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Office of Legislative Drafting, Attorney General's Department.

Statutory Rules 1993 No. L<sup>1</sup>

357/

## Mutual Assistance in Criminal Matters (Republic of Italy) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Mutual Assistance in Criminal Matters Act 1987*.

Dated L 1993.

15 December

L BILL HAYDEN/  
Governor-General

By His Excellency's Command,

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Attorney-General

M. LAVARCH/

### Citation

1. These Regulations may be cited as the Mutual Assistance in Criminal Matters (Republic of Italy) Regulations.

**Commencement**

2. These Regulations commence on 1 April 1994.

**Interpretation**

3. In these Regulations, unless the contrary intention appears:

"the Act" means the *Mutual Assistance in Criminal Matters Act 1987*.

**Application of Act**

4. The Act applies to the Republic of Italy subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to the Treaty on Mutual Assistance in Criminal Matters between Australia and the Republic of Italy done at Melbourne on 28 October 1988 (being the treaty a copy of the English text of which is set out in the Schedule).
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**SCHEDULE**

Regulation 4

**TREATY ON MUTUAL ASSISTANCE IN CRIMINAL  
MATTERS BETWEEN AUSTRALIA AND  
THE REPUBLIC OF ITALY**

Australia and the Republic of Italy, desiring to promote their collaboration in the field of assistance in criminal matters have agreed as follows:

**ARTICLE 1**

**SCOPE OF APPLICATION**

1. Each Contracting State shall, upon request, in accordance with the provisions of this Treaty, grant to the other State assistance in criminal proceedings and investigations relating to a criminal offence.
2. Such assistance shall consist of:
  - (a) location and identification of persons;
  - (b) service of documents;
  - (c) provision of documents and records;
  - (d) execution of requests for search and seizure;
  - (e) taking of evidence and statements of persons;
  - (f) making persons available to give evidence or to assist investigations; and
  - (g) tracing, freezing and confiscation of the proceeds of crime.
3. Each Contracting State shall grant to the other State other assistance which is not inconsistent with its laws.
4. This Treaty does not apply to offences which are exclusive to military law.

**SCHEDULE—continued****ARTICLE 2****CENTRAL AUTHORITIES**

A request under this Treaty shall be made by a Central Authority for each Contracting State. The Central Authorities shall communicate directly with each other. For Australia the Central Authority shall be the Attorney-General's Department. For the Republic of Italy the Central Authority shall be the Ministry of Grace and Justice.

**ARTICLE 3****CONTENTS OF REQUEST**

1. A request for assistance shall include:
  - (a) the name of the authority conducting the criminal proceeding or investigation relating to a criminal offence to which the request relates;
  - (b) the subject matter and nature of the criminal proceeding or investigation relating to a criminal offence and mentioning the relevant law;
  - (c) a description of the evidence or information sought or the acts to be performed;
  - (d) the purpose for which the evidence, information or action is sought; and
  - (e) any requirements for confidentiality.
2. Where appropriate, a request shall include:
  - (a) available information on the identity and whereabouts of the person to be located;
  - (b) the identity and location of the person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;
  - (c) the identity and location of the person from whom evidence is sought;
  - (d) as accurate a description as possible of the place to be searched and the property to be seized;
  - (e) a description of the manner in which any evidence is to be taken and recorded;

**SCHEDULE—continued**

- (f) the information or evidence sought and, where applicable, a list of any particular questions to be answered; and
  - (g) a description of any particular procedure to be followed in executing the request.
3. A request shall indicate the allowances and expenses to which a person appearing in the Requesting State will be entitled.
4. A request and accompanying documents shall be in both English and Italian.

**ARTICLE 4**

**ADDITIONAL INFORMATION**

If the Requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, that State shall request that additional information be furnished.

**ARTICLE 5**

**EXECUTION OF REQUESTS**

1. The Central Authority of the Requested State shall promptly comply with a request or, if appropriate, transmit it to the competent authority, which shall do everything in its power to execute a request.
2. The Requested State, as soon as practicable after processing the request for assistance, shall deliver to the Requesting State the response to the request and, if required, the original request for assistance.
3. The Requested State may postpone execution of a request or grant it subject to conditions if the requested assistance would prejudice an ongoing investigation or proceeding in the Requested State. The Requested State may also impose conditions where the granting of assistance would impose too great a burden on its resources.

