

Documents tabled on 18 September 2007:

National Interest Analysis [2007] ATNIA XXX

with attachment on consultation

**Treaty between Australia and the State of the United Arab Emirates
on Mutual Legal Assistance in Criminal Matters
(Hobart, 26 July 2007)**

[2007] ATNIF 17

Background information:

The United Arab Emirates political brief and country fact sheet

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NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Treaty between Australia and the State of the United Arab Emirates on Mutual Legal Assistance in Criminal Matters (Hobart, 26 July 2007)

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Nature and timing of proposed treaty action

1. *The Treaty between Australia and the State of the United Arab Emirates on Mutual Legal Assistance in Criminal Matters* (the Treaty) was approved by the Federal Executive Council on 30 November 2006, and signed for Australia on 26 July 2007, by the Minister for Justice and Customs, Senator the Hon David Johnston, in Hobart.
2. Article 24 of the Treaty provides that the Treaty shall enter into force 30 days after the date on which instruments of ratification are exchanged. Before Australia can exchange instruments of ratification, regulations need to be made under the *Mutual Assistance in Criminal Matters Act 1987* (the MA Act) to implement the Treaty.

Overview and national interest summary

3. The purpose of the Treaty is to better enable Australia and the United Arab Emirates to assist each other in the investigation, prosecution and suppression of crimes including terrorism, drug trafficking, fraud, money laundering and people trafficking. Australia has similar mutual assistance (MA) treaties with 27 other countries and is also a party to a number of multilateral agreements that impose MA obligations.
4. MA treaties allow Australia to obtain information and evidence for the investigation or prosecution of a crime. They also facilitate the location, restraint, forfeiture and repatriation of instruments and proceeds of crime.
5. The Treaty is based on Australia's model MA treaty and the provisions of the MA Act.

Reasons for Australia to take the proposed treaty action

6. MA is a formal process whereby the Government of one country (the Requesting State) requests assistance from the Government of another country (the Requested State) in a criminal investigation or prosecution of a serious crime. Assistance may also extend to locating, restraining and forfeiting the proceeds of criminal activity in the Requested State's jurisdiction in relation to a criminal activity that took place in the Requesting State.
7. MA treaties are not the only way in which Australia and other countries can assist each other in the investigation or prosecution of criminal matters. Assistance based on reciprocity is possible where both parties have MA laws enabling assistance to be requested and provided in the absence of a treaty. The MA Act enables Australia to provide assistance on the basis of reciprocity.
8. Treaties have a range of benefits over arrangements based on reciprocity. Treaties provide certainty, impose mutual obligations in international law and institute practical arrangements for requesting and providing MA.
9. The United Arab Emirates is an important partner in efforts to combat transnational crime in the Middle East. Concluding the Treaty will ensure that Australia can provide, request and receive MA to and from the United Arab Emirates in accordance with clearly defined and mutually agreed terms.

Obligations

10. Australia and the United Arab Emirates have agreed, in accordance with the Treaty, to grant each other MA in connection with investigations or proceedings relating to criminal matters (Article 1).
11. The Treaty specifies that a criminal matter includes matters connected with offences against a law relating to customs duties, foreign exchange control and other revenue matters (Article 1(2)).
12. Under the Treaty, MA may include:
 - (a) the taking of evidence, including testimony and statements of persons, production of documents, records and other material including by video conference or television link (Articles 1 and 9),
 - (b) locating and identifying persons (Article 1(3)(d)),
 - (c) executing letters rogatory (Article 1(3)(b)),
 - (d) the obtaining of statements of persons (Article 10),
 - (e) the service of documents (Article 8),
 - (f) arranging for people to give evidence or to assist in criminal investigations in the Requesting State (either in person or via electronic communication facilities where appropriate), including the temporary transfer of people in custody for this purpose (Articles 11 and 12),
 - (g) providing copies of documents and records that are open to public access (Article 14),
 - (h) executing requests for searches, seizures and delivery of material (Article 16),

- (i) locating, restraining or forfeiting proceeds of crime and instruments of crime that are needed in connection with a criminal investigation or proceeding (Articles 17 and 18),
- (j) returning embezzled public funds (Article 19), and
- (k) providing other assistance consistent with the objects of the Treaty and the law of the Requested State (Article 1(3)(i)).

