

CHAPTER 08:04
MUTUAL ASSISTANCE IN CRIMINAL MATTERS

ARRANGEMENT OF SECTIONS

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Act 20, 1990,
Act 14, 2005,
Act 14, 2018,
Act 16, 2022.

An Act relating to the provision and obtaining of international assistance in criminal matters.

[Date of Commencement: 9th November, 1990]

[GENERAL AMENDMENT – (1) Section 2(a) of Act 14 of 2018 substitutes for the word "police officer" wherever it appears in the Act, the words "law enforcement officer".

(2) Section 2(b) of Act 14 of 2018 substitutes for the word "commissioner of police" wherever it appears in the Act, the words "head of law enforcement agency".

(3) Section 2(c) of Act 14 of 2018 substitutes for the word "Proceeds of Serious Crimes Act" wherever it appears in the Act, the words "Proceeds and Instruments of Crime Act".]

PART I
Preliminary (ss 1-8)

1. Short title

This Act may be cited as the Mutual Assistance in Criminal Matters Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"**approved form**" means a form approved by the Director of Public Prosecutions in writing for the purposes of the provision in which the expression occurs;

"**arrangement**" includes a convention, protocol, agreement, scheme, or treaty;

"**committal proceeding**", in relation to a foreign offence, includes—

(a) any proceeding to determine whether a person should be tried for the offence (whether or not a particular person is specified at the commencement of that proceeding as the person in relation to whom the determination is to be made); and

(b) a proceeding that is, in accordance with the regulations, to be taken to be a committal proceeding for the purposes of this Act;

"**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 (Cap. 08:03);

[14 of 2018, s. 3(b).]

"**criminal investigation**" means an investigation into an offence (whether the offence is believed to have been committed, to be being committed or to be likely to be committed);

"**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 may be forfeited or confiscated generally;

[14 of 2018, s. 3(c).]

"**criminal proceeding**", in relation to an offence, means a trial of a person for the offence or a committal proceeding in respect of offence;

"**foreign forfeiture order**" means an order, made under the law of a foreign country, for the forfeiture of property in respect of an offence against the law of that country;

"**foreign prisoner**" means a person who is being held in custody pending trial for or sentence for, or is under a sentence of imprisonment for, an offence against a law of a foreign country, but does not include a person who is at large after having escaped from lawful custody;

"**foreign restraining order**" means an order, made under the law of a foreign country, restraining a particular person, or all persons, from dealing with property, being an order made in respect of an offence against the law of that country;

"**foreign offence**" means an offence against a law of a foreign country;

"**foreign serious crime related activity**" has the meaning assigned to it under the Proceeds and Instruments of Crime Act (Cap. 08:03);

[14 of 2018, s. 3(a).]

"foreign serious offence" means a serious offence against a law of a foreign country;

"instrument" has the meaning assigned to it under the Proceeds and Instruments of Crime Act (Cap. 08:03);

[14 of 2018, s. 3(a).]

"joint criminal investigation" means an investigation into an offence conducted by the Republic of Botswana and foreign counterparts;

[14 of 2018, s. 3(a).]

"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;

[14 of 2018, s. 3(a).]

"magistrate" means any person appointed as a Magistrate Grade I or over in accordance with the Magistrates' Courts Act (Cap. 04:04);

"money laundering offence" has the meaning assigned to it under the Proceeds and Instruments of Crime Act (Cap. 08:03);

[14 of 2018, s. 3(d).]

"offence" includes an offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control;

"offence under the ordinary criminal law of Botswana" means an offence against the laws of Botswana other than an offence under the military law of Botswana;

"police officer" ...;

[14 of 2018, s. 3(i).]

"premises" includes—

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) a place (whether enclosed or built upon or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

"prison" includes gaol, lock-up or other place of detention;

"production order" has the meaning assigned to it under the Proceeds and Instruments of Crime Act (Cap. 08:03);

[14 of 2018, s. 3(e).]

"property" has the meaning assigned to it under the Proceeds and Instruments of Crime Act (Cap. 08:03);

[14 of 2018, s. 3(a).]

"restraining order" has the meaning assigned to it under the Proceeds and Instruments of Crime Act (Cap. 08:03);

[14 of 2018, s. 3(f).]

