

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT ACT 2012

WHEREAS it is expedient to amend the Criminal Justice (International Co-operation) (Bermuda) Act 1994 for the purpose of providing powers to enable the performance and enforcement of the obligations assumed by Bermuda under treaties or agreements entered into between the Government of Bermuda, as authorized by the Government of the United Kingdom, and the governments of foreign states, relating to mutual legal assistance in criminal matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Criminal Justice (International Co-operation) (Bermuda) Amendment Act 2012.

Inserts Part IIA

2 The Criminal Justice (International Co-operation) (Bermuda) Act 1994 is amended by inserting, immediately after section 11, the following new Part—

“PART IIA

INTERNATIONAL TREATIES AND AGREEMENTS

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Interpretation

11A In this Part, unless the context otherwise requires—

“information” means any fact, statement or record in any form that is relevant or material for the enforcement of any provision under this Part;

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT ACT 2012

“request” means a request for assistance by a requesting state to a requested state, which is made in accordance with the terms of a treaty concluded by the requesting state and the requested state;

“requested state” means a party to a treaty under this Part that receives a request for assistance under the treaty;

“requesting state” means a party to a treaty under this Part that makes a request for assistance under the treaty;

“treaty” means a mutual legal assistance treaty or agreement in criminal matters that incorporates the exchange of information and the performance and enforcement of specified requirements with respect to legal assistance in criminal matters, entered into by the Government of Bermuda, as authorized by the Government of the United Kingdom, with another government of a foreign state.

Application

11B The provisions of this Part apply to any treaty entered into before or after the commencement of this Part.

Legal effect of Part

11C (1) This Part has effect for the purpose of enforcing the giving of assistance by persons in Bermuda in connection with the performance of the obligations assumed by Bermuda under a treaty.

(2) The Attorney-General, in performing his functions under this Act, is not restricted by any law or any rule of law relating to confidentiality except as expressly provided under this Act or in the applicable treaty.

Duties of the Attorney-General

11D (1) The Attorney-General is the competent authority for Bermuda under the treaties and agreements to which this Part applies.

(2) The Attorney-General may provide assistance to any requesting state in accordance with the terms of the treaty with that state .

Grounds for declining a request for assistance

11E (1) Notwithstanding section 27, the Attorney-General may, where he determines that the costs of a request shall be in excess of \$500, decline the request if the requesting state does not agree to pay the difference in the costs of providing the assistance, whether incurred by the Attorney-General or any other person.

(2) The Attorney-General may also decline a request for assistance if —

(a) with respect to information relating to an offence which is a summary offence under the laws of Bermuda, the information

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT ACT 2012

relates to a period that is more than 12 months after the offence was committed;

- (b) the request pertains to information in the possession or control of a person other than the person named in the request or it does not relate specifically to the affairs of that person named in the request;
- (c) the information is protected from disclosure under the laws of Bermuda on the grounds of legal professional privilege;
- (d) the requesting state would not be able to obtain the information—
 - (i) under its own laws for the purposes of the administration or enforcement of its criminal laws; or
 - (ii) in response to a valid request from the Attorney-General under the treaty;
- (e) the disclosure of the information would be contrary to public policy; or
- (f) the Attorney-General is not satisfied that the requesting state will keep the information confidential and will not disclose it to any person other than—
 - (i) a person or authority in its own jurisdiction for the purposes of the administration and enforcement of its criminal laws; or
 - (ii) a person employed or authorized by the government of the requesting state to oversee data protection.

Notification of refusal

11F Where the Attorney-General declines, in whole or in part, a request under this Part, he shall notify the requesting state and give reasons for his decision.

Power to require information

11G (1) The Attorney-General may, in response to a request for testimony or evidence to be given by a person in Bermuda, by notice in writing served on such person in Bermuda, require the person to provide the information relating to the testimony or evidence before a court nominated by the Attorney-General as provided in section 6(2).

(2) The provisions of section 6(2) shall, with the necessary modifications, apply to a request under this section.

