

MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL, 2022

(Bill No. 3 of 2022)

EXPLANATORY STATEMENT

The object of this Bill is to modernize the existing laws of Seychelles in relation to mutual assistance in criminal matters. Mutual legal assistance (MLA) is a formal Government to Government process that countries use to assist each other in the investigation and prosecution of serious criminal offences. The forms of assistance that Seychelles can receive or give under the Mutual Assistance in Criminal Matters Act of 1995 include: the arrangement for persons to give evidence or assist in criminal investigations; enforcement of court orders in matters relevant to proceeds of crime; and the service of documents.

The 1995 Act has been reviewed by several bodies such as the Review Group on the implementation of the United Nations Conventions Against Corruption; the UN Office on Drugs and Crime; legal committees under the Southern African Development Community; the Eastern and Southern Africa Anti-Money Laundering Group; and the Attorney General Chambers. Further, the Government of Seychelles in 2019 sought assistance from the European Union to review the existing law. From these processes, several shortcomings of the present law were identified and several recommendations were made. This Bill seeks to address those shortcomings and to incorporate some of the best practices around the world into the laws of Seychelles.

The reality is that the 1995 Act is no longer fit for purpose when it comes to combating present-day criminal activities. Criminal activities have drastically changed with the development of technology, and our laws need to be abreast with these changes to combat criminal activities that extend beyond national borders.

This Bill is divided into 4 parts:

Part 1 - Preliminary: in this part, the Bill defines the key words that are used in the Bill. Further, the Bill explains that the primary object of the

proposed law is for Seychelles to provide and obtain international assistance in criminal matters by, for instance, freezing assets; the execution of requests for search and seizure; identifying or tracing of proceeds of crime; and the interception of telecommunications and conducting covert surveillance. To be clear, the aforementioned activities cannot be carried out in Seychelles unless there is a specific request from another country. Further, clause 5 of the Bill makes clear that this proposed law does not authorize the extradition of any person or the arrest or detention with a view to the extradition of any person. It is also noteworthy that the proposed law will not limit existing forms of cooperation or prevent development of other forms of cooperation between Seychelles and another country or international organizations such as the International Criminal Police Organization (INTERPOL).

Part 2 - Request by Seychelles to a foreign State: in this part, the Bill sets out the forms of request for assistance in criminal matters that Seychelles may make to another country. These forms of assistance include: (1) locating or identifying persons; (2) serving documents on a person in the foreign State; (3) taking of evidence in the foreign State; (4) the enforcement of orders made in Seychelles for the confiscation or forfeiture of property in respect of a serious offence; and (5) arranging for persons to come to Seychelles to give evidence or assist Seychellois authorities in the investigation of a criminal matter involving a serious offence. The aforementioned forms of request for assistance in criminal matters are not exhaustive. International assistance in criminal matters is ever-changing and as such, the forms of request for assistance in criminal matter that Seychelles will be able to obtain will vary from country from country. As result, clause 17 of the Bill seeks to allow Seychelles to make any other forms of request for assistance in criminal matter that is provided for under the national laws of the country receiving the request from Seychelles. These forms of assistance may include: interception of telecommunications and postal items; surveillance of any kind; and the preservation of communications data.

Part 3 - Request to Seychelles by a foreign State: in this part, the Bill sets out the forms of request for assistance in criminal matters that a foreign State may make to Seychelles. These forms of assistance include: (1) locating or identifying persons; (2) taking of evidence in Seychelles; (3) the enforcement of orders made in the foreign State for the confiscation or

forfeiture of property in respect of a serious offence; (4) arranging for persons to go to foreign countries to give evidence or assist Seychellois authorities in the investigation of a criminal matter involving a serious offence; (5) service of documents; (6) search and seizure; and (7) interception of communications, preservation of communications data and covert surveillance.

Part 4 - Miscellaneous: in this part, the Bill: (1) creates a register of requests for assistance in criminal matters; (2) sets out the procedure for the authentication of documents; (3) permits the use of video link for the purposes of taking the evidence of a person or the identification of a person or thing or any other form of assistance under the proposed law that can be provided by video link; and (4) allows Seychelles to enter into sharing arrangements with a foreign State where the request from the foreign State imposes an excessive burden on the (financial and technical) resources of Seychelles. Also, this part provides for the making of regulations and the rules of court. Further, the Bill seeks to repeal the Mutual Assistance in Criminal Matters Act, Cap. 284.

Dated this 24th day of March, 2022.

**FRANK D.R. ALLY
ATTORNEY-GENERAL**

MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL, 2022

(Bill No. 3 of 2022)

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

SECTIONS

1. Short title
2. Interpretation
3. Object of Act
4. Act does not limit cooperation with international organizations
5. Act not authority for extradition of any person

PART 2

REQUEST BY SEYCHELLES

DIVISION 1 - PRELIMINARY PROVISIONS

6. Application of this Part
7. Requests to be made by the Attorney General
8. Direct Requests

DIVISION 2 - LOCATING AND IDENTIFYING PERSONS

9. Assistance in locating or identifying persons

DIVISION 3 - SERVICE OF DOCUMENTS

10. Assistance in serving documents

DIVISION 4 - TAKING OF EVIDENCE IN A FOREIGN STATE

11. Request for taking of evidence

DIVISION 5 - ENFORCEMENT OF SEYCHELLES CONFISCATION ORDERS

12. Request for enforcement of Seychelles confiscation order

DIVISION 6 - ATTENDANCE OF PERSONS

13. Request for attendance of persons in Seychelles
14. Penalty not to be imposed on a person refusing to come to Seychelles
15. Privileges and immunities of person coming to Seychelles
16. Arrest of a person who escaped from custody

DIVISION 7 - REQUESTS PERMITTED UNDER THE LAWS OF A FOREIGN STATE

17. Other forms of request

PART 3

REQUEST TO SEYCHELLES

DIVISION 1 - PRELIMINARY PROVISION

18. Application of this Part
19. Prescribed foreign State
20. Ad hoc requests for assistance
21. Request to be made to the Attorney General
22. Direct requests
23. Form of request
24. Refusal of assistance
25. Exceptions to political offences
26. Notification of refusal

DIVISION 2 - LOCATING AND IDENTIFYING PERSONS

27. Assistance in locating or identifying a person

DIVISION 3 - SERVICE OF PROCESS

28. Assistance in service of process
29. Undertaking by foreign State
30. Penalty not to be imposed for failure to comply with the summons

DIVISION 4 - OBTAINING EVIDENCE

31. Taking of evidence for criminal matters
32. Production order for criminal matters
33. Supplementary provisions regarding production orders
34. Immunities in compliance of production order
35. Failure to comply with production order

DIVISION 5 - ARRANGING ATTENDANCE OF PERSON IN A FOREIGN STATE

36. Request for attendance of a person in a foreign State
37. Request for attendance of a prisoner or detainee to a foreign State

DIVISION 6 ENFORCEMENT OF FOREIGN CONFISCATION ORDER

38. Request for enforcement of a foreign confiscation order

39. Registration of confiscation order
40. Proof of orders of foreign State
41. Evidence in relation to proceeding and orders in a foreign State

DIVISION 7 - SEARCH AND SEIZURE

42. Request for search and seizure
43. Search warrant
44. Additional powers of person executing search warrant
45. Immunities of officers executing search warrant

DIVISION 8 - INTERCEPTION OF COMMUNICATIONS, PRESERVATION OF
COMMUNICATIONS DATA AND COVERT SURVEILLANCE

46. Request for the interception of telecommunications
47. Order for the interception of telecommunications
48. Request for the interception of postal items
49. Order for the interception of postal items
50. Request for the preservation of communication data
51. Covert surveillance

PART 4

MISCELLANEOUS

52. Register of Requests for Assistance in Criminal Matters
53. Authentication of documents
54. Use of video link in proceedings
55. Sharing Arrangements
56. Language
57. Authority to enter into treaty: article 64 of the Constitution
58. Regulations
59. Rules of Court
60. Repeal and savings

MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL, 2022

(Bill No. 3 of 2022)



A BILL

FOR

AN ACT TO MAKE PROVISION FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN SEYCHELLES AND OTHER COUNTRIES; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the President and the National Assembly.

