REPUBLIC OF THE MARSHALL ISLANDS
CONFIDENTIAL
C.M. 037 (2014)

FOR ACTION
Minister of Justice

FOR INFORMATION
All Cabinet Members

SUBJECT: Approval of the attached Regulations on Mutual Assistance in Criminal Matters Act

At its meeting on March 26th, 2014, the Cabinet:

approved the attached Regulations pursuant to the Mutual Assistance in Criminal Matters Act (MACMA).

Morean S. Watak
Clerk of the Cabinet

Christopher J. Loeak
President

[Reference – C.P. 6998 (2014)]
Signed by the President on Mar. 27th, 2014

Mutual Assistance in Criminal Matters Regulations, 2002

MUTUAL ASSISTANTANCE IN CRIMINAL MATTERS ACT

The Minister of Justice pursuant to Section 421 of the Mutual Assistance in Criminal Matters Act, 32 MIRC, Chapter 4, as amended, hereby prescribes these Regulations in respect to matters related to Mutual Assistance in Criminal Matters.

Section 1. Name.

These regulations may be cited as the Mutual Assistance in Criminal Matters Regulations 2014.

Section 2. Interpretation.

(1) In these Regulations,

(a) "*the Act*" means the *Mutual Assistance in Criminal Matters Act 2002;*

(b) "*Attorney-General*" means the Attorney-General of the RMI and includes the Deputy Attorney General or Assistant Attorney-General to whom the Attorney-General may delegate authority to carry out specific duties and responsibilities of the Attorney-General established by the Act;

(c) "*data*" means representations, in any form, of information or concepts;

(d) "*document*" means any record of information and any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device, and includes:

(i) anything on which there is writing;
(ii) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
(iii) anything from which sounds, images or writings can be produced, with or without the aid of anything else; or
(iv) a map, plan, drawing, photograph or similar thing;

(e) "*foreign confiscation order*" means an order, made by a court in a foreign country, for the purposes of the:

(i) confiscation or forfeiture of property in connection with; or
(ii) recovery of the proceeds of a serious offense;

give evidence (or who have custody of the documents or articles)].

(f) "*foreign restraining order*" means an order made in respect of a serious offense by a court in a foreign country for the purpose of restraining a particular person or all persons from dealing with property;

(g) "*foreign country*" means:

(i) any country other than the Republic of the Marshall Islands; and

(ii) every constituent part of such country, including a territory, dependency or protectorate, or political subdivision which administers its own laws relating to international cooperation;

(h) "*High Court*" means the High Court of the RMI.

(i) "*interest,*" in relation to property, means a:

(i) legal or equitable estate or interest in the property; or

(ii) right, power or privilege in connection with the property, whether present or future and whether vested or contingent;

(j) "*Minister*" means the Minister of Justice;

(k) "*person*" means any natural or legal person;

(l) "*place*" includes any land (whether vacant, enclosed or built upon, or not), and any premises;

(m) "*premises*" includes the whole or any part of a structure, building, aircraft, or vessel;

(n) "*proceedings*" means any procedure conducted by or under the supervision of a judge, High Court or judicial officer however described in relation to any alleged or proven offense, or property derived from such offense, and includes an inquiry, investigation, or preliminary or final determination of facts;

(o) "*proceeds of crime*" means fruits of a crime, or any property derived or realized indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offense;

(p) "*property*" means real or personal property of every description, whether situated in the RMI or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property;

(q) "*RMI*" means the Republic of the Marshall Islands; and

(r) "*serious offense*" means an offense against a provision of:

(i) any law of the RMI, which is a criminal offense punishable by imprisonment for a maximum term of no less than 12 months;

(ii) a law of a foreign country, in relation to acts or omissions, which had they occurred in the RMI, would have constituted a criminal offense punishable by imprisonment for a maximum term of no less than 12 months.

(2) In these regulations, a reference to a form by number is a reference to the form in the attached Schedule of Forms (the "Schedule") which bears that number.

Section 3. Forms.

(1) The forms set out in the Schedule are the forms to be used in respect of the proceedings or matters under the Act to which those forms relate.

(2) Such variations may be made in any prescribed form as the circumstances of any particular case may require.

(3) Strict compliance with the prescribed forms is not necessary, and substantial compliance, or such compliance as the particular circumstances of the case allow, is sufficient.

Section 4. General procedure for responding to requests.

(1) Upon receipt of a request from a foreign country that complies with section 408 of the Act, the Attorney General shall:

(a) grant the request in whole or in part;
(b) refuse the request, in whole or in part;
(c) consult with the competent authority of the foreign country to determine if the request should be postponed.

(2) A determination made under subsection (1) of this section shall be made within seven (7) days of receipt of the request.

(3) If the determination made under subsection (1) of this section is to refuse or postpone the request, the Attorney General shall notify the foreign country in writing of that determination.

(4) If the determination made under subsection (1) is to grant the request, in whole or in part, the Attorney General shall without undue delay begin taking the necessary steps to complete and respond to the request. All requests for mutual legal assistance that have been granted should be completed within twenty-one days (21) of the initial receipt of the request.

Section 5. Power of Attorney General to send for witnesses and documents.

(1) An authorized person may apply to the High Court for an evidence gathering order, and the High Court acting under the Act may issue a summons in accordance with the usual form in which a witness summons is issued in the RMI:

(a) requiring a named person to attend as a witness before the High Court to do any or all of the following:

(i) to give evidence as required under the summons;
(ii) to answer questions as required under the summons;
(iii) to produce documents and other articles in the person's custody or control as required under the summons; or

(b) requiring a named person who is only to produce documents, other articles, or both to do any or all of the following:

(i) to attend before the High Court;
(ii) produce the documents (if any) in the person's custody or control;
(iii) produce the other articles (if any) in the person's custody or control.

