

No. 31151

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**AUSTRALIA  
and  
LUXEMBOURG**

**Treaty on mutual assistance in criminal matters (with exchanges of notes rectifying the English and French texts of the Treaty). Signed at Luxembourg on 24 October 1988**

*Authentic texts: English and French.*

*Registered by Australia on 18 August 1994.*

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**AUSTRALIE  
et  
LUXEMBOURG**

**Traité d'entraide judiciaire en matière pénale (avec échanges de notes rectifiant les textes anglais et français du Traité). Signé à Luxembourg le 24 octobre 1988**

*Textes authentiques : anglais et français.*

*Enregistré par l'Australie le 18 août 1994.*

# TREATY<sup>1</sup> BETWEEN AUSTRALIA AND THE GRAND DUCHY OF LUXEMBOURG ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Australia and the Grand Duchy of Luxembourg

DESIRING to extend to each other the widest measure of cooperation to combat crime,

HAVE AGREED as follows:

## ARTICLE 1

### SCOPE OF APPLICATION

1. The Contracting States shall, in accordance with this Treaty, grant to each other assistance in investigations or proceedings in respect of criminal matters.
2. 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, as well as for identifying, restraining, confiscating and returning of the proceeds of crime;
  - e) making prisoners available to give evidence or to assist investigations;
  - f) making other persons available to give evidence or to assist investigations;
  - g) service of documents; and
  - h) other assistance consistent with the objects of this Treaty which is not inconsistent with the law of the Requested State.

<sup>1</sup> Came into force on 15 May 1994, i.e., 30 days after the date on which the Contracting Parties had notified each other (on 10 February and 15 April 1994) of the completion of their respective requirements, in accordance with article 20 (1).

3. Assistance shall not include:

- a) the arrest or detention of any person with a view to extradition;
- b) execution of final criminal determinations except to the extent permitted by the law of the Requested State and this Treaty; and
- c) the transfer of prisoners to serve sentences.

ARTICLE 2

OTHER ASSISTANCE

This Treaty shall not derogate from obligations subsisting between the Contracting States pursuant to other treaties or arrangements nor prevent the Contracting States providing assistance to each other pursuant to other treaties or arrangements.

ARTICLE 3

CENTRAL OFFICE

1. The Contracting States shall each appoint a Central Office to transmit and receive requests for the purpose of this Treaty. Until the relevant Contracting State designates another authority, the Central Office of Australia shall be the Attorney-General's Department, Canberra and the Central Office of the Grand Duchy of Luxembourg shall be the Ministry of Justice, Luxembourg.
2. Requests for assistance shall be made through the Central Offices which shall arrange for the prompt carrying out of such requests.

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 of the Requested State

which is not also an offence under the ordinary criminal law of the Requested State;

- b) the request relates to an offence in respect of which the offender 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, sex, 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, according to the law of the Requested State, relates to a fiscal offence;
  - b) the request relates to an offence where the acts or omissions alleged to constitute that offence would not, if they had taken place within the jurisdiction of the Requested State, have constituted an offence;
  - c) the request relates to 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 a similar offence committed outside its territory in similar circumstances;
  - d) the request for assistance relates to 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
  - e) 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 may consider whether assistance could be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to conditions, it shall comply with the conditions.

ARTICLE 5CONTENTS 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) except in cases of requests for service of documents, a description of the essential acts, omissions or matters alleged or sought to be ascertained and a description of the nature of the criminal matter including the text of the relevant provision of the law creating an offence (or in the case of Australia, in respect of a common law offence, by a statement of the law applicable to the offence);
  - c) the purpose for which the request is made and the nature of the assistance sought;
  - d) details of any particular procedure or requirement that the Requesting State wishes to be followed;
  - e) the requirements, if any, of confidentiality and the reasons therefore; and
  - f) specification 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, or who may have material evidence relating to, the investigation or proceeding;
  - b) a statement as to whether sworn or affirmed evidence or statements are required;
  - c) a description of the information, statements, documents, records or other material to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated; and
  - d) 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, where necessary, shall be accompanied by a translation:
  - a) in the case of a request to Australia, in English; or
  - b) in the case of a request to the Grand Duchy of Luxembourg, in French.
4. If the Requested State considers that the information contained in the request is not sufficient 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 as specified in the request and shall respond to the request as soon as practicable.
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 a decision of the Requested State not to comply in whole or in part with a 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 shall return the material provided after the completion of the proceedings to which the request relates.