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the Mutual Assistance in Criminal Matters Act, 2022.

Interpretation

2.(1) In this Act, unless the context otherwise requires —

“ancillary criminal matter” means —

- (a) the restraining of dealing with, or the seizure, forfeiture or confiscation of, property in connection with a serious offence or a foreign serious offence, as the case may be; or
- (b) the seizure, forfeiture or confiscation of property by a court in respect of an offence or other unlawful conduct;
- (c) the obtaining, enforcement or satisfaction of a Seychelles confiscation order or a foreign confiscation order, as the case may be; or
- (d) the imposition or recovery of a pecuniary penalty in respect of an offence or other unlawful conduct;
- (e) the identification or tracing of proceeds of crime and property derived from or used in the commission of a serious offence or a foreign serious offence;

“application” means a notice of motion supported by an accompanying affidavit;

“authorized officer” means —

- (a) any police officer as defined under the Police Force Act, Cap. 172;
- (b) any officer of Customs appointed under the Customs Management Act, 2011;
- (c) any immigration officer as defined under the Immigration Decree Act, Cap. 93;
- (d) any person authorized by the Anti-Corruption Commission as established under the Anti-Corruption Act, 2016; and
- (e) any person authorized by the Attorney General;

“**Central Authority**” means the Attorney General or any authority designated as a Central Authority for Seychelles in pursuance of section 7;

“**communications data**” includes —

- (a) traffic data;
- (b) subscriber information;
- (c) any information not falling within paragraph (a) or (b) that is held or obtained by the provider of a postal service or a telecommunications service and which relates to the provision of that service and includes content data;

“**competent authority**” means a person or authority whom the Attorney General is satisfied is authorized under the law of that foreign State —

- (a) in the case of a request by that foreign State to Seychelles for assistance in a criminal matter, to make the request;
- (b) in the case of a request by Seychelles to that foreign State for assistance in a criminal matter, to receive the request;

“**content data**” means the subject or purpose of the communication, or the message or information being conveyed by the communication, whether or not any interpretation, process, mechanism or device needs to be applied or used to make the meaning of the communication intelligible;

“**covert electronic surveillance**” means covert surveillance carried out by or with an electronic surveillance device which transmits records or otherwise captures audio product or visual images, but does not include either surveillance by a tracking device which only provides the location or position, or the interception of telecommunications;

“**covert surveillance**” means surveillance carried out in a manner that is calculated to ensure that the persons who are

subject to the surveillance are unaware that it is or may be taking place;

“criminal investigation” means an investigation —

- (a) into a serious offence or a foreign serious offence, as the case may be; or
- (b) for the purposes of an ancillary criminal matter;

“criminal matter” means in respect of a serious offence or a foreign serious offence, as the case may be —

- (a) a criminal investigation;
- (b) criminal proceedings;
- (c) an ancillary criminal matter;

“criminal proceedings” means a trial of a person for a serious offence or a foreign serious offence, as the case may be, and includes any proceedings to determine whether a particular person should be tried for the offence;

“dealing” in relation to any property, includes —

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property, whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise;
- (c) disposing of or converting the property;
- (d) bringing the property into or removing the property from Seychelles;
- (e) using the property to borrow money, or as security, whether by way of a charge, mortgage or pledge or otherwise; or

- (f) where a debt is owed to the person holding the property, making a payment to any person in reduction of the amount of the debt;

“financial institution” means —

- (a) a financial institution as defined under the Financial Institutions Act, Cap 79;
- (b) a financial institution as defined under the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020;

“foreign confiscation order” means an order made by a court in a foreign State for the recovery, forfeiture or confiscation of —

- (a) payments or other rewards received in connection with an offence against the law of that foreign State that is a foreign serious offence, or the value of such payments or rewards; or
- (b) property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence, or the value of such property;

“foreign law immunity certificate” means a certificate given, or a declaration made, by a foreign State or under the law of that foreign State, certifying or declaring that, under the law of that 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 thing;

“foreign prisoner” means a person who is being held in custody in a foreign State —

- (a) pending trial or sentence for, or sentence for;

- (b) pursuant to sentence of imprisonment for,
an offence against the law of that foreign State;

“foreign serious offence” means an offence —

- (a) against the law of a foreign State stated in a certificate issued by or on behalf of the foreign State; and
- (b) that consists of or includes any activity which, if the activity had occurred in Seychelles, would have constituted a serious offence;

“foreign State” means any country or territory other than Seychelles and includes any competent authority thereof;

“interception of communications” means disrupting, destroying, opening, interrupting, suppressing, stopping, seizing, recording, copying, listening to and viewing of communications in the course of its transmission so as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication;

“items subject to legal privilege” mean —

- (a) communication between an Attorney-at-Law and the Attorney-at-Law's client made in connection with the giving of legal advice to the client;
- (b) communications between an Attorney-at-Law and Attorney-at-Law's client made in connection with, or in contemplation of, judicial proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made —
- (i) in connection with the giving of legal advice; or
- (ii) in connection with or in contemplation of judicial proceedings and for the purposes of such proceedings,

when these items are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communications or thing held with the intention of furthering a criminal purpose;

“material” includes any book, document or other record in any form, and any article or thing relating to it;

“Minister” means the Minister responsible for legal affairs;

“order” includes a direction or judgment of a court;

“postal item” means any letter, parcel, package, or other thing which is being or will be carried by a public postal service;

“postal service” means any service which —

- (a) consists in the collection, sorting, conveyance, distribution and delivery of postal items; and
- (b) is offered or provided as a service, the main purpose of which, or one of the main purposes of which, is to make available, or to facilitate, a means of transmission from place to place of postal items containing communications;

“premises” include —

- (a) a structure (whether or not movable or offshore), building, tent, vehicle, vessel, hovercraft or aircraft;
- (b) a place (whether or not enclosed or built upon); or
- (c) part of any premises including premises of a kind referred to in paragraph (a) or (b);

“preservation of communications data” means the protection of communications data which already exists in a stored form from modification or deletion, or from anything that would cause its current quality or condition to change or deteriorate:

Provided that communications data that is stored on a highly transitory basis and already exists in a stored form as an integral function of the technology used in its transmission shall not be communications data for the purposes of this definition;

“process” means any summons, warrant, order or other document in respect of a criminal matter that that is issued, as the case may be —

- (a) by any court of Seychelles or by any Judge, Magistrate or officer of such a court;
- (b) by any court of a foreign State or by any Judge, Magistrate or officer of such a court;

“property” means movable or immovable property of every description, whether situated in or outside Seychelles and whether tangible or intangible and includes both virtual assets and an interest in any such movable or immovable property;

“seizure” means freezing coupled with the administration, control, possession, or management of the funds, property or other assets;

“serious offence” means —

- (a) any offence that is punishable with imprisonment for a term of 12 months or more; or
- (b) an inchoate offence including any attempt, abetment, counselling or conspiracy to commit any of the offence referred to in paragraph (a);

“Seychelles confiscation order” means

- (a) an order or penalty made in Seychelles for the confiscation or forfeiture of property in respect of a serious offence;
- (b) a confiscation order within the meaning of Proceeds of Crime (Civil Confiscation) Act, Cap. 298;

“subscriber information” means any information that is held by a provider of a postal service or telecommunications service relating to subscribers to its services and by which a subscriber's identity, affairs or personal particulars can be established, but does not include traffic data;

“surveillance” includes —

- (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communication;
- (b) recording anything monitored, observed or listened to in the course of surveillance; and
- (c) surveillance by or with the assistance of a surveillance device;

“telecommunication” means a communication transmitted or received by means of guided or unguided electromagnetic or other forms of energy or technology;

“telecommunications service” means a service provided to any person for transmitting and receiving telecommunications, being a service, the use of which enables communications to be transmitted or received over a telecommunications system operated by a service provider;

“telecommunications system” means any system, including the apparatus comprised in it, which exists, whether wholly or partly in Seychelles or in the foreign State making a request, for the purpose of transmitting and receiving telecommunications;

“traffic data” means computer data —

- (a) that relates to a communication by means of a computer system;
- (b) is generated by a computer system that is part of the chain of communication; and

(c) shows the communication's origin, destination, route, time, date, size, duration or the type of underlying services;

“**treaty**” includes a convention, agreement, protocol, statute or any other instrument of international law in relation to mutual assistance in criminal matters;

“**virtual asset**” means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes;

“**video link**” means a technological arrangement whereby a witness or person, without being physically present in the place where the proceedings are conducted, is able to see and hear and be seen and be heard by the relevant court or relevant authority.