"serious offence" has the meaning assigned to it under the Proceeds and Instruments of Crime Act (Cap. 08:03);

[14 of 2018, s. 3(g).]

"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.

[14 of 2018, s. 3(h).]

(2) Where in this Act reference is made to the head of law enforcement agency, such reference shall be deemed to include any person specially or generally authorised by the head of law enforcement agency in that regard.

3. Application of Act

(1) Where an arrangement has been made with a foreign country for mutual assistance in criminal matters, the Minister may by statutory instrument make regulations that this Act shall apply to that country.

(2) Regulations made under subsection (1) may provide that the application of this Act to a foreign country shall be subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to an arrangement made between Botswana and that country.

4. Object of Act

The object of this Act is to facilitate the provision and obtaining by Botswana of international assistance in criminal matters, including—

- (a) the obtaining of evidence, exhibits, documents or other articles;

[14 of 2018, s. 4(a).]

- (b) the provision of documents and other records;

- (c) the location and identification of witnesses or suspects and recording of statements;

[14 of 2018, s. 4(b).]

- (d) the execution of requests for search and seizure;

- (e) the making of arrangements for persons to give evidence in person or through video conferencing or assist in investigations;

[14 of 2018, s. 4(c).]

- (f) the confiscation of property in respect of offences;

- (g) the recovery of pecuniary penalties in respect of offences;

- (h) the restraining of dealings in property, or the freezing of assets, that may be confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences;

- (i) the location of property that may be confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences;

- (j) the service of documents; and

- (k) joint criminal investigations into an offence.

[14 of 2018, s. 4(d).]

5. Refusal of assistance

(1) A request by a foreign country for assistance under this Act shall be refused if, in the opinion of the Director of Public Prosecutions—

(a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;

(b) subject to subsection (3), there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;

(c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of his race, sex, religion, nationality or political opinions;

(d) the request relates to the prosecution or punishment of a person in respect of an act or omission that if it had occurred in Botswana, would have constituted an offence under the military law of Botswana but not also under the ordinary criminal law of Botswana;

(e) the granting of the request would prejudice the sovereignty, security or national interest of Botswana;

(f) the request relates to the prosecution of a person for an offence in a case where he has been acquitted or pardoned by a competent tribunal or authority in the foreign country, or has undergone the punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence; or

(g) except in the case of a request under section 10, the foreign country is not a country to which this Act applies.

(2) A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Director of Public Prosecutions—

(a) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Botswana, would not have constituted an offence against the laws of Botswana;

(b) the request relates to the prosecution or punishment of a person in respect of an act or omission that occurred, or is alleged to have occurred, outside the foreign country and a similar act or omission occurring outside Botswana in similar circumstances would not have constituted an offence against the laws of Botswana;

(c) the request relates to the prosecution or punishment of a person in respect of an act or omission where, if it had occurred in Botswana at the same time and had constituted an offence against the laws of Botswana, the person responsible could no longer be prosecuted by reason of lapse of time or any other reason;

(d) the provision of the assistance could prejudice an investigation or proceeding in relation to a criminal matter in Botswana;

(e) the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Botswana);

(f) the provision of the assistance would impose an excessive burden on the resources of the State; or

(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.

(3) An offence is not an offence of a political character—

(a) if it is an offence in accordance with the provisions of any international convention to which Botswana and the foreign country to which this Act applies are parties and there is an obligation on each party to afford mutual assistance in investigation and prosecution of such offence;

(b) if it is an offence against the life or person of a Head of State or a member of his immediate family, a Head of Government, or a Minister or any related offence;

(c) if it is murder or any related offence.

(4) For the purposes of subsection (3)(b) and (c), "related offence" means aiding and abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit that offence.

6. Assistance may be provided subject to conditions

Assistance under this Act may be provided to a foreign country subject to such conditions as the Director of Public Prosecutions may determine.

7. Requests by Botswana

Requests by Botswana for international assistance in criminal matters may be made by the Director of Public Prosecutions.

