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CHAPTER 285

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

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Act 31 of 2005

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MUTUAL ASSISTANCE IN CRIMINAL MATTERS

An Act for the provision and obtaining of international assistance in criminal matters.

PART 1 – PRELIMINARY

1. Definitions

In this Act, unless the contrary intention appears:

“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;

“Counter Terrorism and Transnational Organised Crime Act” means the Counter Terrorism and Transnational Organised Crime Act [Cap. 313];

“Court” means the Supreme Court of Vanuatu;

“criminal matter” includes a matter (whether arising under Vanuatu law or a law of another country) 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;

“document” means a record of information in any form, including:

- (a) a written or printed thing (including a map, plan, graph or drawing);
- (b) a computer file, including a record that is kept in electronic form and can be accessed in Vanuatu;
- (c) a photograph;
- (d) a disk, tape, film sound track or other thing in which sound or other data is embodied;
- (e) a film, negative, tape or other thing in which a visual image is embodied;

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

“foreign forfeiture order” means an order, made under the law of a foreign country, for the forfeiture of property because of an offence against the law of that country;

“foreign law immunity certificate” means a certificate or a declaration:

- (a) given or made by a foreign country or under a law of a foreign country; and
- (b) stating that, under the law of the foreign country, 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:
 - (i) to answer a specified question; or
 - (ii) to produce a specified document;

“foreign pecuniary penalty order” means an order made under the law of a foreign country for a person to pay to the foreign country an amount representing the value (or part of the value) of what the person gained from an offence against the law of that country;

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

“foreign restraining order” means an order made under the law of a foreign country, about an offence against the law of that country, restraining a particular person, or all persons, from dealing with property;

“Foreign State” means:

- (a) any country other than Vanuatu; and
- (b) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to international cooperation.

“forfeiture order” means a forfeiture order within the meaning of the Proceeds of Crime Act;

“pecuniary penalty order” has the same meaning as in the Proceeds of Crime Act;

“political offence” has the same meaning as in the Extradition Act [Cap. 287];

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

“prison” includes a gaol, lock-up or other place of detention;

“proceeds of crime” has the same meaning as in the Proceeds of Crime Act;

“proceeding”, for a criminal matter, includes a proceeding before a judicial officer or a jury:

- (a) to gather evidence that may lead to a criminal charge being laid; or
- (b) to assess evidence in support of a criminal charge;

“Proceeds of Crime Act” means the Proceeds of Crime Act [Cap. 284];

“property” has the same meaning as in the Proceeds of Crime Act;

“property-tracking document”, in relation to an offence, means a document relevant to:

- (a) identifying, locating or quantifying property of a person who committed the offence; or
- (b) identifying or locating any document necessary for the transfer of property of a person who committed the offence; or
- (c) identifying, locating or quantifying tainted property in relation to the offence; or
- (d) identifying or locating any document necessary for the transfer of tainted property in relation to the offence;

“restraining order” has the same meaning as in the Proceeds of Crime Act;

“serious offence” means an offence:

- (a) against a law of Vanuatu for which the maximum penalty is imprisonment for at least 12 months; or
- (b) against a law of another country constituted by an act or omission that, had it occurred in Vanuatu, would have constituted an offence for which the maximum penalty is imprisonment for at least 12 months;

“tainted property” has the same meaning as in the Proceeds of Crime Act;

“trial”, for an offence in a foreign country, 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 lets persons assembled in a place see, hear and talk to persons assembled in another place.

2. Objects of Act

The objects of this Act are:

- (a) to regulate the provision by Vanuatu of international assistance in criminal matters when a request is made by a foreign country for any of the following:

- (i) the taking of evidence, or the production of a document or other article, for a proceeding in the foreign country;
 - (ii) the issue of a search warrant and seizure of any thing relevant to a proceeding or investigation in the foreign country;
 - (iii) the forfeiture or confiscation of property for the commission of a serious offence against the law of the foreign country;
 - (iv) the restraining of dealings in property that may be forfeited or confiscated because of the commission of a serious offence against the law of the foreign country; and
- (b) to facilitate Vanuatu providing international assistance in criminal matters when a request is made by a foreign country to make arrangements for a person who is in Vanuatu to travel to the foreign country:
- (i) to give evidence in a proceeding; or
 - (ii) to give assistance for an investigation; and
- (c) to facilitate Vanuatu obtaining similar international assistance in criminal matters.

3. Act not to limit other provision of assistance

This Act does not prevent the provision or obtaining of international assistance in criminal matters other than assistance of a kind that may be provided or obtained under this Act.

4. Application of Act

This Act applies for all foreign countries.

PART 2 – REQUESTS FOR ASSISTANCE GENERALLY

5. Requests by Vanuatu for assistance generally

A request for international assistance in a criminal matter that Vanuatu is authorised to make under this Act may be made only by the Attorney General.

6. Request by foreign countries for assistance generally

- (1) A request by a foreign country for international assistance in a criminal matter must be made to the Attorney General or a person authorised by the Attorney General to receive requests by foreign countries under this Act.
- (2) A request must be in writing and must include, or be accompanied by, the following information:
- (a) the name of the authority concerned with the criminal matter to which the request relates;
 - (b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
 - (c) a description of the purpose of the request and of the nature of the assistance being sought;
 - (d) any information that may assist in giving effect to the request.
- (3) Failure to comply with subsection (2) is not a ground for refusing the request, but the Attorney General is not obliged to consider the request until that subsection is complied with.
- (4) If a foreign country makes a request to a person authorised under subsection (1), the request is taken, for this Act, to have been made to the Attorney General.