(2) Service on a person of a summons under this section may be effected anywhere within the RMI and shall be effected by delivering a copy of the summons to the person personally or to a duly authorized person (authorized by the person to be served).

(3) If service on a person cannot be effected under subsection (2) for any reason, the High Court may, on application, order that, instead of service, the steps specified in the order are to be taken to bring the document to the notice of a person named in the summons.

(4) If the High Court makes an order under subsection (3), the High Court may order that the document be taken to have been served on the happening of a specified event, or on the expiry of any specified time.

Section 6. Duty of person to continue in attendance.

A person summoned under section 5 to attend before the High Court must attend at the place and time, and on the date, specified in the summons and then from day to day unless excused or released from attending by the High Court.

Section 7. Arrest of person failing to attend.

(1) If a person summoned under section 5 to attend before the High Court fails to attend as required by section 6, the High Court may, on being satisfied that the summons has been duly served and that a reasonable sum for the expenses of attendance has been paid or tendered to that person, issue a warrant for the apprehension of that person in accordance with the usual form in which an arrest warrant is issued in the RMI.

(2) A person named in a warrant issued under subsection (1) may, under the warrant, be apprehended, brought before the High Court and detained in custody until released by order of the High Court.

(3) A warrant issued under subsection (1) may be executed anywhere within the RMI.

(4) The apprehension of a person under this section does not relieve the person from any liability incurred by the person because of his or her failure to attend before the High Court.

Section 8. Fees for person attending.

(1) A person who attends before the High Court in accordance with a summons under section 5 is entitled to be paid witness fees and travelling allowances as if attending before a court of summary jurisdiction in the RMI or, in special circumstances, such fees and allowances as the High Court directs.

(2) Fees and allowances are payable to a person in accordance with subsection (1) subject to the deduction of any amount previously paid to the person for expenses of attendance.

(3) Fees and allowances are payable by the person at whose request the person named in the summons was summoned.

Section 9. Power to examine on oath or affirmation.

(1) A person may, for the purposes of any proceeding in relation to the Act, make an affirmation instead of taking an oath.

(2) An affirmation made by a person pursuant to this section has the same effect for all purposes as if the person had taken an oath.

Section 10. Registration of foreign confiscation and restraining orders.

(1) The registration of a foreign confiscation or restraining order ordered to be registered under section 415 of the Act shall be effected by the entry, in an appropriate record book kept by the High Court, of the following particulars:

(a) the nature of the foreign order;
(b) the names of the parties to the foreign order;
(c) the name of the court or other authority that made the foreign order;
(d) the date of the foreign order;
(e) the property to which the foreign order applies; and
(f) the date of the order for registration.

(2) Under the entry and on the copy of the order the Clerk shall endorse and sign the following entry:

"Registered in the High Court at [place] on [date of registration] pursuant to section 415 of the Mutual Assistance in Criminal Matters Act 2002."

Section 11. Offences by persons.

A person who is summoned to attend before the High Court must not:

(a) without reasonable excuse, fail to attend as required by the summons, after payment or tender of a reasonable sum for expenses of attendance;

(b) refuse to be sworn or to make an affirmation as a witness or, without reasonable excuse, to answer any question when required to do so by the High Court; or

(c) without reasonable excuse, refuse or fail to produce any document or other article that the person was required to produce by the summons.

Schedule of Forms

1. Certificate of denial, partial denial, or postponement of request
2. Authorization to apply for an evidence gathering order
3. Certificate of evidence taken for use in criminal proceedings in foreign country
4. Authorization to apply for a search warrant
5. Authorization to apply for order to locate proceeds of crime
6. Authorization to apply for a transfer order

Form 1
Certificate of denial, partial denial,
or postponement of request
Section 407, Mutual Assistance in Criminal Matters Act 2002

I hereby certify—

* that a request for assistance under the Mutual Assistance in Criminal Matters Act 2002 has been made to me by [*country*]. The assistance requested is of the following nature:

[*specify*]

* that the request [*meets, does not meet, or partially meets*] the requirements of the Act;

* that the request has been [*denied, partially denied, or postponed*] under and in accordance with section 409 of the Act.

Dated at: [*place, date*]

Attorney-General

Form 2
Authorization to apply for an evidence gathering order

Sections 407 & 410, Mutual Assistance in Criminal Matters Act 2002

I have received a request from [*country*] under section 407 of the Mutual Assistance in Criminal Matters Act 2002, to make arrangements for the evidence set out in the Schedule to this authority to be taken in the Republic of the Marshall Islands (*or* for the documents or other articles set out in the Schedule to this authority to be produced in Republic of the Marshall Islands).

I am satisfied—

(a) that the request relates to criminal proceedings in that foreign country; and

(b) that there are reasonable grounds for believing that the evidence can be taken (*or* that the documents or other articles can be produced) in Republic of the Marshall Islands,—

and in my opinion nothing in the Mutual Assistance in Criminal Matters Act 2002 precludes the granting of this request.

Pursuant to section 407 of the Mutual Assistance in Criminal Matters Act 2002, I hereby authorise the taking of the evidence (*or* the production of the documents or other articles).

Dated at: [*place, date*]

Attorney-General:

Schedule

[*Here set out the general nature of the evidence to be taken, (or a description of the documents or articles to be produced), and the name(s) and, if known, the address(es) of the person(s) who is (are) to*