8. Request by foreign country

(1) A request by a foreign country for international assistance in a criminal matter may be made to the Director of Public Prosecutions or a person authorised by the Director of Public Prosecutions, in writing, to receive requests by foreign countries under this Act.

(2) A request made under subsection (1) shall be accompanied by—

(a) the name of the authority concerned with the criminal matter to which the request relates;

(b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

(c) a description of the purpose of the request and of the nature of the assistance being sought;

(d) details of the procedure that the foreign country wishes to be followed by Botswana in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the foreign country pursuant to the request;

(e) a statement setting out the wishes of the foreign country concerning the confidentiality of the request and the reasons for those wishes;

(f) details of the period within which the foreign country wishes the request be complied with;

(g) if the request involves a person travelling from Botswana to the foreign country, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person, while the person is in the foreign country pursuant to the request;

(h) any other information required to be included with the request under an arrangement between Botswana and the foreign country; and

(i) any other information that may assist in giving effect to the request; but failure to comply with this subsection is not a ground for refusing the request.

(3) Where a request by a foreign country is made to a person authorised under subsection (1), the request shall be taken, for the purposes of this Act, to have been made to the Director of Public Prosecutions.

PART II
***Assistance in relation to Taking of Evidence and Production of Documents
or other Articles (ss 9-10)***

9. Requests by Botswana

The Director of Public Prosecutions may in writing request an appropriate authority of a foreign country to arrange for—

- (a) evidence to be taken in the foreign country; or
- (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.

[14 of 2018, s. 6.]

10. Requests by foreign countries

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

[14 of 2018, s. 7(a).]

(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.

[14 of 2018, s. 7(b).]

(3) The evidence of such a witness may be taken in the presence or absence of the person to whom the proceeding in the foreign country relates or of his legal representative, if any.

(4) The magistrate conducting a proceeding under subsection (2) may permit—

- (a) the person to whom the proceeding in the foreign country relates;
- (b) any other person giving evidence or producing documents or other articles at the proceeding before the magistrate; and

(c) the relevant authority of the foreign country,

to have legal representation at the proceeding before him.

(5) The certificate by the magistrate under subsection (2) shall state whether, when the evidence was taken or the documents or other articles were produced, any of the following persons were present—

(a) the person to whom the proceeding in the foreign country relates or his legal representative, if any;

(b) any other person giving evidence or producing documents or other articles or his legal representative, if any.

(6) For the purposes of this section, the person to whom the proceeding in the foreign country relates is competent but not compellable to give evidence.

PART III

Assistance in relation to Search and Seizure (ss 11-12)

11. Requests by Botswana for search and seizure

(1) This section shall apply to a proceeding or investigation relating to a criminal matter involving a serious offence against the laws of Botswana if there are reasonable grounds to believe that a thing relevant to the proceeding or investigation may be located in a foreign country to which this Act applies.

(2) Where this section applies to a proceeding or investigation, the Director of Public Prosecutions may request an appropriate authority of the foreign country to obtain a warrant or other instrument authorising a search for a thing relevant to the proceeding or investigation and, if such a thing, or any other thing that is or may be relevant to the proceeding or investigation, as the case may be, is found pursuant to such a search, authorising the seizure of that thing.

(3) A request shall be accompanied by an affidavit by a person verifying the grounds on which the request is made.

12. Requests by foreign countries for search and seizure

(1) Where—

(a) a proceeding or investigation relating to a criminal matter involving a serious offence has commenced in a foreign country;

(b) there are reasonable grounds to believe that a thing relevant to the investigation or proceeding is located in Botswana; and

(c) the foreign country requests the Director of Public Prosecutions to arrange for the issue of a search warrant under this section in relation to that thing,

the Director of Public Prosecutions may authorise a law enforcement officer, in writing, to apply to a magistrate in the district in which that thing is believed to be located for the search warrant requested by the foreign country.

(2) Where a law enforcement officer authorised under subsection (1) has reason to believe that the thing to which the request relates is, or will, at a specified time, be—

- (a) on a person;
- (b) in the clothing that is being worn by a person; or
- (c) otherwise in a person's immediate control, the law enforcement officer may—
 - (i) lay before a magistrate an information on oath setting out the grounds for that belief; and
 - (ii) apply for the issue of a warrant under this section to search the person for that thing.

