

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE  
CANBERRA

**Treaty between Australia and the Federative Republic of Brazil on Mutual Legal  
Assistance in Criminal Matters**

(Brisbane, 15 November 2014)

Not yet in force  
[2014] ATNIF 32

Australia and the Federative Republic of Brazil hereinafter referred to as “the Parties”,

Desiring to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through co-operation and mutual legal assistance in criminal matters,

Have agreed as follows:

## **PART I GENERAL PROVISIONS**

### **Article 1 Scope of assistance**

1. The Parties shall provide mutual legal assistance in accordance with the provisions of this Treaty, in connection with the investigation and prosecution of offences, in proceedings related to criminal matters, irrespective of whether the assistance is sought or to be provided by a court or other competent authority.

2. Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, customs duties, foreign exchange and other financial or revenue matters.

3. Assistance shall include:

- a) taking of evidence and obtaining statements of persons, including experts;
- b) provision of information, documents and other records, including criminal and government records, judicial documents and expert evaluations;
- c) location of persons and objects, including their identification;
- d) examining objects and sites to the extent that it is not inconsistent with the laws of the Requested Party;
- e) search and seizure;
- f) delivery of property and evidence;
- g) making persons in custody and others available to give evidence or assist investigations;
- h) service of documents, including documents seeking the attendance of persons;

- i) measures to locate, restrain and forfeit the proceeds and instruments of crime and return and share assets;
- j) other assistance consistent with the objects of this Treaty and the law of the Requested Party.

4. For the purposes of this Treaty, the Central Authority of the Requesting Party may, in accordance with its domestic laws, process or make requests for mutual legal assistance on behalf of other authorities, including those authorities responsible for, or entitled to conduct, investigations, prosecutions or judicial proceedings in accordance with the domestic law of the Requesting Party.

## **Article 2 Exclusions**

1. Assistance shall not include:
  - a) the extradition of any person;
  - b) the execution in the territory of the Requested Party of criminal judgments imposed in the territory of the Requesting Party except to the extent permitted by the law of the Requested Party and this Treaty; and
  - c) the transfer of persons in custody to serve sentences.

## **Article 3 Execution of Requests**

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner required by the Requesting Party.
2. The Requested Party, in accordance with its laws and procedures, may execute a request for assistance regardless of bank secrecy.
3. The Requested Party shall respond to reasonable inquiries by the Requesting Party concerning progress toward execution of the request.
4. The Requested Party shall promptly inform the Requesting Party of circumstances, when they become known, which are likely to cause a significant delay in responding to the request.
5. The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request.

**Article 4**  
**Refusal or Postponement of Assistance**

1. Assistance may be refused if:
  - a) the request relates to an offence in respect of which the death penalty may be imposed or executed;
  - b) the execution of the request would impair its sovereignty, security, public order, essential public interest or prejudice the safety of any person;
  - c) the request relates to an offence that is regarded by the Requested Party as an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, of a political character;
  - d) there are grounds to believe the request has been made for the purpose of prosecuting a person on account of race, sex, religion, nationality, ethnic origin or political opinions, or that that person's position may be prejudiced for any of these reasons;
  - e) the request relates to an offence the prosecution of which in the Requesting Party would be incompatible with the Requested Party's law on double jeopardy;
  - f) the request relates to an offence that is regarded by the Requested Party as an offence under military law, which is not also an offence under ordinary criminal law;
  - g) the request related to an offence where acts or omissions alleged to constitute that offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence, or could not be prosecuted in the Requested Party in similar circumstances; or
  - h) subject to Article 11, provision of the assistance sought could impose an excessive burden on the human or financial resources of that Party.
2. Assistance may be temporarily delayed by the Requested Party if execution of the request would interfere with an ongoing investigation, prosecution or civil proceeding in the territory of the Requested Party. Where appropriate, the Requested Party may, upon request, provide certified copies of documents.
3. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
4. Before refusing to grant a request for assistance or before postponing the grant of such assistance, the Requested Party shall consider whether assistance may be granted

subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions it shall comply with them.

5. For the purposes of Article 4(1)(g), in determining whether the offence is an offence against the law of both Parties:

- a) it shall not matter whether the laws of the Parties place the acts or omissions constituting the offence within the same category of the offence or denominate the offence by the same terminology;
- b) the totality of the acts or omissions shall be taken into account and it shall not matter whether, under the laws of the Parties, the constituent elements of the offence differ.

## **PART II PROCEDURES**

### **Article 5 Contents of Requests**

1. In all cases requests for assistance shall include:

- a) the name and contact details of the competent authority conducting the investigation or proceedings to which the request relates;
- b) a description of the nature of the investigation or proceedings, including a summary of the relevant facts and provision of the laws applicable to the request;
- c) the purpose for which the request is made and the nature of the assistance sought;
- d) the need, if any, for confidentiality and the reasons therefore; and
- e) any time limit within which compliance with the request is desired.

