

UNDCP MODEL MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL, 2000

1. The object of this Bill is to enable states to cooperate with each other regarding criminal investigations and proceedings, in accordance with the obligations of states under Article 7 of the 1988 Convention, paragraph 1 of which states that “*the Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences...*”. The preamble makes it clear that the Bill is intended to facilitate the widest range of international cooperation between states, in line with Article 7.

2. In accordance with that objective, “*proceedings*” are defined very widely in clause 2(k), and in keeping with this, “*related proceedings*” as referred to in the preamble are also to be construed broadly. So long as there is a causal connection between the serious offence and the relevant proceedings, for example where assets thought to be the proceeds of the serious offence are being traced, the proceedings are “*related*”. “*Investigations*” covers both investigations by the police under common law systems, and investigations led by judges in civil law systems.

3. The Bill goes on to make provision, *inter alia*, for who may make and act on requests for mutual legal assistance, the types of request that may be made, and the contents of such requests, with the objective that states should be facilitated in giving and requesting mutual assistance in a speedy and effective manner.

4. One of the most important goals of mutual assistance is the bridging of differences between legal systems. For mutual assistance to be successful, requests should be executed in accordance with the law of the requested State and to the extent not prohibited by that law, will be provided in the manner sought by the requesting state. One of the aims of the Bill is to reconcile and accommodate the differences between legal systems so that clashes in law or procedure will not frustrate requests for mutual assistance. Its provisions in this regard tie in with those of the Foreign Evidence Bill.

PART I
PRELIMINARY

Clause 1 - Short title, Extent and Commencement

5. Clause 1(2) has particular relevance for federal jurisdictions, where power in respect of criminal jurisdiction can be apportioned on either or both a federal and local level. This provision would ensure that whatever the arrangements in place, the Bill would extend throughout the enacting State.

Clause 2 - Applicability of the Act

6. Clause 2(1) enables states to achieve a better procedural match between their legal systems and provisions in the Bill, where the two do not exactly fit. A State can lay down conditions on the application of the Bill, or vary or modify it, in an agreement with any foreign State, in relation to a particular case, or more generally. In recognition of the existence and work of a number of international criminal tribunals, the Bill will also apply to them by virtue of clause 2(2). These are defined widely in clause 3(1)(h), and will include subsidiary bodies of those tribunals. The Schedule to the Bill lists the two international criminal tribunals established to date to be covered by it. Under clause 20, the Schedule can be amended by order.

Clause 3 - Definitions

7. “*Appeal*” is defined widely, to include proceedings to discharge or set aside a judgement, and an application for a new trial or for a stay of execution.
8. “*Data*”, “*document*” and “*record*” are defined broadly, and extend the powers in the Bill to all computer based or electronically based records.
9. “*Foreign confiscation order*” would cover an order made by a court in a foreign State, for the purposes

of confiscation or forfeiture of property in connection with, or recovery of the proceeds of, a serious offence, however that order is described under the legal system of that foreign State. It would not cover such orders where there had been no judicially based determination that the property in question was connected with, or the proceeds were of, a serious offence. *“In connection with”* does not require an immediate relationship; it is sufficient for there to be a causal link even though it may be a remote one.

10. *“Foreign restraining order”* is again restricted to those judicial determinations of a court made in respect of a serious offence. It would cover for example orders restraining defendants not within the jurisdiction from removing assets from the jurisdiction.
11. The definition of *“foreign state”* covers those territories, dependencies and protectorates which administer their own laws relating to international cooperation. Their foreign policy may be decided by the country of which they are a part, but they will be covered by the Bill if they have the capacity to deal with affairs of international cooperation.
12. *“Interest”* in relation to property is defined broadly. Even where there is no legal interest in the property, there would be an interest for the purposes of the Bill where there are rights, powers and privileges in connection with the property, eg powers over property by virtue of a familial relationship.
13. *“Proceedings”* are defined very widely, in order to cover all the permutations of the differences of procedure between common and civil law system countries in handling investigations, inquiries and determinations of fact, whether undertaken by police, prosecutors or judges. It would thus cover for example investigations led by the police, and judicial inquiries, including a Royal Commission in common law jurisdictions. *“Proceedings”* are not restricted to serious offences.
14. *“Property”* is given a broad definition in clause 3(1)(m), and covers real or personal property of every description, whether situated in the enacting State or elsewhere, and whether tangible or intangible, and it includes an interest in any such real (ie immoveable property such as a land or building) or personal property.