(3) Where an application is made under subsection (2), the magistrate may, subject to subsection (6), issue a warrant authorising a law enforcement (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable—

- (a) to search the person for the thing; and
- (b) to seize any thing found in the course of the search that the law enforcement officer believes, on reasonable grounds, to be relevant to the proceeding or investigation.

(4) Where a law enforcement officer authorised under subsection (1) has reason to believe that the thing to which the request relates is, or will, at a specified time, be, upon any land, or upon or in any premises, the law enforcement officer may—

- (a) lay before a magistrate an information on oath setting out the grounds for that belief; and
- (b) apply for the issue of a warrant under this section to search the land or premises for that thing.

(5) Where an application is made under subsection (4), the magistrate may, subject to subsection (6), issue a warrant authorising a law enforcement officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable—

- (a) to enter upon the land, or upon or into the premises;
- (b) to search the land or premises for the thing; and
- (c) to seize any thing found in the course of the search that the law enforcement officer believes, on reasonable grounds, to be relevant to the proceeding or investigation.

(6) A magistrate shall not issue a warrant under this section unless—

- (a) the informant or some other person has given to him either orally or by affidavit, such further information, if any, as he requires concerning the grounds on which the issue of the warrant is sought; and
- (b) he is satisfied that there are reasonable grounds for issuing the warrant.

(7) There shall be stated in a warrant issued under this section—

- (a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorised;
- (b) whether the search is authorised at any time of the day or night or during specified hours of the day or night;

(c) a description of the kind of things authorised to be seized; and

(d) a day, not being later than one month after the issue of the warrant, on which the warrant ceases to have effect.

(8) If, in the course of searching, under a warrant issued under this section, for a thing of a kind specified in the warrant, the law enforcement officer finds another thing that he believes on reasonable grounds—

(a) to be relevant to the proceeding or investigation in the foreign country or to afford evidence as to the commission of a criminal offence; and

(b) is likely to be concealed, lost or destroyed if it is not seized,

the warrant shall be deemed to authorise him to seize the other thing.

(9) Where a law enforcement officer finds, as a result of a search in accordance with a warrant issued under this section, a thing which he seizes wholly or partly because he believes the thing on reasonable grounds to be relevant to the proceeding or investigation in the foreign country, he shall deliver the thing into the custody and control of the head of law enforcement agency.

(10) Where a thing is delivered into the custody and control of the head of law enforcement agency under subsection (9), the head of law enforcement agency shall arrange for the thing to be kept for a period not exceeding one month from the day on which the thing was seized pending a direction in writing from the Director of Public Prosecutions as to the manner in which the thing is to be dealt with (which may include a direction that the thing be sent to an authority of a foreign country).

(11) A law enforcement officer who executes a search warrant issued under subsection (3) or (5) shall, as soon as practicable after the execution of the warrant, give to the person, or give to the owner or occupier of the land or premises or leave in a prominent position on the land or at the premises, as the case requires, a notice setting out—

(a) the name and rank of the law enforcement officer;

(b) the name of the magistrate who issued the warrant and the day on which it was issued; and

(c) a description of any things seized and removed in accordance with the warrant.

(12) A law enforcement officer acting in accordance with a warrant issued under subsection (3) may remove, or require a person to remove, any of the clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person under the warrant.

(13) A person shall not be searched under a warrant issued under subsection (3) except by a person of the same sex.

(14) Where a law enforcement officer is authorised, under a warrant issued under subsection (3), to search a person, the law enforcement officer may also search—

(a) the clothing that is being worn by the person; and

(b) any property in, or apparently in, the person's immediate control.

PART IV

Arrangements for Persons to Give Evidence or Assist Investigations (ss 13-23)

13. Requests for removal of certain persons to Botswana

(1) Where—

(a) a proceeding relating to a criminal matter has commenced in Botswana; and

(b) the Director of Public Prosecutions is of the opinion that a person who is in a foreign country to which this Act applies—

(i) is a foreign prisoner;

(ii) is capable of giving evidence relevant to the proceeding; and

(iii) has given his consent to being removed to Botswana for the purpose of giving evidence in the proceeding,

the Director of Public Prosecutions may request the foreign country to authorise the attendance of the person at a hearing in connection with the proceeding.

