



Mutual Legal Assistance Guidelines

Mutual legal assistance rendered by Trinidad and Tobago to a Requesting State is governed by the **Mutual Assistance in Criminal Matters Act Chap. 11:24 (“the MACMA”)**.

Part III of the MACMA governs requests by commonwealth countries to Trinidad and Tobago for assistance.

*S. 21. (1) Subject to subsection (2), a request for assistance under this Act made by a Commonwealth country shall comply with the conditions set out in the **First Schedule**.*

The Part IV of the MACMA governs the application of the MACMA to countries other than commonwealth countries:

S. 32. In Part IV states:

“non-commonwealth country” means a country other than one included in the definition of “Commonwealth country” in section 2(1);

“treaty” includes a convention, protocol, agreement or arrangement.

S. 33. (1) Where a treaty has been entered into between Trinidad and Tobago and a non-commonwealth country providing for mutual assistance in a criminal matter, then upon the application of that country for assistance, the Attorney General may, by Order, subject to negative resolution of Parliament, declare that country to be a country to which this Act applies.

(2) An Order made under subsection (1) may provide that this Act applies subject to such limitations, conditions, exceptions or qualifications as may be prescribed in the Order, and where

such Order so provides, this Act shall apply in relation to that country subject to such limitations, conditions, exceptions or qualifications.

However, in compliance with S.33 of the MACMA, the assistance that may be rendered shall reflect the same as that rendered to the Commonwealth. This in turn means that the country requesting assistance must comply with the requirements under the First Schedule.

The First Schedule:

1. A request for assistance under this Act made by a Commonwealth country shall—

- (a) specify the assistance requested;
- (b) be initiated by a Judge, Magistrate, the Director of Public Prosecutions or a law enforcement agency;
- (c) identify the person, agency or authority that initiated the request;
- (d) state any wishes of the country concerning the confidentiality of the request and the reasons for those wishes;
- (e) state any period within which the country wishes the request to be complied with;
- (f) if the request would involve travel by any person from Trinidad and Tobago to the country, give details of allowances and accommodation to which the person would be entitled; and
- (g) contain such information as is available to the central authority for the country as will facilitate compliance with the request.

2. Where the assistance requested by a Commonwealth country is for the purposes of criminal proceedings, the request—

- (a) shall be accompanied by the certificate, in relation to the criminal proceedings, that is referred to in paragraph (b) of the definition of “criminal proceedings” in section 2; and
- (b) shall-
 - (i) give details of the proceedings and the offence concerned, including a summary of the known facts;
 - (ii) give the identity, if known, of the person to whom the proceedings relate or would relate; and

(iii) if the proceedings have been instituted, state the stage reached in the proceedings and, where applicable, identify the Court exercising jurisdiction.

3. Where a request such as is referred to in section 23 is made by a Commonwealth country, the request shall—

(a) give details of the procedure that the country wishes to be followed in giving effect to the request, including details of the manner and form in which any evidence or information is to be supplied to that country;

(b) where relevant, indicate whether any person, from whom evidence is to be taken, is to be examined— (i) orally or in writing;

(ii) under oath;

(iii) in the presence of his legal representative; or

(iv) in the presence of the person to whom any relevant proceedings in that country relate;

(c) where evidence is to be taken from a person, specify the questions to be put to the person or the subject-matter about which the person is to be examined;

(d) where evidence is to be taken from a person, give details of any special requirements of the country as to the manner of taking evidence relevant to its admissibility in the country; and

(e) give details of any privileges or exemptions under the law of the country in relation to obtaining evidence or information by the means proposed in the request.

4. Where a request such as is referred to in section 24 is made by a Commonwealth country, the request shall identify the article or thing which is to be obtained and, so far as is reasonably practicable, shall contain all information available to the central authority for the country which may be required to be adduced in an application under the law of Trinidad and Tobago for any necessary warrant or authorisation to effect a seizure of that article or thing.

5. Where a request such as is referred to in section 26 is made by a Commonwealth country, the

request shall identify the subject on which evidence or information is to be provided and state the reasons for requiring the personal appearance of the prisoner.

6. Where a request such as is referred to in section 28 is made by a Commonwealth country, the request shall—

- (a) be accompanied by the document to be served; and
- (b) where that document relates to the attendance of any person in the country, give such notice as that country is able to provide of outstanding warrants or other judicial orders in criminal matters against that person.

7. Where a request such as is referred to in section 29 is made by a Commonwealth country, the request shall—

- (a) be accompanied by the certificate given by the Attorney General;
- (b) give details of the specified serious offence; and
- (c) state the grounds for suspecting that the relevant property is in Trinidad and Tobago and give any information in the possession of the country which will assist in identifying or locating that property.