13. The obligation to provide assistance is qualified by internationally accepted grounds for refusal as set out in the Treaty. These grounds reflect the mandatory and discretionary grounds for refusal set out in subsections 8(1) and 8(2) of the MA Act. Article 3(1) of the Treaty obliges the Requested State to refuse to provide assistance if:

- (a) the request relates to offences of a political character,
- (b) the request relates to an offence under military law which is not also an offence under the ordinary criminal law of the Requested State,
- (c) the request relates to the prosecution of a person for an offence in respect of which the offender has been finally acquitted or pardoned, or has served the sentence imposed,
- (d) there are substantial grounds for believing the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinions, or that the person's position may be prejudiced for any of those reasons, or
- (e) the request would prejudice the sovereignty, security, national interest or other essential interests of the Requested State.

14. Article 3(2) gives the Requested State the discretion to refuse to provide assistance if :

- (a) the request relates to the prosecution or punishment of a person for acts or omissions which would not constitute an offence under the laws of the Requested State,
- (b) the request relates to the prosecution or punishment for an extraterritorial offence that does not constitute an extraterritorial offence under the laws of the Requested State,
- (c) the prosecution or punishment for an offence which, had it been committed in the Requested State, could no longer be prosecuted by reason of lapse of time or any other reason,
- (d) the provision of assistance sought could prejudice an investigation or proceeding in the Requested State,
- (e) the provision of assistance sought could prejudice the safety of any person in the Requested State, or
- (f) the provision of assistance sought could impose an excessive burden on the resources of the Requested State.

15. Article 3(3) of the Treaty states that prior to refusing a request for assistance, the Requested State will consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts the conditions for granting assistance, it is bound by the Treaty to comply with the conditions.

16. The United Arab Emirates retains the death penalty for serious crimes. Subsection 8(1A) of the MA Act requires that a request for assistance must be refused where the provision of assistance relates to the prosecution or punishment of a person where the death penalty may be imposed, unless the Attorney-General or the Minister for Justice and Customs, having regard to the special circumstances of the case, is of the opinion that the assistance should be granted. Pursuant to section 8(1B) of the MA Act a request for assistance may be refused if the Attorney-General or the Minister for Justice and Customs believes that the provision of the assistance may result in the death penalty being imposed and, having taken into consideration the interests of international criminal cooperation, is of the opinion that assistance should not be granted.

17. These provisions of the MA Act are reflected in the Treaty. Article 3(2)(e) allows Australia to refuse to grant a MA request that may result in the death penalty being imposed or executed. Assistance may be refused for offences punishable by the death penalty unless, having regard to the special circumstances of the case and in accordance with the Requested State's domestic law, the Requested State considers that assistance should be granted.

18. The Treaty includes detailed provisions about the form and content of MA requests (Article 4). Each State is required to promptly execute requests for assistance in accordance with its respective laws (Articles 2(1) and 5). Subject to the law of the Requested State, assistance should be provided in the manner requested by the Requesting State. If the Requested State becomes aware of circumstances likely to cause significant delay in responding to the request for assistance, it must promptly inform the Requesting State (Article 5(3)).

19. Each country may require that the application for assistance (where relevant), its contents and related documents, and the granting of assistance be kept confidential (Articles 7(1) and 7(2)). The Treaty requires that information and evidence obtained under the Treaty not be used for purposes other than those stated in the request without the prior consent of the Requested State (Article 7(3)).

Implementation

20. Section 7 of the MA Act provides that regulations may provide that the Act applies to a foreign country subject to any MA treaty between Australia and that country. Australia currently has 27 bilateral MA treaties in force with other countries. As with those treaties, it is proposed that the Treaty will be implemented by way of regulations made under the MA Act.

Costs

21. The Requested State will meet all ordinary costs of fulfilling a request for assistance (Article 21(2)). The Requesting State shall bear the expenses associated with:

- (a) conveying any person to or from the Requested State and any fees, allowances or expenses payable to that person while in the Requesting State for the purpose of providing evidence, testimony or assistance with an investigation under Articles 9, 11, or 12 (Article 21(2)(a)),
- (b) conveying custodial or escorting officers (Article 21(2)(b)),
- (c) the establishment and operation of electronic communication facilities, and the interpretation of proceedings (Article 21(2)(c)),

- (d) service of documents when such expenses are imposed in accordance with the law of the Requested State (Article 21(2)(d)), and
- (e) exceptional expenses in fulfilling the request, following consultation between the States (Article 21(2)(e)).

