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Criminal Matters (Mutual Assistance) Act, 2001

Act 7 of 2001

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Act 7 of 2001

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An Act to provide for international assistance in criminal matters and for other matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

Part I – Preliminary

1. Short title and commencement

This Act may be cited as the Criminal Matters (Mutual Assistance) Act, 2001 and shall come into force on such date as the Minister may by Notice in the *Gazette*, appoint.

2. Interpretation

In this Act, unless the context otherwise requires—

“**appropriate authority**” means in relation to a designated country, the person or authority appointed for the purpose of transmitting and receiving requests for assistance under this Act;

“**authorised officer**” means an officer authorised by the Minister for the purposes of transmitting and receiving requests for assistance under this Act;

“**Court**” means a court of competent jurisdiction in Swaziland or in a designated country;

“**criminal proceedings**” means proceedings which have been or could be instituted in Swaziland or, as the case may be, in a designated country in respect of an offence committed or suspected on reasonable grounds to have been committed in Swaziland or, as the case may be, in a designated country;

“**designated country**” means a foreign country designated under [section 3](#);

“**forfeiture order**” means an order made by a Court in terms of section 4 of the Serious Offences (Confiscation of Proceeds) Act, 2001;

“**Minister**” means the Minister for Justice;

“**offence**” means an offence against the laws of Swaziland or against the law of a designated country by which a request is made for assistance under this Act;

“**pecuniary penalty order**” means an order made by a court imposing a pecuniary penalty determined by reference to the value of any property derived or obtained, whether directly or indirectly from, or used in or in connection with, the commission of a serious offence;

“**proceeds**” means proceeds of a serious offence as defined in section 2 of the Serious Offences (Confiscation of Proceeds) Act 2001;

“**property**” means real or personal property of every description wherever situated, whether tangible or intangible and it also means any interest in any such real or personal property;

“**restraining order**” means an order made by a court restraining dealings with any property in respect of which there is reasonable cause to believe that it has been derived or obtained, whether directly from, or used in, or in connection with, the commission of a serious offence;

“**serious offence**” means an offence specified in the Serious Offences (Confiscation of Proceeds) Act, 2001 or an offence of a similar kind against the law of a designated country.

3. Application of Act to designated countries

This Act shall apply to such foreign country as the Minister may designate from time to time by notice in the *Gazette* and referred to in this Act as the “designated country”.

4. Act not to preclude other forms of assistance

Nothing in this Act shall prevent the provision or obtaining of international assistance in criminal matters otherwise than in accordance with this Act.

Part II – Requests by Swaziland for assistance

5. Form of requests for assistance

All requests for assistance under this Part shall be made in writing by the Minister or an authorised officer and transmitted to the appropriate authority in the designated country.

6. Assistance in obtaining evidence

Where there are reasonable grounds to believe that evidence for the purposes of any criminal proceedings may be obtained if in a designated country—

- (a) evidence is taken from any person;
- (b) judicial, official or other records or documents are produced;
- (c) samples of any matter or things are taken or examined; or
- (d) any site or thing is viewed or photographed

a request may be transmitted to the appropriate authority in the designated country requesting that the evidence be so obtained for the purpose of such proceedings.

7. Assistance in identifying and locating persons

Where there are reasonable grounds to believe that a person who—

- (a) is or might be concerned in or affected by; or
- (b) could give evidence for the purpose of

any criminal proceedings, is in a designated country, a request may be transmitted to the appropriate authority in the designated country requesting that assistance be given in locating that person or, if his identity is unknown, in identifying and locating him.

8. Assistance in obtaining articles or things by search and seizure

Where there are reasonable grounds to believe that an article or thing is in a designated country and would, if produced, constitute evidence for the purpose of any criminal proceedings, a request may be transmitted to the appropriate authority in the designated country requesting that the article or thing be obtained by search and seizure in accordance with the law of that country for the purposes of such proceedings.

9. Assistance in arranging attendance of witnesses

Where there are reasonable grounds to believe that a person in a designated country could give evidence for the purpose of any criminal proceedings, a request may be transmitted to the appropriate authority in the designated country requesting that assistance be given in arranging the attendance of that person in Swaziland to give evidence.

