

# Mutual Assistance in Criminal Matters Act 1997

## FIJI

### MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 1997

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**FIJI**

**ACT NO. 28 OF 1997**

I assent.

[L.S.]

K.K.T. MARA  
President

[24 December 1997]

**AN ACT**

**TO REGULATE THE OBTAINING OF INTERNATIONAL ASSISTANCE IN  
CRIMINAL MATTERS RELATING TO TAKING OF EVIDENCE, ASSISTANCE IN  
INVESTIGATIONS AND PROCEDURES FOR FORFEITURE OR CONFISCATION OF  
PROPERTIES USED IN THE COMMISSION OF A SERIOUS OFFENCE AND  
RELATED MATTERS**

**ENACTED** by the Parliament of Fiji.

**Part I-PRELIMINARY**

**1. Short title**

This Act may be cited as the Mutual Assistance in Criminal Matters Act, 1997.

**2. Commencement**

This Act shall come into force on a date the Minister may, by notice in the *Fiji Republic Gazette* appoint.

**3. Interpretation**

In this Act, unless the context otherwise requires:

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"appropriate authority" means a person or body authorised under an enactment of, or duly appointed or authorised by, a foreign country to make or receive requests for the purpose of this Act or the Proceeds of Crime Act, 1997;

"confiscation order" means a confiscation order within the meaning of the Proceeds of Crime Act, 1997;

"Court" means the High Court of Fiji;

"criminal matter" includes -

- (a) a criminal matter relating to revenue (including taxation and customs duties);
- (b) a criminal matter relating to foreign exchange control;
- (c) a matter relating to the forfeiture or confiscation of property in respect of an offence; or
- (d) a matter relating to the restraining of dealings in property that may be forfeited or confiscated, in respect of an offence, whether arising under Fiji law or a law of a foreign country;

"criminal proceeding", in relation to an offence, means a trial of a person for the offence or a proceeding in respect of the offence to determine whether a persons should be tried for the offence (whether or not a particular person is specified at the commencement of that proceedings as the person in relation to whom the determination is to be made);

"facsimile copy" means a copy obtained or sent by facsimile transmission;

"foreign confiscation order" means an order made under the law of a foreign country for a person to pay to the foreign country an amount representing the value (or part thereof) of the person's benefits from an offence against the law of that country;

"foreign forfeiture order" means an order, made under the law of a foreign country, for the forfeiture of property in respect of an offence against the law of that foreign country;

"foreign law immunity certificate" means a certificate given, or a declaration made, by a foreign country or under a law of a foreign country, certifying or declaring that, under the law of the foreign country, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required-

- (a) to answer a specified question; or
- (b) to produce a specified document;

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

"foreign restraining order" means an order, made under the law of a foreign country, restraining a person, or persons, from dealing with property, being an order made in respect of an offence against the law of that foreign country;

"forfeiture order" means a forfeiture order within the meaning of the Proceeds of Crime Act, 1997;

"money laundering offence" means an offence under section 69 or 70 of the Proceeds of Crime Act, 1997;

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"offence" includes an offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control;

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

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

"proceeds" has the same meaning as in the Proceeds of Crime Act, 1997;

"proceeding" in relation to a criminal matter, includes a proceeding before a judicial officer for the purpose of -

(a) gathering evidential material that may lead to the laying of a criminal charge; or

(b) assessing evidential material in support of the laying of a criminal charge;

"property" has the same meaning as in the Proceeds of Crime Act, 1997;

"property-tracking document" has the same meaning as in the Proceeds of Crime Act, 1997;

"restraining order" means a restraining order within the meaning of the Proceeds of Crime Act, 1997;

"serious offence" means an offence for which the maximum penalty prescribed by law is death, or imprisonment for not less than 12 months;

"tainted property" has the same meaning as in the Proceeds of Crime Act, 1997;

"trial" in relation to an offence in a foreign country, includes any proceedings to determine whether a person should be convicted of the offence;

"video link" means a video and sound system that enables person assembled in a place in a country to see, hear or talk to persons assembled in a place in another country.

### ***4. Act not to limit other provision of assistance***

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

### ***5. Application of Act***

This Act extends to any foreign country that has an arrangement or has entered into a reciprocal agreement on assistance in criminal matters with Fiji.

### ***6. Refusal of assistance***

A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Attorney-General, the assistance would prejudice the national, essential or public interests of Fiji or would result in manifest unfairness or a denial of human rights or it is otherwise

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appropriate, in all the circumstance of the case, that the assistance requested should not be granted.

### ***7. Assistance may be provided subject to conditions***

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

### ***8. Requests by Fiji***

(1) A request for international assistance in a criminal matter that Fiji is authorised to make under this Act, unless otherwise provided, shall be made by the Attorney-General.

(2) Subsection (1) does not prevent the Attorney-General on behalf of Fiji from requesting international assistance in a criminal matter of a kind that may be requested under this Act.

### ***9. Requests by foreign country***

(1) A request by a foreign country for international assistance in a criminal matter may be made to the Attorney-General or a person authorised by the Attorney-General to receive requests by foreign countries under this Act.

(2) A request shall be in writing and include the following information-

- (a) the name of the authority concerned with the criminal matter to which the request relates;
- (b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
- (c) a description of the purpose of the request and of the nature of the assistance being sought;
- (d) any information that may assist in giving effect to the request;

Provided that the failure to comply with this subsection is not a ground for refusing the request.