22. Requests for MA are to be made through diplomatic channels to the designated Central Authority (Article 2(2)). The Treaty provides that the Central Authority for Australia will be the Commonwealth Attorney-General's Department (Article 3(3)). Departmental expenses incurred in making and receiving requests for MA will be met from existing Departmental funds.

Regulation Impact Statement

23. Since the Treaty deals with criminal justice issues, neither the Treaty nor implementing regulations have financial implications for businesses or individuals. Any associated costs are borne by governments and law enforcement agencies.

24. According to the self-assessment guidelines provided by the Office of Best Practice Regulation, the regulatory option has low/no impact and therefore does not require further regulatory analysis.

Future treaty action

25. The Treaty provides that the countries shall consult on the interpretation and implementation of the Treaty (Article 22).

26. The Treaty is silent as to amendment. In the absence of an amendment provision, Article 39 of the *Vienna Convention on the Law of Treaties* would apply to allow amendment by agreement between the Parties. Any amendment to the Agreement would be effected in accordance with Australia's domestic treaty process requirements, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties (JSCOT).

Withdrawal or denunciation

27. Either State may terminate the Treaty by written notice through diplomatic channels at any time (Article 24). The Treaty will cease to be in force six months following the date of notification. Termination by Australia would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT.

Contact details

International Legal Cooperation Section
International Crime Cooperation Division
Attorney-General's Department.

CONSULTATION

Treaty between Australia and the State of the United Arab Emirates on Mutual Legal Assistance in Criminal Matters (Hobart, 26 July 2007)

[2007] ATNIF 17

1. The State and Territory Governments have been consulted through the Commonwealth-State/Territory Standing Committee on Treaties (SCOT). Information on the negotiation of the Treaty was provided to State and Territory representatives for consideration at its meeting on 27 September 2006 and 18 May 2007. No requests for further information or comments on the Treaty with the United Arab Emirates have been received to date.
2. Negotiations with the State of the United Arab Emirates about the Treaty were not in the public domain as Australia follows the international practice that a bilateral treaty remains confidential to the parties until is signed.
3. The Treaty will operate within the existing framework set out in the MA Act and is based on the model bilateral MA treaty. Accordingly, no wider consultations were conducted.

Political Brief on the United Arab Emirates

Bilateral Relationship

1. The bilateral relationship has been built on a strong commercial focus. The UAE is Australia's second-largest market in the Middle East. Sectors of key export interest to Australia include automotive, agriculture and services. The UAE is a small but high yield tourism market for Australia and visitor numbers have been steadily increasing since the early 1990s. It is also considered a new market for Australian education services. About 12-15,000 Australians and more than 300 Australian companies are based in the UAE.
2. Australia looks forward to the early conclusion of a high-quality and comprehensive Free Trade Agreement (FTA) with the Gulf Cooperation Council (GCC) and remains committed to expanding Australia's strong and growing trade and investment relationship in the region.

Political Overview

3. The United Arab Emirates (UAE) is a federation of seven Emirates (Abu Dhabi, Dubai, Sharjah, Ras Al Khaimah, Ajman, Umm Al Quwain and Fujairah) that federated in December 1971. Since that time, the UAE has developed rapidly into a nation with modern infrastructure and a high standard of living.
4. The structure of the UAE reflects a careful allocation of responsibilities among the seven Emirates, with Abu Dhabi being generally regarded as the first among equals. Abu Dhabi is the largest and richest Emirate. It has 94 per cent of the country's oil reserves, covers 87 per cent of the UAE's total area and is home to 38 per cent of the population.
5. The current President is HH Sheikh Khalifa bin Zayed Al Nahyan, who is also ruler of Abu Dhabi Emirate. The Ruler of Dubai, HH Sheikh Mohammed bin Rashid Al Maktoum, is the Vice-President, Prime Minister and Defence Minister.
6. The UAE federal structure includes a Supreme Council (comprising the rulers of each Emirate), a Council of Ministers, a semi-appointed Federal National Council (half the members are elected) with advisory powers and an independent judiciary. Each Emirate is nevertheless still governed by its own ruler and has its own local government.
7. The UAE is a member of the GCC, which also includes Saudi Arabia, Kuwait, Oman, Bahrain and Qatar. It is also a member of the Arab League, the Organization of the Islamic Conference, the United Nations and the WTO.