10. Assistance in securing transfer of prisoners

- (1) Where there are reasonable grounds to believe that a prisoner in a designated country could give evidence for the purpose of any criminal proceedings, a request may be transmitted to the appropriate authority in the designated country requesting that the prisoner be transferred to Swaziland to give evidence for the purposes of such proceedings.
- (2) The appropriate authority in the designated country shall notify the Ministry of any conditions under which the prisoner may be transferred, and the Minister shall, except where he is unable to do so or that the appropriate authority waives the observance of such conditions, ensure that those conditions are observed.
- (3) Subject to any conditions as may be prescribed by the designated country in any particular case, the provisions of the Correctional Services Act, 1964 with respect—
 - (a) to the conditions of imprisonment;
 - (b) to the treatment; and
 - (c) to the transfer from prison to prison;of a prisoner shall apply in so far as they are capable of application in relation to the prisoner who is in Swaziland pursuant to a request made under subsection (1)
- (4) Nothing in this section shall be construed as conferring any rights on the prisoner.
- (5) In this section “prisoner” in relation to a designated country means a person who is being held in custody or sentenced for or under a sentence of imprisonment for an offence against the law of that country.

11. Restriction on use of evidence

No evidence obtained under [section 6](#) or given by any person or prisoner under [section 9](#) or [10](#), or any article or thing seized pursuant to a request under [section 8](#) shall be admitted or otherwise used for the purpose of any proceedings other than the criminal proceedings for which the evidence, article or thing was obtained, seized or given without the consent in writing of the appropriate authority in the designated country to which the request was made.

12. Immunities and privileges

- (1) Subject to subsection (2), a person who is in Swaziland pursuant to a request under [section 9](#) or [10](#)—
 - (a) is not liable to be detained, prosecuted or punished for any offence that is alleged to have been committed or that was committed before the person’s departure from the designated country to which the request was made;
 - (b) shall not be compelled to give evidence in relation to any—
 - (i) proceedings other than the proceedings in the criminal matter to which the request relates; or
 - (ii) matter, if he would not be compelled to do so in Swaziland or in the designated country to which the request was made.

- (2) The provisions of subsection (1) shall not apply in relation to a person who—
- (a) leaves Swaziland and returns otherwise than pursuant to the same or another request; or
 - (b) has had an opportunity of leaving Swaziland but has remained in Swaziland after the expiration of period of 15 days from the date when he was notified by the minister that his presence in Swaziland was no longer required for the purpose of the request.

13. Assistance in serving documents

Where for the purposes of any criminal proceedings, it is necessary or desirable to serve a document on a person or authority in a designated country, a request may be transmitted to the appropriate authority in the designated country requesting that the service be so effected.

14. Assistance in tracing proceeds of serious offences

Where—

- (a) in Swaziland a person has been convicted of a serious offence or has been or is about to be charged with a serious offence; and
- (b) there are reasonable grounds to believe that proceeds were gained from the commission of the offence by that person and any of those proceeds are in a designated country

a request may be transmitted to the appropriate authority in that country requesting that assistance be given in that country in identifying, locating or assessing the value of such proceeds.

15. Assistance in relation to forfeiture and pecuniary penalty orders

Where under the Serious Offences (Confiscation of Proceeds) Act 2001—

- (a) a forfeiture order or a pecuniary penalty order or a restraining order has been made against any person in respect of a serious offence; and
- (b) there are reasonable grounds to believe that there is in a designated country—
 - (i) property available for the satisfaction of the pecuniary penalty order; or
 - (ii) property to which the forfeiture order relates

a request may be transmitted to the appropriate authority in the designated country requesting that the order be enforced in the designated country in accordance with the terms of the request and subject to the law of that country.

16. Assistance in obtaining restraining orders

Where—

- (a) in Swaziland a person has been or is about to be charged with a serious offence; and
- (b) there are reasonable grounds to believe that proceeds were gained from the commission of the offence by the person and any of those proceeds are in a designated country,

a request may be transmitted to the appropriate authority in the designated country requesting that an order similar in nature to a restraining order under the Serious Offences (Confiscation of Proceeds) Act, 2001 be made in that country against that person in respect of the offence.

Part III – Request by designated country

17. Request for assistance generally

- (1) All requests by a designated country for assistance under this Part shall be transmitted to the Minister or an authorised officer.
- (2) A request shall normally be made in writing except in the case of emergency when it shall be made orally and confirmed in writing forthwith.
- (3) A request shall—
 - (a) specify the nature of the assistance requested;
 - (b) contain information appropriate to the assistance sought as specified in this Part;
 - (c) state any time-limit within which compliance with the request is desired and reasons therefore;
 - (d) contain the following information—
 - (i) the identity of the agency or authority initiating the request;
 - (ii) the identity of the accused person; and
 - (iii) whether or not criminal proceedings have been instituted;
 - (e) where criminal proceedings have been instituted, it shall contain the following information—
 - (i) the court exercising jurisdiction in the proceedings;
 - (ii) the identity of the accused person;
 - (iii) the offence of which that person stands accused, and a summary of the facts;
 - (iv) the stage reached in the proceedings;
 - (v) any date fixed for further stages in the proceedings;
 - (f) where criminal proceedings have not been instituted, state the offence which the designated country has reasonable grounds to believe have been committed, with a summary of the known facts; and
 - (g) any other information that may assist in giving effect to the request.