(2) For the purposes of this Act, judicial proceedings that are criminal proceedings are —

(a) instituted in Seychelles or a foreign State when a person is produced and charged in court with a serious offence or foreign serious offence, as the case maybe;

(b) concluded on the occurrence of any of the following events;

(i) the discontinuance of the proceedings;

(ii) the acquittal of the defendant;

(iii) the quashing of the defendant's conviction for the offence;

(iv) the grant of a pardon in respect of the defendant's conviction for the offence;

(v) the court sentencing or otherwise dealing with the defendant in respect of his conviction for the offence without having made a foreign confiscation order;

(vi) the satisfaction of a foreign confiscation order made in the proceedings, whether by payment of the amount due under the order, by

the defendant serving imprisonment in default, by the recovery of all property liable to be recovered or otherwise.

Object of Act

3.(1) The object of this Act is for Seychelles to provide and obtain international assistance in criminal matters, including —

- (a) the location and identification of a person;
- (b) the making of arrangements for persons to give evidence or to assist in criminal investigations;
- (c) the provision and obtaining evidence, documents and things;
- (d) the execution of requests for search and seizure;
- (e) the service of documents;
- (f) the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence;
- (g) the restraining of dealings in property, or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;
- (h) the identification or tracing of proceeds of crime and property derived from or used in the commission of a serious offence or a foreign serious offence;
- (i) the recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence;
- (j) interception of telecommunications and conducting covert surveillance;
- (j) preserving communications data;
- (k) any form of assistance in a criminal matter that is specified in a treaty to which Seychelles is a party; and

- (l) any other form of assistance in a criminal matter that is consistent with the laws of Seychelles.

(2) This Act shall apply to the provision or the obtaining of assistance in relation to a serious offence or a foreign serious offence committed or believed to have been committed before or after the commencement of this Act.

Act does not limit cooperation with international organizations

4.(1) Nothing in this Act derogates from existing forms of cooperation or prevents the development of other forms of cooperation, whether formal or informal, in respect of any criminal matter between Seychelles and any foreign State or authority such as the International Criminal Police Organization (INTERPOL).

(2) This Act does not prevent the provision or obtaining of international assistance in criminal matters under any other written law.

Act not authority for extradition of any person

5. Nothing in this Act authorizes —

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

PART 2

REQUEST BY SEYCHELLES

DIVISION 1 - PRELIMINARY PROVISIONS

Application of this Part

6. A request for assistance may be made to a foreign State by Seychelles under this Part.

Requests to be made by the Attorney General

7.(1) A request by Seychelles to a foreign State for assistance in a criminal matter under this Part shall be made by or through the Attorney General or an authority designated as a Central Authority under subsection (3).

(2) A request under subsection (1) shall be made through the diplomatic channel.

(3) For the purposes of this Act, the Central Authority is —

(a) the Attorney General; or

(b) any authority who the President may, by notice published in the Gazette, designate as a Central Authority on such terms and conditions as the President may determine.

(4) An authority designated as a Central Authority under subsection (3) shall have the same powers as the Attorney General and shall provide or obtain international assistance in criminal matters on such terms and conditions as the President may determine.

Direct Requests

8.(1) Notwithstanding section 7, an authority authorized by Seychelles may make a request for assistance in a criminal matter directly to a foreign State —

(a) where and to the extent permitted by any treaty or international arrangement; or

(b) where and to the extent permitted by any agreement with the Attorney General; or

(c) in a case of urgency, with the consent of the Attorney General.

(2) Where an authority transmits a request under subsection (1), the authority shall send, without delay, a copy of the request made for assistance in the criminal matter to the Attorney General and Minister responsible for foreign affairs.

DIVISION 2 - LOCATING AND IDENTIFYING PERSONS

Assistance in locating or identifying persons

9. 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; or
- (b) could give evidence or assistance relevant to,

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

DIVISION 3 - SERVICE OF DOCUMENTS

Assistance in serving documents

10.(1) The Attorney General may request a foreign State to assist in effecting service of any process where the Attorney General is satisfied that for the purposes of or in connection with, any criminal matter in Seychelles, it is necessary or desirable to serve that process on a person or an authority in the foreign State.

(2) The service of a process in a foreign State may be proved by an affidavit, a declaration or a statement of the person who served the process.

DIVISION 4 - TAKING OF EVIDENCE IN A FOREIGN STATE

Request for taking of evidence

11.(1) The Attorney General may request a foreign State to arrange for —

- (a) such evidence to be taken in the foreign State; and
- (b) the evidence to be sent to the Attorney General,

if the Attorney General is satisfied that there are reasonable grounds for believing that such evidence would be relevant to any criminal matter in Seychelles.

(2) The Attorney General may request a foreign State —

- (a) to assist in obtaining, by search and seizure, if necessary, such thing in the foreign State or a photograph or copy of the thing;
- (b) to arrange for the thing or the photograph or copy of the thing to be sent to the Attorney General,

if the Attorney General is satisfied that there are reasonable grounds for believing that such evidence would be relevant to any criminal matter in Seychelles.

(3) Any evidence, thing or photograph or copy of a thing received by the Attorney General pursuant to a request under subsection (1) or (2) may, subject to the provisions of the Criminal Procedure Code, Cap. 54, Evidence Act, Cap. 74, or any other law, be admitted as evidence at any proceedings to which the request relates.

(4) In assessing the weight to be attached to any evidence received by the Attorney General pursuant to a request made under subsection (1) which has been admitted as evidence in any criminal proceedings to which the request relates, the court shall have regard to —

- (a) whether it was possible to challenge the evidence taken; and
- (b) whether the law of the foreign State concerned allowed the parties to the criminal proceedings to be represented by an Attorney-at-Law or an authorized person when the evidence was being taken.

(5) All courts in Seychelles shall take judicial notice of any seal or signature impressed, affixed, appended or subscribed on or to any statement or deposition tendered in evidence under this section.

(6) Evidence or assistance under this section may be given via video link.

DIVISION 5 - ENFORCEMENT OF SEYCHELLES CONFISCATION ORDERS

Request for enforcement of Seychelles confiscation order

12.(1) The Attorney General may request a foreign State to make arrangements —

- (a) for the enforcement and satisfaction of a Seychelles confiscation order; or
- (b) where a Seychelles confiscation order may be made in any proceedings which have been or are to be instituted in

Seychelles, to restrain dealing in any property against which the order may be enforced or which may be available to satisfy the order,

if the Attorney General is satisfied that there are reasonable grounds for believing that some or all of the property concerned is located in that foreign State.

(2) Where —

- (a) the Seychelles confiscation order requires the payment of a specified amount; and
- (b) the property is recovered in a foreign country pursuant to a request under subsection (1),

that specified amount shall be reduced from the value of property so recovered.

(3) A certificate purporting to be issued by or on behalf of a foreign State stating —

- (a) that property has been recovered in the foreign State pursuant to a request under subsection (1);
- (b) the value of the property;
- (c) the date on which the property was recovered,

shall, in any judicial proceedings, be admissible as evidence of the matter so stated.