- (5) If a foreign country makes a request to the Court for international assistance in a criminal matter:
- (a) the Court must refer the request to the Attorney General; and
 - (b) the request is then taken, for this Act, to have been made to the Attorney General.

7. Assistance may be provided subject to conditions

Assistance under this Act may be provided to a foreign country subject to any conditions that the Attorney General determines.

8. Refusal of assistance generally

A request by a foreign country for assistance under this Act must be refused if, in the opinion of the Attorney General:

- (a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, a political offence; or
- (b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for a political offence; or
- (c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality or political opinions; or
- (d) the granting of the request would prejudice the sovereignty, security or national interest of Vanuatu; or
- (e) the request relates to the prosecution of a person for an offence if, for that offence or another offence constituted by the same act or omission as that offence, the person:
 - (i) has been acquitted or pardoned by a competent tribunal or authority in the foreign country; or
 - (ii) has undergone the punishment provided by the law of that country.

9. Refusal of assistance — death penalty

- (1) A request by a foreign country for assistance under this Act may be refused if:
- (a) it relates to the prosecution or punishment of a person charged with, or convicted of, an offence for which the death penalty may be imposed in the foreign country; and
 - (b) the Attorney General is not of the opinion, having regard to the special circumstances of the case, that the assistance requested should be granted.
- (2) A request by a foreign country for assistance under this Act may be refused if the Attorney General:
- (a) believes that the provision of the assistance may result in the death penalty being imposed on a person; and
 - (b) after taking into consideration the interests of international criminal cooperation, is of the opinion that in the circumstances of the case the request should not be granted.

10. Refusal of assistance — Attorney General's discretion

A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Attorney General:

- (a) the request relates to the prosecution or punishment of a person for an act or omission that, if it had occurred in Vanuatu, would not have constituted an offence against Vanuatu law; or

- (b) the request relates to the prosecution or punishment of a person:
 - (i) for an act or omission that occurred, or is alleged to have occurred, outside the foreign country; and
 - (ii) if a similar act or omission occurring outside Vanuatu in similar circumstances would not have constituted an offence against Vanuatu law; or
- (c) the request relates to the prosecution or punishment of a person for an act or omission and the person responsible could no longer be prosecuted by reason of lapse of time or any other reason if:
 - (i) it had occurred in Vanuatu at the same time; and
 - (ii) it had constituted an offence against Vanuatu law; or
- (d) the provision of the assistance could prejudice an investigation or proceeding for a criminal matter in Vanuatu; or
- (e) the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Vanuatu); or
- (f) the provision of the assistance would result in manifest unfairness or a denial of human rights; or
- (g) the provision of the assistance would impose an excessive burden on the resources of Vanuatu; or
- (h) it is appropriate, in all the circumstances of the case, that the assistance requested should not be granted.

PART 3 – ASSISTANCE WITH TAKING EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES

11. Requests by Vanuatu for assistance with evidence

- (1) The Attorney General may request the appropriate authority of a foreign country to arrange, for a proceeding or investigation in a criminal matter in Vanuatu, for:
 - (a) evidence to be taken in the foreign country under the law of that country; or
 - (b) a document or other article in the foreign country to be produced under the law of that country.
- (2) When making a request under subsection (1), 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, from Vanuatu by:
 - (a) a party to the proceeding, or the party's legal representative; or
 - (b) a person being investigated, or the person's legal representative.

12. Requests by foreign countries for assistance with evidence

- (1) If a foreign country (the "requesting country") asks that evidence be taken in Vanuatu for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney General may authorise:
 - (a) the taking of the evidence; and
 - (b) the transmission of the evidence to the requesting country.
- (2) If a foreign country (the "requesting country") asks that a document or other article in Vanuatu be produced for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney General may authorise:

- (a) the production of the documents or articles; and
- (b) their transmission to the requesting country.

13. Taking evidence

- (1) If the Attorney General authorises the taking of evidence under section 12, a Judge may take, on oath, the evidence of each witness in the matter, and the Judge who takes any such evidence must:
- (a) cause the evidence to be put in writing and certify that he or she took the evidence; and
 - (b) send the evidence and certificate to the Attorney General.
- (2) The evidence of such a witness may be taken in the presence or absence of the person to whom the proceeding in the requesting country relates or of his or her legal representative (if any).
- (3) A certificate by a Judge under subsection (1)(a) or (2) must state whether, when the evidence was taken or the document produced, any of the following persons were present:
- (a) the person to whom the proceeding in the requesting country relates or his or her legal representative (if any);
 - (b) any other person giving evidence or producing documents or other articles or his or her legal representative (if any).

14. Production

- (1) If the Attorney General authorises the production of a document under section 12, a Judge:
- (a) may require the document to be produced to him or her; and
 - (b) if it is produced, must send it, or a copy of it certified by the Judge to be a true copy, to the Attorney General.
- (2) If the Attorney General authorises the production of an article (other than a document) under section 12, a Judge:
- (a) may require it to be produced to him or her; and
 - (b) if the article is produced, must send it to the Attorney General.