18. Refusal of request for assistance

- (1) The Minister may refuse a request by a designated country for assistance under this Part if in the opinion of the Minister the criminal matter concerns—
 - (a) conduct which would not constitute an offence under the law of Swaziland;
 - (b) an offence or proceedings of a political character; or
 - (c) conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the designated country.
- (2) Without prejudice to subsection (1), the Minister may refuse to comply in whole or in part with a request under this Part—
 - (a) if it appears to the Minister that granting of the request would be contrary to the laws of Swaziland or would prejudice the security, international relations or other essential public interest of Swaziland;

- (b) if the Minister has reasonable grounds to believe that granting the request would facilitate the prosecution or punishment of a person on account of that person's race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request;
 - (c) if the Minister is satisfied that the steps required to be taken in order to comply with the request cannot under the laws of Swaziland be taken in respect of the criminal matter to which the request relates if it has arisen in Swaziland.
- (3) For the purposes of subsection (1), an offence shall be of a political character if it is an offence within the scope of any international convention to which both Swaziland and the designated country are parties and which imposes on the parties thereto an obligation either to extradite or prosecute the person accused of the commission of that offence.

19. Assistance in locating or identifying persons in Swaziland

- (1) A request may be transmitted by a designated country for assistance in identifying or locating any person believed to be in Swaziland who could give evidence for the purposes of, or who is or might be concerned in, or affected by, any criminal proceedings in the designated country.
- (2) Any such request shall—
- (a) state the purpose for which the information about that person is requested; and
 - (b) contain such information as is available to the designated country as to the whereabouts of that person and such other information as may facilitate the identification of that person in Swaziland.

20. Assistance in examination of witnesses in Swaziland

- (1) A request may be transmitted by a designated country for assistance in the examination of witnesses in Swaziland for the purposes of any criminal proceedings in the designated country.
- (2) Any such request shall specify as appropriate and so far as the circumstances of the case permit—
- (a) the names and addresses or official designations of the witnesses to be examined;
 - (b) the questions to be put to the witnesses or the subject matter about which they are to be examined;
 - (c) whether the witnesses should be examined orally or in writing;
 - (d) whether the witnesses should be examined on oath or solemn affirmation;
 - (e) any provisions of the laws of the designated country as to the manner of taking evidence relevant to its admissibility in that country.
- (3) Subject to the provisions of the Criminal Procedure and Evidence Act, 1938, the accused person or his legal representative may attend the examination of witnesses and may examine such witnesses.

21. Assistance in arranging personal attendance of witnesses in designated country

- (1) A request may be transmitted by a designated country for assistance in facilitating the personal attendance of witnesses before a court in the designated country.
- (2) Any such request shall specify—
- (a) the subject matter upon which the witnesses is to be examined;
 - (b) the reason for which the personal appearance of the witness is required; and

- (c) details of the travelling, subsistence and other expenses payable by the designated country in respect of the personal appearance of the witness.
- (3) The Minister shall refuse to comply with a request made under subsection (1) if the person concerned does not on reasonable grounds consent to the transfer.
- (4) Where a person in custody is being transferred pursuant to a request under subsection (1), the Minister shall notify the designated country of the date when that person shall be released from custody and the date when he should be returned to Swaziland.
- (5) The competent authority in the designated country shall keep the person so transferred in custody for as long as his presence as a witness is required and shall return him to Swaziland when his presence is no longer required.
- (6) The period during which the person so transferred is kept in custody in the designated country shall be deemed for all purposes to be the period served in custody in Swaziland.

22. Assistance in obtaining evidence by other means

When a request for assistance in obtaining evidence in Swaziland by any of the means stated in [section 6](#) for the purposes of any criminal proceedings in a designated country, the request shall specify as appropriate and as far as the circumstances of the case may permit—

- (a) the documents, records or property to be inspected, produced, photographed, copied or transmitted;
- (b) the samples of any property to be taken, examined or transmitted; or
- (c) the site to be viewed or photographed.

23. Assistance in production of judicial and official records

- (1) Where compliance with a request under this Part involves the transmission to the designated country of any document, record or property, the Minister may—
 - (a) postpone the transmission of such document, record or property if it is required in connection with proceedings in a court or commission of inquiry in Swaziland, in which case certified copies of the document or record may be provided pending the transmission of the original;
 - (b) refuse to effect the transmission of such document, record or property unless the designated country agrees to protect the interests of third parties in the document, record or property.
- (2) A document, record or property transmitted to a designated country pursuant to a request under subsection (1) shall be returned to the Minister when it is no longer required in connection with the criminal matter in respect of which the request was made, or unless the Minister has indicated that he does not require the return of such document, record or property.

