

No. 30311

**AUSTRALIA
and
ARGENTINA**

**Treaty on mutual assistance in criminal matters. Signed at
Buenos Aires on 30 August 1990**

Authentic texts: English and Spanish.

Registered by Australia on 28 September 1993.

**AUSTRALIE
et
ARGENTINE**

**Traité d'assistance mutuelle en matière pénale. Signé à
Buenos Aires le 30 août 1990**

Textes authentiques : anglais et espagnol.

Enregistré par l'Australie le 28 septembre 1993.

TREATY¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC ON MU- TUAL ASSISTANCE IN CRIMINAL MATTERS

The Government of Australia and the Government of the Argentine Republic
Desiring to co-operate in order to facilitate the administration of justice in
criminal matters,

Have agreed as follows:

Article 1

SCOPE OF APPLICATION

1. The Contracting Parties shall, in accordance with this Treaty, grant to each other assistance in investigations or proceedings in respect of criminal matters.

2. Criminal matter includes matters connected with offences against a law relating to taxation, customs duties, foreign exchange control and other revenue matters.

3. Such assistance shall consist of:

- a) Taking of evidence and obtaining of statements of persons;
- b) Provision of documents and other records;
- c) Location and identification of persons;
- d) Execution of requests for search and seizure including the search of private premises;
- e) Measures to locate, restrain and forfeit the proceeds of offences and to recover pecuniary penalties in respect of offences;
- f) Making prisoners available to give evidence or to assist investigations;
- g) Making other persons available to give evidence or to assist investigations;
- h) Service of documents; and
- i) Other assistance consistent with the objects of this Treaty which is not inconsistent with the law of the Requested State.

4. Assistance shall not include:

- a) The arrest or detention of any person with a view to extradition;
- b) The execution in the Requested State of criminal judgments imposed in the Requesting State except to the extent permitted by Article 17; and
- c) The transfer of prisoners to serve sentences.

¹ Came into force on 3 January 1993, i.e., 30 days after the date on which the Contracting Parties had notified each other (on 6 May and 4 December 1992) of the completion of their respective requirements, in accordance with article 22 (1).

Article 2

OTHER ASSISTANCE

This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other Contracting Parties providing assistance to each other pursuant to other treaties or arrangements.

Article 3

COMPETENT AUTHORITIES AND CENTRAL OFFICE

1. A request for assistance may be made by a person authorized by the law of the Requesting State being a judicial authority, public prosecutor, the Attorney-General or his or her delegate.

2. The Contracting Parties shall each appoint a Central Office to transmit and receive requests for the purpose of this Treaty. The Central Office of Australia shall be the Attorney-General's Department, Canberra and the Central Office for the Argentine Republic shall be the Ministry of External Relations and Worship. Where a Contracting Party designates another authority for the purpose of this Article, it shall do so through the diplomatic channel.

3. The request for assistance shall be conveyed by the diplomatic channel. Nevertheless, in cases of urgency, the request shall be made through the Central Office and shall be confirmed at the earliest possible opportunity through the diplomatic channel.

4. The Contracting Parties may entrust their consuls with the execution of procedures permitted by the law of the Requested State.

Article 4

REFUSAL OF ASSISTANCE

1. Assistance shall be refused if:

a) The request relates to an offence that is regarded by the Requested State as:

- (i) An offence of a political character; or
- (ii) An offence under military law which is not also an offence under the ordinary criminal law;

b) The request relates to the prosecution of a person for an offence in respect of which the person has been finally acquitted or pardoned or has served the sentence imposed;

c) There are substantial grounds for believing that the request for assistance has been made to facilitate the prosecution of a person on account of that person's race, religion, nationality or political opinions or that that person's position may be prejudiced for any of these reasons; or

d) The Requested State is of the opinion that the request, if granted, would seriously impair its sovereignty, security, national interest or other essential interests.

2. Assistance may be refused if:

a) The request seeks the securing or forfeiture of property or the search of private premises and the acts or omissions would not constitute the offence to which the request relates, had they taken place within the jurisdiction of the Requested State;

b) The request relates to the prosecution or punishment of a person for an offence which is committed outside the territory of the Requesting State and the law of the Requested State does not provide for the punishment of an offence committed outside its territory in similar circumstances;

c) The request for assistance relates to the prosecution of a person for an offence which, had it been committed in the Requested State, could no longer be prosecuted by reason of lapse of time or any other reason; or

d) The provision of the assistance sought could prejudice an investigation or proceeding in the Requested State, prejudice the safety of any person or impose an excessive burden on the resources of that State.

3. Before refusing to grant a request for assistance the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

Article 5

CONTENTS OF REQUESTS

1. Requests for assistance shall include:

a) The name of the competent authority conducting the investigation or proceedings to which the request relates;

b) A description of the nature of the criminal matter including a statement of the relevant laws;

c) Except in cases of requests for service of documents, a description of the acts or omissions which constitute the offence;

d) The purpose for which the request is made and the nature of the assistance sought;

e) Details of any particular procedure or requirement that the Requesting State wishes to be followed;

f) The requirements, if any, of confidentiality and the reasons therefor; and

g) Specifications of any time limit within which compliance with the request is desired.