(3) Where a request for assistance by a requesting state so stipulates—

- (a) the court shall obtain the information sought by the request in the form of depositions of witnesses;

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT ACT 2012

- (b) the court may require that original documents or copies of original documents be certified or authenticated,

and in each case Schedule 1 shall have effect.

Statutory duty to provide information

11H (1) A person on whom a notice has been served under section 11G shall appear before the court and provide the information specified in the notice, within the period specified in it.

(2) The court may extend the time specified in the notice served by the Attorney-General if in its opinion the circumstances warrant.

Location or identification of persons or items

11I (1) Subject to subsection (2), the Attorney-General may consider a request to assist in locating, or identifying and locating—

- (a) a person who is believed to be in Bermuda;
- (b) item or items, as specified in the request, believed to be in Bermuda.

(2) Where, on receipt of a request under subsection (1), the Attorney-General is satisfied—

- (a) that the request relates to a criminal matter in the requesting state; and
- (b) that there are reasonable grounds for believing that the person or item to whom the request relates—
 - (i) is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter; and
 - (ii) is in Bermuda,

the Attorney-General may authorise, in writing, assistance in accordance with this section.

(3) The Attorney-General may authorise the giving of assistance under subsection (2) by forwarding the request to the police, public officer or other appropriate Government department in Bermuda, and the person or department requested shall use its best endeavours to locate or, as the case may be, identify and locate the person or item specified in the request, and shall report to the Attorney-General the outcome.

(4) On receipt of such report, the Attorney-General shall inform the requesting state of the result of the inquiries made pursuant to the request as provided in section 11N.

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT ACT 2012

Transfer of persons in custody

11J (1) Subject to the provisions of this section, the Attorney-General may, in response to a request, authorise the transfer of a person in custody in Bermuda to the territory of the requesting state under such terms and conditions as he may deem appropriate.

(2) The provisions of section 7, with the exception of subsection (2), shall apply, with the necessary modifications, to a transfer of a person in custody in Bermuda to the territory of the requesting state under this section.

(3) No warrant shall be issued pursuant to section 7 for the purposes of this section in respect of a person in custody unless—

- (a) the person has consented, in writing, to being transferred in accordance with the request referred to in subsection (1) and the consent has been communicated to the Attorney-General and to the requesting state;
 - (b) the Attorney-General has consented to the transfer in writing and has communicated his consent to the person in custody and to the requesting state;
 - (c) the requesting state has communicated its acceptance and observance of the terms and conditions of the transfer to the Attorney-General and to the person in custody.
- (4) For the purposes of subsection (3)(a), consent may be given either—
- (a) by the person in custody himself; or
 - (b) in circumstances in which it appears to the Attorney-General inappropriate, by reason of the physical or mental condition or youth of such person in custody, for him to act for himself, by a person appearing to the Attorney-General to be an appropriate person to act on his behalf,

but a consent once given is not capable of being withdrawn after the issue of the warrant.

Transit of persons in custody

11K (1) The Attorney-General may, in response to a request, authorise the transit through Bermuda of a person held in custody by the requesting state or a third state, whose personal appearance has been requested by the requesting state for purposes connected with a criminal investigation, prosecution or proceeding.

(2) The person in custody who has been authorised to transit through Bermuda under subsection (1), who is being transported in an aircraft or ship which lands or calls at a place in Bermuda, shall be kept in such custody while in transit in Bermuda as the Attorney-General may, in consultation with the Minister responsible for national security, direct in writing until his transportation is continued.

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT ACT 2012

(3) Where—

- (a) a person is being held in custody pursuant to a direction under subsection (2); and
- (b) the person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time,

the Attorney-General may, in consultation with the Minister responsible for national security, direct, in writing, that the person be transported in custody to the country from which the person was first transported, and such a direction shall be sufficient authority for that person's removal from Bermuda by such means as the Attorney-General directs.