ARTICLE 8PROTECTING CONFIDENTIALITY AND RESTRICTING USE OF EVIDENCE AND INFORMATION

1. The Requested State, if so requested, shall keep the application for assistance, the contents of a 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 9SERVICE OF DOCUMENTS

1. A request to effect service of a document requiring the appearance of a person shall be made to the Requested State not less than 45 days before the date on which the appearance is required. In urgent cases, the Requested State may waive this requirement.
2. The Requested State shall effect service of documents which are transmitted to it for this purpose by the Requesting State.
3. Service may be effected by simple transmission of the document to the person to be served. If the Requesting State expressly so requests, service shall be effected by the Requested State in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.
4. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the Requested State that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the Requesting

State. The Requested State shall, if the Requesting State so requests, state whether service has been effected in accordance with the law of the Requested State. If service cannot be effected, the reasons shall be communicated immediately by the Requested State to the Requesting State.

#### ARTICLE 10

##### TAKING OF EVIDENCE

1. Where a request is made for the purpose of a proceeding in relation to a criminal matter in the Requesting State the Requested State shall take evidence of witnesses for transmission to the Requesting State.
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 nature of the questions to be put to the witnesses or the subject matter about which they are to be examined.
4. Where a person is required to give evidence pursuant to this Article, officials and persons involved in the proceedings in the Requesting State may be present if the Requested State consents.
5. A person who is required to give evidence in the Requested State under this Article may decline to give evidence where either:
  - a) the law of the Requested State permits that witness to decline to give evidence in similar circumstances in proceedings originating in the Requested State; or
  - b) where the law of the Requesting State permits that witness to decline to give evidence in such proceedings in the Requesting State.
6. If any person claims 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 11TEMPORARY TRANSFER 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 to 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 is sought under paragraphe 1 of this Article 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 whilst the person is in the Requesting State, that person shall thereafter be treated as a person referred to in Article 12.

ARTICLE 12AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE  
OR ASSIST INVESTIGATIONS

1. The Requesting State may request the assistance of the Requested State in making a person available:
  - a) to appear as a witness in proceedings in relation to a criminal matter in the Requesting State unless that person is the person charged; or
  - b) to assist investigations in relation to a criminal matter in the Requesting State.
2. The Requested State shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting State, request the person to consent to appear as a witness in proceedings or to assist in the investigations.

ARTICLE 13SAFE CONDUCT

1. Where a person consents to give evidence in a proceeding or to assist in an investigation in the Requesting State under Articles 11 or 12:
  - a) that person shall not be detained, prosecuted or punished in the Requesting State for any offence, nor shall advantage be taken in the Requesting State of the presence of the person for the purpose of civil proceedings, in respect of any act or omission which preceded the person's departure from the Requested State; or
  - b) that person shall not be required to give evidence in any proceeding other than the proceeding to which the request relates, without that person's consent.
2. Paragraph 1 of this Article shall cease to apply if that person, not being a prisoner detained under Article 11, and 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 before an authority in a Requesting State pursuant to a request under Articles 11 or 12 shall not be subject to prosecution based on the testimony given 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.
5. A person who appears as a witness in the Requesting State pursuant to a request may decline to give evidence if the person has, under the law of the Requested State, a right to decline to do so.
6. If any person claims a right to decline to give evidence under the law of the Requested State, the Requesting State shall, with respect to that claim, rely on a certificate of the Central Office of the Requested State.

