

[AS PASSED BY THE NATIONAL ASSEMBLY]

A

Bill

to enact a law for mutual legal assistance in criminal matters

Whereas it is expedient to enact a law relating to mutual legal assistance in criminal matters and matters connected therewith and ancillary thereto;

It is hereby enacted as follows:-

Preliminary

1. Short title, extent and commencement.— (1) This Act may be called the Mutual Legal Assistance (Criminal Matters) Act, 2020.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—

(a) “agreement” means a treaty, agreement, memorandum of understanding, convention or other international arrangement to which the Islamic Republic of Pakistan is a party and which contains provisions relating to mutual legal assistance in criminal matters;

(b) “appropriate authority” in relation to a foreign country, means a person or body in that country referred to in the agreement or reciprocal arrangement with the Islamic Republic of Pakistan as the authority responsible for administering mutual legal assistance to and from such country;

(c) “central authority” means the Secretary to the Ministry of Interior, Government of the Islamic Republic of Pakistan or such other officer not less than the rank of a Joint Secretary of the Government, as the Secretary to the Ministry of Interior may, by notification in the official Gazette, designate to exercise powers and perform functions of the central authority under this Act;

(d) information system includes an electronic system for creating, generating, sending, receiving, storing, reproducing, displaying, recording or processing any information;

(e) “data” means content data and traffic data;

(f) “electronic” means electrical, digital, magnetic, optical, biometric, electrochemical, electromechanical, wireless or

electromagnetic technology;

- (g) "computer system" means any device or a group of interconnected or related devices one or more of which, pursuant to a programme, performs automatic processing or recording data, and includes a mobile telephone and other telecommunication devices;
- (h) "confiscation" means deprivation of property by order of a court or competent authority subject to the prescribed procedure;
- (i) "confiscation order" means an order made by a court or other competent authority in the Islamic Republic of Pakistan or a court of a country with whom the Islamic Republic of Pakistan has entered into an agreement or reciprocal agreement or notified under sub-section (3) of section 3 of the confiscation of proceeds or instrumentalities of crime or terrorist property, whether or not the order is based on criminal conviction;
- (j) "court" means the court which has jurisdiction to try an offence for which a request has been made under this act;
- (k) "criminal matter" includes any investigation, prosecution or judicial proceedings relating to,-
 - (i) a criminal offence;
 - (ii) identification or tracing of proceeds or instrumentalities of crime or other related articles for evidentiary process;
 - (iii) the determination as to whether a property is proceeds or instrumentalities of crime, money laundering or terrorist property or corruption;
 - (iv) a confiscation order;
 - (v) the freezing or seizure of proceeds or instrumentalities of crime or terrorist property; or
 - (vi) an investigation carried out by a law enforcement agency with a view to refer the case for prosecution under the criminal law;
- (l) "criminal offence" means a thing punishable under Pakistan Penal Code 1860 or under any law of Pakistan;

- (m) "freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other authority and includes an order restraining such dealings;
- (n) "instrumentalities of crime" means any property,-
- (i) used in, or in connection with, the commission of a criminal offence; or
 - (ii) intended to be used in, or in connection with, the commission of a criminal offence, whether the property is located, or the offence is committed, within or outside Pakistan.
- (o) "material" includes any book, document, computer data or mobile data or other record in any form and in any container or article relating to it;
- (p) "prescribed" means prescribed by rules made under this Act;
- (q) "proceeds of crime" means any property derived from or obtained, directly or indirectly, through commission of a criminal offence whether such property is located, or the offence is committed, within or outside Islamic Republic of Pakistan;
- (r) "property" means property/assets of every description, whether moveable or immovable, corporeal or incorporeal, tangible or intangible, a legal document or instrument evidencing title to or interest in property, and whether situated in or outside Islamic Republic of Pakistan;
- (s) "rules" means rules made under this Act;
- (t) "service provider" shall have the same meaning as given to it by section 2(XXVIII) of the Prevention of Electronic crimes Act, 2016;
- (u) "terrorism" shall have the same meaning as given to it by section 6 of the Anti-terrorism Act, 1997 (XXVII of 1997); and
- (v) "terrorist property" shall have the same meaning as given to it by section 2(Z)(aa) of the Anti-terrorism Act, 1997 (XXVII of 1997).

3. Application of the Act.— (1) This Act shall regulate the procedure for rendering and soliciting mutual legal assistance in criminal matters by Pakistan.

(2) Subject to the provisions of this Act, the mutual legal

assistance may be provided by Pakistan to a country on the basis of an reciprocal agreement or arrangement.

(3) Where the Federal Government considers it expedient to provide mutual legal assistance in a criminal matter to a country which has not entered into an reciprocal agreement or arrangement with Pakistan, it may, by notification in the official Gazette, direct that the provisions of this Act shall, subject to such modifications and conditions as may be specified therein, have effect to that country.

(4) Nothing in this section shall be taken to limit the nature or extent of mutual legal assistance that Pakistan may otherwise lawfully provide to, or receive from, a country.

4. Functions of the central authority.— (1) The central authority shall have all such powers as may be necessary to perform its duties and functions under this Act.