Economic Overview

8. The UAE has the world's third-largest conventional oil reserves and fifth-largest natural gas reserves and is a major player in world energy markets. Overwhelmingly these reserves are located in Abu Dhabi. The UAE is the Middle East's third-largest economy after Saudi Arabia and Egypt. Like all GCC states it maintains a relatively open international trade system.

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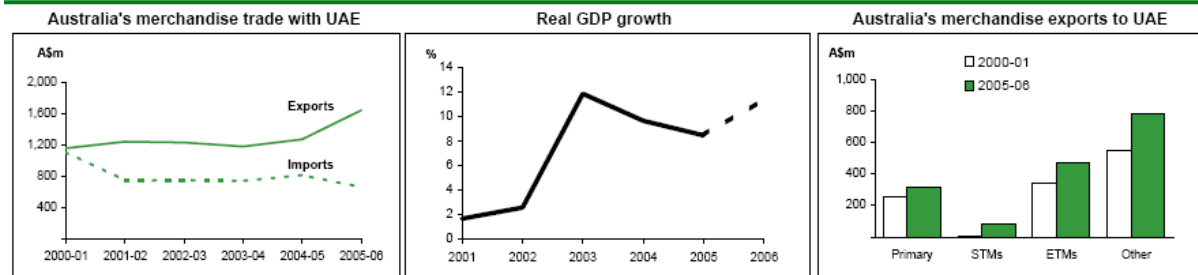
UNITED ARAB EMIRATES *Fact Sheet*

General information:

Fact sheets are updated biannually; May and September

Capital:	Abu Dhabi	Head of State:	H.H. Sheikh Khalifa bin Zayed Al-Nahyan
Surface area:	84 thousand sq km		
Official language:	Arabic		
Population:	4.7 million (2005)	Head of Government:	H.H. Sheikh Mohammed bin Rashid Al-Maktoum
Exchange rate:	A\$1 = 2.7576 Dirhams (July 2006)		

<i>Recent economic indicators:</i>	2001	2002	2003	2004	2005(a)	2006(b)
GDP (US\$bn) (current prices):	68.7	74.6	88.2	104.6	129.6	176.8
GDP PPP (US\$bn) (c):	90.3	95.6	108.6	120.9	130.8	139.1
GDP per capita (US\$):	19,689	19,864	21,815	24,059	27,700	35,099
GDP per capita PPP (US\$) (c):	25,878	25,465	26,871	27,799	27,957	27,610
Real GDP growth (% change YOY):	1.7	2.6	11.9	9.7	8.5	11.5
Current account balance (US\$m):	6,590	3,045	7,148	10,645	19,078	37,216
Current account balance (% GDP):	9.6	4.1	8.1	10.2	14.7	21.0
Goods exports (% GDP):	69.2	68.7	76.1	86.6	91.4	n.a.
Inflation (% change YOY):	2.8	2.9	3.1	5.0	8.0	7.7



Australia's trade relationship with UAE (d):

Australian merchandise trade with UAE, 2005-06:		<u>Total share:</u>	<u>Rank:</u>	<u>Growth (yoy):</u>
Exports to UAE (A\$m):	1,647	1.1%	18th	29.2%
Imports from UAE (A\$m):	663	0.4%	35th	-19.2%
Total trade (exports + imports) (A\$m):	2,310	0.7%	25th	10.3%

Major Australian merch. exports*, 2005-06 (A\$m):

Passenger motor vehicles	277
Non-monetary gold	86
Meat (excl. bovine) f.c.f.	66
Zinc	62

*Includes A\$674m of confidential items, 41% of total exports.

Major Australian merch. imports, 2005-06 (A\$m):

Crude petroleum	446
Ships, boats & floating structures	39
Liquefied propane & butane	25
Structures of iron, steel or aluminium	15

Australia's trade in services with UAE, 2005:

		<u>Total share:</u>
Exports of services to UAE (A\$m):	475	1.3%
Imports of services from UAE (A\$m):	908	2.4%

UAE's global merchandise trade relationships:

UAE's principal export destinations, 2005:

1	Japan	24.4%
2	Republic of Korea	9.6%
3	Thailand	5.5%
34	Australia	0.3%

UAE's principal import sources, 2005:

1	United Kingdom	9.9%
2	China	9.6%
3	United States	9.3%
21	Australia	1.0%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a) all recent data subject to revision; (b) IMF forecast; (c) PPP is purchasing power parity; (d) Total may not add due to rounding.

n.a. Data not available.