15. “*Serious offence*” is defined in clause 3(1)(p). It covers an offence against a provision of any law of the enacting state for which the maximum penalty is imprisonment or other deprivation of liberty for a defined period (a year is suggested in the draft and this is a choice for the enacting State) or more severe penalty. Offences against taxation law can be excluded from this, again according to the discretion of the enacting State.
16. “*Serious offence*” also covers an offence against a provision of a law of a foreign State, in relation to acts or omissions, which had they occurred in the enacting State, would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty for a defined period (again a year is suggested), or more severe penalty if the enacting State so chooses. Again, offences which are purely fiscal in nature, ie are concerned with taxation law, can be excluded.
17. The requirement of dual criminality (ie the relevant act should be a crime in both the requesting and requested State before assistance is given) would demand that the same penalties be inserted into (i) and (ii), and if a fiscal offence is excluded from the definition of (p)(i), it should be excluded from the definition of (p)(ii). The term “*fiscal*” should be interpreted according to the jurisprudence of the enacting state.
18. “*Criminal matters*” as referred to in the title of the Bill are not defined. Although the definition of “*serious offence*” does not specify that the offence must be criminal, offences are synonymous with crime, and it is clear from the ambit of the Bill as set out in its Title and preamble, and from the references in the Bill to criminal matters, that it would not extend to civil proceedings unconnected to a criminal offence.
19. Clause 3(2) makes it clear that references to the laws of the enacting State and a foreign state include references to unwritten laws in force.

PART - II
MUTUAL ASSISTANCE

Clause 4 - Authority to make and act on mutual legal assistance requests

20. Clause 4 provides that the Attorney-General of the enacting state, or other designated person, has the authority to make requests on behalf of that state to the appropriate authority of a foreign state for mutual legal assistance. Requests for assistance in respect of serious criminal offences would normally be dealt with by the public official who is the principal law officer of the country in terms of responsibility for civil and criminal casework, and is also politically responsible for the legal aspects of dealings with foreign states concerning criminal law. Any other person designated in the Attorney-General's place should have similar experience and responsibilities in respect of case work.
21. The Attorney-General, or other designated person, must make or authorise the requests for assistance referred to in clause 6. The assistance must either be in connection with an investigation commenced, or proceeding instituted in the enacting state which relates to a "*serious offence*", which is defined in clause 3(1)(o). There is no requirement that the offence actually have been committed before a request for assistance is made. Thus assistance can take the form of a request for evidence to be taken in a foreign State to show that an offence was planned.
22. Clause 4(1) provides that the Attorney-General or other designated person may make requests on behalf of the enacting State "*to the appropriate authority*". Article 7(8) of the 1988 Drugs Convention states that "*parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution*". Thus the relevant authority may have the power to execute the request itself, or it may act as a "post-box", transmitting requests to the relevant executing agency. Given that in most countries, requests for assistance would be dealt with by different authorities, for example its police and custom authorities, depending on their subject matter, this mechanism ensures that the handling of requests can proceed smoothly.

23. Clause 4(2) makes provision for the Attorney-General or other designated person, to either grant (in whole or in part), refuse or postpone a request from another state for mutual assistance. The Attorney-General can only refuse the request on the ground that to grant it would be likely to prejudice the sovereignty, security or other essential public interest of the enacting state. In this context, references to sovereignty and security are most likely to concern the defence, external relations and internal and external security services of the requested state. “*Essential public interest*” clearly excludes the interests of individuals, and would include the protection of public order.