(3) Where a request by a foreign country is made to a person authorised under subsection (1), the request shall be taken, for the purposes of this Act, to have been made to the Attorney-General.

(4) If a foreign country makes a request to another person or body in Fiji for international assistance in a criminal matter -

- (a) that other person or body shall refer the request to the Attorney-General; and
- (b) the request is then to be taken, for the purposes of the Act, to have been made to the Attorney-General.

**Part II - ASSISTANCE IN RELATION TO TAKING OF EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES**

**10. *Requests by Fiji***

(1) The Attorney-General may, in writing, request the appropriate authority of a foreign country to arrange for -

- (a) evidence to be taken in the foreign country under the law of that country; or
- (b) a document or other article in the foreign country to be produced under the law of that country;

for the purposes of a proceedings or investigation in relation to a criminal matter in Fiji.

(2) When making a request under subsection (1), the Attorney-General may also request that an opportunity be given to the person giving the evidence, or producing the document or other article, to be examined or cross examined, through a video link, from Fiji by -

- (a) any party to the proceedings or that person's legal representative; or
- (b) any person being investigated or that person's legal representative.

**11. *Requests by foreign countries***

(1) Where a request is made by a foreign country (requesting country) that -

- (a) evidence be taken in Fiji, or
- (b) documents or other articles in Fiji be produced, for the purposes of a proceedings or investigations in the requesting country or another foreign country, the Attorney-General may, in writing, authorise the taking of the evidence or the production of the documents or other articles, and the transmission of the evidence, documents or other articles to the requesting country.

(2) Where the Attorney-General authorises the taking of evidence or the production of documents or other articles under subsection (1) -

- (a) in the case of the taking of evidence, a Magistrate may take the evidence on oath of each witness appearing before the Magistrate to give evidence in relation to the matter, and a Magistrate who takes any such evidence shall -
  - (i) cause the evidence to be put in writing and certify that the evidence was taken by the Magistrate, and
  - (ii) cause the writing so certified to be sent to the Attorney-General; or



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(b) in the case of the production of documents or other articles, a Magistrate may, subject to subsection (6), require the production of the documents or other articles and, where the documents or other articles are produced, the Magistrate shall send the documents, or copies of the documents certified by the Magistrate or the other articles, to the Attorney-General.

(3) The evidence of such a witness may be taken in the presence or absence of the person to whom the proceeding in the requesting country relates or of his or her legal representative.

(4) A Magistrate conducting a proceedings under subsection (2) may permit -

(a) the person to whom the proceedings in the requesting country relates;

(b) any other person giving evidence or producing documents or other articles at the proceedings before the Magistrate; and

(c) the relevant authority of the requesting country, to have legal representation at the proceedings before the Magistrate.

(5) If the requesting country has so requested, the Magistrate conducting a proceedings under subsection (2) may permit -

(a) any person to whom the proceedings in the requesting country relates or that person's legal representative; or

(b) the legal representative of the relevant authority of the requesting country, to examine or cross-examine, through a video link, from the requesting country any person giving evidence or producing a document or other article, at the proceeding.

(6) The certificate by the Magistrate under subsection (2) shall state whether, when the evidence was taken or the documents or other articles produced, any of the following persons were present -

(a) the person to whom the proceeding in the requesting country relates or his or her legal representative;

(b) any other person giving evidence or producing documents or other articles or his or her legal representative.

(7) Subject to subsections (8) and (9), laws with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for an offence against the law of Fiji apply, so far as they are capable of application, with respect to the compelling of persons to attend before a Magistrate, and give evidence, answer questions and produce documents or other articles, for the purposes of this section.

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(8) For the purposes of this section, the person to whom the proceedings in the requesting country relates is competent but cannot be compelled, to give evidence.

(9) For the purposes of this section, a person who is required to give evidence, or produce documents or other articles, for the purposes of a proceedings in relation to a criminal matter in the requesting or another foreign country, is not compellable to answer a question or produce a document or article, that the person is not compellable to answer or produce, as the case may be in the proceeding in that country.

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

### **Part III - ASSISTANCE IN RELATION TO SEARCH AND SEIZURE**

#### ***12. Requests by Fiji for search and seizure***

(1) This section applies to a proceedings or investigation relating to a criminal matter involving a serious offence against the law of Fiji if there are reasonable grounds to believe that a thing relevant to the proceeding or investigation may be located in a foreign country.

(2) If this section applies to a proceedings or investigation, the Attorney-General may request the appropriate authority of the foreign country -

(a) to obtain a warrant or other instrument that, in accordance with the law of the foreign country, authorises -

(i) a search for a thing relevant to the proceedings or investigation; and

(ii) if the thing, or any other thing that is or may be relevant to the proceedings or investigation is found as a result of the search, the seizure of that thing.

(3) If the appropriate authority of the foreign country has obtained any thing relevant to the proceedings or investigation by means of a process authorised by the law of that country other than the issue (as requested by Fiji) of a warrant or other instrument authorising the seizure of the thing, the thing -

(a) is not inadmissible in evidence in the proceedings, or

(b) is not precluded from being used for the purposes of the investigation, on the ground alone that it was obtained otherwise than in accordance with the request.

#### ***13. Requests by foreign countries for search and seizure***

(1) Where -

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(a) a proceedings or investigation relating to a criminal matter involving a serious offence has commenced in a foreign country;

(b) there are reasonable grounds to believe that a thing relevant to the investigation or proceedings is located in Fiji; and

(c) the foreign country requests the Attorney-General to arrange for the issue of a search warrant under this section in relation to that thing, the Attorney-General may, in writing, authorise a police officer to apply to a Magistrate for the search warrant requested by the foreign country.