DIVISION 6 - ATTENDANCE OF PERSONS

Request for attendance of persons in Seychelles

13.(1) Where the Attorney General is satisfied that —

- (a) there are reasonable grounds to believe that a person in a foreign State is capable of giving evidence or assistance relevant to a criminal matter involving a serious offence; and

- (b) that person consents to travel to Seychelles for the purpose of giving such evidence or assistance,

the Attorney General may request the foreign State to assist in arranging for the attendance of a person in Seychelles for the purpose of giving such evidence or assistance.

(2) The Attorney General may make arrangements with a foreign State for the purposes of —

- (a) the removal of the person to Seychelles;
- (b) the return of the person to the foreign State;
- (c) in the case of a foreign prisoner, the custody of that person while in Seychelles; and
- (d) any other relevant matter.

Penalty not to be imposed on a person refusing to come to Seychelles

14. Where, pursuant to section 13, the Attorney General requests the assistance of a foreign State in arranging the attendance in Seychelles of any person, that person shall not be subjected 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.

Privileges and immunities of person coming to Seychelles

15.(1) A person who is in Seychelles, pursuant to a request made under section 13, shall not —

- (a) be detained, prosecuted or punished in Seychelles for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign State concerned pursuant to the request;
- (b) be subjected to any civil proceedings in Seychelles in respect of any act or omission that is alleged to have occurred, or that had 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 if the person were not in Seychelles; or

- (c) be required to give evidence or assistance in relation to any criminal matter in Seychelles other than the criminal matter to which the request relates.
- (2) Subsection (1) ceases to apply if —
- (a) the person has left Seychelles and then returns otherwise than pursuant to the same or another request; or
 - (b) the person has had the opportunity to leave Seychelles and had remained in Seychelles otherwise than for —
 - (i) the purpose to which the request relates; or
 - (ii) the purpose of giving evidence or assistance in a criminal matter in Seychelles certified by the Attorney General in writing to be a criminal matter in which it is desirable that the person gives evidence or assistance.

Arrest of a person who escaped from custody

16.(1) A police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person —

- (a) has been brought to Seychelles pursuant to request under section 13(2)(c); and
- (b) has escaped from lawful custody while in Seychelles pursuant to the request.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to lawful custody.

(3) A person who escapes from lawful custody while in Seychelles pursuant to a request under section 13(2)(c) commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or a fine of level 3 on the standard scale, or to both such fine and imprisonment.

DIVISION 7 - REQUESTS PERMITTED UNDER THE LAWS OF A FOREIGN STATE

Other forms of request

17.(1) The Attorney General may make such other requests to a foreign State that are permitted under the laws of the foreign State, including the interception of telecommunications and postal items, surveillance of any kind, and the preservation of communications data.

(2) Any evidence or thing or copy of a thing received by the Attorney General pursuant to a request under subsection (1) may, subject to the provisions of the Criminal Procedure Code, Cap. 54, Evidence Act, Cap. 74, or any other law be admitted as evidence at any proceedings to which the request relates.

(3) The Minister may make regulations in respect of any form request made under subsection (1).

PART 3

REQUEST TO SEYCHELLES

DIVISION 1 - PRELIMINARY PROVISIONS

Application of this Part

18. Unless otherwise stated in this Part, assistance by Seychelles may be provided to a prescribed foreign State under this Part.

Prescribed foreign State

19.(1) For the purposes of this Part, a prescribed foreign State is a foreign State that has a treaty in force between Seychelles and that foreign State under which there is an agreement to provide assistance in criminal matters.

(2) Subject to this Act or any other written law, a request made by a foreign State shall be acted upon pursuant to the provisions of the treaty.

(3) As soon as practicable after 1 January in every year, the Minister responsible for foreign affairs shall publish a notice in the Gazette specifying the treaties in force between Seychelles and a foreign State under which there is an obligation to provide assistance in criminal matters.

Ad hoc requests for assistance

20.(1) This section applies where a foreign State requests assistance under this Part and that foreign State —

- (a) is not a prescribed foreign State;
- (b) is a prescribed foreign State but the request is outside the scope of the treaty between Seychelles and the prescribed foreign State.

(2) If any foreign State makes a request for assistance under subsection (1), the Attorney General, in consultation with the Minister responsible for foreign affairs, may consider the following matters in order to decide whether or not the request shall be dealt with under this Part —

- (a) any assurances given by the foreign State that the foreign State will entertain a similar request by Seychelles for assistance in criminal matters;
- (b) the seriousness of the offence to which the request relates;
- (c) the willingness of the foreign State to enter any sharing arrangements under section 55;
- (d) any other matters that the Attorney General considers relevant.

(3) If, after considering those matters in subsection (2), the Attorney General decides that the request shall be dealt with under this Part, the Attorney General may deal with that request accordingly.

Request to be made to the Attorney General

21.(1) A request by any foreign State to Seychelles for assistance in a criminal matter under this Part shall be made to the Attorney General or an authority designated as a Central Authority under section 7.

(2) A request under subsection (1) shall be made through the diplomatic channel.

Direct requests

22.(1) Notwithstanding section 21, an authority authorized by Seychelles may receive a request for assistance in a criminal matter directly from a prescribed foreign State —

- (a) where and to the extent permitted by any treaty or international arrangement;
- (b) where and to the extent permitted by any agreement with the Attorney General;
- (c) in a case of urgency, with the consent of the Attorney General.

(2) Where an authority authorized by Seychelles receives a request pursuant to subsection (1), the authority shall send, without delay, a copy of the request to the Attorney General and Minister responsible for foreign affairs.

Form of request

23.(1) Every request shall —

- (a) specify the purpose of the request and the nature of the assistance being sought;
- (b) identify the person or authority that initiated the request;
- (c) specify whether the foreign State is requesting assistance either pursuant to section 19 or 20; and
- (d) be accompanied by —
 - (i) a certificate from the foreign State that the request is made in respect of a criminal matter within the meaning of this Act;
 - (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

-
- (iii) where the request relates to —
- (a) the location of a person who is suspected to be involved in or to have benefited from the commission of a foreign serious offence; or
 - (b) the tracing of property that is suspected to be connected with a foreign serious offence,
- the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in subparagraph (a) or (b);
- (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
 - (v) details of the procedure which the foreign State wishes Seychelles to follow 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 that foreign State pursuant to the request;
 - (vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign confiscation order have not been instituted in the foreign State, a statement indicating when the judicial proceedings are likely to be instituted;
 - (vii) a statement setting out the wishes of the foreign State concerning the confidentiality of the request and the reason for those wishes;
 - (viii) details of the period within which the foreign State wishes the request to be met;
 - (ix) if the request involves a person travelling from Seychelles to a foreign State, details of the allowances to which the person will be entitled to, and of the

arrangements for security and accommodation for the person while the person is in the foreign State pursuant to the request;

- (x) any other information required to be included with the request under any treaty between Seychelles and the prescribed foreign State; and
- (xi) any other information that may assist Seychelles in giving effect to the request or which is required under the provisions of this Act or any regulations made under this Act.

(2) Where a foreign State fails to comply with the requirements set out in subsection (1), the Attorney General may request that the foreign State comply with the requirements or submit such other information that the Attorney General deems necessary.

(3) The Attorney General shall execute a request, that is in compliance with this Act, within a reasonable time or within the period specified in subsection (1)(d)(viii), where it is practicable.