15. Conduct of proceedings

- (1) The Judge conducting a proceeding under section 13 or 14 may permit any of the following to have legal representation at the proceeding:
- (a) the person to whom the proceeding in the requesting country relates; and
 - (b) any other person giving evidence or producing a document or other article at the proceeding before the Judge; and
 - (c) the relevant authority of the requesting country.
- (2) If the requesting country has so requested, the Judge may permit examination or cross-examination, through a video or internet link from the requesting country, of any person giving evidence or producing a document or other article at the proceeding by:
- (a) any person to whom the proceeding in the requesting country relates, or that person's legal representative; or
 - (b) the legal representative of the relevant authority of the requesting country.

16. Exceptions to compulsion

- (1) The laws of Vanuatu about:

- (a) compelling a person to attend before a Judge; and
- (b) giving evidence, answering questions and producing documents or other articles;

on the hearing of a charge against a person for an offence against the law of Vanuatu, apply, so far as they are capable of applying, to the compelling of a person under this Part:

- (c) to attend before a Judge; and
 - (d) to give evidence, answer questions and produce documents or other articles.
- (2) However, for this section, the person to whom the proceeding in the requesting country relates is competent, but not compellable, to give evidence.
- (3) Also, for this section, the person is not compellable to answer a question or to produce a document or article if the person would not be compellable to do so in the requesting country or other foreign country to which the request relates.

17. Foreign law immunity certificates

A foreign law immunity certificate is admissible in proceedings under this section as evidence of the matters stated in the certificate.

PART 4 – ASSISTANCE FOR SEARCH AND SEIZURE

18. Requests by Vanuatu for search and seizure

- (1) This section applies to a proceeding or investigation for a criminal matter involving a serious offence against the law of Vanuatu or in relation to terrorist property if the Attorney General believes, on reasonable grounds, that a thing relevant to the proceeding or investigation may be located in a foreign country.
- (2) The Attorney General may request the appropriate authority of the foreign country to obtain a warrant or other instrument that, under the law of the foreign country, authorises:
- (a) a search for a thing relevant to the proceeding or investigation; and
 - (b) if such a thing or any other thing that is or may be relevant to the proceeding or investigation is found as a result of the search — the seizure of that thing.
- (3) A thing that:
- (a) is relevant to the proceeding or investigation; and
 - (b) has been obtained by the appropriate authority of the foreign country by a process authorised by the law of that country other than the issue (as requested by Vanuatu) of a warrant or other instrument authorising the seizure of the thing;

may be admissible in evidence in the proceeding or used in the investigation despite having been obtained otherwise than in accordance with the request.

19. Requests by foreign countries for search and seizure

- (1) The Attorney General may direct an authorised officer to apply to the Court for a search warrant if:
- (a) a proceeding or investigation for a criminal matter involving a serious offence has commenced in a foreign country or in relation to terrorist property; and
 - (b) the Attorney General believes, on reasonable grounds, that a thing relevant to the investigation or proceeding is located in Vanuatu; and

- (c) the foreign country requests the Attorney General to arrange for the issue of a search warrant for that thing.
- (2) The authorised officer may apply to the Court for the issue of a warrant to search land or premises in Vanuatu for a thing relevant to the proceeding or investigation.
- (3) Having regard to the need for prompt action in seizing property that may be at risk of being destroyed or removed, the Court must make itself available to hear an application for a search warrant under this section at short notice.

20. Search warrants

- (1) If an application is made under section 19 for a warrant for a thing relevant to an investigation or proceeding in a foreign country, the Court may issue the warrant authorising the authorised officer, with such assistance, and by such force, as is necessary and reasonable:
 - (a) to enter the land or premises; and
 - (b) to search the land or premises for that thing and to seize it.
- (2) The Court may issue the warrant only if it is satisfied that:
 - (a) a proceeding or investigation for a criminal matter involving a serious offence or in relation to terrorist property has commenced in the foreign country; and
 - (b) the thing for which the warrant is applied is relevant to the investigation or proceeding; and
 - (c) there are reasonable grounds for issuing the warrant.
- (3) A warrant issued under this section must include:
 - (a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the relevant offence; and
 - (b) a description of the kind of thing authorised to be seized; and
 - (c) a time at which the warrant ceases to have effect; and
 - (d) a statement whether entry is authorised at any time or at specified times.

21. Seizing other things

If, in the course of searching under a warrant issued under section 20 for a thing of a kind specified in the warrant, an authorised officer finds another thing, the warrant is taken to authorise the officer to seize the other thing if the officer believes, on reasonable grounds, the other thing:

- (a) to be relevant to the proceeding or investigation in the foreign country or to provide evidence about the commission of a criminal offence in Vanuatu; and
- (b) to be likely to be concealed, lost or destroyed if it is not seized.

22. Custody of things seized

- (1) If an authorised officer seizes a thing under this Part, the authorised officer must deliver the thing into the custody and control of the Commissioner of Police.
- (2) If a thing is delivered into the custody and control of the Commissioner of Police under subsection (1), the Commissioner of Police must tell the Attorney General that the thing has been so delivered and arrange for the thing to be kept in safe custody.
- (3) The Attorney General may give to the Commissioner of Police a direction in writing (including a direction that the thing be sent to an authority of a foreign country) about how the thing is to be dealt with.