2. To the extent necessary and possible, requests for assistance shall also contain the following information:

- a) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
- b) details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefore;
- c) in the case of requests for the taking of evidence or search and seizure, a statement indicating the basis for belief that evidence may be found in the

jurisdiction of the Requested Party, as well as a precise description of the place to be searched and the articles to be seized or the appropriate person to be asked to produce the evidence;

- d) in the case of requests to take evidence from a person, a statement as to whether sworn or affirmed statements are required, a description of the subject matter of the evidence or statement sought, and a list of questions to be asked;
- e) in the case of delivery of evidence, the person or class of persons who will have custody of the evidence, the place to which the evidence is to be removed, any tests to be conducted and the date, if any, by which the evidence will be returned;
- f) in the case of making persons in custody available for giving evidence or assisting in investigations, the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return;
- g) the court order, if any, sought to be enforced and a statement to the effect that it is a final order; and/or
- h) information as to any allowances and/or expenses to which a person giving evidence or assisting in investigations in the Requesting Party would be entitled.

3. 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, that Party may request that additional details be furnished.

4. A request for assistance shall be in writing. However, in urgent circumstances, a request may be made by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity. In such cases the Requesting Party shall confirm the request in writing promptly thereafter unless the Requested Party agrees otherwise.

## **Article 6**

### **Central Authorities**

1. Each Party shall designate a Central Authority for transmitting and receiving requests under this Treaty. The Central Authority for Australia shall be the Commonwealth Attorney-General's Department; the Central Authority for Brazil shall be the Ministry of Justice.

2. Requests under this Treaty shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party. However, the Parties may at any time designate any other authority as a Central Authority for the purposes of this Treaty. Notification of such a designation will take place through diplomatic channels.

3. The Central Authorities shall communicate directly with each other, however this does not preclude communication through diplomatic channels.

**Article 7**  
**Limitation of use and Confidentiality**

1. The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished or the source of such information or evidence be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.
2. The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.
3. The Requested Party shall, to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request except to the extent necessary to execute it or where the disclosure is specifically authorised by the Requesting Party in accordance with any terms and conditions it may specify.
4. Subject to paragraph 3 of this Article, if the request cannot be executed without breaching the confidentiality requirements stated in the request, the Requested Party shall so inform the Requesting Party which shall then determine the extent to which it wishes the request to be executed.

**Article 8**  
**Certification and Authentication**

1. Subject to paragraph 2, documents processed through the Central Authorities in accordance with this treaty shall be exempt from certification or authentication, unless otherwise required.
2. Insofar as not prohibited by the law of the Requested Party, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting Party in order to make them admissible according to the law of the Requesting Party.

**Article 9**  
**Language**

Requests and supporting documents shall be accompanied by a translation into the language of the Requested Party.

**Article 10**  
**Representation**

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.

### **Article 11 Expenses**

1. The Requested Party shall meet the cost of executing 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 Party at the request of the Requesting Party, and any allowance and/or expenses payable to that person while in the territory of the Requesting Party pursuant to a request under Article 16 or 17 of this Treaty;
  - b) the expenses associated with conveying custodial or escorting officers; and
  - c) the expenses and fees of experts in the territory of either the Requested Party or the Requesting Party.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

## **PART III SPECIFIC PROVISIONS**

### **Article 12 Taking of evidence**

1. Where a request is made for the purpose of a proceeding in relation to a criminal matter in the territory of the Requesting Party, the Requested Party shall, upon request, 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 purpose of requests under this Article the Requesting Party shall specify the subject matters about which persons are to be examined, including any questions to be put.
4. The Parties to the relevant proceedings in the Requesting Party, their legal representatives and representatives of the Requesting Party may, subject to the law and procedures of the Requested Party, appear, question or present questions to be made to the person being examined.



5. A person who is required to give evidence in the Requesting Party under this Article may decline to give evidence where either:

- a) the law of the Requested Party permits that witness to decline to give evidence in similar circumstance in proceedings originating in the Requested Party; or
- b) where the law of the Requesting Party permits that witness to decline to give evidence in such proceedings in the Requesting Party.

6. If any person claims that there is a right to decline to give evidence under the law of the Requesting Party, the Central Authority of that Party shall, upon request, provide a written declaration to the Central Authority of the Requested Party as to the existence of that right. In the absence of evidence to the contrary, the declaration shall provide sufficient evidence as to the existence of that right.

### **Article 13**

#### **Obtaining of Statements**

1. The Requested Party shall, upon request, endeavor to obtain statements of persons for the purpose of an investigation or proceeding in relation to a criminal matter in the territory of the Requesting Party.

2. For the purpose of requests made 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 14**

#### **Presence of Persons Involved in Proceedings in the Requested Party**

1. The Requested Party shall, upon request, inform the Requesting Party of the time and place of execution of the request for assistance.

2. To the extent not prohibited by the law of the Requested Party, judges or officials of the Requesting Party and other persons concerned in the investigation or proceedings may be permitted to be present at the execution of the request and to participate in the proceedings in the territory of the Requested Party.