Clause 5 - Saving provision for other requests or assistance in criminal matters

24. Clause 5 contains saving provisions in respect of requests for assistance directly dealt with by the Bill. The power of the Attorney-General and any other person or court regarding requests for assistance is not diminished in any way by the provisions of the Bill. Nor is there any restriction on the nature or extent of assistance in investigations or proceedings in criminal matters which the enacting state may lawfully give to or receive from foreign States. This makes it clear that clause 6 does not act to restrict the kinds of assistance the enacting State can lawfully give to or get from other States. Thus for example, nothing in the Bill would prevent exchanges of intelligence between police or intelligence authorities.

Clause 6 - Mutual legal assistance requests by [name of State]

25. Clause 6 lists the types of requests which the Attorney-General is authorised to make under clause 4. In essence, the requesting State is asking the requested State to “borrow” its coercive powers for its own benefit, for the purpose of proceedings where in most cases no serious offence has been committed in the requested State. Those powers will be exercised in accordance with the domestic law and procedural requirements of the requested State, and that will in some cases limit the scope of assistance that may be given.
26. Clause 6(a) refers to taking evidence, which would include all forms of testimony, whether sworn or unsworn, and would cover the taking of evidence by video or other technological means. Clause 9 sets out

the way the latter is done in respect of requests from foreign states; clause 6(a) would allow the enacting state to make the same kind of requests as set out in clause 9. “*Property*” is given a broad definition in clause 3(1)(m).

27. Clause 6(h) provides that the Attorney-General or other designated person can request the foreign State to allow the presence of nominated persons during the execution of any request made under the Bill. For example, foreign States might wish their police officers to be present in the enacting State while evidence is being taken. The presence of such a nominated person may be contrary to the immigration laws of the foreign State, or to its rules of Court, but this in itself would not be grounds to refuse this part of the request, except if the person’s presence would be likely to prejudice the sovereignty, security or other essential public interest of the enacting State (clause 4(2)).

Clause 7 - Contents of requests for assistance

28. The contents of a request for mutual assistance are crucial to how it is dealt with by the requested State, and thus ultimately its effectiveness. As time is usually of the essence, a request lacking in certain basic information could mean that the receiving state may be unable to process the request without referring back to the sender and so losing valuable time. Clause 7, in specifying the minimum contents of a request, is aimed at avoiding such delay. In many cases, the requesting authority may wish to include additional information for the use of the requested authority to enable it to respond fully and without delay.
29. Although the Bill does not refer to the language of the request, paragraph 9 of Article 7 of the 1988 Convention provides that “*requests shall be made in writing in a language acceptable to the requested Party*”. Although the Bill is silent as to whether an oral request for assistance in urgent cases is acceptable, Article 9(7) goes on to state “*in urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith*”.
30. Language which is specific to a particular legal system should be avoided in a request. Every legal system has its own terminology; e.g. the term “affidavit” may have meaning in one legal system but not in another.

As a request for assistance is intended to be executed by a foreign authority, the request should describe in neutral language what is sought, rather than refer to such a term.

31. Requests for assistance should be specific as to the assistance sought, given that in most legal systems, “fishing expeditions” are not permitted.
32. In accordance with clause 7(1)(a), the name of the authority conducting the investigation or proceeding to which the request relates must be included in the request. This is important because in some jurisdictions requests can only be answered when made by a judicial authority, and certain coercive measures can only be executed through a judicial request, whereas in others a prosecuting authority is empowered for this purpose.
33. A description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws as required in clause 7(1)(b) sets out the context of the request. A description of the purpose of the request would include the reasons for it, for example that there are existing proceedings in respect of a serious offence in the requesting state and evidence of a witness in the requested state is relevant to those proceedings.
34. Where the request is concerned with assets believed on reasonable grounds to be located in the requested State, the request must give details of the offence in question, particulars of any investigation or proceeding begun in respect of that offence, and where a restraint or forfeiture order has been issued, it should accompany the request (clause 7(1)(d)).
35. Clause 7(1)(e) provides that the request should give details of any procedure that the requesting State wishes to be followed by the requested State in giving effect to the request, particularly in the case of a request to take evidence. For example, if a country requests bank documents, it may be necessary to obtain an accompanying certificate for the documents to be admitted at trial. If that is the case, the certificate should be provided with the request to avoid unnecessary duplication of work in the request state. Other examples could be the administration of the oath to witnesses, the way in which an analysis should be taken and

authenticated, and the means by which information is to be sent.