(2) Where—

(a) an investigation relating to a criminal matter has commenced in Botswana; and

(b) the Director of Public Prosecutions is of the opinion that a person who is in a foreign country to which this Act applies—

(i) is a foreign prisoner;

(ii) is capable of giving assistance in relation to the investigation; and

(iii) has given his consent to being removed to Botswana for the purposes of giving assistance in relation to the investigation,

the Director of Public Prosecutions may request the foreign country to authorise the removal of the person to Botswana for the purpose of giving assistance in relation to the investigation.

(3) Where the Director of Public Prosecutions makes a request under subsection (1) or (2), he may make arrangements with an appropriate authority of the foreign country for the purposes of—

(a) the removal of the person to Botswana;

(b) the custody of the person while in Botswana;

(c) the return of the person to the foreign country; and

(d) other relevant matters.

14. Custody of certain persons

Where—

(a) a person is to be brought to Botswana from a foreign country pursuant to a request under section 13; and

(b) the foreign country requests that the person be kept in custody while he is in Botswana,

the person shall, while he is in Botswana or travelling to or from Botswana pursuant to the request, be kept in such custody as the Director of Public Prosecutions directs in writing.

15. Immunities

(1) Where a person is in Botswana—

(a) pursuant to a request under section 13; or

(b) to give evidence in a proceeding, or to give assistance in relation to an investigation, pursuant to a request made by or on behalf of the Director of Public Prosecutions (not being a request under section 13) for international assistance in a criminal matter,

the person, subject to subsection (2), shall not—

(i) be detained, prosecuted or punished in Botswana for any offence that is alleged to have been committed, or that was committed, before his departure from the foreign country pursuant to the request;

(ii) be subjected to any civil suit in respect of any act or omission of his that is alleged to have occurred, or that occurred, before the person's departure from the foreign country pursuant to the request; or

(iii) be required to give evidence in any proceeding in Botswana other than the proceeding to which the request relates, if any.

(2) Subsection (1) shall cease to apply to a person if—

(a) he has left Botswana; or

(b) he has had the opportunity of leaving Botswana and has remained in Botswana otherwise than for—

(i) the purpose to which the request relates;

(ii) the purpose of giving evidence in a proceeding in Botswana certified by the Director of Public Prosecutions, in writing, to be a proceeding in which it is desirable that he gives evidence; or

(iii) the purpose of giving assistance in relation to an investigation in Botswana certified by the Director of Public Prosecutions, in writing, to be an investigation in relation to which it is desirable that he gives assistance.

(3) A certificate given by the Director of Public Prosecutions for the purposes of subsection (2)(b)(ii) or (iii) has effect from the day specified in the certificate (which may be a day before the day on which the certificate is given).

(4) This section binds the State.

16. Status of person prosecuted for offence committed after departure from foreign country

(1) Where a person has come to Botswana pursuant to a request by Botswana under section 13 he shall be taken, for the purposes of this Act, to be in Botswana pursuant to the request during any period during which he remains in Botswana for the purpose of being tried for a criminal offence under the laws of Botswana that he is alleged to have committed after his departure from the foreign country.

(2) Without limiting the generality of subsection (1), the person shall be kept in such custody as the Director of Public Prosecutions directs under section 14.

17. Limitation on use of evidence given by certain persons

(1) Where—

(a) a person is in Botswana—

(i) pursuant to a request under section 13; or

(ii) to give evidence in a proceeding, or to give assistance in relation to an investigation, pursuant to a request made by or on behalf of the Director of Public Prosecutions (not being a request under section 13) for international assistance in a criminal matter; and

(b) he has given evidence in the proceeding to which the request related or in a proceeding certified by the Director of Public Prosecutions under section 15(2)(b)(ii) in relation to him,

that evidence shall not be admitted or otherwise used in any prosecution of him for an offence against the laws of Botswana, other than the offence of perjury in relation to the giving of that evidence.

(2) This section binds the State.

