

# Australian Treaty Series

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## Australian Treaty Series 1992 No 31

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

**Treaty between Australia and the United Mexican States on Mutual Legal**

**Assistance in Criminal Matters**

**(Guadalajara, 6 May 1991)**

**Entry into force: 30 June 1992**

**AUSTRALIAN TREATY SERIES**

**1992 No. 31**

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### **TREATY BETWEEN AUSTRALIA AND THE UNITED MEXICAN STATES ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

**AUSTRALIA AND THE UNITED MEXICAN STATES,**

**DESIRING** to extend to each other the widest possible measure of co-operation to combat crime,

**HAVE AGREED** as follows:

#### Article 1

##### Scope of the Treaty

1. The Parties shall co-operate with each other by taking all appropriate measures that they have legal authority to take in order to provide mutual assistance in criminal

matters, in accordance with the terms of this Treaty and subject to the limitations of their respective domestic legal provisions. Such assistance shall deal with the prevention, investigation and prosecution of offences or any other criminal proceedings arising from acts which are within the competence or jurisdiction of the Requesting Party at the time the assistance is requested.

2. Criminal matters include matters connected with offences against a law relating to taxation, customs duties, foreign exchange control and other revenue matters.

3. This Treaty does not empower one Party's authorities to undertake, in the territorial jurisdiction of the other, the exercise and performance of the functions or authority exclusively entrusted to the authorities of that other Party by its national laws or regulations.

4. Subject to the provisions of paragraph 1 of this Article, requests for assistance under this Treaty will be executed, except that the Requested Party may deny a request to the extent that:

(a) the execution of the request would require the Requested Party to exceed its legal authority or would otherwise be prohibited by the legal provisions in force in the Requested State, in which case the Central Authorities referred to in Article 3 of this Treaty shall consult with each other to identify alternative lawful means for securing assistance;

(b) the Requested Party is of the opinion that the request, if granted, would prejudice its sovereignty, security, national interest or other essential public interests;

(c) the Requested Party regards the request as concerning an offence which is political or of a political character;

(d) the request relates to military offences, except those which constitute offences under ordinary criminal law;

(e) the request does not comply with the provisions of this Treaty; or

(f) its laws otherwise permit such denial.

5. In conformity with this Article and in accordance with the other provisions of this Treaty, such assistance will include:

(a) the taking of testimony or statements of persons;

- (b) the provision of documents, records and evidence;
- (c) search and seizure;
- (d) the legal execution of requests for the taking of measures to locate, restrain, or forfeit assets as ordered by the competent authorities of the Requested Party in accordance with its constitutional and other legal provisions;
- (e) making detained persons and others available to give evidence or assist investigations;
- (f) serving documents;
- (g) locating or identifying persons;
- (h) exchanging information; and
- (i) other forms of assistance mutually agreed by the Parties, in conformity with the object and purpose of this Treaty.

## Article 2

### Other assistance

This Treaty shall not derogate from obligations subsisting between the Parties whether pursuant to other treaties or arrangements or otherwise, nor prevent the Parties providing assistance to each other pursuant to other treaties or arrangements or otherwise.

## Article 3

### Central Authorities

1. With the purpose of ensuring due co-operation between the Parties in providing to each other mutual assistance which falls within the scope of this Treaty, Australia designates as its Central Authority the Attorney-General's Department, Canberra and the United Mexican States designates as its Central Authority its Procuraduria General de la Republica. The Central Authority of the Requested Party shall promptly comply with requests or, when appropriate, shall transmit them to other competent authorities to do so. The competent authorities of the Requested Party shall take all necessary measures to promptly execute the requests in accordance with Article 1.

2. The Central Authorities shall consult regularly with each other in order to secure the most effective implementation of this Treaty and to anticipate and resolve problems that may arise in its application.

#### Article 4

##### Limitations on assistance

1. Before refusing the execution of any request pursuant to this Treaty, the Central Authority of the Requested Party shall determine whether there are conditions whose satisfaction would make possible the rendering of assistance. If the Requesting Party accepts the assistance subject to those conditions, it shall comply with them.

2. The Central Authority of the Requested Party shall promptly inform that of the Requesting Party of the reason for denying the execution of the request.

#### Article 5

##### Contents of requests

1. Requests for assistance shall include:

- (a) the purpose of the request and a description of the assistance sought;
- (b) the name of the competent authority conducting the investigation or proceedings to which the request relates;
- (c) a description of the nature of the criminal matter including a statement of the relevant laws;
- (d) except in cases of a request for service of documents or exchange of information, a description of the acts or omissions or matters alleged to constitute the offence;
- (e) the court order, if any, sought to be enforced and a statement to the effect that it is a final order;
- (f) details of any particular procedure or requirement that the Requesting Party wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;
- (g) the requirements, if any, of confidentiality and the reasons therefor; and

(h) specification of any time limit within which compliance with the request is desired.