Refusal of assistance

24.(1) A request by a foreign State for assistance under this Part shall be refused if, in the opinion of the Attorney General, —

- (a) the request relates to the investigation, 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 nature;
- (b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Seychelles, would have constituted a military offence under the laws of Seychelles which is not also an offence under the ordinary criminal law of Seychelles;
- (c) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting,

punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;

- (d) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person —
- (i) has been convicted, acquitted or pardoned by a competent court or other authority in that foreign State or a third State; or
 - (ii) has undergone the punishment provided by the law of that foreign State or a third State,
- in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;
- (e) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if the act or omission had occurred in Seychelles, would not have constituted an offence against the laws of Seychelles;
- (f) the provision of the assistance would affect the sovereignty, security, public order or other essential public interest of Seychelles;
- (g) the foreign State fails to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made, except with the consent of the Attorney General;
- (h) in the case of a request for assistance under sections 31, 32, 33, 34 and 35 or sections 42, 43, 44 and 45 the foreign State fails to undertake to return to the Attorney General, upon the Attorney General's request, any thing obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;
- (i) the provision of the assistance could prejudice a criminal matter in Seychelles; or

- (j) the provision of the assistance would require steps to be taken that would be contrary to the Constitution or any other law.
- (2) A request by a foreign State for assistance under this Part may be refused by the Attorney General —
 - (a) pursuant to the terms of any treaty between Seychelles and that prescribed foreign State;
 - (b) if, in the opinion of the Attorney General, the provision of the assistance would, or would be likely to, prejudice the safety of any person, whether that person is within or outside Seychelles;
 - (c) if, in the opinion of the Attorney General, the provision of the assistance would impose an excessive burden on the resources of Seychelles and the foreign State is not willing to enter into a sharing arrangement under section 55; or
 - (d) if that foreign State is not a prescribed foreign State and the foreign State fails to give an undertaking to the Attorney General that the foreign State will, subject to the laws of that foreign State, comply with a future request by Seychelles to that foreign State for assistance in a criminal matter.

(3) Without prejudice to subsection (2)(c), if there is a request for assistance by a foreign State and the Attorney General is of the opinion that the expenses involved in complying with the request or continuing to effect the assistance requested for is of an extraordinary or substantial nature, the Attorney General shall consult with the foreign State on the conditions under which the request is to be effected or under which the Attorney General is to cease to give effect to it, as the case may be.

Exceptions to political offences

25. For the purposes of section 24(1)(b), the following offences shall not be held to be offences of a political nature —

- (a) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State;

- (b) an offence against the life or person of a Head of Government, or of a Minister of a Government;
- (c) an offence established under any treaty to which Seychelles and the foreign State are parties and which is declared in the treaty concerned not to be regarded as an offence of a political nature for the purposes of mutual assistance in criminal matters;
- (d) any other offence declared by the Minister by Order published in the Gazette; and
- (e) any attempt, abetment or conspiracy to commit any of the offences referred to in paragraphs (a) to (d).

Notification of refusal

26. 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 Foreign State with the reasons for the refusal.

DIVISION 2 - LOCATING AND IDENTIFYING PERSONS

Assistance in locating or identifying a person

27.(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 Seychelles.

(2) Where, on the receipt of a request made under subsection (1) by a foreign State, the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in the foreign State;
- (b) 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 or might be in Seychelles,

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

(3) Where, in relation to a request made under subsection (1), the Attorney General authorizes assistance in accordance with this section, the Attorney General shall forward the request to the appropriate authority in Seychelles.

(4) The appropriate authority referred to in subsection (3) shall, to the best of its ability, seek to locate or identify and locate, as the case may be, the person to whom the request relates, and shall inform the Attorney General of the outcome of the actions taken.

(5) On receipt of such information under subsection (4), the Attorney General shall inform the foreign State of the result of the inquiries made pursuant to the request.

DIVISION 3 - SERVICE OF PROCESS

Assistance in service of process

28.(1) A foreign State may request the Attorney General to assist in effecting the service of process on a person in Seychelles.

(2) Where, on receipt of a request made under subsection (1), the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in that foreign State;
- (b) there are reasonable grounds for believing that the person to be served is in Seychelles;
- (c) the foreign State has provided sufficient details of the consequences of a failure to comply with such process; and
- (d) where the request relates to the service of a summons to appear as a witness in that foreign State, that foreign State has given an adequate undertaking in respect of the matters specified in section 29,

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

(3) Where service is authorized under subsection (2), the Attorney General may, at the request of a foreign State, arrange for the service of a process in Seychelles relating to a criminal matter in the foreign State.

(4) Without limiting the manner in which the service of a process in a foreign State may be proved in Seychelles, service of such process may be proved by the declaration of the person who served the process.

Undertaking by foreign State

29. Where, pursuant to a request under section 28, 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 Attorney General shall, before authorizing assistance in accordance with section 28, obtain from the foreign State an undertaking that that person 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 accept or comply with the summons, notwithstanding any contrary statement in the summons.

Penalty not to be imposed for failure to comply with the summons

30. The person who is to appear as a witness pursuant to section 28 shall not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to accept, or comply with, the summons, notwithstanding any contrary statement in the summons.

DIVISION 4 - OBTAINING EVIDENCE

Taking of evidence for criminal matters

31.(1) Where a request is made by a foreign State that evidence be taken in Seychelles for the purpose of any criminal matters pending in a court in that foreign State, the Attorney General may, subject to such conditions as the Attorney General may specify, authorize the taking of such evidence.

(2) If the Attorney General authorizes the taking of the evidence under subsection (1), a Judge or Magistrate may —

- (a) take the evidence on oath of each witness appearing before the Judge or Magistrate to give evidence in relation to the criminal matter as if the witness were giving evidence on a

charge against a person for an offence against the laws of Seychelles;

- (b) cause the evidence to be reduced into writing and certify at the end of that writing that the evidence was taken by the said Judge or Magistrate; and
- (c) use the writing, so certified, to be sent to the Attorney General.

(3) The proceedings may be conducted in the presence or absence of the person to whom the criminal matters in the foreign State relates or in the presence of that person's Attorney-at-Law or representative, if any.

(4) The certificate referred to in subsection (2)(b) shall state whether the person to whom the criminal matters in the foreign State relates or the person's Attorney-at-Law or representative, if any, was present at the proceedings.

(5) The laws of Seychelles with respect to the compelling of persons to attend before the Supreme Court, and to give evidence, answer questions and produce materials or articles shall, in so far as they are applicable, apply for the purposes of this section as if it were a hearing of a charge against a person for an offence against the laws of Seychelles.

(6) Notwithstanding subsection (5), for the purposes of this section, the person to whom the criminal matters in the foreign State relates is competent, but not compellable, to give evidence.

(7) Notwithstanding subsection (5), no person who is required under this section to give evidence for the purposes of any criminal matters in a foreign State shall be required to answer any question that the person could not be compelled to answer in those proceedings in that foreign State.

(8) A duly certified foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

(9) Evidence taken under this section shall not be admissible in evidence or otherwise used for the purposes of any judicial proceedings,

disciplinary proceedings, or other proceedings in Seychelles except in a prosecution of the person who gave that evidence for the offence of perjury or contempt of court in respect of that evidence.

(10) Notwithstanding subsection (9), evidence taken under this section may be used for impeaching the credibility of the person who gave the evidence in any judicial proceedings.

Production order for criminal matters

32.(1) Where a request is made by a foreign State that any particular thing or description of a thing in Seychelles be produced for the purpose of any criminal matter in that foreign State, the Attorney General or an authority authorized by the Attorney General may apply to the court for an order under subsection (3).

(2) An application for an order under subsection (3) in relation to any thing in the possession of a financial institution shall be made to a Judge or a Magistrate.

(3) If, on such an application, the court is satisfied that the conditions referred to in subsection (4) are fulfilled, the court may make an order that the person who appears to the court to be in possession of the thing to which the application relates shall —

- (a) produce the thing to an authorized officer for the said officer to take away; or
- (b) give an authorized officer access to the thing,

within 5 days of the date of the order or such other period as the court considers appropriate.

(4) The conditions referred to in subsection (3) are —

- (a) that there are reasonable grounds for suspecting that a specified person has committed or benefited from a foreign serious offence;
- (b) that there are reasonable grounds for believing that the thing to which the application relates —

- (i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application was made; and
- (ii) does not consist of or include items subject to legal privilege; and
- (c) that the court is satisfied that it is not contrary to the public interest or to any law for the thing to be produced or access to it to be given.

(5) The proceedings referred to in subsection (3) may be conducted in the presence or absence of the person to whom the criminal proceedings in the foreign State relates or in the presence of the person's Attorney-at-Law or representative, if any.