18. Release of certain persons upon request by foreign country

Where—

(a) a person is being held in custody in accordance with a direction of the Director of Public Prosecutions under section 14; and

(b) the foreign country from which he has been brought requests his release from custody,

the Director of Public Prosecutions shall direct that he be released from custody.

19. Escaping

Any person who escapes from lawful custody while in Botswana pursuant to a request under section 13 shall be guilty of an offence and liable to imprisonment for a term not exceeding two years.

20. Arrest of person who has escaped from custody

(1) Any law enforcement officer may, without warrant, arrest a person, if he has reasonable grounds to believe that the person—

(a) has been brought to Botswana pursuant to a request under section 13; and

(b) has escaped from lawful custody while in Botswana pursuant to the request.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to custody in accordance with this Act.

21. Requests for giving of evidence at hearings in foreign countries

(1) Where—

(a) a proceeding relating to a criminal matter has commenced in a foreign country;

(b) the foreign country requests the attendance at a hearing in connection with the proceeding of a prisoner who is in Botswana (whether or not in custody);

(c) there are reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceeding; and

(d) the Director of Public Prosecutions is satisfied that—

(i) the prisoner has consented to giving evidence in the foreign country; and

(ii) the foreign country has given adequate undertakings in respect of the matters referred to in subsection (3),

the President may direct that the prisoner be released from prison for the purpose of travelling to the foreign country in the custody of a law enforcement officer or prison officer appointed by the Director of Public Prosecutions to give evidence at the proceeding.

(2) Where—

(a) a proceeding relating to a criminal matter has commenced in a foreign country;

(b) the foreign country requests the attendance at a hearing in connection with the proceeding of a person who is in Botswana;

(c) there are reasonable grounds to believe that the person is capable of giving evidence relevant to the proceeding; and

(d) the Director of Public Prosecutions is satisfied that—

(i) the person has consented to giving evidence in the foreign country, and

(ii) that country has given adequate undertakings in respect of the matters referred to in subsection (3),

the Director of Public Prosecutions may make arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person give evidence in the foreign country are—

(a) that he shall not—

(i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before his departure from Botswana;

(ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before his departure from Botswana; or

(iii) be required to give evidence in any proceeding in the foreign country other than the proceeding to which the request relates,

unless he has left the foreign country and returned voluntarily; or he has had the opportunity of leaving the foreign country and has voluntarily remained in that country otherwise than for the purpose of giving evidence in the proceeding to which the request relates;

(b) that any evidence given by him in the proceeding to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of him for an offence against a law of the foreign country other than the offence of perjury in relation to the giving of that evidence;

(c) that he will be returned to Botswana in accordance with arrangements agreed by the Director of Public Prosecutions;

(d) in a case where he is being held in custody in Botswana and the Director of Public Prosecutions requests the foreign country to make arrangements for his keeping him in custody while he is in the foreign country—

(i) the making of appropriate arrangements for that purpose;

(ii) that he will not be released from custody in the foreign country unless the Director of Public Prosecutions notifies an appropriate authority of the foreign country that he is entitled to be released from custody under the laws of Botswana; and

(iii) if he is released in the foreign country as mentioned in subparagraph (ii), that his accommodation and expenses pending the completion of the proceeding to which the request relates will be paid for by the foreign country; and

(e) such other matters, if any, as the Director of Public Prosecutions thinks appropriate.

22. Requests for assistance in relation to investigations in foreign countries

(1) Where—

(a) an investigation relating to a criminal matter has commenced in a foreign country;

(b) the foreign country requests the removal of a prisoner who is in Botswana (whether or not in custody) to the foreign country for the purpose of giving assistance in relation to the investigation;

(c) there are reasonable grounds to believe that the prisoner is capable of giving assistance in relation to the investigation; and

(d) the Director of Public Prosecutions is satisfied that—

(i) the prisoner has consented to being removed to the foreign country for the purpose of giving assistance in relation to the investigation; and

(ii) the foreign country has given adequate undertakings in respect of the matters referred to in subsection (3),

the President may direct that the prisoner be released from prison for the purpose of travelling to the foreign country in the custody of a law enforcement officer or prison officer appointed by the Director of Public Prosecutions to give assistance in relation to the investigation.