(4) Where a person in custody who has been authorised to transit through Bermuda under subsection (1) is, pursuant to a direction of the Attorney-General, to be detained in a prison, the Prisons Act 1979, so far as applicable and with all necessary modifications, shall apply with respect to that person as if he were a person who has been sentenced to imprisonment for an offence against the law of Bermuda and is liable to be detained in a prison under such a sentence.

(5) For the purposes of enabling the grant of a temporary visa under the Bermuda Immigration and Protection Act 1956 to any person whom it is proposed to transit through Bermuda pursuant to this section, the Attorney-General may issue a certificate, in writing, that the person is to be transported through Bermuda pursuant to this section.

(6) The Attorney-General may, at any time, by notice in writing, cancel any certificate issued under subsection (5) in respect of any person who is in Bermuda for the purposes of being transported through Bermuda pursuant to this section if the Attorney-General is satisfied that that person's presence in Bermuda is no longer necessary for that purpose.

(7) The Attorney-General may provide in the regulations for such other matters as he may deem necessary for the better carrying out of the purposes of this section.

(8) Regulations made under subsection (7) shall be subject to the negative resolution procedure.

Assistance in forfeiture proceedings

11L (1) The Attorney-General may by order made pursuant to section 9 assist with a request to enforce a foreign forfeiture order if such order is in compliance with the provisions of section 9.

(2) Without limiting the provisions of section 9, a foreign forfeiture order shall not have effect for the purposes of this Act or any enactment referred to in section 9(3) until it is registered by the Supreme Court of Bermuda.

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT ACT 2012

(3) The Attorney-General may under the order made under subsection (1) prescribe requirements to be satisfied before the court can register a foreign forfeiture order.

Production, search and seizure

11M (1) Where, on receipt of a request, the Attorney-General is satisfied that —

- (a) the request relates to a criminal matter in the requesting state; and
- (b) there are reasonable grounds for believing that the item to which the request relates is relevant to the criminal matter and is located in Bermuda,

the Attorney-General, or an authorised officer directed by him, may apply to the Supreme Court for an order under subsection (3) or a warrant under subsection (4) in respect of specified premises.

(2) An application for a warrant referred to in subsection (4) in respect of any item in the possession of a financial institution shall not be made unless that item can be particularised.

(3) If, on such an application, the court is satisfied that the conditions referred to in subsection (7) are fulfilled, it may make an order that the person who appears to the court to be in possession of the item to which the application relates shall —

- (a) produce the item to an authorised officer for him to take away; or
- (b) give an authorised officer access to the item,

within seven days of the date of the order or such other period as the court considers appropriate.

(4) On an application referred to in subsection (1), the court may issue a warrant in writing authorizing the Attorney-General, or an authorised officer directed by him, to enter the premises, if necessary by force, at any time within 14 days commencing on the day of the issue of the warrant, and search them if the court is satisfied that the conditions in subsection (7) are fulfilled and that—

- (a) an order made under subsection (3) in relation to any item on the premises has not been complied with; or
- (b) the circumstances of the matter require that urgent action be taken.

(5) The Attorney-General, or an authorised officer directed by him, entering premises by virtue of a warrant under this section—

- (a) may take such other persons and equipment with him as he thinks necessary; and, on leaving the premises entered by virtue of a warrant under this section, shall, if they are unoccupied or the

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT ACT 2012

occupier is temporarily absent, leave them as effectively secured against trespassers as he found them;

- (b) may seize and remove any item whatsoever found there which he has reasonable cause to believe may contain information relevant to a request; and
- (c) shall prepare a list of the items seized, where anything has been seized, and, if so requested by a person showing himself either—
 - (i) to be the occupier of the premises; or
 - (ii) to have had possession or custody of those items immediately before the seizure,

provide that person with a copy of that list.

(6) The Attorney-General may transfer the items seized to the requesting state in accordance with the terms of this Act and the applicable treaty, and may in writing state the conditions that are to apply to such transfer.

