

France

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AGREEMENT BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF INDIA

AND

THE GOVERNMENT OF THE FRENCH REPUBLIC

CONCERNING

MUTUAL LEGAL ASSISTANCE

IN CRIMINAL MATTERS

The Government of the Republic of India and the Government of the French Republic, hereinafter called the Parties;

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution and prevention of crime and the confiscation of the proceeds and instruments of crime:

Have agreed as follows :

Article 1

Scope of Assistance

1. a. The Parties shall provide, in accordance with the provisions of this Agreement, the widest measure of mutual legal assistance in the investigation and prosecution of criminal offences falling within the jurisdiction of the Requesting Party and in proceedings related thereto at the time of the request for assistance.
- b. Criminal offences shall also include offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters.
2. Assistance shall include, but not be limited to :
 - a. Identifying and locating persons;
 - b. Serving of documents or processes;
 - c. The obtaining of evidence, including articles or documents;
 - d. Executing requests for search and seizure;
 - e. Facilitating the personal appearance of witnesses or experts;
 - f. Effecting the temporary transfer of persons in custody to appear in court proceedings or to assist in an investigation, as witnesses;
 - g. Obtaining production of judicial or official records;
 - h. Tracing, restraining, seizing and confiscating the proceeds and instruments of crime;
 - i. Providing information, documents and records;
 - j. Delivery of property, including lending of exhibits; and
 - k. Other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.

3. This Agreement does not apply either to the execution of arrests and enforcement of verdicts, except in the case of confiscation, or to offences under military law which are not offences under the ordinary criminal law.
4. Subject to the provisions of Article 17 (3), assistance shall be provided without regard to whether the conduct under investigation or prosecution in the territory of the Requesting Party constitutes an offence or not in the territory of the Requested Party.

Article 2

Central Authorities

1. Requests for mutual assistance under this agreement shall be addressed through the Central Authorities of the Contracting Parties.
2. The Central Authority of the Republic of India shall be the Ministry of Home Affairs. The Central Authority of the French Republic shall be the Ministry of Justice.
3. Requests under this Agreement shall be transmitted from the Central Authority of the Requesting Party to the Central Authority of the Requested Party directly or through diplomatic channels and returned through the same channels. Requests shall be in writing. In urgent cases the Central Authority may transmit requests by fax or through INTERPOL, followed by the original request in writing.
4. The Central Authority of the Requested Party shall promptly comply with requests or, where appropriate, forward them to its competent authorities for them to carry out.

Article 3

Other Assistance

The mutual assistance provided by the Parties under this Agreement shall be without prejudice to any assistance that may be provided by them pursuant to other treaties, agreements, arrangements or practices.

Article 4

Limitations on compliance

1. The Requested Party shall refuse assistance if:
 - a. The request for assistance impairs its sovereignty, security, public order or other essential interests;

- b. The Requesting Party is unable to comply with any conditions in relation to confidentiality or limitation as to the use of material provided;
 - c. The request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned by the Requested Party.
2. The requested party may refuse assistance if :
- a. The request for assistance relates to an offence of a political character except serious offences against the life, the physical integrity or the freedom of person;
 - b. The execution of the request would interfere with an ongoing investigation or prosecution in the territory of the Requested Party.
3. Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority :
- a. Shall promptly inform the Requesting Party of the reason for considering denial or postponement; and
 - b. Shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.
4. If the Requesting Party accepts assistance subject to the terms and conditions referred to in para 3(b), it shall comply with those terms and conditions.

Article 5

Requests and Supporting Documents

1. Requests shall include :
 - a. The name of the authority requesting assistance ;
 - b. A description of the nature of the investigation or proceedings including a summary of the relevant facts and laws;
 - c. A description of the purpose and nature of assistance requested;
 - d. Any requirements of confidentiality;

- e. Details of any particular procedure the Requesting Party wishes to be followed; and
- f. The time limit within which the request should be complied with.

Where appropriate, the request shall also include :

- a. Any available information as to the identity and the location of the person or property which is the subject matter of the request ;
- b. The relation between the person or property concerned and the investigation or the proceedings, which are the subject matter of the request;
- c. A description, as precise as possible, of the place to be searched and of the documents or articles to be seized ; and
- d. A list of the questions to be answered.

