

Tajikistan

**TREATY BETWEEN THE REPUBLIC OF INDIA AND THE
REPUBLIC OF TAJIKISTAN ON MUTUAL LEGAL
ASSISTANCE IN CRIMINAL MATTERS**

The Republic of India and the Republic of Tajikistan,
hereinafter referred to the "Contracting Parties",

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

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Obligation To Grant Mutual Legal Assistance

1. The Contracting Parties shall, in accordance with this Treaty, grant each other the widest measure of mutual assistance in criminal matters.
2. Mutual assistance for the purpose of paragraph 1 of this Article shall be any assistance given by the Requested Party in respect of investigations or proceedings in the jurisdiction of the Requesting Party in a criminal matter, irrespective of whether the assistance is sought or to be provided by a court or some other authority.
3. Criminal matters for the purpose of paragraph 1 of this Article mean, for the Republic of Tajikistan, investigations or proceedings relating to any offence enacted by criminal legislation of the Republic of Tajikistan, and, for the Republic of India, investigations or proceedings relating to any offence created by a law of Parliament or by the legislatures of States.

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4. Criminal matters shall also include investigations or proceedings relating to criminal offences concerning taxation, duties, customs and international transfer of capital or payments, including those for perpetuating terrorism.

5. Criminal matters shall further include investigations or proceedings relating to criminal offences concerning terrorism, i.e., use of violence for political ends or for putting public in fear.

6. Assistance shall include:

- 6.1 locating and identifying persons and objects;
- 6.2 serving documents, including documents seeking the attendance of persons;
- 6.3 providing information, documents and other records, including criminal and judicial records;
- 6.4 delivering property;
- 6.5 lending exhibits;
- 6.6 taking evidence and obtaining statements of persons;
- 6.7 executing requests for search and seizure;
- 6.8 making persons in custody and others, including experts, available to give evidence or assist investigation;
- 6.9 taking measures to locate, restrain, seize and confiscate the proceeds of crime;
- 6.10 taking measures to locate, identify, restrain, seize and confiscate funds meant for purposes of terrorism, and
- 6.11 providing other assistance consistent with the purposes of this Treaty.

Article 2

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 specified by the Requesting Party.

2. The Requested Party shall, when the Requesting Party specifically requests it, inform the Requesting Party of the time and place of execution of the request.

3. The Requested Party shall not decline execution of a request on the ground of bank secrecy.

Article 3

Refusal Or Postponement Of Assistance

1. Assistance may be refused if, in the opinion of the Requested Party the execution of the request would impair its sovereignty, security, public order or any other essential public interest.

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

3. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request, or to postpone execution, and shall give reasons for that decision.

4. Before refusing to grant a request for assistance or before postponing the granting 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.

PART II SPECIFIC PROVISIONS

Article 4

Location Or Identification Of Persons And Objects

The competent authorities of the Requested Party shall make best efforts to ascertain the location and identity of persons and objects specified in the request.

10

Secret 125

Article 5

Service Of Documents

1. The Requested Party shall serve documents transmitted to it for the purpose of service.
2. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the jurisdiction of the Requesting Party within a reasonable time before the scheduled response or appearance. In determining what time is "reasonable", the Requesting Party shall take into account conditions in the jurisdiction of the Requested Party.
3. The Requested Party shall return a proof of service in the manner required by the Requesting Party. If service is delayed or cannot be effected, the reason therefor shall be communicated to the Requesting Party.

Article 6

Transmission Of Documents And Objects

1. When the request for assistance concerns the transmission of records and documents, the Requested Party may transmit certified true copies thereof, unless the Requesting Party expressly requests the originals, in which case the Requested Party shall make every effort to comply with the request.
2. The original records or documents or objects transmitted to the Requesting Party shall be returned to the Requested Party as soon as possible, upon the latter's request.
3. Insofar as not prohibited by the law of the Requested Party, records, documents or objects shall be transmitted in a form or accompanied by such certification, as may be requested by the Requesting Party in order to make them admissible according to the law of the Requesting Party.

Secret

SECRET

126

Article 7

Presence Of Persons Involved In The Proceedings In The Jurisdiction Of The Requested Party

1. A person requested to testify and produce documents, records or objects in the jurisdiction of the Requested Party shall be compelled, if necessary by subpoena or order to appear and testify and produce such documents, records or objects, in accordance with the requirements of the law of the Requested Party.
2. The Requested Party, in accordance with its laws, shall permit the presence of such persons as specified in the request during the execution of the request, and may allow them to pose questions to the person being questioned.
3. The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. To the extent not prohibited by the law of the Requested Party, the use of technical means to make such a verbatim transcript shall be permitted.

Article 8

Availability Of Persons To Give Evidence Or Assist Investigations In The Jurisdiction Of The Requesting Party

1. The Requesting Party may request the Requested Party that a person be made available to testify or to assist an investigation.
2. The Requested Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's voluntary concurrence thereto. That person shall be informed of any expenses and allowances payable. The Requested party shall promptly inform the Requesting Party of the person's response.