- (7) The conditions to be fulfilled under subsections (3) and (4) are that—
 - (a) there are reasonable grounds for suspecting that a specified person in Bermuda has carried on or has benefited from an offence relating to the item in respect of which the request is made;
 - (b) there are reasonable grounds for believing that the item to which the application relates —
 - (i) is likely to be of substantial value (whether by itself or together with another item) to the criminal matter in respect of which the request is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
 - (c) the court is satisfied that it is not contrary to the public interest for the order or warrant to be issued.

Forwarding information or items to requesting state

11N (1) Where the Attorney-General obtains any information under sections 11G or 11I or causes a person to forfeit any item or seizes any item under sections 11L or 11M, he shall keep such information or such item forfeited or seized confidential other than for purposes of forwarding to the requesting state.

(2) The Attorney-General may forward or provide any item forfeited or seized under sections 11L or 11M to the requesting state after 20 days of the date of receipt of such item.

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT ACT 2012

Offences and penalties

110 (1) A person commits an offence who fails to provide information as required by sections 11G or 11I or wilfully tampers with or alters such information so that it is not in its original form when received by the Attorney-General.

(2) A person commits an offence who, without lawful excuse, destroys or damages any information or items which the Attorney-General or the court, under this Part, has directed such person or another person to provide.

(3) A person who commits an offence under subsection (1) or (2) shall be liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months, or to both.”

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT BILL 2012

EXPLANATORY MEMORANDUM

This Bill amends the Criminal Justice (International Co-operation) (Bermuda) Act 1994 (the “principal Act”) for the purpose of providing powers to enable the implementation and performance of the obligations assumed by Bermuda under treaties or agreements entered into between the Government of Bermuda, as authorized by the Government of the United Kingdom, and the governments of foreign states, relating to mutual legal assistance in criminal matters. The Bill inserts a new Part IIA into the principal Act, which includes provisions that are to govern the implementation and performance of articles of treaties relating to mutual assistance in criminal matters that require legislative empowerment to perform and enforce. The provisions of the new Part IIA will enable the Government of Bermuda to be in the position to comply with and perform obligations contained in mutual assistance treaties including the treaty entered into by the Government of Bermuda, as authorized by the Government of the United Kingdom, with the Government of the United States of America.

Clause 1 provides a citation for the Bill.

Clause 2 amends the principal Act by inserting, immediately after section 11, a new Part IIA which provides as follows—

Section 11A provides for the definition of terms used in Part IIA. Under this section, the term “treaty” is defined to mean a mutual legal assistance treaty or agreement in criminal matters that incorporates the exchange of information and the taking of specified actions concerning legal assistance in criminal matters, entered into by the Government of Bermuda, as authorized by the Government of the United Kingdom, with another jurisdiction.

Section 11B provides for the application of Part IIA to any treaty entered into before or after the commencement of the Part.

Section 11C provides for the legal effect of Part IIA. The Part has legal effect for the purpose of enforcing the giving of assistance by persons in Bermuda in connection with the performance of the obligations assumed by the Government of Bermuda under a treaty or agreement. Except as provided in this Bill or the applicable treaty, the Attorney-General shall not be restricted by any law or rule of law relating to confidentiality when performing functions under Part IIA.

Section 11D provides for the duties of the Attorney-General under Part IIA. The section names the Attorney-General as the competent authority for Bermuda for purposes of the treaties and agreements to which the Part applies. The Attorney-General is empowered to provide assistance to any requesting state in accordance with the terms of the treaty with that state.

Section 11E provides for the applicable grounds for which the Attorney-General may decline a request for assistance. One particular ground for which the Attorney-

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT BILL 2012

General may decline a request for assistance is where the requesting state does not agree to pay the difference in the costs of providing the assistance where the costs exceed \$500, whether such costs are incurred by the Attorney-General or any other person.

Section 11F requires the Attorney-General to notify the requesting state and give reasons where the Attorney-General declines, in whole or in part, a request under Part IIA.