### **Article 15**

#### **Transmission and Return of Documents and Objects**

1. When the request for assistance concerns the transmission of records or documents, copies or originals, if required, may be transmitted by the Requested Party.

2. The original records or documents and the objects transmitted to the Requesting Party shall be returned to the Requested Party as soon as possible, upon the latter's request.

**Article 16**  
**Availability of Persons to Give Evidence or Assist Investigations in the Requesting Party**

1. The Requesting Party may request that a person be made available to give evidence or to assist an investigation.

2. The Requested Party shall, if satisfied that appropriate arrangements for the person's security will be made, seek that person's consent to assist in the investigation or to appear as a witness to give evidence in the Requesting Party. That person shall be informed of any expenses and/or allowances payable.

**Article 17**  
**Making Persons in Custody Available to Give Evidence or Assist Investigations**

1. A person in custody in the territory of the Requested Party may, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to give evidence or assist in investigations or proceedings, provided that the person consents to that transfer and there are no overriding grounds against transferring the person.

2. Where the person transferred is required to be kept in custody under the law of the Requested Party, the Requesting Party shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request or at such earlier time as that person is no longer required.

3. Where 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 treated as a person present in the territory of the Requesting Party pursuant to a request under Article 16.

**Article 18**  
**Safe Conduct**

1. Any person who attends in the territory of the Requesting Party pursuant to Article 16 or 17 shall not:

- a) be detained, prosecuted or punished by that Party for any offence or be subject to any civil suit in the territory of that Party in respect of any act or omission which preceded that person's departure from the territory of the Requested Party; or

- b) without that person's consent be required to give evidence in any proceeding other than the proceeding to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if a person, being free to leave the Requesting Party, has not left it within a period of 30 (thirty) consecutive days after being officially notified that that person's attendance is no longer required or, having left the territory, has returned.

3. Any person who fails to appear in the territory of the Requesting Party may not be subjected to any sanction or compulsory measure in the territory of the Requested Party or in the territory of the Requesting Party unless the person returns voluntarily to the territory of the Requesting Party and is there again duly served and fails to comply with that later service.

### **Article 19**

#### **Proceeds and Instruments of Crime**

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments 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 basis of its belief that such proceeds or instruments may be located in its jurisdiction.

2. Where, pursuant to paragraph 1 of this Article, suspected proceeds or instruments of crime are found, the Requested Party shall take measures, as are permitted by its law, including provisional measures if appropriate, to freeze, seize and confiscate such proceeds or instruments.

3. The Requested Party shall, to the extent permitted by its law, give effect to a final order to forfeit or confiscate the proceeds or instruments of crime made by a court of the Requesting Party or take such other appropriate action to secure the proceeds or instruments following a request by the Requesting Party.

4. The Party that has custody over proceeds and instruments of crime shall dispose of them according to its laws. Insofar as its laws so permit, and on such terms as may be appropriate, the said Party may share with or return to the other any confiscated property or the proceeds from the sale thereof, less any costs resulting from the granting of assistance. The transfer of such property or proceeds shall generally be made on the basis of a final order referred to in paragraph 3 of this Article; however, the Requested Party may transfer or return such property or proceeds at an earlier stage, in accordance with its domestic law.

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

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.

7. In this Article, “instruments of crime” means any property used in or intended to be used in, or in connection with, the commission of an offence.

## **Article 20**

### **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 forty-five (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 21**

### **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. The Requested Party may provide copies of any official documents or records in the same manner and under the same conditions as such documents or records may be provided to its own law enforcement and judicial authorities.

## **Article 22**

### **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 3 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 required by the Requesting Party concerning the result of any search, the place 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.

## **PART IV FINAL PROVISIONS**

### **Article 23 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 or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

### **Article 24 Scope of Application**

This Treaty shall apply to any request presented after its entry into force even if the relevant acts or omissions occurred before that date.

### **Article 25 Amendment**

This Treaty may be amended at any time by mutual consent of the Parties, in accordance with domestic procedures.

### **Article 26 Entry into Force and Termination**

1. This Treaty shall enter into force 30 (thirty) days after Parties have notified each other in writing through the diplomatic channel that their respective requirements for entry into force have been fulfilled.

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

**Article 27**  
**Consultation and Dispute Settlement**

1. The Parties shall consult promptly, at the request of either, concerning the interpretation, application or implementation of this Treaty either generally or in relation to a particular case.
  
2. Any dispute arising out of the interpretation, application or implementation of this Treaty shall be resolved through consultation by diplomatic channels if the Central Authorities of the Parties are themselves unable to reach agreement.

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

DONE at Brisbane in duplicate in the English and Portuguese languages, each text being equally authentic, this 15<sup>th</sup> day of November, 2014.

FOR AUSTRALIA

FOR THE FEDERATIVE  
REPUBLIC OF BRAZIL