(6) No person who is required by an order under this section to produce or make available any thing for the purposes of any criminal proceedings in a foreign State shall be required to produce any thing that the person could not be compelled to produce in the proceedings in that foreign State.

(7) A duly certified foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

(8) Proceedings under subsection (3) shall be heard in Chambers unless the court directs otherwise.

(9) Where the Attorney General receives a request under subsection (1), the Attorney General may execute the request without an order of the court where the person in possession or control of the thing has given the thing to the Attorney General to fulfil the request under this section and the person has signed a declaration declaring that the thing was voluntarily given to the Attorney General.

Supplementary provisions regarding production orders

33.(1) Where the Supreme Court orders a person under section 32 to give an authorized officer access to any thing on any premises, the court may, on the

same or subsequent application of the Attorney General or an authority authorized by the Attorney General, order any person who appears to the Supreme Court to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the thing.

(2) Where any material to which an order under section 32 relates consists of information contained in or accessible by means of any data equipment —

- (a) an order under section 32(3)(a) shall have effect as an order to produce the material in a form which can be taken away and which is visible and legible; and
- (b) an order under section 32(3)(b) shall have effect as an order to give access to the material in a form which is visible and legible.

(3) A person is not excused from producing or making available any thing by an order under section 32 on the ground that —

- (a) the production or making available of the thing might tend to incriminate the person or make the person liable to a penalty; or
- (b) the production or making available of the thing would be in breach of an obligation, whether imposed by law or otherwise, of the person not to disclose the existence of the contents of the thing.

(4) An order under section 32 —

- (a) shall not confer any right to the production of, or of access to, items subject to legal privilege; and
- (b) shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by law or otherwise.

(5) An authorized officer may photograph or make copies of any thing produced or to which access is granted pursuant to an order made under section 32.

(6) Where an authorized officer takes possession of any thing under an order made under section 32 or takes any photograph or makes any copy of the thing pursuant to subsection (5), the authorized officer shall inform the Attorney General and shall, unless the Attorney General otherwise directs, immediately send the thing or the photograph or copy of the thing to the relevant foreign State.

- (7) In this section, “data equipment” means any equipment which —
- (a) automatically processes information;
 - (b) automatically records or stores information;
 - (c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment, wherever situated;
 - (d) can be used to retrieve information whether the information is recorded or stored in the equipment itself or in other equipment, wherever situated; or
 - (e) can be used to carry out any combination of the functions specified in paragraphs (a) to (d).

Immunities in compliance of production order

34.(1) No civil or criminal action, other than a criminal action for an offence under section 35, shall lie against any person for —

- (a) producing or giving access to any thing if the person had produced or given access to the thing in good faith in compliance with an order made against him under section 32; or
- (b) doing or omitting to do any act if that person had done or omitted to do the act in good faith and as a result of complying with such an order.

(2) A person who complies with an order made under section 32 shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by law, contract or rules of professional conduct.

Failure to comply with production order

35. Any person who —

- (a) without reasonable excuse contravenes or fails to comply with an order under section 32; or
- (b) in purported compliance with such an order, produces or makes available to an authorized officer any material known to the person to be false or misleading in a material particular without —
 - (i) indicating to the authorized officer that the material is false or misleading and the part of the material that is false or misleading; or
 - (ii) providing correct information to the authorized officer if the person is in possession of, or can reasonably acquire, the correct information,

commits an offence and is liable on conviction to a fine of level 3 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and term of imprisonment.

DIVISION 5 - ARRANGING ATTENDANCE OF PERSON IN A FOREIGN STATE**Request for attendance of a person in a foreign State**

36.(1) A foreign State may request the Attorney General to assist in arranging the attendance, in that foreign State, of a person in Seychelles for the purpose of giving evidence or assistance in relation to a criminal matter in that foreign State.

(2) The Attorney General may assist in making arrangements for the travel of the person to the foreign State pursuant to a request referred to in subsection (1) if the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in the foreign State involving a foreign serious offence;
- (b) there are reasonable grounds to believe that the person

concerned is capable of giving evidence or assistance relevant to the criminal matter;

- (c) the person concerned has freely consented to attend as requested; and
- (d) the foreign State has given adequate undertakings in respect of the matters referred to in subsection (3).

(3) The matters in relation to which undertakings are to be given by the foreign State are —

- (a) that the person 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 Seychelles;
 - (ii) be subjected to any civil suit in the foreign State in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from Seychelles; or
 - (iii) be required to give evidence or assistance in relation to any criminal matter in the foreign State other than the criminal matter to which the request relates, unless the person has left the foreign State or the person has had the opportunity of leaving the foreign State and has remained in the foreign State otherwise than for the purpose of giving evidence or assistance in relation to the criminal matter to which the request relates;
- (b) that any evidence given by the person in the criminal proceedings to which the request relates, if any, will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against the law of the foreign State, other than for the offence of perjury or contempt of court in relation to the giving of that evidence;

- (c) that the person will be returned to Seychelles in accordance with arrangements agreed to by the Attorney General; and
- (d) such other matters as the Attorney General thinks appropriate.

(4) Where, pursuant to this section, the foreign State requests the assistance of the Attorney General in arranging the attendance of any person in that foreign State, the person to whom the request relates shall not be subjected 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.

Request for attendance of a prisoner or detainee to a foreign State

37.(1) Where a request by the foreign State under section 36 relates to —

- (a) a prisoner within the meaning of section 2 of the Prison Act, Cap. 180; or
- (b) a person under detention in Seychelles,

the Attorney General may assist in arranging the transfer of such person into the custody of an officer of the foreign State for the purpose of transporting such person from Seychelles to the foreign State and, after that, to be detained in that foreign State under the custody of such authority as may be lawful in that foreign State and produced from time to time under custody before the appropriate authority or court in the foreign State before which the person is required to attend as a witness.

(2) Immediately upon the person's attendance being dispensed with by the appropriate authority or court in the foreign State before which the person's attendance is required, the person shall be transported in the custody of an officer of the foreign State to Seychelles and returned into the custody of a Seychelles officer having lawful authority to take the person into custody and the person shall, after that, continue to undergo the imprisonment or detention which the person was undergoing prior to the transfer of his custody under subsection (1).

(3) Where, pursuant to this section, the foreign State requests the assistance of the Attorney General in arranging the attendance of any person in

that foreign State, the person to whom the request relates shall not be subjected 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.

(4) No transfer under subsection (1) shall be effected unless the foreign State gives an undertaking —

- (a) to bear, and be responsible for, all the expenses of the transfer of custody;
- (b) to keep the person under lawful custody throughout the transfer of his custody; and
- (c) to return the person into custody of the authorized officers of Seychelles immediately on the person's attendance before the appropriate authority or court in the foreign State being dispensed with.

DIVISION 6 - ENFORCEMENT OF FOREIGN CONFISCATION ORDER

Request for enforcement of a foreign confiscation order

38.(1) A foreign State may request the Attorney General to assist in —

- (a) the enforcement and satisfaction of a foreign confiscation order made in any judicial proceedings instituted in that foreign State against property that is reasonably believed to be located in Seychelles; or
- (b) where a foreign confiscation order may be made in judicial proceedings which have been or are to be instituted in that foreign State, the restraining of dealing in any property that is reasonably believed to be located in Seychelles and against which the order may be enforced or which may be available to satisfy the order.

(2) On receipt of a request under subsection (1), the Attorney General may —

- (a) in the case of section (1)(a), take action pursuant to section

39 and the regulations made pursuant to section 58 or such practice directions given by the Supreme Court;

- (b) in the case of section (1)(b), take action under the regulations made pursuant to section 58; or
- (c) make an application pursuant to section 153C of the Criminal Procedure Code, Cap. 54, for an order under section 153A or 153B of the Criminal Procedure Code.

Registration of confiscation order

39.(1) The Attorney General or a person authorized by the Attorney General may apply, by way of a notice of motion and an accompanying affidavit, to the Supreme Court for the registration of a foreign confiscation order.