PART 5 – ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

Division 1 – Requests by Vanuatu

23. Requests for removal of certain persons to Vanuatu

- (1) The Attorney General may request a foreign country to authorise the attendance at a hearing, for a proceeding that has commenced in Vanuatu, of a person who is in the foreign country if:
- (a) the proceeding relates to a criminal matter; and
 - (b) the Attorney General is of the opinion that the person:
 - (i) is a foreign prisoner; and
 - (ii) is capable of giving evidence relevant to the proceeding; and
 - (iii) has consented to being removed to Vanuatu to give evidence in the proceeding.
- (2) The Attorney General may request a foreign country to authorise the removal of a person who is in the foreign country to Vanuatu to give assistance in an investigation that has commenced in Vanuatu if:
- (a) the investigation relates to a criminal matter; and
 - (b) the Attorney General is of the opinion that the person:
 - (i) is a foreign prisoner; and
 - (ii) is capable of giving assistance in the investigation; and
 - (iii) has consented to being removed to Vanuatu to give assistance in the investigation.
- (3) If the Attorney General makes a request under subsection (1) or (2), the Attorney General may arrange with an appropriate authority of the foreign country for:
- (a) the removal of the person to Vanuatu; and
 - (b) the custody of the person while in Vanuatu; and
 - (c) the return of the person to the foreign country; and
 - (d) other relevant matters.

24. Custody of certain persons

- (1) This section applies:
- (a) to a person who is to be brought to Vanuatu from a foreign country in response to a request under section 23; and
 - (b) if the foreign country requests that the person be kept in custody while he or she is in Vanuatu.
- (2) The person must be kept in such custody as the Attorney General directs in writing while the person is in Vanuatu, or travelling to or from Vanuatu, under the request.

25. Immunities

- (1) If a person is in Vanuatu:
- (a) because of a request under section 23; or
 - (b) to give evidence in a proceeding, or to give assistance in an investigation, because of a request made by or for the Attorney General (except a request under section 23) for international assistance in a criminal matter;

the person must not:

- (c) be detained, prosecuted or punished in Vanuatu for any offence committed, or alleged to have been committed, before he or she left the foreign country in response to the request; or
 - (d) be subjected to any civil suit for any act or omission of the person that occurred, or is alleged to have occurred, before he or she left the foreign country under the request, being a civil suit to which the person could not be subjected if the person were not in Vanuatu; or
 - (e) be required to give evidence in any proceeding in Vanuatu other than any proceeding to which the request relates; or
 - (f) be required, in any proceeding to which the request relates, to answer any question that the person would not be required to answer in a proceeding relating to a criminal matter in the foreign country; or
 - (g) be required, in any proceeding to which the request relates, to produce any document or article that the person would not be required to produce in a proceeding in the foreign country relating to a criminal matter.
- (2) A foreign law immunity certificate is admissible in proceedings as evidence of the matters stated in the certificate.
- (3) Subsection (1) ceases to apply to a person if:
- (a) the person has left Vanuatu; or
 - (b) the person has had the opportunity of leaving Vanuatu and has remained in Vanuatu otherwise than:
 - (i) for the purpose to which the request relates; or
 - (ii) to give evidence in a proceeding in Vanuatu certified by the Attorney General, in writing, to be a proceeding in which it is desirable that the person give evidence; or
 - (iii) to give assistance in an investigation in Vanuatu certified by the Attorney General, in writing, to be an investigation in which it is desirable that the person give assistance.
- (4) A certificate given by the Attorney General for subsection (3)(b)(ii) or (3)(b)(iii) has effect from the day specified in it (which may be a day before the day on which the certificate is given).

26. Status of person prosecuted for offence committed after leaving foreign country

- (1) This section applies to a person who has come to Vanuatu in response to a request under section 23.
- (2) The person is taken, for this Act, to be in Vanuatu because of the request during any period when he or she remains in Vanuatu to be tried for a criminal offence against the law of Vanuatu that he or she is alleged to have committed after he or she left the foreign country.
- (3) Without limiting subsection (2), the person must be kept in such custody as the Attorney General directs under section 24.

27. Limitation on use of evidence given by certain persons

- (1) This section applies to a person who is in Vanuatu to give evidence in a proceeding or assistance in an investigation:
- (a) either:
 - (i) because of a request under section 23; or

- (ii) because of a request (other than a request under that subsection) made by the Attorney General for international assistance in a criminal matter; and
 - (b) if the person has given the evidence or assistance in the proceeding to which the request related or in a proceeding certified by the Attorney General, in writing, to be a proceeding in which it is desirable that the person give evidence.
- (2) The evidence must not be admitted or otherwise used in a prosecution of the person for an offence against Vanuatu law, other than for perjury in giving that evidence.
- (3) Anything the person says or does when giving the assistance is not to be admitted or otherwise used in any prosecution of the person for an offence against Vanuatu law.

28. Conditions of imprisonment

For a person who is in Vanuatu because of a request under section 23 and who has been committed to prison in Vanuatu under a direction of the Attorney General under section 24, the laws of Vanuatu about the following matters apply (so far as they are capable of application):

- (a) the conditions of imprisonment of persons imprisoned for offences against Vanuatu law; and
- (b) the treatment of the persons during imprisonment; and
- (c) the transfer of the persons from prison to prison.