**SCHEDULE—continued**

4. The Requested State shall promptly inform the Requesting State of circumstances, when they become known to the Requested State, which are likely to cause a significant delay in executing the request.

**ARTICLE 6**

**REFUSAL OF ASSISTANCE**

1. The Requested State may refuse assistance if:

- (a) the offence in connection with which assistance is requested is a political offence;
- (b) there are substantial grounds for believing that the request for assistance has been made to facilitate the prosecution of a person on account of that person's race, sex, religion, nationality or political opinions, or that person's position may be prejudiced for any of these reasons;
- (c) it is of the opinion that the execution of the request for assistance would seriously impair its sovereignty, security, or other public or national interests;
- (d) the request relates to an offence for which, in the Requesting State, the offender has been finally acquitted or has served the sentence imposed or has the benefit of a pardon or amnesty;
- (e) the request relates to conduct which is not an offence or could not be prosecuted in the Requested State in similar circumstances; or
- (f) the provision of the assistance would, or would be likely to, prejudice the safety of any person.

2. Before refusing to grant a request for assistance the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. The Requesting State shall comply with conditions imposed by the Requested State.

3. The Requested State shall promptly inform the Requesting State of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.

**SCHEDULE—continued**

**ARTICLE 7**

**RETURN OF MATERIAL**

The Requesting State shall return to the Requested State upon request any documents, records, or articles furnished in execution of a request, as soon as possible.

**ARTICLE 8**

**PROTECTING CONFIDENTIALITY AND RESTRICTING  
USE OF EVIDENCE AND INFORMATION**

1. The Requested State shall, if so requested, keep the contents of a request and its supporting documents, and the fact of granting of such assistance confidential. If the request cannot be executed without breaching confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.
2. The Requested State may require that evidence and information provided be kept confidential in accordance with conditions. Nevertheless, disclosure may be made where necessary as evidence in a public proceeding.
3. The Requesting State shall not use evidence or information obtained for purposes other than those stated in the request without the prior consent of the Requested State except that a Requesting State may use such evidence or information where it is obliged by its law to prosecute persons in respect of that evidence or information.

**ARTICLE 9**

**SERVICE OF DOCUMENTS**

1. Each Contracting State, upon request, shall cause service of any document of the other State.

**SCHEDULE—continued**

2. A request for service of a document requiring the appearance of a person before an authority of the Requesting State shall be transmitted to the Requested State not less than 40 days before the scheduled appearance. In urgent cases, the Requested State may waive this requirement.
3. The Requested State shall return a statement of service.

**ARTICLE 10**

**TAKING OF EVIDENCE BY THE REQUESTED STATE**

1. Each Contracting State, upon request, shall take the evidence of witnesses to be used in criminal proceedings in the territory of the other State.
2. For the purpose of this Treaty, the giving or taking of evidence shall include the production of documents, records or other articles.
3. If the law of the Requested State permits, it may allow the presence of an accused and representatives of the Requesting State as well as counsel for those persons and for the relevant witness. The competent authority may provide persons permitted to be present the opportunity to question the witness in accordance with the laws of the Requested State.
4. The witness may decline to give evidence where the law of the Requested State would permit that witness to decline to give evidence in similar circumstances in proceedings in the Requested State. Testimonial privileges under the laws of the Requesting State shall not apply in the execution of a request, but such questions of privilege shall be preserved for the Requesting State.
5. If the person summoned does not appear to give evidence, refuses or fails to give evidence, or gives false evidence, the Requested State shall apply the provisions and sanctions of its own law.
6. A witness shall be entitled to such allowances as may be provided for by the law of the Requested State.



**SCHEDULE—continued**

**ARTICLE 11**

**OBTAINING OF STATEMENTS OF PERSONS  
IN THE REQUESTED STATE**

Each Contracting State may request the other State to obtain the statements of persons for the purposes of a criminal matter. The Requested State shall endeavour to obtain the statements referred to.

**ARTICLE 12**

**TAKING OF EVIDENCE OR ASSISTING IN INVESTIGATIONS  
IN THE REQUESTING STATE**

1. In the case of a request for a person to appear as a witness in a criminal proceeding or to assist in investigations in the Requesting State, the Requested State shall request that person to comply with the request and seek that person's consent thereto.
2. The person shall be entitled to such allowances and expenses, including return travel costs to the Requested State, as are provided for by the law of the Requesting State.

