

TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF UNITED MEXICAN STATES ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the Republic of India and the Government of the United Mexican States hereinafter referred to as "the Contracting Parties";

GUIDED by the traditional friendly relations between both countries;

RECOGNISING the need to facilitate the widest measure of mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

DESIRING to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime, including terrorism and tracing, restraint, seizure and forfeiture of funds meant for financing acts of terrorism as also, 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. The Contracting Parties shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by either Contracting Party in respect of investigations, prosecutions or proceedings to the other Contracting Party in criminal matters, irrespective of whether the assistance is sought or is to be provided by a Tribunal or Court or some other authority.
3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in one Contracting Party would constitute an offence under the laws of the other Contracting Party.
4. Assistance shall include:

- a) locating and identifying persons and objects;
- b) serving documents, including documents seeking the attendance of persons;
- c) providing information, documents and records;
- d) providing objects, including lending exhibits;
- e) taking evidence and obtaining statements, including expert's opinion ;
- f) authorizing the presence of persons from one Contracting Party at the territory of the other Contracting Party for the execution of a request;
- g) making detained persons available to give evidence or assist investigations;
- h) facilitating the appearance of witnesses or the assistance of persons in investigations;
- i) search and seizure;
- j) taking measures to locate, restrain or forfeit the proceeds and instruments of crime;
- k) providing of information by either Contracting Party *suo moto* to the other, which may be within its knowledge and can be of use of the other Contracting Party;
- l) taking measures to locate, freeze, seize and forfeit any funds or finances meant for the financing of acts of terrorism in the territory of either Contracting Party;
- m) any other form of assistance not prohibited by the national law of the Requested Party.

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

6. This Treaty does not empower one Contracting Party's authorities to undertake, in the territorial jurisdiction of the other, the exercise and performance of the functions or authority exclusively entrusted to the authorities of that other Contracting Party by its national laws or regulations.

ARTICLE 2 DEFINITIONS

For the purpose of this Treaty:

1.
 a) for the Republic of India, criminal matters mean, investigations, inquiries, trials or other proceedings relating to an offence created by law of Parliament or by the legislature of a State and for the United Mexican States, criminal matters mean investigations or proceedings relating to any offence under any Federal or State law.

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

2.

a) "proceeds of crime" means any property derived or obtained directly or indirectly by any person or organization as a result of an offence, including crime involving money laundering or the value of any such property.

b) "property" means assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to or interest in such assets derived or used in the commission of an offence include the ones obtained through proceeds of crime;

c) "forfeiture" means any legal 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;

e) "seizure of property" means any measure for the prevention of dealing in or transfer or disposal of property; and

f) "assistance" means legal assistance under this Treaty.

3.

a) "Requesting Party" means the Contracting Party that makes the request for mutual legal assistance in criminal matters.

b) "Requested Party" means the Contracting Party to whom the request is made.

ARTICLE 3 CENTRAL AUTHORITIES

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

2. For the Republic of India the Central Authority shall be the Ministry of Home Affairs and in the United Mexican States the Central Authority shall be the Office of the Attorney General.

610

3. Any change or addition in the Central Authorities shall be notified by either Contracting Party through diplomatic channels.

ARTICLE 4 CONTENTS OF REQUESTS

1. Requests for assistance under this Treaty shall be made in writing. However, in urgent circumstances, or where otherwise permitted by the Requested Party, requests may be made orally or by any electronic means such as electronic e-mail or facsimile, with the understanding that it shall be formalized in writing within thirty (30) days, after the request was made.
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 proceeding relates;
 - c) the purpose for which the request is made and nature of the assistance sought;
 - d) details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefor;
 - 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, or the location, restraint or forfeiture of proceeds of crime or funds meant for financing of acts of terrorism, 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, a statement as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
 - i) in the case of lending of exhibits, the persons 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) the person or class of person 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) in case that request is intended to receive a statement from a person in the territory of the Requested Party, the Requesting Party shall send the respective questionnaire in writing;
- l) the need, if any, for confidentiality and the reasons therefor; and
- m) in the case of request for seizure or forfeiture of proceeds or instruments of crime, including seizure and forfeiture of funds meant for financing acts of terrorism where possible:
 - (i) a detailed description of the proceeds or instrument including their location
 - (ii) a statement describing the basis for belief that the monies or property are the proceeds or instruments of crime including seizure and forfeiture of funds meant for financing acts of terrorism; and
 - (iii) a statement describing the evidence that would be available for proceeding in the Requested Party.

