

**AGREEMENT BETWEEN THE REPUBLIC OF INDIA
AND THE KINGDOM OF SPAIN
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The Republic of India and the Kingdom of Spain (hereinafter referred to as Contracting Parties);

Guided by the traditional friendly relations between the two countries;

Recognising the need to facilitate the widest measures of mutual assistance in criminal matters;

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

Have agreed as follows:

ARTICLE 1

Scope of application

1. Under this Agreement, the Contracting Parties shall grant each other the widest measure of mutual legal assistance in criminal matters.
2. For the purpose of this Agreement mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided initially by a judicial authority or any other authority, if ultimately such a request or grant is issued by a judicial authority.
3. This Agreement shall be without prejudice to other obligations between the Parties pursuant to other treaties or arrangements or otherwise, and shall not prevent the Parties or their law enforcement agencies from providing assistance to each other pursuant to other treaties or arrangements.

4. This Agreement shall also apply to any requests for mutual legal assistance relating to acts or omissions committed before its entry into force.

ARTICLE 2

Definitions and Scope of the Assistance

1. Criminal matters mean, legal proceedings relating to investigations, inquiries or trials of the offences created by the law, including the fiscal crimes.

2. Assistance shall include :

- i. measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime;
- ii. taking of evidence and obtaining of statements of persons;
- iii. providing of information, documents and other records, including criminal and judicial records;
- iv. location of persons and objects, including their identification;
- v. search of persons and places and seizure of assets and documents;
- 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. any other assistance consistent with the objects of this agreement.

3. For the purpose of this agreement:

a. "proceeds of crime" means any property that is derived or realised directly or indirectly by any persons from an offence or offences or the value of any such property;

b. "property" includes money and all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property;

c. "confiscation" means any measure resulting in the deprivation of property;

d. "instruments of crime" means any property which is, or is intended to be, used in connection with the commission of an offence; and

e. "the restraint of property" means any measure for the prevention of dealing in or transfer or disposal of property.

ARTICLE 3

Central Authorities

1. Requests for assistance under this Agreement shall be made through the Central Authorities of the Contracting Parties.

2. In the Republic of India the Central Authority is the Ministry of Home Affairs. In the Kingdom of Spain, the Central Authority shall be the Ministry of Justice.

ARTICLE 4

Form and Contents of Requests

1. Requests for assistance under this Agreement shall be made in writing. The requests may be made in advance by fax, e-mail or other equivalent mode, due to be confirmed by original document signed by the Requesting State within following thirty days of their formulation.

2. Requests for assistance shall include a statement of:

(a) the name of the competent authority conducting the investigation or proceedings to which the request relates;

(b) the matters, including the relevant facts and laws, to which the investigation or proceedings relates;

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- (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (e) any time limit within which compliance with the request is desired;
 - (f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - (g) 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;
 - (h) in the case of requests to take evidence from a person, the text of the questionnaire and the description of the method by which it should be done;
 - (i) 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;
 - (j) in the case of making detained persons available, the person or the authority 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;
 - (k) the need, if any, for confidentiality and the reasons therefor; and
 - (l) in the case of requests for restraint or forfeiture of proceeds or instruments of crime, where possible:
 - i) a detailed description of the proceeds or instruments including their location;
 - ii) a statement describing the basis for belief that the monies or property are the proceeds or instruments of crime; and

- iii) a statement describing the evidence that would be available for a proceeding in the Requested Party.

3. The Requested Party shall not refuse to execute the request solely because it does not include all of the information described under this article if it can otherwise be executed according to the law of the Requested Party.

4. If the Requested Party considers that additional information is needed to enable the request to be dealt with, that Party may request such additional information.

ARTICLE 5

Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the Requested Party and may be executed in accordance with any requirements or manner specified in the request if not incompatible with the law of the Requested Party.

2. The Requested Party shall, upon request, inform the Requesting Party of any circumstances which are likely to cause a significant delay in execution of the request.

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

ARTICLE 6

Refusal of Assistance

1. The Requested Party may refuse the assistance if:

- (a) the execution of the request would impair its sovereignty, security, public order or other essential interests;
- (b) the execution of the request would be contrary to the domestic law of the Requested Party;

(c) if the request seeking restraint, forfeiture or confiscation of proceeds or instruments of activity which, had it occurred within the jurisdiction of the Requested Party, would not have been an activity in respect of which a confiscation order could have been made; and

(d) the request relates to an offence in respect of which the accused person had been finally acquitted. However, the Requested Party shall provide information as may be required to establish that the accused has been finally acquitted.

2. Before refusing to grant a request for 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 conditions, it shall comply with them.

ARTICLE 7

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.

2. The original records or documents and the 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, documents, objects and records 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.

ARTICLE 8

Taking evidence in the Requested Party

1. A person, including a person in custody, requested to testify and produce documents, records or other articles in the Requested Party 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 Party.

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

3. Subject to the law of the Requested Party, 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 9

Availability of Persons to Give Evidence or Assist in Investigation in the Requesting Party

1. The Requesting Party may request that a person be made available to testify or to assist in 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 concurrence thereto. That person shall be informed of any expenses and allowances payable.

ARTICLE 10

Making Detained Persons Available to Give Evidence or Assist in Investigations

1. A person in custody in the Requested Party shall, at the request of the Requesting Party, be temporarily transferred to the Requesting Party 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 Party, the Requesting Party 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 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 person present in the Requesting Party pursuant to a request seeking that person's attendance.

ARTICLE 11

Safe conduct and Immunity

1. A person present in the Requesting Party 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 the territory of that Party for any acts or omissions which preceded that person's departure from the Requested Party, 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 Party 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 Party, 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 Party, has not left it within a period of 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 Party may not be subjected to any sanction or compulsory measure in the Requested Party.

ARTICLE 12

Proceeds and Instruments of Crime

1. The Requested Party shall, upon request endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. A request may be made for the assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested Party by whatever means are appropriate. This may include giving effect to an order made by a judicial authority or other competent authority whose actions may be appealed against to a judicial authority in the Requesting Party or submitting the request to one of the said authorities 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 or instruments.
4. The State Party which has under its custody the proceeds or instruments of crime shall make them available in conformity of the established norms in its internal legislation, 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 either of the Contracting Parties as the case may be by a third Party affected by the order, the relevant Party shall inform the other Party as soon as possible and shall also inform it promptly of the outcome of that representation.

ARTICLE 13

Confidentiality and Limitation of Use of the Information

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

ARTICLE 14 **Authentication**

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

ARTICLE 15 **Language**

Requests and supporting documents shall be accompanied by a translation into the official language of the Requested Party or English.

ARTICLE 16 **Expenses**

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

- (a) the expenses associated with conveying any person to or from the territory of the Requested Party at the request of the Requesting Party, and any allowance or expenses payable to that person while in the Requesting Party pursuant to a request under Article 9 or 10 of this Agreement; and
- (b) the expenses and fees of experts.

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.

ARTICLE 17

Entry into Force

This Agreement shall come into force on the last date of the month following in which the last communication through diplomatic channel between the parties is made conveying completion of all the internal legal requisites for its entry into force.

ARTICLE 18

Termination

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

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

DONE at New Delhi this the ~~Third~~ day of July 2006 (Two Thousand and Six) in two originals each, in Hindi, Spanish and English, all texts being equally authentic. However, in case of difference, the English text shall prevail.



For the Republic of India



For the Kingdom of Spain