(2) A Judge may, on an application referred to in subsection (1), register the foreign confiscation order if the Judge is satisfied —

- (a) that the order is in force and not subject to further appeal in the foreign State;
- (b) where a person affected by the order did not appear in the proceedings in the foreign State, that the person had received notice of such proceedings in sufficient time to enable the person to challenge those proceedings; and
- (c) that by enforcing the order in Seychelles, such enforcement would not be contrary to the interests of justice.

(3) For the purpose of subsection (2), the Judge shall take into consideration a certificate referred to in section 41, if presented to the Judge at any time during the course of the proceedings.

(4) A Judge may revoke the registration of a foreign confiscation order if it appears to the Judge that —

- (a) the order has been satisfied by payment of the amount due under the order or other means; or

- (b) the person against whom the order was made, is serving imprisonment in default of payment.

(5) Where an amount of money payable or remaining to be paid under a foreign confiscation order registered in the Supreme Court under this section is expressed in a currency other than that of Seychelles Rupees, the amount shall, for the purpose of any action taken in relation to that order, be converted into Seychelles Rupees using the daily weighted trading exchange rates of the Central Bank of Seychelles on the date of registration of the order.

(6) For the purposes of subsection (5), a notice issued by the Central Bank of Seychelles and stating the daily weighted trading exchange rate prevailing on the specified date shall be admissible in any judicial proceedings as evidence of the facts so stated.

(7) In this section, “appeal” includes —

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial, opposition or a stay of execution.

Proof of orders of foreign State

40.(1) For the purposes of sections 38 and 39 and the regulations made pursuant to section 58 —

- (a) any order made or judgment given by a court of a foreign State purporting to bear the seal of that court and to be signed by any person in the person's capacity as a Judge, Magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or to have been signed by that person, as the case may be; and
- (b) a document, duly authenticated, that purports to be a copy of any order made or judgment given by a court of a foreign State shall be deemed without further proof to be a true copy.

(2) A document is duly authenticated for the purpose of section (1)(b) if it purports to be certified by any person in the person's capacity as a Judge, Magistrate or officer of the court in question or by or on behalf of that foreign State.

Evidence in relation to proceeding and orders in a foreign State

41.(1) For the purposes of sections 38 and 39 and the regulations made pursuant to section 58, a certificate purporting to be issued by or on behalf of a foreign State stating that —

- (a) judicial proceedings have been instituted and have not been concluded, or that judicial proceedings are to be instituted, in that foreign State;
- (b) a foreign confiscation order is in force and is not subject to appeal;
- (c) all or a certain amount of the sum payable under a foreign confiscation order remains unpaid in that foreign State, or that other property recoverable under a foreign confiscation order remains unrecovered in that foreign State;
- (d) a person has been notified of any judicial proceedings in accordance with the law of that foreign State; or
- (e) an order, however described, made by a court of that foreign State has the purpose of —
 - (i) recovering, forfeiting or confiscating —
 - (a) payments or other rewards received in connection with an offence against the law of that foreign State that is a foreign serious offence, or the value of the payments or rewards; or
 - (b) property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence or the value of such property; or

- (ii) forfeiting or destroying, or forfeiting or otherwise disposing of, any drugs or other substance in respect of which an offence against the corresponding drug law of that foreign State has been committed, or which was used in connection with the commission of such an offence,

shall, in any proceedings in a court, be received in evidence without further proof.

(2) In any such proceedings, a statement contained in a duly authenticated document, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarize evidence given in proceedings in a court in a foreign State, shall be admissible as evidence of any fact stated in the document.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in that person's capacity as a Judge, Magistrate or officer of the court in the foreign State, or by or on behalf of that foreign State.

(4) Nothing in this section shall prejudice the admissibility of any evidence, whether contained in any document or otherwise, which is admissible apart from by virtue of this section.

DIVISION 7 - SEARCH AND SEIZURE

Request for search and seizure

42.(1) The Attorney General may, on the request of the foreign State, assist in obtaining any thing by search or seizure.

(2) Where, on receipt of a request referred to in subsection (1), the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in that foreign State in respect of a foreign serious offence; and
- (b) there are reasonable grounds for believing that the thing to which the request relates is relevant to the criminal matter and is located in Seychelles,

the Attorney General may apply to the Magistrate's Court or the Supreme Court for a warrant under section 43 in respect of premises specified by the Attorney General.

(3) An application for a warrant referred to in section 43 in respect of any thing in the possession of a financial institution shall be made to the Supreme Court.

(4) An application for a warrant referred to in section 43 shall specify with sufficient particulars the thing in the possession of a financial institution.

Search warrant

43.(1) On an application referred to in section 42, the court may issue a warrant authorizing an authorized officer to enter and search the premises specified by the Attorney General if the court is satisfied that —

- (a) an order made under section 32 in relation to any thing on the premises has not been complied with; or
- (b) the conditions in subsection (2) are fulfilled.

(2) The conditions referred to in paragraph (1)(b) are —

- (a) that there are reasonable grounds for suspecting that a person specified in the request has committed or has benefited from a foreign serious offence;
- (b) that there are reasonable grounds for believing that the thing to which the application relates —
 - (i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) that the court is satisfied that it is not contrary to the public interest for the warrant to be issued.

(3) A warrant issued under this section shall be subject to such conditions as the court may specify in the warrant.

Additional powers of person executing search warrant

44.(1) Where an authorized officer has entered premises in the execution of a warrant issued under section 43, the authorized officer may seize and retain any thing that is specified in the warrant, other than items subject to legal privilege.

(2) An authorized officer may photograph or make a copy of any thing seized under subsection (1).

(3) Where an authorized officer seizes any thing or takes a photograph or makes a copy of any thing under a warrant, the authorized officer shall inform the Attorney General and shall, unless the Attorney General otherwise directs, immediately send the thing or the photograph or copy of the thing to the relevant foreign State.

(4) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable on conviction to a fine of level 2 on the standard scale or to imprisonment for a term not exceeding 2 years or to both such fine and term of imprisonment.

Immunities of officers executing search warrant

45.(1) No civil or criminal action shall lie against any person for —

- (a) the producing or giving access to any thing if the person had produced or given access to the thing in good faith in compliance with a warrant issued under section 43; or
- (b) doing or omitting to do any act if the person had done or omitted to do the act in good faith and as a result of complying with such a warrant.

(2) A person who complies with a warrant issued under section 43 shall not be treated as being in breach of any restriction upon the disclosure of any information or thing imposed by law, contract or rules of professional conduct.

DIVISION 8 - INTERCEPTION OF COMMUNICATIONS, PRESERVATION OF
COMMUNICATIONS DATA AND SURVEILLANCE

Request for the interception of telecommunications

46.(1) For the purposes of a criminal investigation, the Attorney General may, in accordance with the provisions of this Act and any other written law, execute a request from a foreign State for —

- (a) the interception and immediate transmission of telecommunications; or
- (b) the interception, recording and subsequent transmission of telecommunications.

(2) A request by a foreign State under this section shall include —

(a) confirmation that a lawful interception order or warrant has been issued in connection with the particular criminal investigation by a court or relevant authority in the foreign State, or such actions are being done in accordance with a written law in the foreign State;

- (b) details of the criminal matter under investigation;
- (c) the desired duration of the interception;
- (d) if possible, the provision of sufficient technical data, including the following information —
 - (i) the name of the authority, telecommunications service provider or person with access to the relevant data;
 - (ii) the location at which the data is held;
 - (iii) details of the data of the relevant interception;
 - (iv) such other information that the Attorney General may require the foreign State to provide.

Order for the interception of telecommunications

47.(1) Where the Attorney General approves a request under section 46, the Attorney General or the Commissioner of Police may make an ex-parte

application to the Supreme Court for an order to intercept telecommunications.

