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Canada

TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA
AND THE GOVERNMENT OF CANADA
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

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The Government of the Republic of India and the
Government of Canada, —

Desiring to improve the effectiveness of both
countries in the investigation, prosecution and
suppression of crime, including crime related to
terrorism and the tracing, restraint, forfeiture or
confiscation of the proceeds of crime, through
cooperation and mutual assistance in criminal matters,

Have Agreed as follows :

PART I GENERAL PROVISIONS

ARTICLE 1

OBLIGATION TO GRANT MUTUAL ASSISTANCE

1. The Contracting Parties shall, in accordance with this Treaty, grant each other the widest measure of mutual assistance in criminal matters.

2. Mutual⁵ assistance for the purpose of paragraph 1 shall be any assistance given by the Requested State in respect of investigations, inquiries, trials or other proceedings in the Requesting State in a criminal matter, irrespective of whether the assistance is sought or to be provided by a court or some other authority.

Article 2

DEFINITIONS

1. (a) For the purposes of this Treaty, criminal matters mean, for India, investigations, inquiries, trials or other proceedings relating to an offence created by a law of Parliament or by the legislature of a

state and, for Canada, investigations or proceedings relating to any offence created by a law of Parliament or by the legislature of a province. This shall include any offence relating to aiding and abetting, conspiracy or the funding of criminal activity.

(b) Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments.

(c) Assistance shall include :

(i) Measures to locate, restrain, forfeit or confiscate the proceeds of crime;

(ii) taking of evidence and obtaining of statements of persons;

(iii) provision of information, documents and other records, including criminal and judicial records;

(iv) location of persons and objects, including their identification;

(v) search and seizure;

- (vi) delivery of property, including lending of exhibits;
- (vii) making detained persons and others available to give evidence or assist investigations;
- (viii) service of documents, including documents seeking the attendance of persons; and
- (ix) other assistance consistent with the objects of this Treaty.

2. For the purposes of this Treaty :

(a) proceeds of crime means any property that is derived or realised directly or indirectly by any person from an offence or offences or the value of any such property; and

(b) propeerty includes money and all kinds of movable or immoveable, tangible or intangible property, and includes any interest in such property.

ARTICLE 3
DUAL CRIMINALITY

Assistance shall be provided without regard to whether the conduct under investigation or prosecution in the Requesting State constitutes an offence or may be prosecuted by the Requested State.

ARTICLE 4
EXECUTION OF REQUESTS

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as it is not prohibited by that law, in the manner requested by the Requesting State.

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

3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State 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. The requested State shall not decline execution of a request on the ground of bank secrecy.

ARTICLE 5

REFUSAL OR POSTPONEMENT OF ASSISTANCE

1. Assistance may be refused by the Requested State if in the opinion of the Requested State the execution of the request would impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person.

2. Assistance may be refused if execution of the request would be contrary to the domestic law of the Requested State.

3. The Requested State may refuse to execute a request seeking restraint, forfeiture or confiscation of proceeds of a crime which, had it occurred in the

Requested State, would not have been a crime in respect of which an order of restraint, forfeiture or confiscation could have been made. However, the Requested State shall not refuse a request for other types of assistance relating to a proceeds of crime case because a restraint, forfeiture, or confiscation order for the proceeds of the crime could not have been obtained in the Requested State.

4. Assistance may be postponed by the Requested State if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

5. Before refusing to grant a request for assistance or before postponing the grant of such assistance, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

PART II SPECIFIC PROVISIONS

ARTICLE 6

TAKING EVIDENCE IN THE REQUESTED STATE

1. A person, including a person in custody, requested to testify and produce documents, records or other articles in the Requested State may be compelled by subpoena or order to appear and testify and produce such documents, records and other articles, in accordance with the law of the Requested State.

2. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence.

3. The right to participate in the taking of evidence includes the right of counsel present to pose questions. The persons present at the execution of a request may be permitted to make a verbatim transcript of the proceedings. The use of technical means to make such a verbatim transcript may be permitted.

ARTICLE 7

TRANSMISSION OF DOCUMENTS AND OBJECTS

1. When the request for assistance concerns the transmission of records and documents, the Requested State may transmit certified true copies thereof, unless the Requesting State expressly requests the originals.

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

3. Insofar as not prohibited by the law of the Requested State, documents, objects and records shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 8 /

AVAILABILITY OF PERSONS TO GIVE EVIDENCE OR
ASSIST IN INVESTIGATIONS IN THE REQUESTING STATE

1. The Requesting State may request that a person be made available to testify or to assist in an investigation.

2. The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

ARTICLE 9

MAKING DETAINED PERSONS AVAILABLE TO GIVE EVIDENCE
OR ASSIST IN INVESTIGATIONS

1. A person in custody in the Requested State shall, at the request of the Requesting State, be temporarily transferred to the Requesting State to 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 State, the Requesting State shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request.

3. Where the sentence imposed expires, or where the Requested State advises the Requesting State 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 present in the Requesting State pursuant to a request seeking that person's attendance.

ARTICLE 10

SAFE CONDUCT

1. A person present in the Requesting State in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceeding other than the proceedings to which the request relates.