8. Where a request such as is referred to in section 30 is made by a Commonwealth country, the request shall—

- (a) be accompanied by the certificate given by the Attorney General;
- (b) be accompanied by a copy of the order made in the country—
 - (i) sealed by the Court that made the order; or
 - (ii) duly authenticated in accordance with section 35(2)(a), and identify the relevant law under which the order was made;
- (c) give details of the specified serious offence;
- (d) in the case of an order such as is referred to in section 31(1)(a)(ii)(A) or (B), be accompanied by a certificate given by the Attorney General to the effect that the person against whom the order was made appeared in the proceedings or, if he did not do so, that he received the notice of the proceedings specified in the certificate;

- (e) state the grounds for suspecting that the relevant property is in Trinidad and Tobago and give any information in the possession of the country which will assist in identifying or locating the property; and
- (f) give particulars of any amount paid or recovered under the order.

9. Where a request such as is referred to in section 31 is made by a Commonwealth country, the request shall—

- (a) be accompanied by the certificate given by the Attorney General;
- (b) if relevant, be accompanied by a copy of the Order made in the country—
 - (i) sealed by the Court that made the order; or
 - (ii) duly authenticated in accordance with section 35(2)(a), and identify the law under which the order was made;
- (c) if relevant, state the grounds for believing that an order is likely to be made;
- (d) give details of the serious offence in respect of which the order was or, as the case may be, is likely to be, made; and
- (e) state the grounds for suspecting that the relevant property is in Trinidad and Tobago and give any information in the possession of the country which will assist in identifying the property.

10. After giving preliminary consideration to a request for assistance under this Act made by a Commonwealth country, the Central Authority may require the central authority for that country to furnish further information relative to the request and if that information is not furnished within such period as the Central Authority considers reasonable, the request shall be deemed to have been withdrawn.

Refusal of Requests:

- (2) Such a request shall be refused if, in the opinion of the Central Authority—

- (a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;
- (c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality, place of origin or political opinions;
- (d) the request relates to the prosecution or punishment of a person in respect of conduct that, had it occurred in Trinidad and Tobago, would have constituted a criminal offence under any law giving effect to a state of emergency, but if the conduct alleged would have amounted to a criminal offence under any other law of Trinidad and Tobago, this paragraph shall not apply;
- (e) the granting of the request would be contrary to the Constitution of Trinidad and Tobago or the sovereignty of Trinidad and Tobago, or would prejudice the security, international relations or any substantial interest related to national security, public interest or other essential public policy of Trinidad and Tobago;
- (f) the request relates to conduct by a person that constitutes an offence in respect of which the person has already been convicted or acquitted by a Court or tribunal in Trinidad and Tobago;
- (g) the request is for the transfer of a prisoner under section 27(1) but the prisoner does not consent to his transfer;
- (h) the request is for assistance of a kind which cannot be given under this Act, or would require steps to be taken for its implementation that could not be lawfully taken;
- (i) the implementation of the request would require an individual to act or refrain from acting in a certain way, and the individual is not willing to do so and cannot be lawfully compelled to do so;
- (j) the request relates to an offence which in the requesting country is an offence only under military law or a law relating to military obligations; or
- (k) **deleted in amendment Act No. 2 of 2018 The Miscellaneous Provisions (Mutual Assistance in Criminal Matters, Proceeds of Crime, Financial Intelligence Unit of Trinidad and Tobago, and Customs and Exchange Control) Act 2018 (Section 2)*
- (l) it would be contrary to the laws of Trinidad and Tobago.

(3) A request for assistance made by a Commonwealth country may be refused, in whole or in part, if in the opinion of the Central Authority—

(a) the request relates to the prosecution or punishment of a person in respect of conduct that, had it occurred in Trinidad and Tobago, would not have constituted an offence against the laws of Trinidad and Tobago;

(b) the request relates to the prosecution or punishment of a person in respect of conduct that occurred, or is alleged to have occurred, outside the Commonwealth country making the request, and similar conduct occurring outside Trinidad and Tobago in similar circumstances would not have constituted an offence against the laws of Trinidad and Tobago;

(c) the request relates to the prosecution or punishment of a person in respect of conduct where, had it occurred in Trinidad and Tobago and had constituted an offence against the laws of Trinidad and Tobago, the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason;

(d) the request was made by a special or ad hoc tribunal;

(e) the provision of the assistance would impose an excessive burden on the resources of Trinidad and Tobago;

(f) any conditions, exceptions or qualifications imposed pursuant to section 4 in relation to the Commonwealth country, prevent the request from being accepted;

(g) the request does not meet the requirements of the First Schedule; or

(h) there are other reasonable grounds for doing so.

END.