(2) Where the Supreme Court grants an application under subsection (1), the Supreme Court may —

- (a) require an authority, a telecommunications service provider or person with access to the data to intercept and retain a specified communication, or communication of a specified description, received or transmitted by that authority, telecommunications service provider or person;
- (b) authorize a police officer or a competent person to intercept or listen to a conversation provided by the authority, telecommunications service provider or person;
- (c) authorize a police officer or a competent person to enter any premises and to install on the premises a device for the interception and retention of specified telecommunications; or
- (d) approve the use of any technology belonging to the Seychelles or the foreign State that may facilitate the interception of telecommunications;
- (e) make such other orders that the Supreme Court deems appropriate.

Request for the interception of postal items

48.(1) For the purposes of a criminal investigation, the Attorney General may, in accordance with the provisions of this Act and any other written law, execute a request from a foreign State to assist in the interception of a postal item during the course of its carriage by a postal service.

(2) The Attorney General may grant a request under subsection (1) if the Attorney General is satisfied that —

- (a) the foreign State has jurisdiction over the criminal matter for which the request is sought; and

- (b) there are grounds to suspect that the information obtained pursuant to the interception will be relevant to the commission of a serious foreign offence in the foreign State.

Order for the interception of postal items

49.(1) Where the Attorney General approves a request under section 48, the Attorney General or the Commissioner of Police may make an ex-parte application to the Supreme Court for an order to intercept a postal item.

(2) Where the Supreme Court grants an application under subsection (1), the Supreme Court may direct —

- (a) that the intercepted postal item or a copy thereof is transmitted to or from the foreign State;
- (b) such other orders that the Supreme Court deems appropriate.

Request for the preservation of communication data

50.(1) A foreign State may request the Attorney General to assist in the preservation of communications data.

(2) The Attorney General may assist in the preservation of communications data where there are reasonable grounds to believe that the communications data held in Seychelles will be relevant to a criminal investigation or proceedings in the foreign State.

(3) A request for the preservation of communications data by a foreign State to the Attorney General under this section shall —

- (a) contain a brief description of criminal investigation and the reasons for the necessity of the preservation of the communications data;
- (b) contain a description of the communications data to be preserved and its relationship to the criminal investigation or prosecution, and in particular identifying whether the communications data to be preserved includes —

- (i) subscriber information;
 - (ii) traffic data;
 - (iii) any other information falling within the definition of communications data;
- (c) contain information to identify the custodian of the stored communications data or the location computer system or relevant technology;
- (d) indicate the manner and time within which the foreign State intends to submit a substantive request for assistance for the production of the required communications data.

(4) Where the Attorney General approves a request under this section, the Attorney General or the Commissioner of Police may make an ex-parte application to the Supreme Court for an order to preserved the required communications data.

(5) The preservation of communications data pursuant to a request made under this section shall not exceed a period of 120 days, unless the Supreme Court determines otherwise.

Covert surveillance

51.(1) A request may be made to the Attorney General by a foreign State for the deployment of covert surveillance.

(2) Covert surveillance under this section shall take place in accordance with regulations made under this Act or any other written law.

(3) Regulations under subsection (2) may set out a framework for —

- (a) covert electronic surveillance including the use of a tracking device;
- (b) the establishment of joint investigation team with the competent authority in Seychelles and the competent authority in the foreign State.

PART 4

MISCELLANEOUS

Register of Requests for Assistance in Criminal Matters

52.(1) The Attorney General shall maintain a case management system with such details and in such form as the Attorney General may determine.

(2) The case management system shall contain —

- (a) all requests made or received by the Attorney General under sections 7 and 21;
- (b) all requests made or received by an authority authorized by Seychelles under sections 8 and 22.

(3) The Minister responsible for foreign affairs or an authorized person may access the case management system to verify or cross-reference any information.

Authentication of documents

53.(1) Subject to sections 12, 40 and 41 and any law relating to the admissibility 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 without any further proof 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 officer in or of that foreign State; and

(b) either —

(i) it is verified by oath or affirmation of a witness or of an officer of the government of the foreign State; or

(ii) it purports to be sealed with an official or public seal of that foreign State or of a Minister, department or officer of the government of that foreign State.

(3) All courts in Seychelles shall take judicial notice of the official or public seal referred to in subsection (2).

(4) Nothing in this section prevents the proof of any matter or admission in evidence of any document in accordance with any other provision of this Act or any other law of Seychelles.

Use of video link in proceedings

54.(1) A court may issue an order that the testimony or statement of a person, the identification of a person or thing or any other form of assistance under this Act be provided by video link.

(2) An order issued under subsection (1) shall order the person —

- (a) to attend at a time and place fixed by the court to give a statement, testify or otherwise provide assistance by video link and to remain in attendance until excused by the foreign State;
- (b) to answer any questions raised by the foreign State in accordance with the law that applies to that foreign State; or
- (c) to produce or show any item, article or document or copy thereof to the foreign State at the time and place fixed by the court and the court may impose any other appropriate conditions;
- (d) such other directions that the court deems necessary to facilitate a request for assistance by a foreign State.

(3) The costs of establishing a video link and costs related to the servicing of the video link in Seychelles shall be borne by the foreign State, unless otherwise agreed by the Attorney General and the foreign State.

(4) Section 31(5), (6), (7), (8), (9) and (10) shall apply *mutatis mutandis* to this section.

Sharing Arrangements

55.(1) Subject to subsection (3), the ordinary costs of executing a request by a prescribed foreign State, as defined in section 19, shall be borne

by Seychelles unless otherwise specified in the treaty between the prescribed foreign State and Seychelles.

(2) The ordinary costs of executing a request by a foreign State, as defined in section 20, shall be borne by that foreign State, except where —

- (a) the foreign state gives an undertaking to the Attorney General that the foreign State will, subject to the laws of that foreign State, comply with a future request by Seychelles; and
- (b) the Minister responsible for foreign affairs has directed the Attorney General to waive the costs of executing the particular request; or
- (c) the Attorney General is willing to proceed with the request in accordance with subsection (3).

(3) The Attorney General shall invite a foreign State to enter sharing arrangements where the Attorney General takes the view that the request imposes an excessive burden on the resources of Seychelles.

(4) The sharing arrangements may include —

- (a) the costs of a legal consultant appointed by the Attorney General to execute the request or the costs of over time to be paid to a State Counsel;
- (b) the sharing of any monies that resulted from the recovery, forfeiture or confiscation of a foreign serious offence;
- (c) any such other financial arrangements that the Attorney General and foreign State may agree to enter.

(4) The monies received from any sharing arrangements shall be paid into the Consolidated Fund or a fund established under another Act.

Language

56. The documents in support of a request for mutual assistance in criminal matters shall be in English language unless stipulated otherwise in any treaty or international arrangement.

Authority to enter into treaty: article 64 of the Constitution

57.(1) The President, or any person authorized by the President, may enter into a treaty, whether bilateral or multilateral, in respect of mutual assistance in criminal matters for the purposes of this Act and such treaty shall be binding on Seychelles pursuant to article 64(5) of the Constitution.

(2) Where a treaty is entered into under subsection (1), the Minister responsible for foreign affairs shall comply with section 19(3).

Regulations

58.(1) The Minister may make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes —

- (a) prescribing the procedure for enforcing foreign confiscation orders;
- (b) covert surveillance;
- (c) prescribing the fees, costs and charges payable under this Act;
- (d) prescribing such forms for the purposes of this Act;
- (e) prescribing for such other matters as are contemplated by or necessary for giving full effect to, the provisions of this Act and for their due administration.

Rules of Court

59. Rules of court, made by the Chief Justice, may provide for the practice and procedure in relation to proceedings under this Act.

Repeal and savings

60.(1) The Mutual Assistance in Criminal Matters Act, Cap. 284, is repealed.

(2) Nothing in this Act affects —

- (a) the validity of any request for mutual assistance in criminal matters made by Seychelles to a foreign State prior to the commencement of this Act;
- (b) the validity of any request for mutual assistance in criminal matters made by a foreign State to Seychelles prior to the commencement of this Act;
- (c) any procedure relating to the provision or obtaining of mutual assistance in criminal matters prior to the commencement of this Act;
- (d) any decision relating to the provision or obtaining of mutual assistance in criminal matters made prior to the commencement of this Act.