**ARTICLE 13**

**AVAILABILITY OF PRISONERS TO GIVE EVIDENCE  
OR TO ASSIST IN INVESTIGATIONS**

1. Each Contracting State may transfer temporarily, upon request, to the other State a prisoner in custody to give evidence and to assist in investigations, provided the prisoner consents.
2. The Requesting State shall hold the prisoner in custody, if the original sentence has not expired, and shall return the prisoner in custody to the Requested State at the conclusion of the proceeding in relation to which the prisoner's transfer is sought or at such earlier time as the prisoner's presence is no longer required, unless the Requested State formally requests the prisoner be discharged.

**SCHEDULE—continued**

3. Where the sentence imposed on a person transferred under this Article expires while the person is in the Requesting State, that person shall thereafter be entitled to such allowances and expenses, including return travel costs to the Requested State, as a person transferred pursuant to Article 12.

**ARTICLE 14**  
**IMMUNITY**

1. A person who consents to give evidence in proceedings or to assist in investigations in the Requesting State under Articles 12 or 13 shall not be prosecuted, detained or punished for any offence or sentence, concerning criminal law, which preceded the person's departure from the Requested State. Nor will there be advantage taken of the presence of that person for the purpose of civil proceedings in relation to facts which preceded the person's departure from the Requested State.

2. Immunity provided in this Article shall cease if, fifteen days after the person appearing has been notified that his or her presence is no longer required and that person, being free to leave, has not left the Requesting State or, having left, has returned.

3. A witness appearing before an authority in the Requesting State shall not be subject to prosecution based on his or her evidence to the extent that the evidence is true.

4. A person who consents to be transferred pursuant to Articles 12 or 13 shall not be required to give evidence in proceedings other than the proceedings to which the request relates unless the person consents. The Requested State's consent shall also be required in the case of a person transferred pursuant to Article 13.

5. A person who does not consent pursuant to paragraph 1 of this Article shall not by reason thereof be liable to any penalty or be submitted to any coercive measures notwithstanding any contrary statement in the request.

**SCHEDULE—continued**

**ARTICLE 15**

**PROVISION OF DOCUMENTS AND RECORDS**

1. Each Contracting State shall provide, upon request, to the other State, copies of official documents and records that are open to public access.
2. The Requested State may provide, upon request, copies of any official document or record, not open to public access, in the same manner and under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

**ARTICLE 16**

**AUTHENTICATION**

Each Contracting State shall, upon request, authenticate any documents, records or articles to be transmitted to the other State under this Treaty in the manner, subject to its law, required by the other State.

**ARTICLE 17**

**SEARCH, SEIZURE AND CONFISCATION**

1. The Requested State shall, within the limits of its law, execute requests for search and seizure of documents or property relating to an offence as well as requests for confiscation of proceeds or profits of crime. In urgent cases, the Requested State shall adopt all possible interim measures in order to preserve the existing situation and to safeguard threatened legal interests and evidence.
2. Such documents, property, proceeds or profits of crime shall, upon request and within the limits of the law of the Requested State, be confiscated and handed over to the Requesting State. The rights of third parties shall in any case be protected.

**SCHEDULE—continued**

**ARTICLE 18**

**REPRESENTATION AND EXPENSES**

1. In any proceedings arising out of a request for assistance the Requested State shall represent the interests of the Requesting State within the limits of its law.
2. Each State shall render assistance without cost to the other State except for:
  - (a) allowances of private experts specified in a request;
  - (b) all expenses and allowances related to transfer of witnesses pursuant to Article 12; and
  - (c) all expenses related to the transfer and custody of witnesses in custody pursuant to Article 13.

**ARTICLE 19**

**CONSULTATION**

The Contracting States shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either generally or in relation to a particular case.

**ARTICLE 20**

**ENTRY INTO FORCE AND TERMINATION**

1. This Treaty shall enter into force on the first day of the month following the period of three months after the date on which the Contracting States have notified each other that their respective requirements for the entry into force of this Treaty have been complied with.
2. This Treaty shall apply also to the execution of requests submitted before its entry into force as well as to those requests submitted after its entry into force that refer to facts occurring prior to its entry into force.

**SCHEDULE—continued**

3. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the first day of the month following the period of six months after the date of receipt of such notice.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE at Melbourne on the twenty-eighth day of October One Thousand nine hundred and eighty eight in English and Italian both texts being equally authentic.

For Australia  
Michael Tate

For the Republic of Italy  
Gilberto Bonalumi

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on

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1993.

23 December