



E/NL.1987/10-11
6 September 1988
ENGLISH ONLY

**PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF
THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES**

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

TURKS AND CAICOS ISLANDS

Communicated by the Government of the United Kingdom
of Great Britain and Northern Ireland

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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THE NARCOTIC DRUGS (EVIDENCE)
(UNITED STATES OF AMERICA)
ORDINANCE, 1986
No. 1 OF 1986

ARRANGEMENT OF SECTIONS

Section

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Third Schedule: Authentication and attestation of official records and other documentary information

AN ORDINANCE

To facilitate the obtaining of evidence required in or for the purpose of investigations and proceedings in the United States of America in pursuance of obligations under the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972, and for purposes connected therewith and incidental thereto.

Enacted by the Legislature of the Turks and Caicos Islands:

Short title 1. This Ordinance may be cited as the Narcotic Drugs (Evidence) (United States of America) Ordinance, 1986.

Interpretation 2. In this Ordinance:

"the Agreement" means the Agreement, intended to be made between the Government of the United Kingdom of Great Britain and Northern Ireland, including the Turks and Caicos Islands, and the Government of the United States of America, concerning the Turks and Caicos Islands and matters connected with, arising from, related to, or resulting from, narcotics activity such as is mentioned in the Convention;

"Assistor" means a person from whom documentary information is sought under the terms of a Certificate;

"Certificate" means a document issued by the Attorney General of the United States, as described in section 4;

"the Convention" means the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972;

"documentary information" includes but is not limited to, any document, memorandum, report, record or data compilation in any form, and any plan, graph, drawing or photograph, and any disc, type or other device for audio reproduction or computer use, and any film, negative, tape or other device for visual reproduction;

"foundation testimony" means testimony given by a witness solely for the purpose of securing the acceptance as admissible evidence in proceedings in the United States of documentary information referred to in a Certificate;

"official records" means:

- (a) Publicly available records of the Government of the Turks and Caicos Islands and of its departments and agencies;
- (b) Any records or information in the possession of the Government of the Turks and Caicos Islands and of its departments and agencies which are not publicly available, but which the Government of the Turks and Caicos Islands may make available, subject to any such terms and conditions as it may specify;

"United States" means the United States of America.

3. This Ordinance shall apply in relation to proceedings in respect of all criminal offences or ancillary civil or administrative proceedings or investigations undertaken by the Government of the United States or its agencies connected with, arising from, related to or resulting from any narcotics activity referred to in article 36 of the Convention and falling within the jurisdiction of the United States.

Application of
this Ordinance

4. Upon the receipt by the Attorney-General of the Turks and Caicos Islands of a Certificate from the Attorney General of the United States, in the Form and manner set out in the First Schedule, that he has reason to believe that:

Procedure in
respect of
request for
documentary
information

- (a) A person identified to the Attorney General of the United States is involved in a matter to which this Ordinance applies;
- (b) Documentary information relevant to the investigation or resolution of that matter is located in the Turks and Caicos Islands;

the Attorney General of the Turks and Caicos Islands shall promptly act upon the request contained in the Certificate in accordance with the procedure set out in the Second Schedule.

5. Official records produced in response to a Certificate shall be authenticated in the Turks and Caicos Islands by the Attorney-General of the Turks and Caicos Islands or by a public officer authorised in writing by him in that behalf. The authentication in such case shall be in Form A set out in the Third Schedule and shall comply with the Convention Abolishing the Requirement for Legislation of Foreign Public Documents dated, at the Hague, 5 October 1961.

Authentication
and attestation
of official
records

6. Documentary information other than official records produced by an Assistor in response to a Certificate shall be authenticated in the Turks and Caicos Islands by a person designated in that behalf by the Attorney-General of the Turks and Caicos Islands, in the manner provided in Form B set out in the Third Schedule.

Authentication
and attestation
of documentary
information other
than official
records

Foundation
testimony

7. (1) Foundation testimony, with respect to documents to which this Ordinance relates, shall be by way of affidavit, depositions taken in the Turks and Caicos Islands, voluntary appearance by a witness at proceedings in the United States in respect of matters to which this Ordinance applies, or in accordance with such other procedure as may be agreed between the Government of the United States and the Governments of the United Kingdom and of the Turks and Caicos Islands.