(2) A police officer authorised under subsection (1) may apply to a Magistrate for the issue of a warrant to search land or premises for the things to which the request relates in the same way as a police officer may apply for the issue of a search warrant under Part IV of the Criminal Procedure Code.

(3) Where an application is made under subsection (2) for a warrant to search land or premises in Fiji for a thing relevant to an investigation or proceedings in a foreign country, the Magistrate may issue a warrant of the kind in the same manner, and subject to the same conditions, as the Magistrate could issue a search warrant under Part IV of the Criminal Procedure Code and, subject to this Part, the warrant may be executed in the same manner as if it has been issued under the Criminal Procedure Code.

(4) If, in the course of searching, under a warrant issued under this section, for a thing of a kind specified in the warrant, the police officer finds another thing that the police officer believes on reasonable grounds -

(a) to be relevant to the proceedings or investigation in the foreign country or to afford evidence as the commission of a Fiji criminal offence, and

(b) is likely to be concealed, lost or destroyed if it is not seized, the warrant is deemed to authorise the police officer to seize the other thing.

(5) Where the police officer finds, as a result of a search in accordance with a warrant issued under this section, a thing which the police officer seizes wholly or partly because the police officer believes the thing on reasonable grounds to be relevant to the proceeding or investigation in the foreign country, the police officer shall deliver the thing into the custody and control of the Commissioner of Police.

(6) Where a thing is delivered into the custody and control of the Commissioner, of Police under subsection (5), the Commissioner of Police shall without delay inform the Attorney-General that the thing has been so delivered and arrange for the thing to be kept pending a direction in writing from the Attorney-General as to the manner in which the thing is to be dealt with (which may include a direction that the thing be sent to an authority of a foreign country).

**Part IV-ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS**

**Division 1 - Requests by Fiji**

**14. Requests for removal of certain person to Fiji**

(1) Where-

- (a) a proceedings relating to a criminal matter has commenced in Fiji, and
- (b) the Attorney-General is of the opinion that a person who is in a foreign country-
  - (i) is a foreign prisoner,
  - (ii) is capable of giving evidence relevant to the proceedings, and
  - (iii) has given his or her consent to being removed to Fiji for the purpose of giving evidence in the proceedings, the Attorney-General may, in writing, request the foreign country to authorise the attendance of the person at a hearing in connection with the proceedings.

(2) Where-

- (a) an investigation relating to a criminal matter has commenced in Fiji, and
- (b) the Attorney-General is of the opinion that a person who is in a foreign country -
  - (i) is a foreign prisoner,
  - (ii) is capable of giving assistance in relation to the investigation, and
  - (iii) has given his or her consent to being removed to Fiji for the purpose of giving assistance in relation to the investigation, the Attorney-General may, in writing, request the foreign country to authorise the removal of the person to Fiji for the purpose of giving assistance in relation to the investigation.

(3) Where the Attorney-General makes a request under subsection (1) or (2), the Attorney-General may make arrangements with an appropriate authority of the foreign country for the purposes of-

- (a) the removal of the person to Fiji;
- (b) the custody of the person while in Fiji;
- (c) the return of the person to the foreign country; and
- (d) other relevant matters.

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### ***15. Custody of certain persons brought to Fiji***

- (a) a person is to be brought to Fiji from a foreign country pursuant to a request under section 14; and
- (b) the foreign country requests that the person be kept in custody while he or she is in Fiji,

the person shall, while the person is in Fiji or travelling to or from Fiji pursuant to the request, be kept in custody as the Attorney-General directs in writing.

### ***16. Immunities***

(1) Where a person is in Fiji pursuant to a request under section 14, or to give evidence in a proceedings, or to give assistance in relation to an investigation, pursuant to a request made by or on behalf of the Attorney-General (not being a request under section 14) for international assistance in a criminal matter, the person, subject to subsection (2), shall not-

- (a) be detained, prosecuted or punished in Fiji for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign country pursuant to the request;
- (b) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from the foreign country pursuant to the request, being a civil suit to which the person could not be subjected to if the person were not in Fiji;
- (c) be required to give evidence in any proceedings in Fiji other than the proceedings to which the request relates;
- (d) be required, in the proceedings to which the request relates, to answer any question that the person would not be required to answer in a proceeding in the foreign country relating to a criminal matter; or
- (e) be required, in the proceedings to which the request relates, to produce any document or article that the person would not be required to produce in a proceedings in the foreign country relating to a criminal matter.

(2) A duly authorised foreign law immunity certificate is admissible in proceedings as prima facie evidence of the matters stated in the certificate.

(3) Subsection (1) ceases to apply to a person if -

- (a) the person has left Fiji; or
- (b) the person has had the opportunity of leaving Fiji and has remained in Fiji otherwise than for-

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- (i) the purpose to which the request relates;
- (ii) the purpose of giving evidence in a proceeding in Fiji certified by the Attorney-General, in writing, to be a proceedings in which it is desirable that the person give evidence; or
- (iii) the purpose of giving assistance in relation to an investigation in Fiji certified by the Attorney-General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

(4) A certificate given by the Attorney-General under subparagraph (3)(b)(ii) or (iii) is effective from the date of the certificate.