(2) Without prejudice to the generality of sub-section (1), the central authority shall be authorized to, -

- (a) make a request on behalf of Pakistan to the appropriate authority of a country for mutual legal assistance in any investigation commenced, or proceedings instituted in Pakistan relating to a criminal offence committed, or suspected on reasonable grounds to have been committed within or outside Pakistan;
- (b) receive and deal with requests received from the appropriate authority of a country for mutual legal assistance in any investigation commenced, or proceedings instituted in that country relating to an offence committed, or suspected on reasonable grounds to have been committed within or outside that country;
- (c) certify or authenticate, or arrange for the certification and authentication of any documents or other material supplied in response to a request for assistance;
- (d) to take practical measures to facilitate the orderly and rapid disposition of request for assistance;
- (e) to make any arrangements deemed necessary in order to transmit the evidentiary material gathered in response to request for assistance to the appropriate authority of the requesting country or to authorize any other authority as prescribed to do so; and
- (f) to carry out such other tasks as provided for in this Act or which may be necessary for effective assistance to be provided or received.

(3) The central authority may, having regard to its functions and to exercise its powers efficiently, delegate its functions and powers

to one or more subordinate officers not less than the rank of a Joint Secretary.

5. Transmission of information.— (1) The central authority may not initiate transmitting of any information relating to criminal matters confidentially to the appropriate authority in a country concerned with such criminal matters, without prior request by that country.

(2) Subject to the provisions of this Act, a request transmitted by a country to any other agency or authority in Pakistan may be referred by such agency or authority to the central authority and this shall not affect the validity of the request or actions taken thereupon.

6. Form and manner of requests.— The central authority may specify the form, manner and conditions of making requests to Pakistan and all requests shall be entertained in accordance with such form, manner and conditions:

Provided that the central authority may dispense with any particular condition where it is likely to cause undue delay and frustrate the object for which the request for mutual legal assistance has been made by a country.

7. Mutual legal assistance request by Pakistan.— A request for mutual legal assistance by the central authority to a country may comprise one or more of the following matters, namely:-

- (a) inquire about the location and identification of witnesses, suspects, perpetrators and offenders;
- (b) have evidence taken or documents or other articles produced;
- (c) obtain search warrants or other lawful instruments authorizing a search for evidence relevant to investigations or proceedings in Pakistan, located or as permissible under the domestic law of that country believed to be located in that country and if found, to seize them as permissible under the domestic law of that country;
- (d) freeze or seize properties that may be the subject of investigations or proceedings, through relevant legal process in that country, to the extent to which the properties are believed on reasonable ground to be located in that country;
- (e) confiscate properties, subject to the confiscation order, to the extent to which the properties are believed to be located in that country;
- (f) transmit to Pakistan any evidence, documents, articles, properties or proceeds realized from the disposal of properties;

- (g) transfer in custody to Pakistan a person in foreign country who consented to assist Pakistan in the relevant investigation or proceedings;
- (h) effect service of judicial documents;
- (i) identify or trace proceeds or instrumentalities of crime or properties for evidentiary purpose;
- (j) facilitate the voluntary appearance of persons required in relation to any existing or intended investigations or proceedings in Pakistan;
- (k) provide original or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; and
- (l) provide any other type of assistance that is not contrary to the domestic law of that country.

8. Foreign request for assistance.— (1) Where a country makes a request to Islamic Republic of Pakistan for mutual legal assistance, the central authority may approve mutual legal assistance for similar purposes as those specified in section 7 to the country in relation to investigations commenced or proceedings instituted in that country.

(2) The request under sub-section (1) shall be made out in conformity with the form, manner and conditions specified under section 6 and include the following, namely:-

- (a) the name of the appropriate authority or such other authority concerned with the criminal matter to which the request relates;
- (b) a description of nature of the criminal matter and a statement setting out a summary of relevant facts and law;
- (c) the description of the purpose of the request and the nature of assistance being sought;
- (d) in the case of request to freeze, seize or confiscate assets believed on reasonable grounds to be located in Pakistan, be accompanied with the details of the criminal offence, particulars of any investigation or proceedings commenced in respect of that offence and a copy of any relevant freezing, seizure or confiscation order of the court;
- (e) details of any procedure that the country wishes to be followed by Pakistan in giving effect to the request, particularly in the case of a request to take evidence, as far as it is not contrary to the laws of Pakistan;
- (f) a statement setting out any requirements of the country concerning any confidentiality relating to the request and

the reasons thereof;

- (g) details, of the period within which the country wishes the request to be complied with;
- (h) details, where applicable, regarding the grounds for believing that the relevant properties to be traced, frozen or seized or confiscated, are located in Pakistan; and
- (i) any other information that may assist in giving effect to the request.

9. Foreign request for an evidence gathering order or search warrant.— (1) Notwithstanding anything contained in any other law for the time being in force, where the central authority approves the request of a country pursuant to section 8 for the following purposes;

- (a) taking of a statement or testimony from a person; or
- (b) production of documentary or other evidence in Pakistan; or
- (c) identification of a person, property or record,

the central authority may apply to the court for a search warrant or any evidence gathering order, as the case may be.

(2) The court, to which an application is made under subsection (1), may issue a search warrant or, as the case may be, an evidence-gathering order where it is satisfied that there are reasonable grounds to believe that,-

- (a) an offence has been committed, or is suspected on reasonable grounds to have been committed, against the laws of the requesting country and which, if committed in Pakistan, constitutes an offence under the laws of Pakistan;
- (b) evidence of commission of the offence is likely to be found in any place in Pakistan; and
- (c) the person suspected of committing the offence or the witness is likely to be present in Pakistan.

(3) An evidence-gathering order,-

- (a) shall provide for the manner in which the statement or testimony is to be taken or the evidence is to be obtained or the person or thing to be identified in order to give proper effect to the request unless prohibited under the laws of Islamic Republic of Pakistan, and, in particular, may require any person named therein to-

- (i) make a record from data or make a copy of record;
- (ii) attend court to give evidence on oath; or