36. The prohibition is designed to alert the requested State to possible clashes in procedural requirements between different legal systems. Looking at the taking of evidence, if a different procedure is applied in the requested State from that applicable in the requesting State, its admissibility before the courts of the requesting State may be called into question. This clause is designed to prevent this.
37. The model law common law Foreign Evidence Bill is relevant here. It makes provision for the admissibility of testimony and attached exhibits taken in a foreign State, as a result of a request for mutual assistance, before the courts of another State. Under the terms of the Bill, testimony would be admissible as such in the courts of the requesting state even though it had not been taken before a court on oath or affirmation, so long as it had been taken before a court under such caution or admonition as would be accepted by courts in the requested State for the purposes of giving testimony in proceedings before those courts.
38. Clause 7(1)(f) provides that a request for assistance is to include a statement setting out any wishes of the requesting State concerning confidentiality relating to the request, and the reasons for those wishes. This should be read alongside clause 16, which provides, inter alia, that documents sent to the Attorney-General by a foreign State in accordance with a request by the enacting State are privileged, and that the fact a request has been received and its contents should not be disclosed by any person, except to the extent required to execute the request.
39. It is clearly important to ensure the effectiveness of the request that it state the time within which the requesting State wishes the request to be complied with (clause 7(1)(g)).
40. Even if the request does not set out all the information specified in clause 7(1), it may be granted, after consultation with the requesting state if necessary (clause 7(2)).

Clause 8 - Foreign requests for an evidence-gathering order or a search warrant

41. Clause 8 provides that where the Attorney-General or other designated person grants a request by a foreign State to obtain evidence in the enacting State, an authorized person may apply to a specified court or body for a search warrant or an evidence-gathering order. The grounds for issuing an evidence-gathering order or search warrant are set out in clause 8(2). A statement contained in the foreign request to the effect that a serious offence has been or may have been committed against the law of the foreign State is prima facie evidence of that fact (clause 8(3)), for the purposes of clause 8(2)(a). The issue evidence-gathering order or search warrant is not necessarily limited to where a serious offence is involved, but could be broadened to cover any offence, as the enacting State considers appropriate. The intention behind clause 8(3) is to give full faith and credit to the official assertion in the foreign request.
42. The grant of search warrants raises more sensitive issues in most legal systems than would the grant of evidence-gathering orders. Thus in accordance with clause 8(2)(c), before it grants an application for a search warrant, the court or authority has to have reasonable grounds to believe that it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order.
43. Clause 8(4) states that an evidence-gathering order is to provide for the way in which the evidence is to be obtained in order to give proper effect to the foreign request, unless that manner is prohibited under the law of the enacting State. Thus the latter is to take precedence and cannot be overridden by the terms of the foreign request in the event of a conflict. Clause 8(4)(i) is designed to cover a variety of situations, including where evidence has been stored on computer or disc. Clause 8(4)(b) makes explicit the inherent powers of the court to include in an evidence-gathering order such terms and conditions as the court considers appropriate.
44. Clause 8(5) provides that a person named in an evidence-gathering order may refuse to answer a question or to produce a document or thing where the refusal is based on a law currently in force in the enacting State, or a privilege recognised by a law in force in the requesting State, or a law currently in force in the requesting State that would render the answering of that question or the production of that document or thing by that person in that jurisdiction an offence. The latter is designed to get over the problem of a person who would commit no offence under the law of the enacting State when giving evidence, but could be exposed to

proceedings in his state of origin for doing so on the grounds that such action amounted to an offence.