### ***17. Status of person prosecuted for offence committed after departure from foreign country***

(1) Where a person has come to Fiji pursuant to a request under section 14, the person shall be taken, for the purposes of this Act, to be in Fiji pursuant to the request during any period during which the person remains in Fiji for the purpose of being tried for a criminal offence against the law of Fiji that the person is alleged to have committed after the person's departure from the foreign country.

(2) Without limiting the generality of subsection (1), the person shall be kept in custody as the Attorney-General directs under section 15.

### ***18. Limitation on use of evidence given by certain persons***

(1) Where -

(a) a person is in Fiji to give evidence in a proceedings pursuant to a request-

(i) under subsection 14 (1), or

(ii) (other than a request under subsection 14(1)) made by the Attorney-General for international assistance in a criminal matter, and

(b) the person has given evidence in the proceedings to which the request related or in a proceedings certified by the Attorney-General under subparagraph 16(3)(b)(ii) in relation to the person,

that evidence shall not be admitted or otherwise used in any prosecution of the person for an offence against Fiji law, other than the offence of perjury in relation to the giving of that evidence.

(2) If -

(a) a person is in Fiji to give assistance in relation to an investigation pursuant to a request-

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- (i) under subsection 14 (2), or
- (ii) (other than a request under subsection 14(2)) made by the Attorney-General for international assistance in a criminal matter, and
- (b) the person has given assistance in relation to the investigation to which the request related or in relation to an investigation certified by the Attorney-General under subparagraph 16(3)(b)(iii) in relation to the person,

anything said or done by the person when giving the assistance is not to be admitted or otherwise used in any prosecution of the person for an offence against Fiji law.

### ***19. Conditions of imprisonment***

The laws of Fiji with respect to-

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

apply, so far as they are capable of application, in relation to a person who is in Fiji pursuant to a request under section 14 and who has been committed to prison in Fiji in accordance with the directions of the Attorney-General under this Act.

### ***20. Release of certain persons upon request by foreign country***

Where-

- (a) a person is being held in custody in accordance with the directions of the Attorney-General under section 15, and
- (b) the foreign country from which the person has been brought requests, in writing, the release of the person from custody,

the Attorney-General shall, in writing, direct that the person be released from custody.

### ***21. Arrest of person who has escaped from custody***

(1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person-

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- (a) has been brought to Fiji under section 14; and
- (b) has escaped from lawful custody while in Fiji.

(2) The police officer shall, within 24 hours or as soon as practicable, take the person before a Magistrate.

(3) If the Magistrate is satisfied that the person has escaped from lawful custody, the Magistrate may issue a warrant authorising any police officer to return the person to lawful custody.

### ***22. Aiding person to escape etc.***

Section 139 of the Penal Code and section 79 of the Prisons Act relating to harbouring an escapee apply while a person is in custody in Fiji pursuant to a request to a foreign country by Fiji under this Act.

## **Division 2 - Requests by foreign countries**

### ***23. Requests for giving of evidence at hearings in foreign countries***

(1) Where-

- (a) a proceedings relating to a criminal matter has commenced in a foreign country;
- (b) the foreign country requests the attendance at a hearing in connection with the proceeding of a prisoner who is in Fiji (whether or not in custody);
- (c) there are reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceeding; and
- (d) the Attorney-General is satisfied that-
  - (i) the prisoner has consented to giving evidence in the foreign country, and
  - (ii) the foreign country has given adequate (whether or not unqualified undertakings in respect of the matters referred to in subsection (3),

the Attorney-General may-

(A) where the prisoner is being held in custody, direct, in writing, that the prisoner be released from prison for the purpose of travelling to the foreign country to give evidence at the proceedings and, subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner, make arrangements for the travel of the prisoner to the foreign country in the custody of a police or prison officer appointed by the Attorney-General for the purpose; or



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(B) in a case where the prisoner, having been released from custody on a parole or other order or licence to be at large, is not being held in custody, approve the travel of the prisoner to the foreign country to give evidence at the proceeding and obtain approvals, authorisation, permissions or variations to the parole or other order or licence to be at large as may be required and, subject to the obtaining of any necessary approvals, authorisation, permissions or variations of the parole or other order or licence to be at large, make arrangements for the travel of the prisoner to the foreign country in the custody of a police or prison officer appointed by the Attorney-General for the purpose.

(2) Where-

- (a) a criminal proceedings has commenced in a foreign country;
- (b) the foreign country requests the attendance at a hearing in connection with the proceedings of a person (not being a prisoner) who is in Fiji; and
- (c) there are reasonable grounds to believe that the person is capable of giving evidence relevant to the proceedings; and
- (d) the Attorney-General is satisfied that-
  - (i) the person has consented to giving evidence in the foreign country, and
  - (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3),

the Attorney-General may make arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person give evidence in the foreign country are-

(a) that the person shall not-

- (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Fiji;
- (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Fiji, being a civil suit to which the person could not be subjected to if the person were not in the foreign country; or
- (iii) be required to give evidence in any proceedings in the foreign country other than the proceedings to which the request relates, unless-

(A) the person has left the foreign country; or

(B) the person has had the opportunity of leaving the foreign country and has remained in that country otherwise than for the purpose of giving evidence in the proceedings to which the request relates;

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(b) that any evidence given by the person in the proceedings to which the request relates is inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than the offence of perjury in relation to the giving of that evidence;

(c) that the person shall be returned to Fiji in accordance with arrangements agreed by the Attorney-General;

(d) where the person is being held in custody in Fiji and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country-

(i) the making of appropriate arrangements for that purpose;

(ii) that the person shall not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Fiji law; and

(iii) if the person is released in the foreign country as mentioned in subparagraph (ii), that the person's accommodation and expenses pending the completion of the proceeding to which the request relates shall be paid for by the foreign country; and

(e) other matters as the Attorney-General thinks appropriate.