2. Requests for assistance, to the extent necessary and insofar as possible, shall also include:

a) The identity, nationality and location of the person or persons who are the subject of the investigation or proceeding;

b) A statement as to whether a sworn or other type of declaration is required;

c) A description of the information, statement or evidence sought;

d) A description of the documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked to produce them; and

e) Information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.

3. All documents submitted in support of a request shall be accompanied by a translation into the language of the Requested State.

4. If the Requested State considers that the information contained in the request is not sufficient for the purpose of this Treaty to enable the request to be dealt with, that State may request that additional information be furnished.

Article 6

EXECUTION OF REQUESTS

1. To the extent permitted by its law, the Requested State shall provide such assistance in accordance with the requirements specified in the request and shall respond to the request as soon as practicable after it has been received.

2. The Requested State may postpone the delivery of material requested if such material is required for Proceedings in respect of criminal or civil matters in that State. The Requested State shall, upon request, provide certified copies of documents.

3. The Requested State shall promptly inform the Requesting State of circumstances, when they become known to the Requested State, which are likely to cause a significant delay in responding to the request.

4. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with the request for assistance and the reason for that decision.

Article 7

RETURN OF MATERIAL TO REQUESTED STATE

Where required by the Requested State, the Requesting State, after the completion of the proceedings, shall return to the Requested State material provided by the Requested State in fulfillment of the request.

Article 8

PROTECTING CONFIDENTIALITY AND RESTRICTING USE OF EVIDENCE AND INFORMATION

1. The Requested State, if so requested, shall keep the application for assistance, the contents of the request and its supporting documents, and the fact of granting of such assistance, confidential. If the request cannot be executed without breaching confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.

2. The Requesting State, if so requested, shall keep confidential evidence and information provided by the Requested State, except to the extent that the evidence and information is needed for the investigation and proceeding described in the request.

3. The Requesting State shall not use evidence obtained, nor information derived therefrom, for purposes other than those stated in a request without the prior consent of the Requested State.

Article 9

SUMMONS AND SUBPOENA

1. Where the Requesting State requires the attendance of a person before its Courts, it shall request the service of the summons or subpoena not less than 30 days before the date on which the attendance is required.

2. In urgent cases the Requested State may waive this requirement.

Article 10

TAKING OF EVIDENCE

1. At the request of the Requesting State, the Requested State shall take the evidence or statements of persons.

2. For the purposes of this Treaty, the giving or taking of evidence shall include the production of documents, records or other material.

3. For the purposes of requests under this Article the Requesting State shall specify the subject matter about which persons are to be examined, including any questions to be put.

4. Where, pursuant to a request for assistance, a person is to give evidence, the parties to the relevant proceedings in the Requesting State, their legal representatives and representatives of the Requesting State may, subject to the laws of the Requested State, appear and question the person giving that evidence. For the purposes of this paragraph the Requesting State shall advise the Requested State of the names of the parties and any representatives entitled to attend.

5. A person who is required to give evidence in the Requested State pursuant to a request for assistance may decline to give evidence where either:

a) The law of the Requested State would permit that person to decline to give evidence in similar circumstances in proceedings which originated in the Requested State; or

b) Where the law of the Requesting State would permit that person to decline to give evidence in such proceedings in the Requesting State.

6. If any person claims that there is a right to decline to give evidence under the law of the Requesting State, the Requested State shall, with respect thereto, rely on a certificate of the Central Office of the Requesting State.

Article 11

AVAILABILITY OF PRISONERS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

1. A prisoner in the Requested State may at the request of the Requesting State be temporarily transferred to the Requesting State to give evidence or assist investigations.

2. The Requested State shall not transfer a prisoner to the Requesting State unless the prisoner consents.

3. While the original sentence of a prisoner in the Requested State has not expired, the Requesting State shall hold the prisoner in custody and shall return that prisoner in custody to the Requested State at the conclusion of the proceedings in relation to which transfer to the Requesting State was sought or at such earlier time as that prisoner's presence is no longer required.

4. Where the sentence imposed on a person transferred under this Article expires while the person is in the Requesting State, that person shall thereafter be treated as a person referred to in Article 12.

Article 12

FACILITATING ATTENDANCE OF OTHER PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

1. A person in the Requested State may, at the request of the Requesting State, be invited to appear in the Requesting State to give evidence or to assist investigations.

2. The Requested State shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting State, invite the person to consent to appear in proceedings or to assist in the investigations.