(2) At the request of the Attorney General of the United States, or his designee, the Attorney-General of the Turks and Caicos Islands may request an Assistor or other person designated in that behalf by the Attorney-General of the Turks and Caicos Islands, at a place to be named and at a time not less than twenty days after the date of such request:

- (a) To swear an affidavit in the Turks and Caicos Islands containing such recitals as are notified to him by the Attorney-General of the Turks and Caicos Islands as being necessary for such foundation testimony;
- (b) To make a deposition in the Turks and Caicos Islands in conformity with the requirements of Rule 15 of the Federal Rules of Criminal Procedure of the United States.

(3) An Assistor or other person who provides foundation testimony in the Turks and Caicos Islands under the provisions of this section shall enjoy in the Turks and Caicos Islands the same rights and protection under the law of the Turks and Caicos Islands as regards immunity, self-incrimination, privilege or incapacity and the right to consult and be represented by an Attorney as would be enjoyed by or afforded to a witness in any proceedings in the Supreme Court.

(4) An Assistor who provides testimony in the Turks and Caicos Islands under the provisions of this section or who provides such testimony in proceedings in the United States shall enjoy, in accordance with and to the full extent allowed under United States law, the protection of United States law as regards immunity, self-incrimination, privilege and incapacity. This provision shall be in addition to and not in derogation of the provisions of subsection (3) of this section. Any judicial determination in respect of such protection shall be made according to United States law by the judicial authorities of the United States.

(5) Any claim made under the provisions of subsections (3) and (4) of this section shall be adjudicated in an expedited manner. The Attorney-General of the United States or his designee may appear as a witness and produce such evidence or testimony as the court may allow.

(6) Pending the final adjudication of any claim made under the provisions of this section, the Assistor or other person shall provide all that foundation testimony required from him not being the subject of the claim being so adjudicated.

Protection for
persons disclo-
sing confidential
information

8. (1) A person who divulges any confidential information in conformity with a Certificate or who gives any foundation testimony under the provisions of this Ordinance shall be deemed not to commit any offence under:

No. 1 of 1979

(a) Section 19 of the Banking Ordinance, 1979;

No. 3 of 1979

(b) The Confidential Relationships Ordinance 1979;

No. 11 of 1981

(c) Part VIII of the Companies Ordinance, 1981;

or under any other law for the time being in force in the Islands, by reason only of such disclosure or the giving of such testimony; and such disclosure or giving of such testimony shall be deemed not to be a breach of any confidential relationship between that person and any other person, and no civil claim or action whatsoever shall lie against the person making such disclosure or giving such testimony or against such person's principal or employer by reason only of such disclosure or testimony.

(2) The disclosure by any person of any confidential information in conformity with a Certificate or the giving by any person of foundation testimony under the provisions of this Ordinance shall be deemed not to be a breach of any condition of secrecy imposed under the provisions of section 18 of the Banking Ordinance, 1979.

9. The provisions of sections 200 and 201 of the Companies Ordinance, 1981, shall not apply to any confidential information given by any person in pursuance of a request contained in a Certificate, or to any person in respect of matters to which this Ordinance applies.

10. (1) Any Assistor who, after being served by the Attorney-General of the Turks and Caicos Islands with a notice to produce any documentary information pursuant to a Certificate, fails, without reasonable excuse, to produce such information which is within his possession or custody or control, shall be guilty of an offence and liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years, or to both such fine and imprisonment.

(2) Any Assistor or any other person who, contrary to the terms of paragraph 3 of the Second Schedule, informs any person other than his Attorney of the fact of the issue of a Certificate or of any other communication relevant to the matter to which the Certificate relates, shall be guilty of an offence and liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months, or to both such fine and imprisonment.

(3) Where any documentary information has not been produced as requested in pursuance of a notice served under this Ordinance, the Attorney-General of the Turks and Caicos Islands or any police officer authorized in writing in that behalf by the Attorney General of the Turks and Caicos Islands may apply to any court, the Magistrate or a Justice of the Peace for the issue of a warrant to search for and seize any such documentary information, and thereupon the court, Magistrate or Justice of the Peace shall issue a warrant to search for and seize the information concerned. Such warrant, *mutatis mutandis*, shall be in form similar to, and shall confer the same powers of entry, search and seizure, as a search warrant issued under sections 15 and 31 of the Magistrates Ordinance. Any documentary information seized under such warrant shall be brought immediately to the Attorney-General of the Turks and Caicos Islands who shall immediately convey it to the Attorney-General of the United States in conformity with the requirement of the Certificate.

