

10

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

The Republic of India and Ukraine (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 the service of summons, execution of warrants and other judicial documents and commissions;

Desiring to improve the effectiveness of measures 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 Treaty, the Contracting Parties shall grant each other the widest measure of mutual legal assistance in criminal matters.
2. For the purpose of this Treaty mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a court or some other competent authority.
3. This Treaty shall be without prejudice to other obligations between the Contracting Parties pursuant to other treaties or arrangements or otherwise, and shall not prevent the Contracting Parties or their competent authorities from providing assistance to each other pursuant to other treaties or arrangements.

4. This Treaty shall also apply to any requests for mutual legal assistance relating to offences committed before its entry into force.

ARTICLE 2

Definitions

For the purpose of this Treaty:

1. (a) Criminal matters mean inquiries, investigations, trials and other proceedings relating to an offence created by:

For the Republic of India, a law of Parliament or by the legislature of a State; and

For Ukraine, the laws of Ukraine.

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

(c) 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, judicial and procedural records;
- (iv) location of persons and objects, including their identification;
- (v) search and seizure;
- (vi) delivery of property, including lending of exhibits;
- (vii) making persons detained or in custody 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. (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;

(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 Treaty 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 Ukraine, the Central Authorities are the General Prosecutor's Office of Ukraine (concerning requests by pre-trial investigation authorities) and the Ministry of Justice of Ukraine (concerning requests by courts).

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 Contracting Party, requests may be made orally. If the request is not made in writing, it shall be confirmed in writing within thirty days thereafter unless the Central Authorities of the Contracting Parties agree otherwise.
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;
- (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 Contracting 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 Contracting 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 and if needed, a list of questions which a person should be asked;
- (i) in the case of lending of exhibits, person(s) who will have custody of the exhibit, the place to which the exhibit is to be removed and any tests to be conducted;
- (j) in the case of making persons detained or in custody available, persons who will have custody during the transfer, the place to which such person is to be transferred and the date of that person's return;
- (k) the need, if any, for confidentiality and the reasons therefore; 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 Contracting Party.

3. The Requested Contracting 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 Contracting Party.

4. If the Requested Contracting Party considers that additional information is needed to enable the request to be dealt with, that Contracting Party may request such additional information. All efforts will be made to give this information at the earliest.

ARTICLE 5

Execution of Request

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

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

3. The Requested Contracting Party shall promptly inform the Requesting Contracting Party of a decision of the Requested Contracting 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 Contracting Party may refuse the assistance if:

- (a) the execution of the request would impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person;
- (b) the execution of the request would be contrary to the domestic law of the Requested Contracting Party;
- (c) if the request seeking restraint, forfeiture or confiscation, of proceeds or instruments of commission of offence which, had it occurred within the jurisdiction of the Requested Contracting Party, would not have been an offence in respect of which a confiscation order could have been made;
- (d) the request relates to an offence in respect of which the accused person had been prosecuted and finally convicted or acquitted or pardoned.

2. Before refusing to grant a request for assistance, the Requested Contracting Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Contracting 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 Contracting Party may transmit certified true copies thereof, unless the Requesting Contracting Party expressly requests the originals.
- 2. Any object as well as the original records or documents transmitted in execution of the request, shall be returned by the Requesting Contracting Party to the Requested Contracting Party as soon as possible unless the latter Contracting Party waives the return thereof.
- 3. Insofar as not prohibited by the law of the Requested Contracting Party, documents, objects and records shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting

Contracting Party in order to make them admissible according to the law of the Requesting Contracting Party.

ARTICLE 8

Taking Evidence in the Requested Contracting Party

1. A person, including a person detained or in custody, requested to testify and produce documents, records or other articles in the Requested Contracting 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 Contracting Party.
2. Subject to the law of the Requested Contracting Party, commissioners, other officials of the Requesting Contracting Party and persons concerned in the proceedings in the Requesting Contracting Party shall be permitted to be present when evidence is taken in the Requested Contracting Party 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 9

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

1. The Requesting Contracting Party may request that a person be made available to testify or to assist in an investigation.
2. The Requested Contracting 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 Persons Detained or in Custody Available to Give Evidence or Assist in Investigations

1. A person detained or in custody in the Requested Contracting Party shall, at the request of the Requesting Contracting Party, be temporarily transferred to the Requesting Contracting 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 Contracting Party, the Requesting Contracting 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 Contracting Party advises the Requesting Contracting 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 Contracting Party pursuant to Article 9 of the present Treaty.

ARTICLE 11

Safe Conduct

1. A person present in the Requesting Contracting 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 Contracting Party for any acts or omissions which preceded that person's departure from the Requested Contracting 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 Contracting 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 Contracting 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 Contracting Party, has not left it within period of 30 days after being officially notified that the 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 Contracting Party may not be subjected to any sanction or compulsory measure in the Requested Contracting Party.

ARTICLE 12

Proceeds and Instruments of Crime

1. The Requested Contracting 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 Contracting Party of the results of its inquiries.

2. A request may be made for 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 Contracting Party by whatever means appropriate.

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

5. Where action has been taken in the Requested Contracting 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 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.

ARTICLE 13

Confidentiality and Limitation of Use

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

ARTICLE 14

Authentication

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

ARTICLE 15

Language

Requests and supporting documents shall be accompanied by a translation into English.

ARTICLE 16

Costs

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

- 11
- (a) the expenses associated with conveying any person to or from the territory of the Requested Contracting Party at the request of the Requesting Contracting Party, and any allowance or expenses payable to that person while in the Requesting Contracting Party pursuant to a request under Articles 9 or 10 of this Treaty; and
 - (b) the expenses and fees of experts either in the Requested Contracting Party or the Requesting Contracting 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.

ARTICLE 17

Entry Into Force and Termination

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at the place and date mutually agreed by the Contracting Parties as soon as possible. It shall enter into force thirty days after the date of the exchange of instruments of ratification.
2. Either of the Contracting Parties may terminate this Treaty at any time by giving written 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 such notice by the other Contracting Party.

DONE at New Delhi this the 3rd day of October 2002, in duplicate, in Hindi, Ukrainian and English, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of India



For Ukraine