(2) Where—

(a) an investigation relating to a criminal matter has commenced in a foreign country;

(b) the foreign country requests that a person who is in Botswana travel to the foreign country to give assistance in relation to the investigation;

(c) there are reasonable grounds to believe that he is capable of giving assistance in relation to the investigation; and

(d) the Director of Public Prosecutions is satisfied that—

(i) he has consented to travel to the foreign country for the purpose of giving assistance in relation to the investigation; and

(ii) the foreign country has given adequate undertaking in respect of the matters referred to in subsection (3),

the Director of Public Prosecutions may make arrangements for him to travel to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person be removed to, or travel to, the foreign country for the purpose of giving assistance in relation to an investigation are—

(a) that he shall not—

(i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Botswana;

(ii) be subjected to any civil suit in respect of any act or omission of his that is alleged to have occurred, or that occurred, before his departure from Botswana; or

(iii) be required to give evidence in any proceeding in the foreign country,

unless he has left the foreign country, and returned voluntarily or he has had the opportunity of leaving the foreign country and has voluntarily remained in that country otherwise than for the purpose of giving assistance in relation to the investigation to which the request relates;

(b) that he will be returned to Botswana in accordance with arrangements agreed by the Director of Public Prosecutions;

(c) in a case where he is being held in custody in Botswana and the Director of Public Prosecutions requests the foreign country to make arrangements for keeping him in custody while he is in the foreign country—

(i) the making of appropriate arrangements for that purpose;

(ii) that he will not be released from custody in the foreign country unless the Director of Public Prosecutions notifies an appropriate authority of the foreign country that he is entitled to be released from custody under the laws of Botswana; and

(iii) if he is released in the foreign country as mentioned in subparagraph (ii), that his accommodation and expenses pending the completion of the investigation to which the request relates will be paid for by the foreign country; and

(d) such other matters, if any, as the Director of Public Prosecutions thinks appropriate.

23. Effect of removal to foreign country on prisoner's term of imprisonment

Where a prisoner who is serving a term of imprisonment for an offence against a law in Botswana is released from a prison pursuant to a request by a foreign country under section 21 or 22, the prisoner shall, while in custody in connection with the request (including custody outside Botswana), be deemed to be continuing to serve that term of imprisonment.

PART V

Custody of Persons in Transit (ss 24-26)

24. Transit

(1) Where—

(a) a person is to be transported in custody from a foreign country through Botswana to another foreign country for the purpose of giving evidence in a proceeding, or giving assistance in relation to an investigation, relating to a criminal matter in the other foreign country; and

(b) at least one of those foreign countries is a foreign country to which this Act applies, the person—

(i) may be transported through Botswana in the custody of another person; and

(ii) if an aircraft by which the person is being transported lands at a place in Botswana,

shall be kept in such custody as the Director of Public Prosecutions directs in writing until his transportation is continued.

(2) Where a person who is being held in custody pursuant to a direction under subsection (1) and his transportation is not, in the opinion of the Director of Public Prosecutions, continued within a reasonable time, the Director of Public Prosecutions may direct that he be transported in custody to the foreign country from which the person was first transported.

25. Escaping

Any person who being a person being kept in custody pursuant to a direction under section 24(1), escapes from such custody, shall be guilty of an offence and liable to imprisonment for a term not exceeding two years.

26. Arrest of person in transit

(1) Any law enforcement officer may, without warrant, arrest a person if the law enforcement officer has reasonable grounds to believe that the person was being kept in custody pursuant to a direction under section 24(1) and has escaped from that custody.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to custody in accordance with this Act.

PART VI
Proceeds of Crime (ss 27-32)

27. Requests for enforcement of orders

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.

[14 of 2018, s. 8.]

28. Requests for issue of orders in foreign countries

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 (Cap. 08:03)—

(a) a search warrant for tainted property;

(b) a restraining order;

(c) a production order; or

(d) a monitoring order.

[14 of 2018, s. 9.]

29. Request for enforcement of orders

(1) Where—

(a) 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.

[14 of 2018, s. 10.]

(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.

[14 of 2018, s. 10.]