2. Requests for assistance, to the extent necessary and insofar as possible, shall also include:

(a) the identity, nationality and location of the person or persons who are the subject of, or who may have information relevant to, the investigation or proceeding;

(b) a description of the information, statement or evidence sought;

(c) a description of the documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked to produce them; and

(d) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.

3. Requests, supporting documents and other communications made pursuant to this Treaty shall be in the language of the Requesting State and accompanied by a translation into the language of the Requested State.

4. If the Requested Party considers that the information contained in the request is not sufficient in accordance with this Treaty to enable the request to be dealt with, it may request additional information.

## Article 6

### Execution of requests

1. Requests for assistance shall be carried out in accordance with the law of the Requested Party and, insofar as it is not incompatible with that law, in the manner requested by the Requesting Party.

2. The Requested Party may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in the Requested State. The Requested Party shall, upon request, provide certified copies of documents.

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

## Article 7

## Return of material to Requested Party

Where required by the Requested Party, the Requesting Party shall return the material provided under this Treaty when no longer needed for the relevant investigation or proceedings.

### Article 8

#### Protecting confidentiality and restricting use of evidence and information

1. The Requested Party shall keep the application for assistance, the contents of a request and its supporting documents, and the fact of granting such assistance, confidential. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine whether the request should nevertheless be executed.
2. The Requesting Party shall keep confidential information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.
3. The Requesting Party shall not use information or evidence obtained, nor anything derived from either, for purposes other than those stated in the request without the prior consent of the Requested Party.

### Article 9

#### Service of documents

1. The Requested Party shall effect service of documents which are transmitted to it for this purpose by the Requesting Party.
2. A request to effect service of a document requiring the appearance of a person shall be made to the Requested Party not less than 45 days before the date on which the appearance is required. In urgent cases, the Requested Party may waive this requirement.
3. The Requested Party may effect service of any document by mail or, if the Requesting Party so requests, in any other manner required by the law of the Requesting Party which is not inconsistent with the law of the Requested Party.

4. The Requested Party shall forward to the Requesting Party proof of service of the documents. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.

## Article 10

### Taking of evidence

1. When a request is made for the purpose of a proceeding in relation to a criminal matter in the Requesting State, the Requested Party shall take the evidence of witnesses for transmission to the Requesting Party.
2. For the purposes of this Treaty, the giving or taking of evidence shall include the production of documents, records or other material.
3. For the purposes of requests under this Article the Requesting Party shall specify the subject matter about which persons are to be examined, including any questions to be put.
4. The Parties to the relevant proceedings in the Requesting State, their legal representatives and representatives of the Requesting Party may, subject to the laws of the Requested Party, attend the proceedings.
5. A person who is required to give evidence in the Requested State under this Article may decline to give evidence where the law of the Requested Party permits that witness to decline to give evidence in similar circumstances in proceedings originating in the Requested State.
6. Any claim of immunity, incapacity or privilege under the laws of the Requesting Party shall be decided by the competent authorities of the Requesting Party.

## Article 11

### Obtaining of statements of persons

1. The Requested Party shall, upon request, endeavour to obtain statements of persons for the purposes of an investigation or proceeding in relation to a criminal matter in the Requesting State.
2. For the purposes of requests under this Article the Requesting Party shall specify the subject matter about which it seeks statements from persons including any questions which it seeks to be put to the person.

## Article 12

### Availability of persons in custody to give evidence or to assist investigations

1. A person in custody in the Requested State may, at the request of the Requesting Party, be temporarily transferred to the Requesting State to assist investigations or to give evidence.
2. The Requested Party shall not transfer a person in custody to the Requesting State unless the person consents to that transfer.
3. While the person transferred is required to be held in custody under the law of the Requested Party, the Requesting Party shall hold that person in custody and shall return that person in custody to the Requested State at the conclusion of the matter in relation to which transfer is sought under paragraph 1 of this Article or at such earlier time as the person's presence is no longer required.
4. When the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in Article 13.

## Article 13

### Availability of other persons to give evidence or assist investigations

1. The Requesting Party may request the assistance of the Requested Party in seeking a person's consent to:
  - (a) appear as a witness in proceedings in relation to a criminal matter in the Requesting State unless that person is the person charged; or
  - (b) assist investigations in relation to a criminal matter in the Requesting State.
2. The Requested Party shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting Party, request the person to consent to appear as a witness in proceedings or to assist in investigations.

