

ACT NO. 2 OF 2005



I assent.

[L.S.]

RATU JONI MADRAIWIWI
Acting President

[17th March 2005]

AN ACT**TO AMEND THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT**

ENACTED by the Parliament of the Fiji Islands—

Short title, etc

1.—(1) This Act may be cited as the Mutual Assistance In Criminal Matters (Amendment) Act 2005.

(2) This Act comes into force on a date appointed by the Minister by notice in the *Gazette*.

(3) In this Act, “principal Act” means the Mutual Assistance In Criminal Matters Act 1997.

Section 3 amended

2. Section 3 of the principal Act is amended—

- (a) by repealing the definitions of “confiscation order” and “foreign confiscation order”;
- (b) by adding the following definitions—
 - “criminal investigation” means—
 - (a) an investigation commenced in Fiji in respect of an offence committed or suspected on reasonable grounds to have been committed or likely to be committed, against the law of Fiji;

- (b) in relation to a foreign country, an investigation commenced in the foreign country in respect of an offence committed, or suspected by that country on reasonable grounds to have been committed or to be likely to be committed, against the law of that country;

“foreign pecuniary penalty 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”;

“pecuniary penalty order” means a pecuniary penalty order within the meaning of the Proceeds of Crime Act 1997”;

- (c) by repealing the definition of “criminal matter” and substituting the following definition—

“ “criminal matter” means criminal investigation and criminal proceedings;” and

- (d) in the definition of “serious offence” by deleting “12 months” and substituting “6 months or a fine of not less than \$500”.

Section 4 amended

3. Section 4 of the principal Act is repealed and substituted by the following section—

“Act not to limit other provision of assistance

4. Nothing in this Act limits—

- (a) the power of the Attorney-General, apart from this Act, to make requests to foreign countries or act on requests from foreign countries for assistance in investigations or proceedings in criminal matters;
- (b) the power of a person or court, apart from this Act, to make requests to foreign countries or act on requests from foreign countries for forms of international assistance;
- (c) the nature or extent of assistance in criminal matters which Fiji may lawfully give or receive from foreign countries;
- (d) the existing forms of co-operation, whether formal or informal, in respect of criminal matters between Fiji and any other country, or the development of other forms of such co-operation.”.

Section 5 amended

4. Section 5 of the principal Act is amended by deleting “that” and substituting “whether or not the foreign country”.

Section 6 amended

5. Section 6 of the principal Act is amended—

(a) by deleting “or it is otherwise appropriate, in all the circumstances of the case, that the assistance requested should not be granted”; and

(b) by adding at the end the following subsection—

“(2) The Attorney-General may, after consulting with the appropriate authority of the foreign country, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Fiji.”

Section 9 amended

6. Section 9 (2) of the principal Act is amended by deleting “be in writing and”.

Section 10 amended

7. Section 10 of the principal Act is amended—

(a) in subsection (1) by adding “and for the evidence, document or other article to be sent to him” at the end of that subsection; and

(b) in subsection (2) after “video link,” by inserting “internet link or other means,”.

Section 11 amended

8. In section 11(5)(b) of the principal Act after “video link,” insert “internet link or other means,”.

Section 13 amended

9. Section 13 of the principal Act is amended—

(a) in subsection (1), by deleting paragraph (b) and inserting the following paragraph—

“(b) there are reasonable grounds for believing that there is in or on any place in Fiji—

(i) a thing upon or in respect of which an offence under the law of a foreign country has been, or is suspected of having being committed; or

- (ii) a thing which there are reasonable grounds for believing will be evidence as to the commission of such an offence; or
 - (iii) a thing relevant to the proceedings or investigation; and”;
- (b) in subsection (3), by deleting “relevant to an investigation or proceedings in a foreign country” and inserting “set out in subsection (1)”;
- (c) in subsection (4), by deleting paragraph (a) and inserting the following paragraph—
- “(a) is a thing—
- (i) upon or in respect of which an offence under the law of a foreign country has been, or is suspected of having been, committed; or
 - (ii) which will be evidence as to the commission of such an offence; or
 - (iii) intended to be used for the purpose of such an offence; or
 - (iv) relevant to the proceedings or investigation; and”;
- (d) in subsection (5), by deleting “relevant to the proceeding or investigation in the foreign country” and inserting “a thing set out in subsection (1)”

Part IVA inserted

10. The principal Act is amended by inserting after Part IV the following Part—

“ Part IVA—ASSISTANCE IN RELATION TO SERVICE OF DOCUMENTS

Assistance in serving documents

25A. The Attorney-General may, in writing, request the appropriate authority to assist in effecting the service of process in the foreign country if the Attorney-General is satisfied that for the purposes of, or in connection with, any criminal matter in Fiji it is necessary or desirable to serve process on a person or an authority in a foreign country.

Assistance in arranging service

25B. Where a written request is made by a foreign country for assistance in effecting the service of process on a person in Fiji, the Attorney-General may facilitate assistance and shall give reasons when unable to assist.

Penalty not to be imposed for failure to comply with summons

25C. Where, pursuant to section 25B, a foreign country requests the assistance of the Attorney-General in effecting the service on a person to appear as a witness in that foreign country, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to comply with the summons, notwithstanding any contrary statement in the summons."

Section 29 amended

11. Section 29 of the principal Act is amended—

- (a) in paragraph (b) by deleting "confiscation" and substituting "pecuniary penalty";
- (b) by deleting the full stop at the end of paragraph (c) and inserting "or a foreign serious offence, or"; and
- (c) after paragraph (c) by inserting the following paragraph—

"(d) production order made or a search warrant issued in Fiji in respect of a property-tracking document that is believed to be located in that foreign country."

Section 31 amended

12. Section 31 of the principal Act is amended—

- (a) by deleting "confiscation" (wherever occurring) and substituting "pecuniary penalty";
- (b) in subsection (1)(a) by deleting "and";
- (c) in subsection (1) by deleting paragraph (b).

Section 34 amended

13. Section 34(c) of the principal Act is amended by deleting all the words and expressions after "the issue of —" to the end of the section and substituting the following subparagraphs—

- "(i) an order requiring the documents to be produced or made available for inspection in accordance with the law of Fiji, the Director of Public Prosecutions may apply to a Judge for a production order under the Proceeds of Crime Act 1997 in respect of the offence for the purpose of obtaining possession of the property-tracking document; or

(ii) a search warrant in respect of the offence, the Attorney-General may, in writing, authorize a police officer to apply to a Judge or magistrate for a search warrant under section 103 of the Criminal Procedure Code in relation to the property-tracking document.”.

Passed by the House of Representatives this 8th day of February 2005.

Passed by the Senate this 9th day of March 2005.

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