

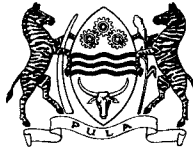


Republic of Botswana

**MUTUAL ASSISTANCE IN CRIMINAL MATTERS
(AMENDMENT) ACT, 2018**

**MUTUAL ASSISTANCE IN CRIMINAL MATTERS
(AMENDMENT) ACT, 2018**

No. 14



of 2018

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. General Amendment to Cap. 08:04
3. Amendment of section 2 of the Act
4. Amendment of section 4 of the Act
5. Amendment of section 5 of the Act
6. Amendment of section 9 of the Act
7. Amendment of section 10 of the Act
8. Amendment of section 27 of the Act
9. Amendment of section 28 of the Act
10. Amendment of section 29 of the Act
11. Amendment of section 30 of the Act
12. Insertion of section 30A in the Act
13. Amendment of section 31 of the Act
14. Amendment of section 32 of the Act
15. Insertion of section 32A in the Act

An Act to amend the Mutual Assistance in Criminal Matters Act.

Date of Assent: 29.06.2018

Date of Commencement: 29.06.2018

ENACTED by the Parliament of Botswana.

- | | |
|--|--|
| <p>1. This Act may be cited as the Mutual Assistance in Criminal Matters (Amendment) Act, 2018.</p> <p>2. The Mutual Assistance in Criminal Matters Act (hereinafter referred to as “the Act”) is amended by substituting for the words —</p> <p>(a) “police officer” wherever they appear in the Act the words “law enforcement officer”;</p> <p>(b) “commissioner of police” wherever they appear in the Act the words “head of law enforcement agency”; and</p> <p>(c) “Proceeds of Serious Crimes Act” wherever they appear in the Act the words “Proceeds and Instruments of Crime Act.”.</p> <p>3. The Act is amended in section 2 by —</p> <p>(a) inserting in their correct alphabetical order, the following new definitions —</p> | <p>Short title</p> <p>General Amendment to Cap. 08:04</p> <p>Cap. 08:03</p> <p>Amendment of section 2 of the Act</p> |
|--|--|

- “instrument” has the meaning assigned to it under the Proceeds and Instruments of Crime Act;
- “joint criminal investigation” means an investigation into an offence conducted by the Republic of Botswana and foreign counterparts;
- “law enforcement officer” means a person who is responsible for investigation, apprehension or detention of persons suspected or convicted of an offence under the Laws of Botswana;
- “foreign serious crime related activity” has the meaning assigned to it under the Proceeds and Instruments of Crime Act; and
- “property” has the meaning assigned to it under the Proceeds and Instruments of Crime Act”;
- (b) substituting for the definition of “confiscation order” the following new definition —
- “confiscation order” means an order made by court, whether conviction or non-conviction based, for the forfeiture of any property or its realisation to satisfy any order under the Proceeds and Instruments of Crime Act”;
- (c) substituting for the definition of “criminal matter” the following new definition —
- “criminal matter” includes —
- (a) a criminal matter relating to taxation, customs duties or any revenue matter or relating to foreign exchange control or in terms of any other law under the Laws of Botswana;
- (b) a matter relating to conviction or non-conviction based forfeiture or confiscation of property under the Proceeds and Instruments of Crime Act or any law under the Laws of Botswana or a law of a foreign country; and
- (c) a matter relating to the restraining of dealings in property or the freezing of assets that maybe forfeited or confiscated generally.”;
- (d) substituting for the definition of “money laundering offence” the following new definition —
- “money laundering offence” has the meaning assigned to it under the Proceeds and Instruments of Crime Act.”;
- (e) substituting for the definition of “production order” the following new definition —
- “production order” has the meaning assigned to it under the Proceeds and Instruments of Crime Act.”;
- (f) substituting for the definition of “restraining order” the following new definition —
- “restraining order” has the meaning assigned to it under the Proceeds and Instruments of Crime Act.”;
- (g) substituting for the definition of “serious offence” the following new definition —
- “serious offence” has the meaning assigned to it under the Proceeds and Instruments of Crime Act.”;

(h) substituting for the definition of “tainted property” the following new definition —

““tainted property”, means —

- (a) property used in, or in connection with, or intended to be used in the commission of the offence or serious crime related activity of local or foreign origin; or
- (b) proceeds of a serious offence or serious crime related activity of local or foreign origin.”; and

(i) deleting the definition of “police officer”.