Article 6

Execution of Requests

A request shall be executed in accordance with the law of the Requested Party and to the extent not prohibited by its law, and, so far as practicable, in the manner stated in the request.

The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

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

Article 7

Limitations on use of information

The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

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.

3. The Requested Party shall to the extent requested, keep confidential a request, supporting documents and any action taken pursuant to the request except to the extent necessary to execute it.

Article 8

Attendance of Persons

If so required by the Requesting Party, the Requested Party shall state the date and place of execution of the request. The competent authorities and the persons designated by the Requesting Party may be present at the time of execution of the request if the Requested Party consents thereto.

Article 9

Obtaining of evidence, articles or documents

1. Where a request is made that evidence be taken, the Requested Party shall arrange to have such evidence taken in accordance to its law.
2. For the purpose of this Agreement, the giving or taking of evidence shall include the production of documents, records or other material.
3. For the purposes of requests under this Article, the Requesting Party shall specify the questions to be put to the witness or person giving evidence and the subject matter about which they are to be examined.
4. If necessary, any questions additional to those specified in paragraph 3 of this Article, may be put to the witness or person giving evidence by the competent authority of the Requested Party, either of its own volition or if requested by any of the persons referred to in Article 8.
5. A person who is required to give evidence as a witness in the territory of the Requested Party, pursuant to a request for assistance, may decline to give evidence if the law of the Requested Party would permit the person to decline to give evidence in similar circumstances in proceedings which originated in the territory of the Requested Party. If the witness claims that there is a right to decline to give evidence under the law of the Requesting Party, the evidence shall nonetheless be taken and the making of the claim recorded and transmitted to the Central Authority of the Requesting Party for resolution by the authorities of that Party.

Article 10

Service of documents

1. The Requested Party shall effect service of writs, judicial verdicts and other records and documents which are transmitted to it for this purpose by the Requesting Party.
2. The Requesting Party shall transmit the request for the service of a document pertaining to a response in the territory of the Requesting Party within a reasonable time before the scheduled response.
3. The Requesting Party shall transmit to the Requested Party, a request for the service of a document pertaining to appearance of witnesses or experts in the territory of the Requesting Party at least forty days before the scheduled appearance.
4. Service may be effected by the Requested Party, by simple transmission of the document to the person to be served. If the Requesting Party expressly so requests, service shall be effected by the Requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.
5. The Requested Party shall, in so far as its law permits, return a proof of service in the manner required by the Requesting Party.
6. A person who fails to comply with any process served on him shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party.

Article 11

Restitution of documents or property

1. Evidence obtained and the originals of records and documents communicated in compliance with a request shall be kept by the Requested Party, except if the Requesting Party requires that they be returned; and
2. The Requesting Party may require from the Requested Party, pursuant to the decision of a Competent Judicial Authority of the Requesting Party, the restitution of any property or monies derived from criminal offence to the victim of the same, without prejudice to the rights of a third party.

Article 12

Publicly available and official documents

1. Subject to its law, the Requested Party shall provide copies of publicly available documents.
2. The Requested Party may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own competent authorities.

Article 13

Certification and authentication

1. Subject to the provisions of paragraph 2 of this Article, evidence, documents, records or other material transmitted pursuant to this Agreement shall not require any form of certification or authentication, unless expressly requested by the Central Authority of the Requesting Party.
2. Material shall be certified or authenticated by Consular or Diplomatic officers only if the law of the Requesting Party specifically so requires.

Article 14

Transfer of persons in custody

1. A person in the custody of the Requested Party, who is required to appear in court proceedings or to assist in investigations, as a witness, pursuant to this Agreement shall be transferred from the Requested Party to the Requesting Party, provided the Requested Party and the person concerned consent and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.
2. Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst the person is in the custody of the Requesting Party, the Requested Party shall so advise the Requesting Party which shall ensure that person's release from custody.
3. Consequent to his release and if his presence in the territory of the Requesting Party is still required in connection with the purpose of the original transfer, that person, subject to his consent, shall be treated as a person transferred under Article 15.

Article 15

Transfer of other persons

1. If the Requesting Party considers the personal appearance of a witness or expert for the purpose of giving evidence or providing assistance, it shall so inform the Requested Party. The Requested Party shall notify the witness or expert of the request, and then advise the Requesting Party of the reply received from the witness or expert.
2. Where a request is made pursuant to paragraph 1 of this Article, the Requesting Party shall also indicate the approximate amounts of allowances, including travelling and accommodation expenses payable to such witness or expert.