29. Release of certain persons upon request by foreign country

The Attorney General must direct that a person be released from custody if:

- (a) the person is being held in custody under a direction of the Attorney General under section 24; and
- (b) the foreign country from which the person has been brought requests the release of the person from custody.

30. Arrest of person who has escaped from custody

- (1) Any police officer may arrest a person without warrant if the Attorney General believes, on reasonable grounds, that the person:
 - (a) has been brought to Vanuatu in response to a request under section 23; and
 - (b) has escaped from lawful custody while in Vanuatu because of the request.
- (2) The police officer must take the person before the Court as soon as practicable.
- (3) If the Court is satisfied that the person has escaped from lawful custody, the Court may issue a warrant authorising any police officer to return the person to lawful custody.

Division 2 – Requests by foreign countries

31. Requests for assistance by foreign countries

This Division applies if:

- (a) a proceeding or an investigation about a criminal matter has commenced in a foreign country; and
- (b) the foreign country requests the removal of a prisoner who is in Vanuatu (whether or not in custody) to the foreign country to attend at the proceeding or to assist in the investigation; and

- (c) the Attorney General believes, on reasonable grounds, that the prisoner is capable of giving evidence relevant to the proceeding or assistance relevant to the investigation; and
- (d) the Attorney General is satisfied that:
 - (i) the prisoner has consented to giving evidence or assistance in the foreign country; and
 - (ii) the foreign country has given adequate (whether or not unqualified) undertakings about the matters mentioned in section 33.

32. Travel of prisoner or person

- (1) If the prisoner is being held in custody, the Attorney General may:
 - (a) direct that the prisoner be released from prison to travel to the foreign country to give evidence at the proceeding or assistance in the investigation; and
 - (b) subject to the making or giving of any necessary directions or approvals for the release of the prisoner — arrange for the prisoner to travel to the foreign country in the custody of a police or prison officer appointed by the Attorney General for the purpose.
- (2) If the prisoner has been released from custody on a parole or other order or licence to be at large, the Attorney General may:
 - (a) approve the travel of the prisoner to the foreign country to give evidence or assistance and obtain any necessary approvals, authorities, permissions or variations to the order or licence; and
 - (b) subject to obtaining the approvals, authorities, permissions or variations, arrange for the prisoner to travel to the foreign country.
- (3) The Attorney General may arrange for a person (other than a prisoner) who is in Vanuatu to travel to a foreign country if:
 - (a) a proceeding or an investigation about a criminal matter has commenced in the foreign country; and
 - (b) the foreign country requests that the person travel to the foreign country to give evidence at the proceeding or assistance at the investigation; and
 - (c) the Attorney General believes, on reasonable grounds, that the person is capable of giving evidence relevant to the proceeding or assistance relevant to the investigation; and
 - (d) the Attorney General is satisfied that:
 - (i) the person has consented to travel to the foreign country to give evidence or assistance; and
 - (ii) the foreign country has given adequate (whether or not unqualified) undertakings about the matters mentioned in section 33.

33. Undertakings to be given

- (1) For sections 31(d)(ii) and 32(3)(d)(ii), this section sets out the matters about which undertakings are to be given.
- (2) The person will not:
 - (a) be detained, prosecuted or punished for an offence against the law of the foreign country committed, or alleged to have been committed, before the person's departure from Vanuatu; or
 - (b) be subjected to civil suit for an act or omission of the person that occurred, or is alleged to have occurred, before the person's departure from Vanuatu,

being a civil suit to which the person could not be subjected if the person were not in the foreign country; or

- (c) be required to give evidence in a proceeding in the foreign country other than the proceeding to which the request relates;

unless:

- (d) the person has left the foreign country; or

- (e) the person has had the opportunity of leaving the foreign country and has remained in that country for a purpose other than giving evidence in the proceeding to which the request relates.

- (3) Evidence given by the person in the proceeding to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than for perjury in giving that evidence.
- (4) The person will be returned to Vanuatu under arrangements agreed by the Attorney General.
- (5) If the person is being held in custody in Vanuatu and the Attorney General requests the foreign country to make arrangements to keep the person in custody while the person is in the foreign country:
- (a) appropriate arrangements will be made for that purpose; and
- (b) the person will not be released from custody in the foreign country unless the Attorney General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Vanuatu law; and
- (c) if the person is released in the foreign country after notice by the Attorney General under paragraph (b) — the foreign country will pay for the person's accommodation and expenses pending the completion of the proceeding to which the request relates.
- (6) The Attorney General may require undertakings about any other matters that he or she thinks appropriate.

34. Effect of removal to foreign country on prisoner's term of imprisonment

- (1) This section applies to a prisoner who:
- (a) is serving a term of imprisonment for an offence against a law of Vanuatu; and
- (b) is released from a prison because of a request by a foreign country under section 31.
- (2) The prisoner is taken, while in custody because of the request (including custody outside Vanuatu), to be continuing to serve the term of imprisonment.

PART 6 – CUSTODY OF PERSONS IN TRANSIT

35. Transit

- (1) Subsection (2) applies to a person who is to be taken in custody from a foreign country through Vanuatu to another foreign country to give evidence in a proceeding or assistance in an investigation in a criminal matter in the other foreign country.
- (2) The person:
- (a) may be taken through Vanuatu in the custody of another person; and
- (b) if an aircraft or ship on which the person is a passenger lands or calls at a place in Vanuatu – must be kept in custody as the Attorney General directs in writing until the person's journey is continued.