2. A person, who is present in the Requesting State by consent as a result of a request for the person's attendance to answer before a judicial authority any acts, omissions or convictions shall not be prosecuted or—detained or subjected to any other restriction of personal liberty for acts and omissions or convictions which preceded that person's departure from the Requested State, not specified in the request.

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

4. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

ARTICLE 11

PROCEEDS OF CRIME

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

2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds of crime. Such assistance shall be given in accordance with the law of the Requested State by whatever means are appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting State or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested State.

3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds.

4. Proceeds forfeited or confiscated pursuant to this Treaty shall accrue to the Requested State, unless otherwise agreed in a particular case.

5. Where action has been taken in the Requested State pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in Canada or India as the case may be by a person affected by the order, the relevant State shall inform the other State as soon as possible and shall also inform it promptly of the outcome of that representation.

§ PART III PROCEDURE

4 ARTICLE 12

CONTENTS OF REQUESTS

1. In all cases requests for assistance shall include :

- (a) the name 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 laws;

- (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 therefor; and
- (e) any time limit within which compliance with the request is desired.

2. Requests for assistance shall also contain the following information :

- (a) where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
- (b) where necessary, details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor;

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(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 State;

(d) in the case of requests to take evidence from a person, a statement as to whether sworn or affirmed statements are required, and a description of the subject matter of the evidence or statement sought;

(e) in the case of lending of exhibits, the person or class of persons who will have custody of the exhibit, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;

(f) in the case of making detained persons available, 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; and

(g) in the case of requests for restraint or forfeiture of proceeds of crime, where possible, :

(i) a detailed description of the proceeds including their location;

4 (ii) a statement describing the basis for belief that the monies or property are the proceeds of crime; and

(iii) a statement describing the evidence that would ~~be~~ available for a proceeding in the Requested State.

3. The Requested State shall not refuse to execute the request solely because it does not include all of the information described in paragraphs 1 and 2 if it can otherwise be executed according to the law of the Requested State.

4. If the Requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional details be furnished.

5. A request shall be made in writing. In urgent circumstances or where otherwise permitted by the Requested State, a request may be made orally but shall be confirmed in writing promptly thereafter.

ARTICLE 13

CENTRAL AUTHORITIES

Central Authorities shall transmit and receive all requests^s and responses thereto for the purposes of this Treaty. The Central Authority for Canada shall be the Minister of Justice or an official designated by that Minister; the Central Authority for India shall be the Ministry of Home Affairs.

ARTICLE 14

CONFIDENTIALITY AND LIMITATION OF USE

1. The Requested State may require, after consultation with the Requesting State, 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 Requested State 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.

3. The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Requested State.

ARTICLE 15
AUTHENTICATION

Evidence or documents transmitted pursuant to this Treaty shall not require any form of authentication, save as is specified in Article 7.

ARTICLE 16

LANGUAGE

Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested State.

ARTICLE 17

CONSULAR OFFICIALS

1. Consular officials may take evidence in the territory of the receiving State from a witness on a voluntary basis without a formal request. Prior notice of the intended proceedings shall be given to the receiving State. That State may refuse its consent for any reason provided in Article 5.

2. Consular officials may serve documents on an individual who appears voluntarily at the consular premises.

ARTICLE 18

EXPENSES

1. The Requested State shall meet the cost of executing the request for assistance, except that the Requesting State shall bear :

(a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State, and any allowance or expenses payable to that person while in the Requesting State pursuant to a request under Articles 8 or 9 of this Treaty; and

(b) the expenses and fees of experts either in the Requested State or the Requesting State.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

PART IV FINAL PROVISIONS

ARTICLE 19

OTHER ASSISTANCE

This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other treaties, arrangements or otherwise, or prevent the Contracting Parties providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise. Assistance provided or continued to be provided to each other pursuant to other treaties, arrangements or otherwise is no bar for seeking and extending the assistance under this Treaty.

ARTICLE 20

SCOPE OF APPLICATION

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

ARTICLE 21
CONSULTATIONS

The Contracting Parties shall consult promptly, at the request of either Party, concerning the interpretation and the application of this Treaty.

ARTICLE 22
THIRD STATES

Where judicial authorities of a third State issue any order in the context of an investigation or proceedings that requires a national or resident of one of the Parties to undertake, or refrain from any conduct in the territory of the other Party in a manner that conflicts with the laws or established policies of that other Party, the Parties agree to consult to identify means to avoid or limit such conflict.

ARTICLE 23

ENTRY INTO FORCE AND TERMINATION

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall come into force upon the exchange of instruments of ratification.

2. Either of the Contracting States may terminate this Treaty by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the Treaty shall cease to have any force or effect.

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

DONE at Ottawa this the twenty fourth day of October, one thousand nine hundred and ninety four in duplicate, in Hindi, English and French languages each version being equally authentic.

S. B. Chavan
2-4-10-94.

Hon'ble S. B. CHAVAN
Minister of Home Affairs
For the Government of the
Republic of India

Herb Gray

Hon'ble HERB GRAY
Solicitor General
of Canada
For the Government of
Canada