### ***24. Requests for assistance in relation to investigation in foreign countries***

(1) Where-

(a) an investigation relating to a criminal matter has commenced in a foreign country;

(b) the foreign country requests the removal of a prisoner who is in Fiji (whether or not in custody) to the foreign country for the purpose of giving assistance in relation to the investigation;

(c) there are reasonable grounds to believe that the prisoner is capable of giving assistance in relation to the investigation; and

(d) the Attorney-General is satisfied that-

(i) the prisoner has consented to being removed to the foreign country for the purpose of giving assistance in relation to the investigations, and

(ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3), the Attorney-General may-

(A) where the prisoner is being held in custody, direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give assistance in relation to the investigation and, subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner, make arrangements for the travel of the prisoner to the foreign country in the custody of a police or prison officer appointed by the Attorney-General for the purpose; or

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(B) where the prisoner, having been released from custody on a parole or other order or licence to be at large, is not being held in custody, approve the travel of the prisoner to the foreign country for the purpose of giving assistance in relation to the investigation and obtain approvals, authorisation, permission or variations to the parole or other order or licence to be at large as may be required and, make arrangements for the travel of the prisoner to the foreign country in the custody of a police or prison officer appointed by the Attorney-General for the purpose.

(2) Where-

(a) a criminal investigation has commenced in a foreign country;

(b) the foreign country requests that a person (not being a prisoner) who is in Fiji travel to the foreign country to give assistance in relation to the investigation;

(c) there are reasonable grounds to believe that the person is capable of giving assistance in relation to the investigations; and

(d) the Attorney-General is satisfied that-

(i) the person has consented to travel to the foreign country for the purpose of giving assistance in relation to the investigations, and

(ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3),

the Attorney-General may, make arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person be removed to, or travel to, the foreign country for the purpose of giving assistance in relation to an investigation are-

(a) that the person shall not-

(i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Fiji;

(ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Fiji, being a civil suit to which the person could not be subjected to if the person were not in the foreign country; or

(iii) be required to give in any proceedings in the foreign country, unless-

(A) the person has left the foreign country; or

(B) the person has had the opportunity of leaving the foreign country and has remained in that country otherwise than for the purpose of giving assistance in relation to the investigation to which the request relates;

(b) that the person shall be returned to Fiji in accordance with arrangements agreed by the Attorney-General;

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(c) where the person is being held in custody in Fiji and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country-

(i) the making of appropriate arrangements for that purpose;

(ii) that the person shall not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Fiji law; and

(iii) if the person is released in the foreign country as mentioned in subparagraph (ii), that the person's accommodation and expenses pending the completion of the investigation to which the request relates shall be paid for by the foreign country; or

(d) other matters as the Attorney-General thinks appropriate.

### ***25. Effects of removal to foreign country on prisoner's term of imprisonment***

Where a prisoner who is serving a term of imprisonment for an offence against a law of Fiji is released from a prison pursuant to a request by a foreign country under section 23 or 24, the prisoner, while in custody in connection with the request (including custody outside Fiji), is deemed to be continuing to serve that term of imprisonment.

## **Part V-CUSTODY OF PERSONS IN TRANSIT**

### ***26. Transit***

(1) Where a person is to be transported in custody from a foreign country through Fiji to another foreign country for the purpose of giving evidence in a criminal proceedings, or giving assistance in relation to a criminal investigation, the person -

(a) may be transported through Fiji in the custody of another person; or

(b) if an aircraft or ship by which the person is being transported lands or calls at a place in Fiji, shall be kept in custody as the Attorney-General directs in writing until his or her transportation is continued.

(2) Where a person is held in custody under paragraph (1)(b) and the person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time, the Attorney-General may direct that the person be transported in custody back to the foreign country from which the person was first transported.

### ***27. Arrest of person in transit***

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(1) Any police officer may, without warrant, arrest a person if the police officer has reasonable grounds to believe that the person was being kept in custody pursuant to a direction under paragraph 26(1)(b) and has escaped.

(2) The police officer shall, within 24 hours or as soon as practicable, take the person before a Magistrate.

(3) If the Magistrate is satisfied that the person has escaped from lawful custody, the Magistrate may issue a warrant authorising any police officer to return the person to lawful custody.

### ***28. Aiding person to escape etc.***

Section 139 of the Penal Code relating to aiding a prisoner to escape and section 79 of the Prisons Act relating to harbouring an escapee apply while a person is in custody in Fiji under the provisions of this Act.

## **Part VI-PROCEEDS OF CRIME**

### ***Division 1-Requests by Fiji***

### ***29. Requests for enforcement of orders***

Fiji may request an appropriate authority of a foreign country to make arrangements for the enforcement of -

- (a) a forfeiture order made in Fiji against property that is believed to be located in that foreign country,
- (b) a confiscation order made in Fiji where some or all of the property available to satisfy the order is believed to be located in that foreign country, or
- (c) a restraining order made in Fiji against property that is believed to be located in that foreign country, if the order was made in respect of a serious offence.

