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An Act to amend the Mutual Assistance in Criminal Matters Act 2003.

(23 June 2017)

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Mutual Assistance in Criminal Matters Amendment Act 2017.

2 Commencement

This Act comes into force on the day after the date on which it receives the assent of the Queen's Representative.

3 Principal Act amended

This Act amends the Mutual Assistance in Criminal Matters Act 2003.

4 Definitions

Section 3 is amended by inserting the following definitions in their appropriate alphabetical order—

“**Central Authority**, in relation to any foreign country, means the person or authority for the time being responsible for transmitting or receiving requests under this Act

“**property of a corresponding value**, in relation to tainted property, means property of a value that corresponds to the value of the tainted property”.

5 New sections 5A and 5B inserted

The following sections are inserted after section 5—

“5A Certain investigations relating to civil proceedings deemed to be criminal investigations

- “(1) An investigation that is certified by the Attorney-General or the Solicitor-General, to have commenced in the Cook Islands and that relates to the restraint or forfeiture of property must be treated as a criminal investigation, despite the related proceedings being civil in nature, if the property is, or is suspected on reasonable grounds to be or to be likely to be, tainted property or property of a corresponding value.
- “(2) An investigation in a foreign country that is certified by the Central Authority of that country to have started in that country must be treated as a criminal investigation, despite the related proceedings being civil in nature, if the investigation relates to the restraint or forfeiture of property that is, or is suspected on reasonable grounds to be or to be likely to be, tainted property or property of a corresponding value.
- “(3) An investigation that is treated as a criminal investigation under this section is a criminal matter for the purposes of this Act.

“5B Certain civil proceedings deemed to be criminal proceedings

- “(1) A proceeding certified by the Attorney-General to have been instituted in respect of the forfeiture or restraint of property must be treated as a criminal proceeding, despite being civil in nature, if the property is, or is suspected on reasonable grounds to be or to be likely to be, tainted property or property of a corresponding value.
- “(2) A proceeding certified by the Central Authority of the requesting country to have been instituted in respect of the forfeiture or restraint of property must be treated as a criminal proceeding, despite being civil in nature, if the property is, or is suspected on reasonable grounds to be or to be likely to be, tainted property or property of a corresponding value.
- “(3) Proceedings treated as criminal proceedings under this section are criminal matters for the purposes of this Act.”

6 Refusal or postponement of assistance

Section 9 is amended by adding the following subsection as subsection (2)—

- “(2) However, the Attorney-General must not refuse or postpone a request for assistance solely or primarily on either of the following grounds—
- “(a) that the request would involve a breach of secrecy or confidentiality obligations or requirements relating to one or more financial institutions:
- “(b) the relevant offence involves fiscal matters.”

7 Requests for search and seizure warrants for tainted property

Section 44(b) is amended by inserting words “or property of a corresponding value” after “tainted property”.

This Act is administered by the Crown Law Office.

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