Section 11G empowers the Attorney-General, in response to a request, to require a person in Bermuda to give information relating to requested testimony or evidence to a court nominated by the Attorney-General in accordance with the powers of the Attorney-General as provided in section 6(2) of the principal Act.

Section 11H stipulates that it is a statutory duty to provide information as required by the Attorney-General under section 11G.

Section 11I empowers the Attorney-General to authorise to assist a requesting state to locate, or identify and locate, persons or items believed to be in Bermuda. The Attorney-General may authorise the granting of the assistance if he is satisfied that the request relates to a criminal matter in the requesting state, that the person or item to whom the request relates might be concerned or could give evidence or other assistance with respect to the criminal matter and that the person or item is in Bermuda. For purposes of giving assistance under this section, the Attorney-General may request the assistance of the appropriate Government department or public officer.

Section 11J provides for the transfer of a person in custody. The section empowers the Attorney-General to authorise assistance to a requesting state, pursuant to section 7 of the principal Act, for the transfer of a person in custody in Bermuda to the territory of the requesting state. Transfer of a person in custody under this section is subject to consent being given to the transfer by the person in custody to be transferred and by the Attorney-General. Additionally, the requesting state must accept and observe the terms and conditions of transfer as may be required by the Attorney-General.

Section 11K provides for the transit of a person in custody. In response to a request, the Attorney-General may authorise the transit through Bermuda of a person held in custody by the requesting state or another state. The request must be made for purposes of the personal appearance of the person in custody in connection with a criminal matter in the territory of the requesting state. The person in custody being transported by aircraft or ship who lands or calls at any place in Bermuda is required to be kept in such custody while in transit in Bermuda as the Attorney-General shall determine in consultation with the Minister responsible for national security. Where the transportation of the person in custody is not continued within a reasonable time, the Attorney-General may, in consultation with the Minister responsible for national security, direct that the person in custody be returned to the country from which he was transported. The Attorney-General is further empowered to direct that the person in custody be detained in a prison for the duration of his transit through Bermuda, and the provisions of the Prisons Act 1979

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA)
AMENDMENT BILL 2012

shall apply to such person as though he has been sentenced to imprisonment for an offence against the law of Bermuda. For the purposes of the person in custody being granted a temporary visa under the Bermuda Immigration and Protection Act 1956, the Attorney-General is empowered to issue a certificate in writing, to enable the granting of the visa and is empowered to cancel the certificate at any time if he is satisfied that the person's presence in Bermuda is no longer necessary.

Section 11L provides for the giving of assistance in forfeiture proceedings. The section extends the application of the powers of the Attorney-General under section 9 of the principal Act to requests for the enforcement of foreign forfeiture orders. The section requires such foreign forfeiture orders to be registered by the Supreme Court in order to have effect in Bermuda and empowers the Attorney-General to prescribe the requirements to be satisfied before the court can register a foreign forfeiture order.

Section 11M provides empowerment to require the production of items and to order the search and seizure of items. In response to a request relating to an item connected to a criminal matter in the requesting state, the Attorney-General or an authorised officer may apply to the Supreme Court for an order for the production of the required item or for a warrant for the entry to premises and the search and seizure of the required item. The court may grant an application for a warrant for search and seizure where the production order has not been complied with or where it is necessary to take urgent action. The court will issue an order or a warrant under this section if satisfied that there are reasonable grounds for suspecting that a specified person in Bermuda has carried on or benefited from an offence relating to the item, that the item is likely to be of significant value with respect to the offence, that the item does not consist of or include items that are subject to legal privilege and that it is not contrary to public interest for the order or warrant to be issued.

Section 11N requires the Attorney-General to keep information and items to be forwarded to a requesting state confidential. The Attorney-General may forward items obtained under sections 11L or 11M after 20 days of the date of receipt of the items.

Section 11O provides for the offences for the failure to provide information as required under sections 11G or 11I or willfully tampering with or altering such information so that it is not in its original form when received by the Attorney-General. The clause further provides for the offence of failure to produce or release items as required under the Act.