### ***30. Requests for issue of orders in foreign countries***

Where a criminal proceedings or investigation has commenced in Fiji in relation to a serious offence, Fiji may request an appropriate authority of a foreign country to obtain the issue, in respect of the offence, of a warrant, order or other instrument similar in nature to any of the following warrants and orders under the Proceeds of Crime Act, 1997-

- (a) a search warrant for tainted property;

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- (b) a restraining order;
- (c) a production order in respect of a property-tracking document; or
- (d) a search warrant in respect of a property-tracking document.

### **Division 2 - Requests by foreign countries**

#### **31. Requests for enforcement of orders**

(1) Where-

(a) a foreign country requests the Attorney-General to make arrangements for the enforcement of -

(i) a foreign forfeiture order, made in respect of a serious offence, against property that is believed to be located in Fiji; or

(ii) a foreign confiscation 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 Fiji; and

(b) the Attorney-General is satisfied that-

(i) a person has been convicted of the offence; and

(ii) the conviction and the order are not subject to further appeal in the foreign country,

the Attorney-General may authorise the Director of Public Prosecutions, in writing, to apply for the registration of the order in the Court.

(2) Where a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order, made in respect of a serious offence, against property that is believed to be located in Fiji the Attorney-General may, authorise the Director of Public Prosecutions, in writing, to apply for the registration of the order in the Court.

(3) Where the Director of Public Prosecutions applies to the Court for registration of a foreign order under this section, the Court may register the order.

(4) A foreign forfeiture order registered in the Court under this section has effect, and may be enforced, as if it were a forfeiture order made by the Court under the Proceeds of Crime Act, 1997 at the time of registration.

(5) A foreign confiscation order registered in the Court under this section has effect, and may be enforced, as if it were a confiscation order made by the Court under the Proceeds of Crime Act, 1997 at the time of registration and requiring the payment to the State of the amount payable under the order.

(6) A foreign restraining order registered in the Court under this section has effect, and may be

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enforced, as if it were a restraining order made by the Court under the proceeds of Crime Act, 1997 at the time of registration.

(7) Where a foreign confiscation order or a foreign restraining order is registered in the Court under this section, a copy of any amendment made to the order (whether before or after registration) may be registered in the same way as the order and the amendment does not, for the purposes of this Act and the Proceeds of Crime Act, 1997 come into effect until registered.

(8) An order or an amendment of an order shall be registered in the Court by the registration, in accordance with the rules of the Court, of-

(a) a copy of the appropriate order or amendment sealed by the Court or other authority making that order or amendment; or

(b) a copy of that order or amendment duly authenticated under subsection 48(2).

(9) A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order shall be regarded for the purposes of this Act as the same as the sealed or authenticated copy but registration effected by means of the facsimile copy ceases to have effect at the end of 21 days unless the sealed or authenticated copy has been registered by then.

(10) The Attorney-General may, in writing, direct the Director of Public Prosecutions to apply to the Court for cancellation of the registration of a foreign confiscation order or a foreign restraining order which has been registered in the Court.

(11) Where the Director of Public Prosecutions applies to the Court under subsection (10), the Court shall cancel the registration accordingly.

(12) Section 73 of the Proceeds of Crime Act, 1997 does not apply to an order registered under this section.

### ***32. Requests for search and seizure warrants in respect of tainted property***

Where-

(a) a criminal proceedings or investigation has commenced in a foreign country in respect of a serious offence;

(b) there are reasonable grounds to believe that tainted property in relation to the offence is located in Fiji; and

(c) the foreign country requests the Attorney-General to obtain the issue of a search warrant in relation to the tainted property,

the Attorney-General may, in writing, authorise a police officer to apply to a Magistrate under

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section 103 of the Criminal Procedure Code for a search warrant in relation to that tainted property.

### ***33. Requests for restraining orders***

Where-

- (a) a criminal proceedings has commenced, or there are reasonable grounds to believe that a criminal proceedings is about to commence, in a foreign country in respect of a serious offence;
- (b) there are reasonable grounds to believe that property that may be made or is about to be made the subject of a foreign restraining order is located in Fiji; and
- (c) the foreign country requests the Attorney-General to obtain the issue of a restraining order against the property,

the Attorney-General may, in writing, authorise the Director of Public Prosecutions to apply to the Court for a restraining order under the Proceeds of Crime Act, 1997 against that property in respect of the offence.

### ***34. Requests for information gathering orders***

Where-

- (a) a criminal proceeding or investigation has commenced in a foreign country in respect of a serious offence;
- (b) a property-tracking document in relation to the offence is reasonably believed to be located in Fiji; and
- (c) the foreign country requests the Attorney-General to obtain the issue of-
  - (i) an order requiring the documents to be produced or made available for inspection in accordance with the law of Fiji; or
  - (ii) a search warrant in respect of the offence,

the Attorney-General may, in writing, authorise a police officer to apply to a Judge for-

- (A) a production order under the Proceeds of Crime Act in respect of the offence for the purpose of obtaining possession of the property-tracking document; or
- (B) a search warrant under Section 103 of the Criminal Procedure Code in relation to the property-tracking document.