45. Clause 8(6) provides for a mechanism for the Attorney-General to notify the foreign state that a person has refused to give evidence pursuant to clause 8(5)(b) or (c) and request the foreign State to provide a written statement on whether the person's refusal was well-founded under the law of the foreign State. Such a statement is admissible in the evidence-gathering proceedings, and for the purposes of clause 8 is determinative of whether the person's refusal is in fact well-founded under the foreign law (clause 8(7)). This provision should not give rise to constitutional difficulties, since the person would be required to give evidence in the law of the enacting State subject to its own rules of procedure, and its purpose is to protect the position of persons under the law of the foreign State in so far as is reasonable.
46. Clause 8(8) provides that a person who, without reasonable excuse, refuses to comply with a lawful order of the court made under clause 8, or who having refused pursuant to clause 8(5) continues to do so even though evidence has been admitted under clause 8(7) that his refusal is not well-founded, commits a contempt of court and is punishable accordingly. Contempt of court comprises an act of defiance of court authority, of which failing to comply with a court order is one example. The punishment for contempt in most legal systems is a fine or committal to prison.
47. Clause 8(10), which provides that no document or thing seized and ordered to be sent to a foreign State shall be sent until the Attorney-General is satisfied that the foreign State has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the document or thing, ensures a high level safeguard to avoid exposing individuals who would or might be affected by such action.

Clause 9 - Foreign requests for a virtual evidence-gathering order by video link, etc.

48. Clause 9 makes provision for the enacting state to grant requests to gather evidence by video link or other technology which permits the virtual presence of the person in the relevant territory, eg. so the person can be asked questions by the relevant authorities and be required to answer them then and there. The place referred to in clause 9(3)(a) need not be a court. Under clause 9(3)(c), exhibits can be produced for the

inspection of the authorities of the foreign State or international criminal tribunal via video or other means.

49. The intention behind clause 9(5)(a) is that the evidential and procedural laws of the requesting state should apply in all cases, with the important exception of where the law of the requested state prohibits disclosure of particular evidence. This exception has been included to avoid a situation where the witness is required by the laws of the requesting state to give particular evidence, the disclosure of which is prohibited by the laws of the requested state and may result in the witness committing an offence under the laws of the requested state, presided over by a judge. With the same underlying reasoning, clause 9(5)(b) provides that the law of perjury of the enacting state will apply to any evidence given, as though the person giving it was a witness in a court or tribunal in the enacting state.
50. If the witness refuses to provide evidence as ordered by the judge under clause 9(3), the law of the enacting state on contempt will apply.

Clause 10 - Foreign requests for consensual transfer of detained persons

51. Clause 10 deals with the position where a foreign State requests to have a person detained in the enacting State transferred to the foreign State to give evidence or to assist in proceedings, and is intended to statutorily override legislation in the enacting state on service of custodial sentences in this regard. Clause 10(2) is designed to ensure that the consent of the transferred person is obtained under judicial supervision, in that the Court or other body can only make a transfer order where it is satisfied that the detained person consents to the transfer.
52. Transfer orders must set out the name of the detained person and where he is currently confined, and shall order the person who has custody of him/her to deliver him into the custody of a person who is designated in the order, or who is a member of the class of persons so designated. The reference to the class of persons so designated is to deal with last minute logistical problems if a person has been named and is not available on the day.

53. Clause 10(4) provides that time spent in custody by a person pursuant to a transfer order is to count toward any sentence required to be served by that person, provided that the person remains in such custody and is of good behaviour.