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

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

**ARTICLE 5
EXECUTION OF REQUEST**

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

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

3. The Requested Party shall, inform the Requesting Party of the date and place of execution of the request for assistance.

4. The Requested Party shall not refuse to execute a request on the ground of bank secrecy.

5. The Central Authority of the Requested Party shall communicate as soon as possible the result of its proceedings to the Central Authority of the Requesting Party.

ARTICLE 6 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, essential public interest or prejudice the safety of any person.

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

3. Assistance may be refused if the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.

4. Assistance may be refused if the request seeking seizure, forfeiture of proceeds of crime or seizure of property is in respect of any conduct/activity which cannot be made basis for such seizure or forfeiture in the Requested Party.

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

6. The Requested Party shall promptly inform the Requesting Party of the decision of the Requested Party not to comply in whole or in part the request for assistance or either to grant or postpone execution of the request and shall give reasons for that decision.

7. The request for assistance may be refused if it relates to a political offence or an offence of a political nature. For the purpose of this Treaty, the following offences shall not be regarded as offences of political character:

- (b)
- (a) offences under International Conventions to which both States are Parties;
 - (b) murder;
 - (c) manslaughter or culpable homicide;
 - (d) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
 - (e) the causing of an explosion likely to endanger life or cause serious damage to property;
 - (f) the making or possession of an explosive substance by a person to intend either himself or another person to endanger life or cause serious damage to property;
 - (g) the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
 - (h) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
 - (i) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
 - (j) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
 - (k) incitement to murder;
 - (l) any other offence related to terrorism which at the time of the request is under the national legislation of the Requesting Party, not to be regarded as an offence of a political character; and
 - (m) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

8. Before refusing a request for assistance or before postponing the execution of a request, the Requested Party shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to those 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.
2. The Requested Party may provide any information, copies of documents and records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own enforcement and judicial authorities.
3. The original 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.
4. Insofar as not prohibited by the national legislation 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 national legislation of the Requesting Party.

**ARTICLE 8
TAKING EVIDENCE IN THE REQUESTED PARTY**

1. Any person, including a person in custody or detention, 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 national legislation of the Requested Party.
2. Subject to the national law of the Requested Party, commissions or other officials of the Requesting Party shall be permitted to be present when evidence is taken in the Requested Party and to participate in the manner as may be permissible.
3. The presence and participation of representatives shall have to be previously authorized by the Requested Party, which will inform the Requesting Party before the execution of the request.

4. The Requesting Party shall submit a list of the names, designation and reasons for the presence of its representative within a reasonable time frame before the execution of the request.

ARTICLE 9 VIDEO CONFERENCING

On request, the Requested Party may facilitate examination of a witness or an expert before its judicial authority or other competent authority, by means of video conferencing, in conformity with its national law and procedure.

ARTICLE 10 AVAILABILITY OF PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATION IN THE REQUESTING PARTY

The Requesting Party may request that a person be made available to testify or to assist in an investigation. 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 in writing thereto. That person shall be informed in advance, of any expenses and allowances payable by the Requesting Party.

ARTICLE 11 MAKING DETAINED PERSONS AVAILABLE TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS

1. A person in custody in the territory of the Requested Party shall, at 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 national legislation 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. The initial term of transfer shall not exceed ninety (90) days, which, upon justified request of the Requesting Party, may be extended by the Requested Party.

4. 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 in the territory of the Requesting Party under Article 10 of this Treaty.

5. The time spent in the custody within the territory of the Requesting Party shall be computed towards the sentence, which was imposed by the Requested Party.