## Article 14

### Safe conduct

1. Subject to paragraph 2, where a person is in the Requesting State pursuant to a request made under Articles 12 or 13:



(a) that person shall not be detained, prosecuted or punished in the Requesting State, for any offence, nor be subject to any civil suit, being a civil suit to which the person could not be subjected if the person were not in the Requesting State, in respect of any act or omission which preceded the person's departure from the Requested State; and

(b) that person shall not, without that person's consent, be required to give evidence in any proceedings or to assist any investigation other than the proceedings or investigation to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if that person, being free to leave, has not left the Requesting State within a period of 30 days after that person has been officially notified that that person's presence is no longer required or, having left, has returned.

3. A person appearing in the Requesting State pursuant to a request made under Articles 12 or 13 shall be subject to the law of that State relating to contempt, perjury and the making of false declarations.

4. A person who does not consent to a request pursuant to Articles 12 or 13 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure notwithstanding any contrary statement in the request or in any document accompanying the request.

## Article 15

### Provision of publicly available and official documents

1. The Requested Party shall provide copies of documents and records that are open to public access as part of a public register or otherwise, or that are available for purchase by the public.

2. If the legal provisions of the Requested Party do not prohibit it, the Requested Party may provide any record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities.

## Article 16

### Certification and authentication

1. Documents or materials supporting a request for assistance involving the use of compulsory measures or the forfeiture of proceeds or instrumentalities of crime shall

be authenticated in accordance with paragraphs 2 or 3 of this Article. Documents or materials furnished in response to a request shall be similarly authenticated if requested.

2. Documents and materials to be used in Australia are authenticated for the purposes of this Treaty if:

(a) they purport to be certified by a competent authority under United Mexican States law; and

(b) they purport to be sealed with an official seal of the United Mexican States.

3. Documents and material to be used in the United Mexican States are authenticated for the purposes of this Treaty if:

(a) they are certified by a competent authority under Australian law; and

(b) they are legalised by the Australian Department of Foreign Affairs and Trade and by the Mexican diplomatic or consular representative duly accredited to Australia.

## Article 17

### Search and seizure

1. The Requested Party shall, insofar as its law permits, carry out requests for search and seizure and delivery of material to the Requesting Party provided the information supplied, including additional information requested pursuant to paragraph 4 of Article 5, if any, would justify such action under the law of the Requested Party.

2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure and the subsequent custody of the material seized.

3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party.

## Article 18

### Proceeds of crime

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instrumentalities of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the

Requesting Party shall notify the Requested Party of the reasons for its belief that such proceeds or instrumentalities may be located in its jurisdiction.

2. Where pursuant to paragraph 1 suspected proceeds or instrumentalities of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of those suspected proceeds or instrumentalities of crime pending a final determination in respect of those proceeds or instrumentalities by a court of the Requesting Party.

3. The Requested Party shall, to the extent permitted by its law, give effect to a final order forfeiting or confiscating the proceeds or instrumentalities of crime made by a court of the Requesting Party.

4. In the application of this Article, the rights of bona fide third parties shall be respected under the law of the Requested Party.

5. The Requested Party shall retain the property referred to in paragraph 3.

6. In this Article "proceeds of crime" means any property suspected, or found by a court, to be property derived or realised, directly or indirectly, as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

## Article 19

### Subsidiary arrangements

The Central Authority of each Party may enter into subsidiary arrangements consistent with the object and purpose of this Treaty and with the laws of both Parties.

## Article 20

### Representation and expenses

1. Unless otherwise provided in this Treaty, the Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

2. The Requested Party shall meet the cost of fulfilling the request for assistance except that the Requesting Party shall bear:

(a) the expenses associated with conveying any person to or from the territory of the Requested State and any fees, allowances or expenses payable to that person whilst in the Requesting State pursuant to a request under Articles 12 or 13;

(b) the expenses associated with conveying custodial or escorting officers; and

(c) where required by the Requested Party, exceptional expenses in fulfilling the request.

## Article 21

### Consultation

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

## Article 22

### Entry into force and termination

1. This Treaty shall enter into force on the date on which the Parties have notified each other in writing through the diplomatic channel that their respective domestic requirements for the entry into force of this Treaty have been complied with.[\[1\]](#)

2. This Treaty shall apply to requests whether or not the relevant acts or omissions occurred prior to this Treaty entering into force.

3. Either Party may terminate this Treaty by notice in writing through the diplomatic channel at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

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

**DONE** at Guadalajara on the sixth day of May, One thousand nine hundred and ninety-one in English and Spanish, both texts being equally authentic.

FOR AUSTRALIA: FOR THE UNITED MEXICAN STATES:

[Signed:] [Signed:]

NEAL BLEWETT FERNANDO SOLANA