Clause 11 - Persons in [name of State] in response to a request

54. Clause 11(1) provides for the Attorney-General, or a named Court, to authorise by written notice the temporary detention in the enacting State of a person being detained in a foreign State pursuant to a request under clause 6(f), (ie a request to transfer in custody to the enacting State a person detained in the foreign State who consents to assist the enacting State in the relevant investigation or proceedings). This provision is necessary given that as the person would in most cases not have committed any offence under the law of the enacting State, there would be no other authority to detain him/her.
55. Clause 11(2) ensures that the immigration laws of the enacting State are waived if they would prevent a person in respect of whom a notice has been issued to enter and stay in the State for the purposes of the request, and be required to leave when no longer required for those purposes. Clause 11(2)(b) provides that such a person while in custody shall be deemed to be in lawful custody. This clause ties in with Clause 11(4) which provides that any person who escapes from lawful custody while in the enacting State pursuant to a section 6(f) request may be arrested without warrant by any authorized person and returned to the custody authorised under clause 11(1)(a). Clause 11(4) deals with an important practical point, that in the event of escape, it is preferable to give priority to the execution of the request for mutual assistance rather than immediately prosecute the person for the offence of escape. Thus the first objective is to return them to lawful custody in accordance with the terms of clause 11.
56. Clause 11(5) provides that the provisions of the clause apply with the necessary changes to a person being detained in the enacting State pursuant to an authorisation from the Attorney-General of the enacting State, in the course of transit between a foreign country and a third country.

Clause 12 - Safe conduct guarantee

57. It is crucial to guarantee the safe conduct of persons in the enacting State in response to a request for mutual assistance by the enacting State. Without such guarantee, foreign states may be reluctant to allow persons to enter the enacting State, and the individuals themselves would be unwilling to go. Thus the clause provides that a person who is in the enacting State in response to such a request shall not while there be detained, prosecuted or punished, or subjected to civil process in respect of an act or omission that occurred before the person's departure from the foreign State pursuant to the request. The safe conduct does not extend to acts or omissions after that date, so the person concerned is not protected if he or she commits an offence, which could include perjury committed during the judicial proceedings, while in the territory of the requesting State.
58. The safe conduct guarantee ceases to apply to the person when he/she leaves the enacting State, or could have left, but stays in the state for a period to be specified after the Attorney-General has notified the person that he or she is no longer required for the purposes of the request (clause 11(2)).

Clause 13 - Foreign requests for [name of State] restraining orders

59. Clause 13 makes provision for the issue of restraining orders by foreign states. A restriction on their issue is that criminal proceedings must have begun in the foreign State in respect of a serious offence. This is more onerous than for domestic restraint orders which in many legal systems can be sought in Chambers ex parte before proceedings have begun. In most cases close coordination will be required of the commencement of proceedings and the request for a restraint order.
60. The Money Laundering and Proceeds of Crime Act 2000 (or other specified legislation) is to apply in relation to the application and any resulting order made by a court as if the serious offence which is the subject of the order had been committed in the enacting State, rather than in the foreign State.

Clause 14 - Requests for enforcement of foreign confiscation or restraining orders

61. Clause 14 deals with the enforcement of foreign confiscation or restraining orders. The former is defined in clause 3(d) as an order, made by a court in a foreign State, for the purposes of the confiscation or forfeiture of property in connection with, or recovery of the proceeds of, a serious offence. “*Foreign restraining order*” is defined in clause 3(e) as an order made in respect of a serious offence by a court in a foreign State for the purpose of restraining a particular person or all persons from dealing with property. A confiscation order has more severe consequences for the individual concerned than a restraining order, and thus the Bill provides that the issue of the former be subject to a more restrictive test than the latter.
62. The specified court will, on application by the Attorney-General, register a foreign restraining order if it is satisfied that at the time of registration, the order is in force in the foreign State (clause 14(2)). Whether or not it is subject to appeal is not a determining factor.
63. The court will register a foreign confiscation order only if it is satisfied as to a number of conditions. Firstly it must be satisfied that at the time of registration, the order is in force in the foreign State and is not subject to appeal. The more stringent requirement than that in respect of a restraining order is considered appropriate because of the nature of the power the foreign state is asking the enacting state to exercise. The foreign state is in effect asking another state to interfere with the free movement and enjoyment of property rights in that state, and this should not be allowed where there is doubt as to whether the order is in force in the foreign State, or if that order is subject to appeal.
64. Secondly, the court must be satisfied that where the person who is subject of the order did not appear in the confiscation proceedings in the foreign State, the person was given notice of the proceedings in enough time to enable him or her to defend them, or the person had absconded or died before such notice could be given. The term “*absconded*” is referred to in clause 32 of the Money Laundering and Proceeds of Crime Bill. For the purposes of that clause, a person is deemed to have absconded if reasonable attempts to arrest the person pursuant to a warrant issued for his arrest have been unsuccessful during a specified period commencing on the day the warrant was issued, and the person is deemed to have so absconded on the last day of that period. The same definition would apply here.