List of Agreements between Australia and the United Arab Emirates

Treaty name done at [place], on [date signed by Australia].	[Date treaty entered into force]
In force	
Agreement on Trade and Economic Relations and Technical Co-operation between the Government of Australia and the Government of the United Arab Emirates done at Canberra, 06/03/85 [1985] ATS 34	09/09/1985
Agreement with the United Arab Emirates relating to Air Services done at Dubai, 08/09/2002 [2005] ATS 8	24/01/2005
Not yet in force	
Agreement with the United Arab Emirates on Defence Cooperation done at Abu Dhabi, 23/04/2007 [2007] ATNIF 10	
Treaty on Extradition with the United Arab Emirates, 26/07/2007) [2007] ATNIF 16	
Treaty with the United Arab Emirates on Mutual Legal Assistance in Criminal Matters, 26/07/2007) [2007] ATNIF 17	

List of Mutual Assistance in criminal matters treaties with other countries

<u>Australian bilateral mutual assistance agreements</u>		
KEY	<i>Domestic legislation or regulation (Country name)</i>	
	[Treaty name] done on [date signed by Australia].	[Date entered into force]
	Treaty between Australia and the Kingdom of Thailand on Mutual Assistance in Criminal Matters done on 26/07/2006 [2006] ATNIF 18	Not yet in force
1.	<i>Mutual Assistance in Criminal Matters (Argentine Republic) Regulations</i>	
	Treaty between the Government of Australia and the Government of the Argentine Republic on Mutual Assistance in Criminal Matters done on 30/08/1990 [1993] ATS 6	3/01/1993
2.	<i>Mutual Assistance in Criminal Matters (Republic of Austria) Regulations</i>	
	Treaty between Australia and the Government of the Republic of Austria on Mutual Assistance in Criminal Matters done on 20/10/1988 [1990] ATS 36	1/12/1990
3.	<i>Mutual Assistance in Criminal Matters (Canada) Regulations</i>	
	Treaty between the Government of Australia and the Government of Canada on Mutual Assistance in Criminal Matters done on 19/06/1989 [1990] ATS 11	14/03/1990
4.	<i>Mutual Assistance in Criminal Matters (The People's Republic of China) Regulations</i>	
	Treaty between Australia and the People's Republic of China on Mutual Legal Assistance In Criminal Matters done on 3 April 2006 [2006] ATNIF 9	28/03/2007
5.	<i>Mutual Assistance in Criminal Matters (Republic of Ecuador) Regulations</i>	
	Treaty between the Government of Australia and the Government of the Republic of Ecuador on Mutual Assistance in Criminal Matters done on 16/12/1993 [1997] ATS 27	28/12/1997

6.	<i>Mutual Assistance in Criminal Matters (Finland) Regulations</i>	
	Treaty between Australia and Finland on Mutual Assistance in Criminal Matters done on 22/07/1992 [1994] ATS 12	30/04/1994
7.	<i>Mutual Assistance in Criminal Matters (French Republic) Regulations</i>	
	Treaty between the Government of Australia and the Government of the French Republic on Mutual Assistance in Criminal Matters done on 14/01/1993 [1994] ATS 11	1/05/1994
8.	<i>Mutual Assistance in Criminal Matters (Greece) Regulations 2004</i>	
	Treaty between Australia and the Hellenic Republic on Mutual Assistance in Criminal Matters done on 4/07/2002 [2005] ATS 4	16/01/2005
9.	<i>Mutual Assistance in Criminal Matters (Hong Kong) Regulations 1999</i>	
	Agreement between the Government of Australia and the Government of Hong Kong concerning Mutual Legal Assistance in Criminal Matters done on 23/09/1996 [1999] ATS 20	6/11/1999
10.	<i>Mutual Assistance in Criminal Matters (Republic of Hungary) Regulations</i>	
	Treaty between Australia and the Republic of Hungary on Mutual Assistance in Criminal Matters done on 25/10/1995 [1997] ATS 14	25/04/1997
11.	<i>Mutual Assistance in Criminal Matters (Republic of Indonesia) Regulations 1999</i>	
	Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters done on 27/10/1995 [1999] ATS 10	17/07/1999
12.	<i>Mutual Assistance in Criminal Matters (State of Israel) Regulations</i>	
	Treaty between the Government of Australia and the Government of the State of Israel on Mutual Legal Assistance in Criminal Matters done on 24/08/1994 [1995] ATS 25	23/09/1995
13.	<i>Mutual Assistance in Criminal Matters (Republic of Italy) Regulations</i>	
	Treaty on Mutual Assistance in Criminal Matters between Australia and the Republic of Italy done on 28/10/1988 [1994] ATS 5	1/04/1994