(3) A foreign confiscation order, or a foreign restraining order, registered in the High Court has effect, and may be enforced, as if it were an order made by a court under the Proceeds and Instruments of Crime Act (Cap. 08:03).

[14 of 2018, s. 10.]

(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.

[14 of 2018, s. 10.]

30. Requests for search and seizure warrants in respect of tainted property

Where—

(a) a proceeding or investigation has commenced in respect of 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 (Cap. 08:03) 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.

[14 of 2018, s. 11.]

30A. Sharing confiscated property with a foreign country

(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.

[14 of 2018, s. 12.]

(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.

[14 of 2018, s. 12.]

(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.

[14 of 2018, s. 12.]

31. Requests for restraining orders

Where—

- (a) a criminal proceeding has commenced in a foreign country in respect of a serious offence;
- (b) there are reasonable grounds to believe that property that may be 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, not later than 7 days from the date of a request made under paragraph (c), apply to a magistrate's court or the High Court for the restraining order requested by the foreign country.

[16 of 2022, s. 2.]

32. Requests for information gathering orders

(1) Where—

- (a) a criminal proceeding or criminal investigation has commenced in a foreign country in respect of a serious offence;
- (b) a document in relation to the offence 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 the document, or
 - (ii) a search warrant under the Criminal Procedure and Evidence Act in respect of the document,

the Director of Public Prosecutions may, not later than 7 days from the date of a request made under paragraph (c), apply to a magistrate or a judge of the High Court for the order requested by the foreign country.

[16 of 2022, s. 3.]

(2) Where—

- (a) a criminal proceeding or criminal investigation has commenced in a foreign country in respect of a serious offence that is—
 - (i) a money laundering offence in respect of proceeds of a serious offence; or
 - (ii) an ancillary offence in relation to an offence of a kind referred to in subparagraph (i);
- (b) information about transaction conducted through an account with a financial institution in Botswana is reasonably believed to be relevant to the proceeding or investigation; and

(c) the 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 financial institution to give information to the police about transactions conducted through the account,

the Director of Public Prosecutions may, not later than 7 days from the date of a request made under paragraph (c), apply to a magistrate or a judge of the High Court for the order requested by the foreign country.

[16 of 2022, s. 3.]

32A. Confidentiality

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.

[14 of 2018, s. 15.]

PART VII ***Service of Documents (s 33)***

33. Service of documents

(1) Where a foreign country requests the Director of Public Prosecutions to arrange for the service in Botswana of a process relating to a criminal matter in the foreign country, the Director of Public Prosecutions may arrange for the service of the process.

(2) Without limiting the manner in which the service of a document in a foreign country may be proved in Botswana, service of such a document may be proved by affidavit of the person who served the document.

PART VIII ***Miscellaneous (ss 34-38)***

34. Delegation

(1) The Director of Public Prosecutions may, either generally or as otherwise provided by the instrument of delegation, delegate to an officer of the Attorney-General's Chambers all or any of his powers under this Act, other than this power of delegation or his powers under section 5.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Director of Public Prosecutions.

(3) A delegation under this section does not prevent the exercise of a power by the Director of Public Prosecutions.

35. Evidence

A certificate by the Director of Public Prosecutions stating that Botswana or a specified foreign country is a party to an arrangement in force is, for the purpose of any proceedings under this Act, *prima facie* evidence of the matters stated in the certificate.

36. Authentication of documents

(1) In a proceeding under this Act arising directly or indirectly from a request made under this Act, any document that is duly authenticated is admissible in evidence.

(2) A document is duly authenticated for the purposes of subsection (1) if—

(a) it purports to be signed or certified by a judge, magistrate or officer in or of a foreign country; and

(b) it purports to be authenticated by the oath of a witness or an officer of the Government of the foreign country or to be sealed with an official or public seal of the foreign

country or of a Minister of State, or of a Department or officer of the Government, of the foreign country.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other law of Botswana.

37. Regulations

The Minister may make regulations prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act; and
- (c) prescribing penalties not exceeding a fine of P1 000 for offences against the regulations.

38. Act not to cover arrest or extradition

Nothing in this Act shall be construed as authorising the extradition, or arrest or detention with a view to extradition, of any person.