4. Section 4 of the Act is amended by —

- (a) substituting for paragraph (a) the following new paragraph —
“(a) the obtaining of evidence, exhibits, documents or other articles”;
- (b) substituting for paragraph (c) the following new paragraph —
“(c) the location and identification of witnesses or suspects and recording of statements”;
- (c) substituting for paragraph (e) the following new paragraph —
“(e) the making of arrangements for persons to give evidence in person or through video conferencing or assist in investigations”;
and
- (d) inserting immediately after paragraph (j), the following new paragraph —
“(k) joint criminal investigations into an offence.”.

Amendment of
section 4 of the
Act

5. Section 5 (2) of the Act is amended by inserting immediately after paragraph (f), the following new paragraph —

- “(g) the provision of assistance would involve infliction of pain, injury or psychological harm in order to enhance the credibility of an existing threat of any kind to a person in or outside Botswana.”.

Amendment of
section 5 of
the Act

6. Section 9 of the Act is amended by substituting for paragraph (b), the following paragraph —

- “(b) documents, exhibits or other articles in the foreign country to be produced, for the purposes of a proceeding in relation to a criminal matter in Botswana.”.

Amendment of
section 9 of
the Act

7. Section 10 of the Act is amended by —

- (a) substituting for subsection (1) the following new subsection —
“(1) Where a request is made by a foreign country that —
 - (a) evidence or video conferencing be taken in Botswana; or
 - (b) documents, exhibits or other articles in Botswana be produced,for the purposes of a proceeding in relation to a criminal matter in the foreign country, the Director of Public Prosecutions may by writing in accordance with the approved form, authorise —
 - (i) the taking of the evidence,
 - (ii) video conferencing,
 - (iii) the production of documents,
 - (iv) the production of other articles,

Amendment of
section 10 of
the Act

- (v) the transmission of the evidence,
- (vi) the transmission of exhibits,
- (vii) the transmission of documents, or
- (viii) other articles to the foreign country.”; and

(b) substituting for subsection (2) the following new subsection —

“(2) Where the Director of Public Prosecutions authorises the taking of evidence, video conferencing or the production of documents, exhibits or other articles under subsection (1) —

(a) in the case of taking evidence, the magistrate may take the evidence on oath of each witness appearing before him to give evidence in relation to the matter, and the magistrate who takes any such evidence shall —

- (i) cause the evidence to be put in writing and certify that the evidence was taken by him, and
- (ii) cause the writing so certified to be sent to the Director of Public Prosecutions; and

(b) in the case of the production of documents or other articles, a magistrate may require the production of the documents, exhibits or other articles and, where the documents or other articles are produced, he shall send the documents, or copies of the documents certified by him to be true copies, or the other articles to the Director of Public Prosecutions.”

Amendment of section 27 of the Act

8. The Act is Amended by substituting for section 27, the following new section —

“Requests for enforcement orders

27. The Director of Public Prosecutions may request an appropriate authority of a foreign country to which this Act applies to make arrangements for the enforcement of —

- (a) a confiscation or forfeiture order against property that is a proceed or instrument or property believed to be located in that country which is of corresponding value to the property referred to in the confiscation or forfeiture order; or
- (b) a restraining order against property that is a proceed or instrument or property believed to be located in that country which is of corresponding value to the property referred to in the restraining order,

if the order was made in respect of a serious offence or in relation to a serious crime related activity.”

Amendment of section 28 of the Act

9. The Act is amended by substituting for section 28, the following new section —

“Requests for issue of orders in foreign countries

28. Where a proceeding or an investigation has commenced in Botswana in relation to a serious offence, the Director of Public Prosecutions may request an appropriate authority of a foreign country to which this Act applies, to obtain in respect of the offence or a

serious crime related activity, of a warrant, order or other similar instruments in nature to any of the following warrants and orders under the Proceeds and Instruments of Crime Act —

- (a) a search warrant for tainted property;
- (b) a restraining order;
- (c) a production order; or
- (d) a monitoring order.”.

10. The Act is amended by substituting for section 29, the following new section —

“Request for enforcement of orders

29. (1) Where —

- (a) foreign country requests the Director of Public Prosecutions to make arrangements for the enforcement of a foreign confiscation order made in respect of a serious offence or a serious crime related activity, against property that is believed to be located in Botswana; and
- (b) the Director of Public Prosecutions is satisfied that —
 - (i) a person has been convicted of the offence or there is non-conviction based order,
 - (ii) the conviction or any other order are not subject to further appeal in the foreign country, or
 - (iii) a non-conviction based order which is not subject to further appeal in the foreign country,

the Director of Public Prosecutions may apply for the registration of the order in the High Court.

(2) Where a foreign country requests the Director of Public Prosecutions to make arrangements for the enforcement of a foreign restraining order, made in respect of a serious offence, or serious crime related activity against property that is believed to be located in Botswana, the Director of Public Prosecutions may apply for the registration of the order in the High Court.