## **Part VII-REQUESTS BY OR ON BEHALF OF A DEFENDANT**



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### ***35. Requests by Attorney-General on behalf of a defendant***

(1) If a defendant in a proceedings (original proceedings) relating to a criminal matter thinks that it is necessary for the purposes of the proceedings that requests be made for-

- (a) evidence to be taken in a foreign country;
- (b) a document or other article in a foreign country to be produced;
- (c) a thing located in a foreign country to be seized; or
- (d) arrangements to be made for a person who is in a foreign country to come to Fiji (pursuant to a request to a foreign country by Fiji under this Act) to give evidence relevant to the criminal proceeding,

the defendant may apply to the Court for a certificate that it would be in the interests of justice for the Attorney-General to make the appropriate request to the foreign country under Part II, III or IV.

(2) Before making a decision on the application, the Court shall give an opportunity to any party to the original proceedings, and the Attorney-General to appear before the Court and be heard on the merits of the application.

(3) In deciding whether to issue a certificate, the Court shall have regard to the following matters-

- (a) whether the foreign country is likely to grant a request made by the Attorney-General on behalf of the defendant;
- (b) the extent to which the material (whether it is evidence, a document, an article or a thing) that the defendant seeks to obtain from the foreign country would not otherwise be available;
- (c) whether the Court hearing the original proceedings would be likely to admit the material into evidence in the proceedings;
- (d) the likely probative value of the material, if it were admitted into evidence in the proceedings, with respect to any issue likely to be determined in the proceedings; or
- (e) whether the defendant would be fairly prejudiced if the material were not available to the Court.

(4) Subsection (3) does not prevent the Court from taking any other matter into account that it considers relevant.

(5) If the Court issues a certificate-

- (a) the Court shall send a copy of the certificate to the Attorney-General; and

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(b) the Attorney-General shall, in accordance with the certificate, make a request on behalf of the defendant to the foreign country for international assistance unless he or she is of the opinion, having regard to the special circumstances of the case, that the request should not be made.

### ***36. Certificate made under section 35***

(1) If a foreign country refuses a request made under subsection 35(5), the Attorney-General shall give a certificate in writing to that effect.

(2) A certificate under subsection (1) is prima facie evidence of the facts stated in it.

## **Part VIII-ADMISSIBILITY OF FOREIGN EVIDENCE**

### **Division 1 - Preliminary**

#### ***37. Interpretation***

In this Part, unless the context otherwise requires-

"civil proceedings" means proceedings other than criminal proceedings;

"criminal proceedings" includes-

- (a) prosecutions for an offence;
- (b) proceedings for the committal of a person for trial for an offence; or
- (c) a proceedings for the sentencing of a person convicted of an offence;

"foreign law" means a law (whether written or unwritten) of, or in force in, a country other than Fiji;

"foreign material" means-

- (a) the testimony of a person that-
  - (i) was obtained as a result of a request of a kind referred to in section 39; and
  - (ii) complies with the requirements of section 41;
- (b) any exhibit annexed to the testimony; or
- (c) any part of the testimony or exhibit;

"Fiji court" means-

- (a) the Court;
- (b) a Magistrate's Court;
- (c) a judge or arbitrator acting under Fiji law; or

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(d) a person or body authorised by a Fiji law, or by consent of parties, to hear, receive and examine evidence;

"Fiji law" means law (whether written or unwritten) of, or in force in, Fiji;

"related civil proceedings", in relation to a criminal proceedings, means any civil proceedings arising from the same subject matter from which the criminal proceedings arose.

### ***38. Proceedings to which this Part applies***

This Part applies to proceedings, before a Fiji court, namely -

- (a) a criminal proceedings for an offence against the law of Fiji; or
- (b) a related civil proceedings.

## **Division 2 - Obtaining Foreign Material**

### ***39. Requests for foreign material***

This part applies to-

- (a) testimony obtained as a result of a request made by or on behalf of the Attorney-General to a foreign country for the testimony of a person; and
- (b) any exhibit annexed to any testimony.

### ***40. Requirements for testimony***

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

### ***41. Form of testimony***

- (1) The testimony may be recorded-
  - (a) in writing;

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- (b) on audio tape; or
- (c) on video tape.

(2) The testimony need not:

- (a) be in the form of an affidavit; or
- (b) constitute a transcript of a proceedings in a foreign Court.

(3) The testimony shall be endorsed with, or be accompanied by, a certificate to the effect that-

- (a) it is an accurate record of the evidence given; and
- (b) it was taken in the manner specified by section 40.

(4) The certificate shall-

- (a) be signed or certified by a Judge, Magistrate or Court officer of the foreign country to which the request was made; and
- (b) bear an official or public seal of -
  - (i) the country; or
  - (ii) an authority of the country responsible for matters relating to justice, being a Minister of State, a Ministry or Department of Government, or an officer of the Government.

### **Division 3 - Using Foreign Material**

#### ***42. Foreign material may be adduced as evidence***

(1) Subject to subsection (2) and section 43, foreign material may be adduced as evidence in a proceedings to which this Part applies.

(2) The foreign material is not to be adduced as evidence if-

- (a) at the hearing of the proceeding, it appears to the Court's satisfaction that the person who gave the testimony concerned is present in Fiji and is able to testify at the hearing; or
- (b) the evidence would not have been admissible had it been adduced from the person at the hearing.

#### ***43. Direction to prevent foreign material being adduced***

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(1) The Court may direct that foreign material not be adduced as evidence if it appears to the Court's satisfaction that the interests of justice would be better served if the foreign material were not adduced as evidence.