Article 16

Safe conduct

1. A person who consents to transfer pursuant to Article 14 or Article 15 shall not be prosecuted, detained or restricted in his personal liberty in the territory of the Requesting Party for any criminal offences or be subject to a civil suit to which the person could not be subjected if the person was not in the territory of the Requesting Party for any act or omission which preceded his departure from the territory of the Requested Party.
2. A person who consents to transfer, pursuant to Article 14 or Article 15, shall not be subject to prosecution based on his testimony, except for giving false evidence.
3. A person who consents to transfer, pursuant to Article 14 or Article 15, shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.
4. A person who does not consent to transfer, pursuant to Article 14 or Article 15, shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.
5. A person who responds to summons from the Requesting Party to answer for acts forming the subject of proceedings against him shall not be prosecuted or detained or restricted in his personal liberty in the territory of the Requesting Party for acts or omissions which preceded his departure from the territory of the Requested Party and which are not specified in the summons.
6. Paragraphs 1 and 5 shall not apply if the person being free to leave, has not left the territory of the Requesting Party within a period of thirty days after being notified that his presence is no longer required or having left the territory of the Requesting Party, has returned.

Article 17

Search and seizure

1. The Requested Party shall, in so far as its law permits, carry out requests for search, seizure and delivery of material to the Requesting Party which is relevant to a proceeding or investigation in relation to a criminal matter.
2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.
3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

Article 18

Proceeds of crime

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime against the law of the Requesting Party are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.
2. Where pursuant to paragraph 1, suspected proceeds of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in transfer or disposal of those suspected proceeds of crime, pending a final determination in respect of those proceeds by a Court of the Requesting Party.
3. A request made for assistance in securing confiscation of the proceeds of crime shall be executed if the said proceeds could be confiscated under the law of the Requested Party in similar circumstances.
4. Proceeds of crime confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.
5. Proceeds of crime include instruments used in connection with the commission of an offence, means any property, money and all kinds of movables or immovables, tangibles or intangibles, including any interest accrued that are derived or realised directly or indirectly or used by any person from an offence or offences, or the value of such property.

Article 19

Provision of other information in connection with proceedings

Where an offence has been committed within the territory of one Party and that offence can also be prosecuted by the other Party, the former shall inform the latter if it decides not to prosecute the offence. Upon request, the former Party may provide information and evidence in relation to that offence.

Article 20

Exchange of information from criminal records

Each Party shall, subject to the requirements of its law, inform the other Party of all sentences of imprisonment imposed on the nationals of that Party. Such information shall be communicated through the Central Authority annually.

Article 21

Transit

1. One Party may authorise the transit, through its territory, of a person in custody in another state, whose personal appearance to give evidence as a witness has been requested by the other Party. Such authorisation is granted for a request accompanied by all relevant documents.
2. The person transferred shall remain in custody on the territory of the Requested Party or if the case arises on the territory of the Requested Party to authorise the transit, unless the Requested Party requires that the persons be released from custody during the temporary transfer.
3. Each Party may refuse transit of its nationals.

Article 22

Language

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

Article 23

Representation and Expenses

1. The Requested Party shall assume all ordinary expenses of executing a request within its territory except :
 - a. Fees of experts ;
 - b. Expenses of translation; and
 - c. Travel expenses and allowances of witnesses, experts, persons being transferred in custody and escorting officers.

2. If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Parties shall by mutual consultation determine the terms and conditions under which the execution of the request may continue.

Article 24

Settlement of disputes

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach an Agreement.

Article 25

Entry into force and termination

1. This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.

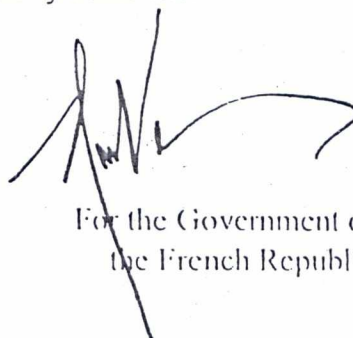
2. Either party may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect on receipt of that notice. Requests for assistance which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

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

DONE in triplicate atNew Delhi..... this25th..... day of January..... 1998. in the Hindi, English and French languages, each text being equally authentic.



For the Government of
the Republic of India



For the Government of
the French Republic