**ARTICLE 12
SAFE CONDUCT**

1. A person, including a person in custody or detention, present in the territory of the Requesting Party in response to a request seeking that person's presence shall not be prosecuted, detained or subjected to any other restrictions of personal liberty in that State 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. Paragraph 1 of this Article shall cease to apply if a person, being free to leave the territory of the Requesting Party, has not left it within a period of thirty (30) days after being officially notified that that person's presence is no longer required or, having left that territory, has voluntarily returned.

3. Any person who fails to appear in the territory of the Requesting Party shall not be subject to any sanction or compulsory measure in the Requested Party.

**ARTICLE 13
SERVICE OF DOCUMENTS**

1. The Requested Party shall serve the documents sent by the Requesting Party. This service can be carried out by simple transmission of the

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documents to the addressee. If the Requesting Party expressly requests, the service shall be effected in accordance with the procedures established by its national legislation for similar documents or in any other manner compatible with its legislation.

2. The service shall be proved by a signed and dated receipt of the addressee or by a statement of the Requested Party certifying the fact, manner and date of service. The proof of service shall be transmitted immediately to the Requesting Party. If the Requested Party is unable to effect the service, it shall communicate the reasons for the same to the Requesting Party.

3. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting Party within a reasonable time, before the scheduled response or appearance.

ARTICLE 14 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. The Requested Party shall, upon the request of the Requesting Party, execute a request for a search and seizure in accordance with its national laws.

3. Search and seizure shall be conducted by the Requested Party to the same extent and under the same conditions as to be got done for its own law enforcement and judicial authorities in accordance with its law.

4. The competent authority that has executed a request for a search and seizure shall provide such information as may be required by the Requesting Party concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.

5. Proceeds or instruments seized or forfeited pursuant to this Treaty shall accrue to the Requested Party, unless otherwise agreed.

**ARTICLE 15
CONFIDENTIALITY**

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, disclosed or used only subject to such terms and conditions as may be specified by the Requested Party.
2. The Requesting Party may require that the requests, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested Party shall so inform the Requesting Party prior to executing the request and the latter shall then 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 Requested Party.

**ARTICLE 17
AUTHENTICATION**

1. For the purposes of this Treaty, the documents acknowledged as official in the territory of one Contracting Party shall be acknowledged as official in the territory of the other Contracting Party.
2. Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 7, or as required by the Requesting Party.

**ARTICLE 18
LANGUAGE**

Requests, supporting documents and other communications made pursuant to this Treaty shall be in the language of the Requested Party or in English.

**ARTICLE 19
EXPENSES**

1. The Requested Party shall meet the expense of executing the request for assistance, nevertheless 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 10 or 11 of this Treaty; and
 - b) the expenses and fees of experts either in 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 Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

**ARTICLE 20
CONSULTATION**

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

**ARTICLE 21
OTHER INSTRUMENTS**

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Contracting Party through the provisions of other applicable international conventions/agreements, or through the provisions of its national law. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

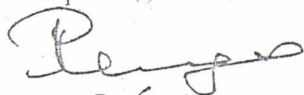
ARTICLE 22
SETTLEMENT OF DISPUTES

Any difference or dispute arising out of the application, interpretation or implementation of this Treaty shall be resolved amicably by negotiations and mutual consultations.

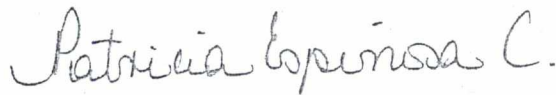
ARTICLE 23
FINAL PROVISIONS

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force on the thirtieth (30th) day after the exchange of instruments of ratification.
3. This Treaty may be amended by mutual consent. Any such amendment shall enter into force thirty (30) days after the receipt of the later communication intimating the completion by the Contracting Parties of their internal procedure for the entry into force of the amendment through diplomatic channels.
4. Either Contracting Party may terminate this Treaty. The termination shall take effect six (6) months from the date on which it is notified through diplomatic channels to the other Contracting Party.
5. The requests for assistance made before termination of this Treaty shall be considered even if this Treaty has been terminated.

Signed at New Delhi this the 10th day of September 2007 (Two thousand and Seven) in three originals each, Hindi, Spanish and English, all texts being equally authentic. However, in case of divergence, the English text shall prevail.



FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA



FOR THE GOVERNMENT OF
THE UNITED MEXICAN STATES