- (3) The Attorney General may direct that the person be taken in custody to the foreign country from which the person was first taken if:
- (a) the person is being held in custody because of a direction under subsection (2)(b); and
 - (b) the person's journey is not, in the opinion of the Attorney General, continued within a reasonable time.

36. Arrest of person in transit

- (1) A police officer may, without warrant, arrest a person if the Attorney General believes, on reasonable grounds, that the person was being kept in custody under a direction under section 35 (2)(b) and has escaped from that custody.
- (2) The police officer must take the person before the Court as soon as practicable.
- (3) If the Court is satisfied that the person has escaped from lawful custody, the Court may issue a warrant authorising any police officer to return the person to lawful custody.

37. Aiding person to escape etc.

The laws of Vanuatu about aiding a prisoner to escape from custody, rescuing a prisoner from custody, permitting escape and harbouring a prisoner who has escaped from custody apply to a person who is in custody in Vanuatu because of a request to a foreign country by Vanuatu under this Act.

PART 7 – ASSISTANCE REGARDING PROCEEDS OF CRIME

Division 1 – Requests by Vanuatu

38. Requests by Vanuatu for enforcement of orders

- (1) The Attorney General may request an appropriate authority of a foreign country to make arrangements for the enforcement of:
- (a) a forfeiture order in connection with a serious offence, made in Vanuatu under the Proceeds of Crime Act against property that is believed to be located in the foreign country; or
 - (ab) a forfeiture order in connection with terrorist property made in Vanuatu under the Counter Terrorism and Transnational Organised Crime Act; or
 - (b) a pecuniary penalty order in connection with a serious offence, made in Vanuatu, if some or all of the property available to satisfy the order is believed to be located in the foreign country; or
 - (c) a restraining order in connection with a serious offence, made in Vanuatu against property that is believed to be located in that foreign country.
- (2) The Attorney General may enter an arrangement with the foreign country to share with the country the amount forfeited under subsection (1)(a) or paid under subsection (1)(b).

39. Requests for issue of orders in foreign countries

If a proceeding or investigation has commenced in Vanuatu for a serious offence or in relation to terrorist property, the Attorney General may ask an appropriate authority of a foreign country for the issue, in connection with the offence or terrorist property, of an instrument similar in nature to any of the following instruments under the Proceeds of Crime Act:

- (a) a search warrant for tainted property;

- (b) a restraining order;
- (c) a production order for a property-tracking document;
- (d) a search warrant for a property-tracking document.

Division 2 – Requests by foreign countries

40. Requests by foreign countries for enforcement of orders

(1) Subsection (2) applies if:

- (a) a foreign country requests the Attorney General to make arrangements for the enforcement of:
 - (i) a foreign forfeiture order, in connection with a serious offence or terrorist property, against property that is believed to be located in Vanuatu; or
 - (ii) a foreign pecuniary penalty order, in connection with a serious offence, if some or all of the property available to satisfy the order is believed to be located in Vanuatu; and
- (b) the Attorney General is satisfied that:
 - (i) a person has been convicted of the offence; and
 - (ii) the conviction and the order are not subject to further appeal in the foreign country.

(2) The Attorney General may apply for the registration of the order in the Court.

(3) If a foreign country requests the Attorney General to make arrangements for the enforcement of a foreign restraining order, in connection with a serious offence or terrorist property, against property that is believed to be located in Vanuatu, the Attorney General may apply for the registration of the order in the Court.

41. Registration of foreign orders

If the Attorney General applies to the Court for registration of a foreign order under section 40, the Court must register the order accordingly.

42. Effect of registration

- (1) A foreign forfeiture order registered in the Court under section 41 has effect, and may be enforced, as if it were a forfeiture order made by the Court under the Proceeds of Crime Act or the Counter Terrorism and Transnational Organised Crime Act at the time of registration.
- (2) A foreign pecuniary penalty order registered in the Court under section 41 has effect, and may be enforced, as if it were a pecuniary penalty order made by the Court under the Proceeds of Crime Act at the time of registration and requiring the payment to the State of the amount payable under the order.
- (3) The Attorney General may enter an arrangement with a foreign country to share with that country the amount forfeited under subsection (1) or paid under subsection (2).
- (4) A foreign restraining order registered in the Court under section 41 has effect, and may be enforced, as if it were a restraining order made by the Court under the Proceeds of Crime Act at the time of registration.

43. Amendments of orders

If a foreign pecuniary penalty order or a foreign restraining order is registered in the Court under section 41:

- (a) a copy of any amendments to the order (whether before or after registration) may be registered in the same way as the order; and

- (b) the amendments do not, for this Act and the Proceeds of Crime Act, have effect until they are registered.

44. How an order is registered

- (1) An order or an amendment of an order may be registered in the Court by registering a copy of:
- (a) the appropriate order or amendment sealed by the Court or other authority that made the order or amendment; or
 - (b) the order or amendment authenticated under section 61(2).
- (2) A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order is to be treated as if it were a sealed or authenticated copy.
- (3) However, registration effected by facsimile copy ceases to have effect at the end of 21 days unless a sealed or authenticated copy of the order has been registered by then.