14.	<i>Mutual Assistance in Criminal Matters (Republic of Korea) Regulations</i>	
	Treaty between Australia and the Republic of Korea on Mutual Assistance in Criminal Matters done on 25/08/1992 [1993] ATS 34	19/12/1993
15.	<i>Mutual Assistance in Criminal Matters (Grand Duchy of Luxembourg) Regulations</i>	
	Treaty between Australia and the Grand Duchy of Luxembourg on Mutual Assistance in Criminal Matters done on 24/8/1988 [1994] ATS 14	15/05/1994
16.	<i>Mutual Assistance in Criminal Matters (Malaysia) Regulations 2006</i>	
	Treaty between the Government of Australia and the Government of Malaysia on Mutual Assistance in Criminal Matters done on 15/11/2005, and Exchange of Notes of 7 December 2005 [2006] ATS 21	28/12/2006
17.	<i>Mutual Assistance in Criminal Matters (United Mexican States) Regulations</i>	
	Treaty between Australia and the United Mexican States on Mutual Legal Assistance in Criminal Matters done on 6/05/1991 [1992] ATS 31	30/06/1992
18.	<i>Mutual Assistance in Criminal Matters (Monaco) Regulations 2001</i>	
	Treaty between the Government of Australia and the Government of His Serene Highness the Prince of Monaco on Mutual Assistance in Criminal Matters done on 13/09/1999 [2001] ATS 14	4/10/2001
19.	<i>Mutual Assistance in Criminal Matters (Kingdom of the Netherlands) Regulations</i>	
	Treaty between Australia and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters done on 26/10/1988 [1991] ATS 20	1/06/1991
20.	<i>Mutual Assistance in Criminal Matters (Republic of the Philippines) Regulations</i>	
	Treaty between Australia and the Republic of the Philippines on Mutual Assistance in Criminal Matters done on 28/04/1988 [1993] ATS 37	19/12/1993

21.	<i>Mutual Assistance in Criminal Matters (Republic of Portugal) Regulations</i>	
	Treaty between Australia and the Republic of Portugal on Mutual Assistance in Criminal Matters done on 4/07/1989 [1994] ATS 25	17/10/1993
22.	<i>Mutual Assistance in Criminal Matters (Spain) Regulations</i>	
	Treaty on Mutual Assistance in Criminal Matters between Australia and the Kingdom of Spain done on 3/07/1989 [1991] ATS 6	31/01/1991
23.	<i>Mutual Assistance in Criminal Matters (Sweden) Regulations 2001</i>	
	Treaty between Australia and Sweden on Mutual Assistance in Criminal Matters done on 18/12/1998 [2001] ATS 16	1/12/2001
24.	<i>Mutual Assistance in Criminal Matters (Switzerland) Regulations</i>	
	Treaty between Australia and Switzerland on Mutual Assistance in Criminal Matters done on 25/11/1991 [1994] ATS 7	31/07/1994
25.	<i>Mutual Assistance in Criminal Matters (United Kingdom) Regulations 1999</i>	
	Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning the Investigation, Restraint and Confiscation of the Proceeds and Instruments of Crime done on 6/02/1997 [2000] ATS 15	10/05/2000
26.	<i>Mutual Assistance in Criminal Matters (United States of America) Regulations 1999 (includes both Treaty and Exchange of Notes)</i>	
	Treaty between the Government of Australia and the Government of the United States of America on Mutual Assistance in Criminal Matters, and Exchange of Notes, done on 30/04/1997 [1999] ATS 19	10/10/1999