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Article 9

Search And Seizure

- 1. The competent authority that has executed a request for search and seizure shall provide such information as may be required by the Requesting Party concerning, but not limiting to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.
- 2. The Requesting Party shall observe conditions imposed by the Requested Party in relation to seized documents, records or objects which may be delivered to the Requesting Party.

Article 10

Making persons in custody available to give evidence or assist investigations

- 1. A person in custody in the jurisdiction of the Requested Party shall, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to assist investigations or to give evidence in proceedings provided that the person consents to that transfer and there are no overriding grounds against transferring the person. The Requesting Party shall hold that person in custody and shall return the person in custody to the Requested Party at the conclusion of the execution of the request.
- 2. Where the sentence imposed expires, or 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 be treated as a person invited pursuant to Article 8 of this Treaty.

Article 11

Safe conduct

- 1. A person present in the jurisdiction of the Requesting Party in response to a request seeking that person's attendance shall not be detained or subjected to any other restriction of personal liberty except as specified in paragraph 1 of Article 10 of this Treaty, nor shall that

person be prosecuted for any acts or omissions which preceded that person's departure from the jurisdiction of the Requested Party, nor shall that person be obliged to give evidence in any proceedings other than the proceedings to which the request relates.

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

3. Any person who fails to appear in the jurisdiction of the Requesting Party may not be subjected to any sanction or compulsory measure by the Requested Party.

Article 12

Proceeds of crime

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

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

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 Party, unless otherwise agreed in a particular case.

5. Where action has been taken in the Requested Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in Republic of Tajikistan or the

1779

Republic of India, as the case may be, by a person affected by the order, the relevant Contracting Party shall inform the other Contracting Party as soon as possible and shall also inform it promptly of the outcome of that representation.

PART III

PROCEDURE

Article 13

Contents of requests

- 1. In all cases requests for assistance shall include:
 - 1.1 the competent authority conducting the investigation, criminal prosecution or proceedings to which the request relates;
 - 1.2 a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and laws;
 - 1.3 the purpose for which the request is made and the nature of the assistance sought; and
 - 1.4 any time limit within which compliance with the request is desired.
- 2. Request for assistance shall also contain the following information:
 - 2.1 where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - 2.2 Where necessary, details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefor,

- 2.3 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;
 - 2.4 in the case of requests to take evidence from a person, information as to whether that evidence is required to be sworn, affirmed, or otherwise taken in conformity with the law of the Requested Party, and description of the subject matter of the evidence or statement sought;
 - 2.5 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;
 - 2.6 in the case of making persons in custody available, the person or class of persons who will have custody during the transfer, the place to which the person in custody is to be transferred and the date of that person's return;
 - 2.7 the need, if any, for confidentiality and the reasons therefor;
 - 2.8 any other information that might be useful in order to execute the request.
3. If the Requested Party 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.
 4. A request shall be made in writing. In urgent circumstances or where otherwise permitted by the Requested Party, a request may be made by facsimile or other agreed means of electronic communication but shall be confirmed in original written form promptly thereafter.

Article 14

Central authorities

Central Authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty.

The Central Authority for the Republic of Tajikistan shall be the Prosecutor's Office of the Republic of Tajikistan; the Central Authority for the Republic of India shall be the Ministry of Home Affairs of the Republic of India.

Article 15

Confidentiality

1. The Requested Party may require 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. If the Requesting Party accepts the information or evidence subject to such terms and conditions, it shall comply with them.

2. The Requested Party shall, upon request, and to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so notify the Requesting Party, which shall determine whether the request should nevertheless be executed.

Article 16

Limitation of use

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.

Article 17

Certification

Evidence or documents transmitted pursuant to this Treaty shall not require any form of certification, save as is specified in Article 6 of this Treaty.

ARTICLE 18

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.

ARTICLE 19

Consular Officers

1. Consular officers 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 3 of this Treaty.
2. Consular officers may serve documents on an individual who appears voluntarily at the consular premises.

ARTICLE 20

Expenses

1. The Requested Party shall meet the cost of executing the request for assistance in its territory, except that the Requesting Party shall bear;
 - 1.1. the expenses associated with conveying any person to or from the jurisdiction of the Requested Party at the request of the Requesting Party, and any allowance or expenses payable to that person while in the jurisdiction of the Requesting Party pursuant to a request under Articles 7 or 8 of this Treaty.
 - 1.2. the expenses and fees of experts either in the Jurisdiction of 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 Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

PART IV - FINAL PROVISIONS

ARTICLE 21

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 22

International Conventions / Treaties

The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from other international Conventions/Treaties to which the Contracting Parties are signatories.

Article 23

Consultations

The Contracting Parties shall consult promptly, at the request of either Contracting Party, concerning the interpretation and the application of this Treaty, either generally or in relation to a particular request.

Article 24

Ratification And Termination

1. This Treaty shall be subject to ratification and it shall enter into force on the date of exchange of the instruments of ratification.

Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channel and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

Done at New Delhi on 10th May, 2001, in two originals in the Hindi, Tajik and English languages, all texts being equally authentic. In case of divergence in interpretation of the provisions of this Treaty, the English text shall prevail.

L. K. Advani

**For the Republic of
India**

Law

**For the Republic of
Tajikistan**

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