(2) Without limiting the matters that the Court may take into account in deciding whether to give a direction, it shall take into account-

(a) the extent to which the foreign material provides evidence which would not otherwise be available;

(b) the probative value of the foreign material with respect to any issue that is likely to be determined in the proceedings;

(c) the extent to which statements contained in the foreign material would, at the time they were made, be challenged by questioning the persons who made them;

(d) whether exclusion of the foreign material would cause undue expense or delay; and

(e) whether exclusion of the foreign material would prejudice-

(i) the defence in criminal proceedings; or

(ii) any party to a related civil proceedings.

### **Division 4 - Miscellaneous**

#### ***44. Certificates relating to foreign material***

(1) The Attorney-General may certify that specified foreign material was obtained as a result of a request made to a foreign country by or on behalf of the Attorney-General.

(2) It is presumed (unless evidence sufficient to raise reasonable doubt is adduced to the contrary) that the foreign material specified in the certificate was obtained as a result of that request.

#### ***45. Right to examine witnesses***

(1) Subject to this section, nothing in this Part shall be taken to limit the right of the defendant in any criminal proceedings to which this Part applies (in this section referred to as "the defendant") to examine in person or by his legal representative any witness whose testimony is admitted in evidence in those proceedings.

(2) If the defendant requests that the person who gave the testimony concerned be present at the hearing in Fiji for the purposes of cross-examination, the court shall warn the defendant that he or she may be ordered to pay any expenses incurred by the State in making the person available before the court.

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(3) If -

(a) as a result of the request, the person appears before the court as a witness; and

(b) it appears to the court that the cross-examination of the person was unnecessary, of a trivial nature or irrelevant to the matters in issue in the proceedings,

the court may order that the defendant pay any expenses incurred by the State in obtaining the attendance of the person as a witness.

(4) A certificate signed by the Attorney-General shall be evidence of the expenses incurred by the State for the purposes of subsection (3).

(5) An amount payable by a person to the State under subsection (3) is a civil debt due by the person to the State.

(6) An order against a person under subsection (3) may be enforced as if it were an order made in civil proceedings instituted by the State against the person to recover a debt due by the person to the State and the debt arising from the order shall be taken to be a judgement debt.

### ***46. Operation of other laws***

This Part does not limit the ways in which a matter may be proved, or evidence may be adduced, under any other Fiji law.

## **Part IX -MISCELLANEOUS**

### ***47. Delegation***

The Attorney-General may delegate to the Solicitor-General any of his or her powers under this Act.

### ***48. Authentication of documents***

(1) In a proceedings under this Act or the Proceeds of Crime Act, 1997 arising directly or indirectly from a request made under this Act, any document that is duly authenticated is admissible in evidence.

(2) A document is duly authenticated for the purposes of subsection (1) if -

(a) it is signed or certified by a Judge, Magistrate or officer in or of a foreign country; and

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(b) it is sealed with an official or public seal of the foreign country or of a Minister of State, or of a Department or officer of the Government, of the foreign country.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, under any other law of Fiji.

### ***49. Restriction on use of information etc.***

(1) If, as a result of a request made by the Attorney-General under this Act, any material (whether it is evidence, a document, an article or a thing) has been sent to Fiji by a foreign country for the purposes of a proceedings or investigation in relation to a criminal matter, the material is not to be used intentionally for any other purpose without the approval of the Attorney-General.

(2) The material is inadmissible in evidence in any proceedings other than the proceedings in respect of which it was obtained unless the Attorney-General has approved its use for the purposes of that other proceedings.

(3) Any information, document, article or thing obtained directly or indirectly from a person by making use of the material-

(a) otherwise than for the purpose of the proceedings or investigation in respect of which it was obtained; and

(b) without the approval of the Attorney-General,

is inadmissible in evidence in any other proceedings and may not be used for the purposes of any other investigation.

(4) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to-

(a) if the person is a natural person-a fine not exceeding \$12,000 or imprisonment for a period not exceeding 2 years, or both; or

(b) if the person is a body corporate-a fine not exceeding \$60,000.

(5) For the purposes of this section, disclosure of any material is taken to be a use of that material.

### ***50. Requests for international assistance not to be disclosed***

(1) A person who, because of his or her office or employment, has knowledge of -

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- (a) the contents of a request for international assistance made by a foreign country to Fiji under this Act;
  - (b) the fact that the request has been made; or
  - (c) that fact that the request has been granted or refused, shall not intentionally disclose those contents or that fact except if-
  - (d) it is necessary to do so in the performance of his or her duties; or
  - (e) the Attorney-General had given his or her approval to the disclosure of those contents or that fact.
- (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to-
- (a) if the person is a natural person-a fine not exceeding \$12,000 or imprisonment for a period not exceeding 2 year, or both; or
  - (b) if the person is a body corporate-a fine not exceeding \$60,000.

### **51. Regulations**

- (1) The Minister may make Regulations to give effect to the provision of this Act.
- (2) The Chief Justice may make rules of Court prescribing practice and procedures of the Court, namely-
- (a) summoning of witnesses;
  - (b) production of documents;
  - (c) taking of evidence on oath;
  - (d) administering of oaths;
  - (e) payment of expenses and allowances of witnesses;
  - (f) protection and immunity of Magistrates, barristers and solicitors and witnesses; or
  - (g) procedures for registration of any foreign order;
  - (h) any other practice or procedure necessary to give effect to the provisions of this Act.

Passed by House of Representatives this third day of December, in the year of our Lord one thousand, nine hundred and ninety-seven.

Passed by the Senate this seventeenth day of December, in the year of our Lord one thousand, nine hundred and ninety-seven.