24. Assistance for service of documents in Swaziland

- (1) A request for assistance in the service of documents in Swaziland for the purposes of any criminal proceedings in a designated country shall be accompanied by the documents to be served.
- (2) The Minister shall use his best endeavours to have the document served in accordance with the request unless such service is contrary to any other law for the time being in force.
- (3) If the document is served, the Minister shall transmit to the appropriate authority in the designated country a certificate of service of the document or if it has not been served, the reasons which have prevented the service of the document.

25. Assistance in tracing the proceeds of serious offences

- (1) The appropriate authority in a designated country may request for assistance in identifying, locating and assessing the value of any property believed to have been derived or obtained either directly or indirectly from, or to have been used in, or in connection with the commission of a serious offence and believed to be within Swaziland.
- (2) Any such request shall contain information concerning the nature and location of the property and any person in whose possession or control the property is believed to be held in Swaziland.

26. Seizure and confiscation of proceeds of serious offence

- (1) Where—
 - (a) the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of—
 - (i) a forfeiture order made in respect of a serious offence against property that is believed to be located in Swaziland; or
 - (ii) a pecuniary penalty order made in respect of a serious offence where some or all of the property available to satisfy the order is believed to be located in Swaziland; and
 - (b) the Minister is satisfied that:
 - (i) the person has been convicted of the offence; and
 - (ii) conviction and the order are not subject to further appeal in the designated country,the Minister may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.
- (2) Where the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of a restraining order made in that country in respect of a serious offence against property that is believed to be located within Swaziland, the Minister may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.
- (3) Where the Director of Public Prosecutions has applied for registration in the High Court or a forfeiture order or a pecuniary penalty order under subsection (1) or a restraining order under subsection (2), the High Court shall register the order accordingly.

27. Effect of registration of forfeiture order, pecuniary penalty order or restraining order

A forfeiture order, a pecuniary penalty order or a restraining order registered under [section 26](#) shall have effect and may be enforced as if it were a forfeiture order, a pecuniary penalty order or a restraining order made by the High Court under the Serious Offences (Confiscation of Proceeds) Act, 2000.

28. Cancellation of forfeiture order, pecuniary penalty order or restraining order

- (1) The Minister may authorise the Director of Public Prosecutions in writing to apply to the High Court for the cancellation of an order or amendment thereto registered under [section 26](#) or [27](#) if the Minister is satisfied that—
 - (a) the order or amendment thereto has ceased to have effect in the designated country in which it was made;
 - (b) the cancellation of the order or amendment is necessary having regard to the arrangements entered into between Swaziland and the designated country in relation to the enforcement of orders of that kind.

- (2) Where the Director of Public Prosecutions has applied for cancellation of the order or amendment thereto under subsection (1) the High Court shall cancel the order or amendment and accordingly such order or amendment shall cease to have effect.

Part IV – Miscellaneous

29. Disposal or release to property

The provisions of the Serious Offences (Confiscation of Proceeds) Act, 2001 shall *mutatis mutandis* apply to the disposal or release of any property forfeited or obtained as a result of the enforcement of a pecuniary order made pursuant under this Act.

30. Confidentiality

Any request as well as any information or material furnished in compliance with any such request under this Act shall be kept confidential and shall not be disclosed to any person for any purpose other than that for which the request was made.

31. Authentication of documents

Any document or other material transmitted for the purpose of, or in response to, a request under this Act shall be deemed to be duly authenticated if it purports to be—

- (a) signed or certified by a Judge, Magistrate or proper officer of the designated country; or
- (b) authenticated by the oath of witness or any officer of the Government of the designated country or of a Minister of State, or of a Department or Officer of the Government of the designated country.

32. Limitation of use of information

Unless with the consent of the Minister, no information obtained in response to a request for assistance under this Act shall be used in connection with any matter other than the criminal matter in respect of which the request was made.

33. Regulations

The Minister may make such regulations as are necessary for carrying out or giving effect to the provisions of this Act.

34. Rules of Court

Notwithstanding [section 35](#), the Chief Justice may by Legal Notice published in the *Gazette*, make Rules of Court regulating the procedure for the registration of forfeiture, restraining or pecuniary penalty orders issued in a designated country.

35. Act not applicable to extradition

Nothing in this Act shall be construed as authorising the extradition or the arrest or detention of a person with a view to extraditing that person.

36. Application of existing legislation

Except in so far as provisions are expressly made in this Act to the contrary, the provisions of the Criminal Procedure and Evidence Act, 1938 shall apply to give effect to the provisions of this Act.