45. Cancellation of registration

- (1) The Attorney General may apply to the Court for cancellation of the registration of a foreign pecuniary penalty order or a foreign restraining order that has been registered in the Court.
- (2) If the Attorney General applies to the Court for cancellation of a registration under subsection (1), the Court must cancel the registration accordingly.

46. Requests for search and seizure warrants for tainted property

The Attorney General may direct an authorised officer to apply to the Court under the Proceeds of Crime Act for a search warrant for property if:

- (a) a proceeding or investigation has commenced in a foreign country for a serious offence or terrorist property; and
- (b) the Attorney General believes, on reasonable grounds, that tainted property or terrorist property for the offence is located in Vanuatu; and
- (c) the foreign country requests the Attorney General to obtain the issue of a search warrant for the property.

47. Requests for restraining orders

The Attorney General may apply to the Court for a restraining order under the Proceeds of Crime Act against property connected with a serious offence or terrorist property if:

- (a) a proceeding has commenced, or the Attorney General believes, on reasonable grounds, that a proceeding is about to commence, in a foreign country for the offence; and
- (b) the Attorney General believes, on reasonable grounds, that property that may be made or is about to be made the subject of a foreign restraining order is located in Vanuatu; and
- (c) the foreign country requests the Attorney General to obtain the issue of a restraining order against the property.

48. Requests for information gathering orders

(1) Subsection (2) applies if:

- (a) a proceeding or investigation has commenced in a foreign country for a serious offence or terrorist property; and
- (b) any document of the type described in section 79(1) or (2) of the Proceeds of Crime Act connected with the offence is reasonably believed to be located in Vanuatu; and

- (c) the foreign country requests the Attorney General to obtain the issue of:
 - (i) an order requiring the documents to be produced or made available for inspection under the law of Vanuatu; or
 - (ii) a search warrant for obtaining the documents.
- (2) The Attorney General may direct an authorised officer to apply to the Court for:
 - (a) a production order under the Proceeds of Crime Act in connection with the offence to obtain possession of the property-tracking document; or
 - (b) a search warrant under that Act for obtaining the documents.

PART 8 – REQUESTS BY OR FOR A DEFENDANT

49. Requests by Attorney General for a defendant

- (1) Subsection (2) applies if a defendant in a proceeding (the “original proceeding”) in Vanuatu for a criminal matter thinks that it is necessary for the proceeding that:
 - (a) evidence be taken in a foreign country; or
 - (b) a document or other article in a foreign country be produced; or
 - (c) a thing located in a foreign country be seized; or
 - (d) arrangements be made for a person who is in a foreign country to come to Vanuatu to give evidence relevant to the proceeding.
- (2) 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 an appropriate request to the foreign country under Part 3, 4 or 5 so that:
 - (a) the evidence may be taken; or
 - (b) the document or article may be produced; or
 - (c) the thing may be seized; or
 - (d) the arrangements may be made.
- (3) Before making a decision on the application, the Court must give an opportunity to appear before the Court and be heard on the merits of the application to:
 - (a) all parties to the original proceeding; and
 - (b) the Attorney General.
- (4) In deciding whether to issue a certificate, the Court must have regard to the interests of justice generally and in particular to the following matters:
 - (a) whether the foreign country is likely to grant such a request by the Attorney General;
 - (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 country would not otherwise be available;
 - (c) whether the Court hearing the original proceeding would be likely to admit the material into evidence in the proceeding;
 - (d) the likely probative value of the material, if it were admitted into evidence in the proceeding, for any issue likely to be determined in the proceeding;
 - (e) whether the defendant would be unfairly prejudiced if the material were not available to the Court.

- (5) Subsection (4) does not prevent the Court from having regard to any other relevant matter.
- (6) If the Court issues a certificate:
- (a) the Court must send a copy of the certificate to the Attorney General; and
 - (b) the Attorney General must, in accordance with the certificate, request the foreign country for international assistance.

50. Certificate by Attorney General if foreign country refuses request made under section 49

- (1) If a foreign country refuses a request made under section 49(6), the Attorney General must give a certificate in writing to that effect.
- (2) A certificate under subsection (1) is evidence of the facts stated in it.

PART 9 – ADMISSIBILITY OF FOREIGN EVIDENCE

51. Definitions for Part 9

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 country other than Vanuatu;

“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 53; and
 - (ii) complies with section 55; 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;

“Vanuatu Court” means:

- (a) the Supreme Court of Vanuatu; or
- (b) a judge or arbitrator acting under Vanuatu law; or
- (c) a person or body authorised by a Vanuatu law, or by consent of parties, to hear, receive and examine evidence;

“Vanuatu law” means a law (whether written or unwritten) of, or in force in, Vanuatu.

52. Proceedings to which this Part applies

This Part applies to a proceeding, before a Vanuatu court, that is:

- (a) a criminal proceeding for an offence against Vanuatu law; or
- (b) a related civil proceeding.

53. 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 country for the testimony of a person; and
- (b) any exhibit annexed to the testimony.

54. Requirements for testimony

- (1) The testimony must be taken before a superior court of record in the foreign country concerned:
 - (a) on oath or affirmation; or
 - (b) under such caution or admonition as would be accepted, by courts in the foreign country concerned, for giving testimony in proceedings before those courts.
- (2) The testimony may be taken in closed court.