ARTICLE 14PROVISION OF PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

1. Upon request, the Requested State shall provide copies of documents and records that are open to public access as part of a public register or otherwise.

2. Upon request, the Requested State may 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. Each Contracting State shall, upon request, authenticate any documents or other material to be transmitted to the other Contracting State under this Treaty.
2. A document is authenticated for the purposes of this Treaty if:
  - a) it purports to be signed or certified by a Judge, Magistrate or other officer in or of the State sending the document; and
  - b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official seal of the State sending the document or of a Minister of State, or of a Department or officer of the Government, of that State.

#### 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 that the request:
  - a) relates to acts or omissions, which would constitute an extraditable offence under the law of the Requested State; and
  - b) contains information that would justify such action under the law of the Requested State.
2. The Requested State shall provide information to 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 17PROCEEDS OF CRIME

1. The Requested State shall, upon request, insofar as its law permits and subject to the provisos set out in paragraphe 1(a) and (b) of Article 16, endeavour to ascertain whether any proceeds of an alleged crime are located within its jurisdiction and shall notify the Requesting State of the results of its enquiries.
2. Where pursuant to paragraph 1 suspected proceeds of crime are found the Requested State shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a Court of the Requesting State. The Requested State shall give effect to a confiscation order, in respect of an offence, made by a Court of the Requesting State.
3. The Requested State shall return the property obtained in satisfaction of the confiscation order to the Requesting State.

ARTICLE 18CONSULTATION

The Contracting States 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 19REPRESENTATION AND EXPENSES

1. Unless otherwise provided in this Treaty the Requested State shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of a request for assistance and shall otherwise represent the interest of the Requesting State.
2. 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 whilst 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 20

##### ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty days after the date on which the Contracting States 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 apply to requests whether or not the relevant acts or omissions occurred prior to this Treaty entering into force.
3. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

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

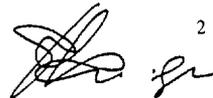
DONE at Luxembourg  
on the 24<sup>th</sup> day of October One Thousand nine  
hundred and eighty eight in English and French, both texts being  
equally authentic.

For Australia:



1

For the Grand Duchy  
of Luxembourg:



2

<sup>1</sup> Lionel Bowen.

<sup>2</sup> Robert Krieps.

## EXCHANGE OF NOTES — ÉCHANGES DE NOTES

[RECTIFICATION OF THE ENGLISH TEXT — RECTIFICATIF DU TEXTE ANGLAIS]

## I a

Note No. 113/89

The Australian Embassy presents its compliments to the Ministry of Foreign Affairs of the Grand Duchy of Luxembourg and has the honour to refer to discussions concerning an error in the text of the Treaty between Australia and the Grand Duchy of Luxembourg on Mutual Assistance in Criminal Matters, done at Luxembourg on 24 October 1988.

In paragraph 1 of Article 17 of the English text of the Treaty, the misspelt word 'paragaphe' should be replaced by 'paragraph'.

The Embassy proposes that the Treaty be considered as rectified ab initio and would appreciate the Ministry's confirmation that this proposal is acceptable to the Government of the Grand Duchy of Luxembourg.

The Australian Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurances of its highest consideration.

Brussels, 2 October 1989

## II a

## MINISTÈRE DES AFFAIRES ÉTRANGÈRES

The Ministry of Foreign Affairs of the Grand Duchy of Luxembourg has the honour to acknowledge receipt of the Australian Embassy's Note No.113/89, dated 2 October 1989, which reads as follows:

[See note I a]

The Ministry has the honour to confirm that the action proposed to rectify the Treaty ab initio is acceptable to the Government of the Grand Duchy of Luxembourg.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Australian Embassy the assurances of its highest consideration.

Luxembourg, 25 October 1989

Australian Embassy  
Brussels