65. Clause 14(4) is an exception to the normal evidentiary rules applicable in most legal systems, in providing that a statement contained in the foreign request to the effect that the conditions referred to in clause 14(3) are met is prima facie evidence of those facts, without proof of the signature or official character of the person appearing to have signed the foreign request.

15. Foreign requests for the location of proceeds of crime

66. Clause 15 makes provision for where a foreign State requests the Attorney-General to assist in locating property believed to be the proceeds of a serious crime in that State. In such a case, the Attorney-General can authorise the use of domestic powers in relation to money laundering and proceeds of crime in order to acquire the information the requesting State is seeking. Thus he can make an application under section 71 (production orders), 76 (search warrant for location of documents relevant to locating property) or 78 (monitoring orders) of the Money Laundering Act 2000 (or similar provisions in other specified legislation) in respect of the property.

Clause 16 - Sharing confiscated property with foreign States

67. Clause 16 deals with sharing property that has been confiscated, either in the foreign State (as a result of a request by the Attorney-General that the foreign State confiscates any property believed to be located in it which is the subject of a confiscation order under the Money Laundering and Proceeds of Crime Act 2000), or property realised in the enacting State, (as a result of action taken by that State as a result of a request of a foreign State for the enforcement of a foreign restraining or confiscation order).

68. The Attorney-General can if he sees fit, enter into an arrangement (which would not be a legally enforceable agreement, but would be more binding than an understanding) with the competent authorities of the foreign State for the reciprocal sharing of such property. This provision enables the Attorney-General to override in respect of such property whatever domestic law says about the recovery of the proceeds of crime (usually that it all reverts to the state). That arrangement could be ad hoc on a case by case basis, or be more general and regular.

PART - III
MISCELLANEOUS

Clause 17 - Privilege for foreign documents

69. It is crucial for the effectiveness of arrangements for mutual assistance for there to be safeguards to protect confidentiality. Both the enacting and foreign states will be unwilling to offer assistance if information such as the fact a request has been made and its contents enters the public domain without restriction. The same would be true of evidence transmitted from one state to another. Clauses 17 and 18 make provision for such safeguards.
70. Clause 17 makes provision for privilege for foreign documents sent to the Attorney-General in response to a request for mutual assistance, in order to preserve them from domestic scrutiny. Although in so doing it overrides the principle of freedom of information, it does so in a limited way. The request is privileged only up until the point the document, in compliance with the conditions on which it was sent, is made public or disclosed in the course of and for the purpose of any proceedings.
71. Clause 17(3) provides that except to the extent required under the Act to execute a request by a foreign State for mutual assistance in criminal matters, no person shall disclose the fact a request has been received, or its contents, and lays down a penalty of imprisonment or a fine or both, the length and amount of which to be specified for breach of this. Confidentiality can thus only be lifted for the purposes of giving effect to the request.

Clause 18 - Restriction on use of evidence and materials obtained by mutual assistance

72. In line with clause 17, no information, document, article or other thing obtained from a foreign State pursuant to a request made under the Bill can be used in any other investigation or proceeding, except that disclosed

in the request. The only exception to this is if the Attorney-General consents to such action after he has consulted with the foreign State.

Clause 19 - Confiscated proceeds of drug crime to be credited to Fund for Drug Abuse Prevention and Control

73. Clause 19 provides for the confiscated proceeds of drug crime to be credited to the Fund for Drug Abuse Prevention and Control, subject to any sharing of property pursuant to in clause 16, or otherwise pursuant to any other arrangements for sharing property allowed in the enacting State.

Clause 20 - Amendment of the Schedule

74. Clause 20 sets out a mechanism for the amendment of the Schedule to the Bill, which lists the international criminal tribunals to be covered by it.

May, 2000