55. Form of testimony

- (1) The testimony may be recorded in any of the following ways:
 - (a) in writing;
 - (b) on audio tape;
 - (c) on video tape.
- (2) The testimony need not:
 - (a) be in the form of an affidavit; or
 - (b) 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:
 - (a) it is an accurate record of the evidence given; and
 - (b) it was taken in the manner required by section 54.
- (4) The certificate must:
 - (a) purport to be signed or certified by a judge, magistrate or court officer of the foreign country to which the request was made; and
 - (b) purport to bear an official or public seal of:
 - (i) the country; or
 - (ii) an authority of the country responsible for matters relating to justice (that is, a Minister of State, a Ministry or Department of Government, or an officer of the Government).

56. 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 Vanuatu Court's satisfaction that the person who gave the testimony concerned is present in Vanuatu 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 Vanuatu Court directs, under section 57, that the foreign material must not be adduced as evidence.

57. Direction to prevent foreign material being adduced

- (1) The Vanuatu Court may direct that foreign material not be adduced as evidence if it appears to the Vanuatu 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 Vanuatu Court may take into account in deciding whether to give such a direction, it must 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.

58. 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 country 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.

59. Effect of Part 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 his or her 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 Vanuatu to be cross-examined, the Court must warn the defendant that he or she 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.

60. 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 10 – MISCELLANEOUS

61. Authentication of documents

- (1) In a proceeding under this Act or the Proceeds of Crime Act arising directly or indirectly from a request made under this Act, any document that is authenticated is admissible in evidence.
- (2) A document is authenticated for subsection (1) if:
 - (a) it purports to be signed or certified by a judge, magistrate or judicial officer in or of a foreign country; and
 - (b) it purports to be sealed with an official or public seal of the foreign country or of a Minister of State, or of a Department or officer of the Government, of the foreign country.
- (3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, under any other law.

62. Restriction on use of information etc.

- (1) Any material (whether it is evidence, a document, an article or a thing) that is sent to Vanuatu by a foreign country:
 - (a) because of a request made by the Attorney General under this Act; and
 - (b) for a proceeding or investigation in a criminal matter;is not to be used intentionally for any other purpose without the approval of the Attorney General.
- (2) The material is inadmissible in evidence in any proceeding other than the proceeding for which it was obtained unless the Attorney General approves its use for that other proceeding.
- (3) Any information, document, article or thing obtained directly or indirectly from a person by making use of the material:
 - (a) otherwise than for the proceeding or investigation for which it was obtained; and
 - (b) without the approval of the Attorney General;is inadmissible in evidence in any other proceeding and may not be used for any other investigation.
- (4) A person who contravenes subsection (1) or (3) is guilty of an offence punishable by:
 - (a) if the person is a natural person — a fine not exceeding VT 1,200,000 or imprisonment for not more than 2 years, or both; or
 - (b) if the person is a body corporate — a fine not exceeding VT 6,000,000.
- (5) For this section, disclosure of any material is taken to be a use of that material.

63. Requests for international assistance not to be disclosed

- (1) Subsection (2) applies to a person who, because of his or her office or employment, has knowledge of:
 - (a) the contents of a request for international assistance made by a foreign country to Vanuatu under this Act; or

- (b) the fact that such a request has been made; or
 - (c) the fact that such a request has been granted or refused.
- (2) The person must not intentionally disclose those contents or that fact unless:
- (a) it is necessary to do so in the performance of his or her duties; or
 - (b) the Attorney General has given his or her approval to the disclosure of those contents or that fact.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable by:
- (a) if the person is a natural person — a fine not exceeding VT 1,200,000 or imprisonment for not more than 2 years, or both; or
 - (b) if the person is a body corporate — a fine not exceeding VT 6,000,000.

64. Regulations

The Minister may make regulations, not inconsistent with this Act, 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.

65. Repeal of Mutual Assistance in Criminal Matters Act No. 52 of 1989

The Mutual Assistance in Criminal Matters Act No. 52 of 1989 is repealed.

66. Transitional

A request or an order that was made under the Mutual Assistance in Criminal Matters Act No. 52 of 1989 and has not been finalised at the commencement of this Act is taken to be a request or an order made under this Act.

Table of Amendments

1	<i>Amended by Act 31 of 2005</i>	42(1)	<i>Amended by Act 31 of 2005</i>
18(1)	<i>Amended by Act 31 of 2005</i>	46(a)	<i>Amended by Act 31 of 2005</i>
19(1)(a)	<i>Amended by Act 31 of 2005</i>	46(b)	<i>Amended by Act 31 of 2005</i>
20(2)(a)	<i>Amended by Act 31 of 2005</i>	47	<i>Amended by Act 31 of 2005</i>
38(1)(a)	<i>Amended by Act 31 of 2005</i>	48(1)(a)	<i>Amended by Act 31 of 2005</i>
38(1)(ab)	<i>Inserted by Act 31 of 2005</i>	48(1)(b)	<i>Amended by Act 31 of 2005</i>
39	<i>Amended by Act 31 of 2005</i>	48(1)(c)(ii)	<i>Amended by Act 31 of 2005</i>
40(1)(a)(i)	<i>Amended by Act 31 of 2005</i>	48(2)(b)	<i>Amended by Act 31 of 2005</i>
40(3)	<i>Amended by Act 31 of 2005</i>		