(4) An Assistor or other person designated in that behalf by the Attorney-General of the Turks and Caicos Islands in accordance with subsection (2) of section 7 who, when required so to do, without reasonable cause, refuses to provide foundation testimony, as mentioned in subsection (2) of section 7, shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment.

(5) For the purposes of subsections (1) and (3) of this section service of the notice shall be sufficient if delivered by hand or posted by registered post to the registered or other office of the Assistor. Affidavit testimony of delivery of the notice by hand or supporting the registration certificate shall be deemed sufficient proof of such service.

No. 1 of 1979

Restriction on application of certain provisions of No. 11 of 1981

Enforcement

First Schedule
(Section 4)

Request and certificate

1. The Certificate shall:

- (i) be signed by the Attorney General of the United States;
- (ii) in respect of Grand Jury proceedings, identify those proceedings by Grand Jury number, and in respect of an indictment, identify such indictment by caption and docket number;
- (iii) certify that the Attorney-General of the United States has reason to believe that a matter falling within the scope of the Agreement has arisen;
- (iv) request that the Attorney-General of the Turks and Caicos Islands secure the documents identified by the Attorney General of the United States;
- (v) declare that the information is relevant to the successful resolution of the matter; and
- (vi) undertake that, save with the consent of the Government of the Turks and Caicos Islands, the information will not be used for any purposes other than the resolution of matters encompassed by the Agreement.

2. Only one Certificate shall be required to enable the production of the documentary information relating to the matter which is the subject of the Certificate.

3. The Certificate shall be drawn in the following manner:

CERTIFICATE

Grand Jury Number:
Indictment Caption and
Docket Number:

Having regard to the provisions of the Agreement between the Governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland including the Turks and Caicos Islands dated, I, the Attorney General of the United States of America, hereby certify as follows:

1. I have reason to believe that individuals and entities, identified by United States law enforcement officers, are involved in matter falling within the scope of article 36 of the Single Convention on Narcotic Drugs, 1961, as more fully described in the Agreement.

2. I request that you, the Attorney-General of the Turks and Caicos Islands, secure to me the Attorney General of the United States, that documentary information believed by me to be held by the following person/s which is described in the Schedule hereto and believed by me to be relevant to the resolution of the matter in hand, as well as other documentary information subsequently identified by the Attorney General of the United States or his designee as being relevant to the resolution of the matter in hand.

3. The said documentary information will not be used or disclosed by the United States Government or its agencies for any purposes other than the resolution of matters encompassed by the said Agreement without the written consent of the Government of the Turks and Caicos Islands through the Attorney General of the Turks and Caicos Islands.

Schedule

(Signed)

Attorney General of the United States of America

Second Schedule
(Section 4)

Procedure upon receipt of certificate

1. Upon receipt of a Certificate by the Attorney-General of the Turks and Caicos Islands, he shall issue a notice to the Assistor requiring the Assistor to produce to him the documentary information requested pursuant to the Certificate, which is in the Assistor's possession, custody or control, within fourteen days of the date of such notice, unless that period is extended for good reason, with the concurrence of the Attorney General of the United States, or is shortened by the Attorney-General of the Turks and Caicos Islands.
2. The Attorney-General of the Turks and Caicos Islands shall not notify the Assistor of the issue of a Certificate prior to the issue of the notice referred to in paragraph 1 of this Schedule, unless the Attorney General of the United States or his authorized representative agrees in writing to such notification.
3. An Assistor or any other person and any legal practitioner instructed by him in that behalf shall not notify any other person of the issue of the Certificate, or the said notice, the documentary information required, or any communications in connection with the enquiry, for a period of ninety days from the date of the Certificate, or for a further period of ninety days on request in that behalf made to the Attorney-General of the Turks and Caicos Islands by the Attorney General of the United States, or his authorized representative, or for such further period or periods as may be mutually agreed between the said Attorneys General and communicated to the Assistor; and this paragraph shall be binding on an Attorney as if he were an Assistor.
4. With the written consent of the Attorney-General of the Turks and Caicos Islands, the relevant United States Government prosecutor may, if necessary, liaise with the Assistor to help in the identification of documentary information to which a Certificate relates, and such prosecutor may also liaise with the Turks and Caicos Islands Commissioner of Police, if he considers it necessary.
5. Promptly upon receipt from the Assistor of any documentary information to which a Certificate relates, the Attorney-General of the Turks and Caicos Islands shall send the same to the Attorney General of the United States.