(3) A foreign confiscation order, or a foreign restraining order, registered in the High Court has effect, and maybe enforced, as if it were an order made by a court under Proceeds and Instruments of Crime Act.

(4) Where an order is registered in a court in accordance with this section —

- (a) a copy of any amendments made to the order, whether before or after registration, may be registered in the same way as the order; and
- (b) the amendments made to the order shall have no effect unless they are registered.”.

Amendment of section 29 of the Act

Amendment of section 30 of the Act

11. The Act is amended by substituting for section 30, the following new section —

“Requests for search and seizure warrants in respect of tainted property

30. Where —

- (a) a proceeding or investigation has commenced in a foreign country in respect of a serious offence or a serious crime related activity;
 - (b) there are reasonable grounds to believe tainted property in relation to the offence or a serious crime related activity is located in Botswana; and
 - (c) the foreign country requests the Director of Public Prosecutions to obtain the issue of a search warrant under the Proceeds and Instruments of Crime Act in relation to the tainted property,
- the Director of Public Prosecutions may authorise a law enforcement officer to apply to a magistrate for the issue of a search warrant or any other order requested by the foreign country.”

Insertion of section 30A in the Act

12. The Act is amended by inserting, immediately after section 30, the following new section —

“Sharing confiscated property with a foreign country

30A. (1) The Director of Public Prosecutions may enter into agreement with competent authority of a foreign country for the reciprocal sharing with that country of property or a part of it realised —

- (a) in the foreign country, as a result of action taken under this Act; or
- (b) in Botswana, as a result of action taken under this Act.

(2) Where the Minister responsible for finance considers it appropriate, the Minister may order that the whole or any part of any property confiscated under this Act, or the value thereof be remitted to the foreign country.

(3) The Director of Public Prosecutions may, unless agreed otherwise with the foreign country, deduct reasonable expenses incurred in investigations, prosecution or judicial proceeding leading to the return or disposition of confiscated property.”

Amendment of section 31 of the Act

13. The Act is amended by substituting for section 31, the following new section —

“Request for restraining orders

31. Where —

- (a) a proceeding has commenced in a foreign country in respect of a serious offence or a serious crime related activity;
- (b) there are reasonable grounds to believe that property that maybe made or is about to be made the subject of a foreign restraining order is located in Botswana; and
- (c) the foreign country requests the Director of Public Prosecutions to obtain the issue of a restraining order under the Proceeds and Instruments of Crime

Act against the property,
the Director of Public Prosecutions may apply
to a magistrate's court or the High Court for the
restraining order requested by the foreign country.”.

14. The Act is amended by substituting for section 32, the following
new section —

“Request for
information
gathering
orders

Amendment of
section 32
of the Act

32. (1) Where —

- (a) proceeding or an investigation has commenced in a foreign country in respect of a serious offence or a serious crime related activity;
- (b) a document in relation to the offence or a serious crime related activity is reasonably believed to be located in Botswana; and
- (c) the foreign country requests the Director of Public Prosecutions to obtain the issue of —
 - (i) a production order under the Proceeds and Instruments of Crime Act in respect of a document, or
 - (ii) a search warrant under the Proceeds and Instruments of Crime Act in respect of a document,

the Director of Public Prosecutions may authorise a law enforcement officer to apply to a magistrate or a judge of the High Court for the order requested by the foreign country.

(2) Where —

- (a) a proceeding or investigation has commenced in a foreign country in respect of a serious offence or a serious crime related activity that is —
 - (i) a money laundering offence in respect of proceeds or instruments of a serious offence or serious crime related activity, or
 - (ii) an ancillary offence in relation to an offence of a kind referred to in subparagraph (i) ;
- (b) information about a transaction conducted through an account with an institution in Botswana is reasonably believed to be relevant to the proceedings or investigations; and
- (c) a foreign country requests the Director of Public Prosecutions to obtain the issue of an order under the Proceeds and Instruments of Crime Act directing the institution to give information to a law enforcement officer about transactions conducted through an account,

the Director of Public Prosecutions may authorise the law enforcement officer to apply to a magistrate or a judge of the High Court for the order requested by the foreign country.”.

Insertion of
section 32A in
the Act

15. The Act is amended by inserting, immediately after section 32, the following new section —

“Confidentiality 32A. The Director of Public Prosecutions or any person authorised by him shall regard, and deal with as confidential, all documents and information relating to a request made under this Act.”.

PASSED by the National Assembly this 12th day of June, 2018.

BARBARA N. DITHAPO,
Clerk of the National Assembly.