Article 13

IMMUNITY

1. A person who consents to give evidence or assist an investigation in the Requesting State under Articles 11 and 12 shall not be detained, prosecuted or punished in the Requesting State for any offence, or be subject to any civil suit being a civil suit to which the person could not be subjected if the person were not in the Requesting State, in respect of any act or omission which preceded the person's departure from the Requested State. Without that person's consent, he or she shall not be required to give evidence in any proceeding other than the proceeding to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if that person, being free to leave, has not left the Requesting State within a period of thirty days after that person has been officially notified that that person's presence is no longer required or, having left, has returned.

3. A person appearing in a proceeding in the Requesting State pursuant to a request under Article 11 or 12 shall not be subject to prosecution based on his or her testimony except that that person shall be subject to the laws of that State in relation to contempt and perjury.

4. A person who does not consent to a request pursuant to Articles 11 or 12 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure notwithstanding any contrary statement in the request.

Article 14

PROVISION OF PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

1. The Requested State shall provide copies of any documents or records that are open to public access as part of a public register or otherwise, or that are available for purchase by the public.
2. The Requested State shall provide copies of any official document or record in the same manner and under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

Article 15

CERTIFICATION AND AUTHENTICATION

1. A request for mutual assistance and the supporting documents thereto, as well as documents or other material supplied in response to such a request, shall be certified or authenticated in accordance with paragraph 2.
2. A document is certified or authenticated for the purpose of this Treaty if:
 - a) It purports to be signed or certified by any person specified in paragraph 1 of Article 3 of the State sending the document; and
 - b) It purports to be sealed with an official seal of a minister of state or of a department of the Government of that State.
3. The signatures and seal on documents presented through the diplomatic channel shall be deemed to be those of the persons and the department referred to in paragraph 2 of this Article.

Article 16

SEARCH AND SEIZURE

1. The Requested State shall insofar as its law permits carry out requests for search, seizure and delivery of any material to the Requesting State provided the request contains information that would justify such action under the law of the Requested State.
2. The Requested State shall provide such information as may be required by the Requesting State concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.
3. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized property which is delivered to the Requesting State.

Article 17

PROCEEDS OF OFFENCES

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of an offence are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. In making the request, the Requesting

State shall notify the Requested State of the basis of its belief that such proceeds may be located in its jurisdiction.

2. Where pursuant to paragraph 1 suspected proceeds of an offence are found the Requested State, upon request by the Requesting State, shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of the offence, pending of a final determination in respect of those proceeds.

3. Where the person convicted of an offence retains ownership of the proceeds of the offence of which he or she was convicted, the Requested State shall give effect to a pecuniary penalty order in respect of the offence or to a forfeiture or confiscation order in respect of the proceeds of the offence made by a court of the Requesting State.

4. Where the person convicted of an offence has disposed of the proceeds of the offence of which he or she was convicted, a court of the Requested State shall, at the request of the Requesting State, determine whether the transferee obtained the property without notice that it was or may have been the proceeds of an offence. Where the court of the Requested State determines that the transferee was not a bona fide third party it shall order the forfeiture or confiscation of the property.

5. The Requested State shall with respect to the property referred to in paragraphs 3 and 4, retain one half of the value and transfer the remainder to the Requesting State. Where the property is real property the Requested State shall sell that property and disburse the proceeds of that sale in accordance with this paragraph.

6. For the purpose of this Article, proceeds of an offence includes any property obtained directly or indirectly as a result of the commission of an offence and instrumentalities used in the commission of the offence.

Article 18

SUBSIDIARY ARRANGEMENTS

The Central Offices of the Contracting Parties may enter into subsidiary arrangements consistent with the purposes of this Treaty in order to facilitate its functioning.

Article 19

REPRESENTATION

For the purposes of this Treaty, the Requested State, through its competent authorities, shall afford representation of the interests of the Requesting State in any proceedings. The representative appointed by the Requested State shall be legally authorized to act in those proceedings.

Article 20

EXPENSES

The Requested State shall meet the cost of fulfilling the request for assistance except that the Requesting State shall bear:

- a) The expenses associated with conveying any person to or from the territory of the Requested State, and any fees, allowances or expenses payable to that person while in the Requesting State pursuant to a request under Articles 11 or 12;
- b) The expenses associated with conveying custodial or escorting officers; and
- c) Where required by the Requested State, exceptional expenses in fulfilling the request.

Article 21

CONSULTATION

The Contracting Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either, generally or in relation to a particular case.

Article 22

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. This Treaty shall also apply to requests made in relation to acts or omissions occurring prior to this Treaty entering into force.
3. Either Contracting Party may notify the other in writing at any time of its intention to terminate this Treaty and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.
4. Notwithstanding that a Contracting Party has given notice pursuant to paragraph 3, this Treaty continues to apply to requests made before that notice was given.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE at Buenos Aires, on the thirtieth day of August, one thousand nine hundred and ninety in the English and Spanish languages, both texts being equally authentic.

For the Government
of Australia:

[RICHARD WOOLCOTT]

For the Government
of the Argentine Republic:

[HECTOR SUBIZA]