Third Schedule
(Section 5)

FORM A

Attestation of authenticity of
official records

I,
attest that my position with the Government of the Turks and Caicos Islands is

(Official title)

and that in that position I am authorized by the law of the Turks and Caicos Islands/
United Kingdom to attest that the documents attached hereto and described below:

- (a) are true copies of original official records which are authorised by the law
of Turks and Caicos Islands/United Kingdom to be recorded or filed in

(Name of public office or agency)

which is a public office or agency;

- (b) set forth matters which are required by the law of the Turks and Caicos
Islands/United Kingdom to be recorded or filed and reported.

Description of documents: _____

(Date)

(Signature)

(Section 6)

FORM B

Affidavit with respect to document of a
regularly conducted activity

(Note: Affidavit must be executed by custodian of records or such other person who can explain the record-keeping procedure)

I,
swear/affirm on penalty of perjury/on my oath as follows:

(1) I am employed by

(Name of business, activity or person from whom documents are sought)

(2)

(Name of business, activity or person from whom documents are sought)

engages in the regular business of

(describe business or activity)

(3) My official title is

(4) My duties and responsibilities include

(describe relationship to books and records, i.e. custodian of books and records, or supervision over books and records etc.)

(5) As a result of my duties and responsibilities I have knowledge of the manner in which the books and records are kept.

(6) The attached documents are original (or true copies of original) documents which I obtained from the custody and control of

(name of business, activity or person from whom documents are sought)

(7) The attached documents are

(description of documents, e.g. "Ledger of the checking account of John Doe for the month of July 1983")

(8) It is a regular practice of this business to make and keep

_____ in the _____
(description of documents)
following manner

(describe manner in which documents or categories of documents are made and kept)

(9) It is the regular practice of the business to base its records upon information transmitted by a person with knowledge of the matters recorded, who was acting in the course of the regularly conducted business activity.

(10) It is the regular practice of the business to check the correctness of documents of the kind attached hereto.

(11) It is the regular practice of the business to rely on records of the kind attached hereto.

Passed by the Legislative Council this 13th day of January, 1986.

(Signature)

Ruth Blackman
Clerk

(Signature)

W.H. Mills
Speaker

E/NL.1987/11

THE NARCOTIC DRUGS (EVIDENCE)
(UNITED STATES OF AMERICA)
(AMENDMENT)
ORDINANCE, 1986
No. 6 of 1986

AN ORDINANCE

To amend the Narcotic Drugs (Evidence) (United States of America)
Ordinance 1986.

Enacted by the Legislature of the Turks and Caicos Islands.

1. This Ordinance may be cited as the Narcotic Drugs (Evidence)
(United States of America) (Amendment) Ordinance 1986.

Short title

2. There are inserted in Form B set out in the Third Schedule to the
Narcotic Drugs (Evidence) (United States of America) Ordinance 1986,
immediately after paragraph (11), the following paragraphs and the
words at the end of the last of those paragraphs:

Amendment of
Third Schedule
to principal
Ordinance

"(12) The entries on the documents attached hereto were
made by persons with knowledge of the matters recorded, or from
information transmitted by persons with such knowledge.

(13) The persons making the entries on the documents or
transmitting the information for purposes of recording it were
acting in the course of the regularly conducted business or
activity.

(14) The entries on these documents were made at or near
the time of the matters recorded, pursuant to a systematic and
routine procedure for the conduct of the business.

(15) The documents attached hereto were kept in the course
of the regular activity of this business.

.....
(Date)

.....
(Signature)

Delete or amend the above paragraphs as applicable".