

314
41

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

The Government of the Republic of India and the Government of the Republic of Indonesia (hereinafter referred to as Contracting States);

Bearing in mind the existing friendly relations between the two Countries;

Desiring to extend each other the widest possible measures of cooperation in investigation and prosecution of crimes as well as tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through mutual legal assistance in criminal matters;

HAVE AGREED as follows:

ARTICLE 1
SCOPE OF APPLICATION

1. The Contracting States shall, in accordance with this Treaty and subject to their domestic laws, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. For the purpose of this Treaty, mutual legal assistance in criminal matters shall mean assistance rendered by the Requested State with respect to investigations, prosecutions, trials or other proceedings relating to any offence, which at the time of request for assistance, fall within the jurisdiction of the Requesting State.
3. Mutual legal assistance may 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) search and seizure;
 - (f) taking evidence and obtaining statements;

315
42

- (g) authorizing the presence of persons from the Requesting State at the execution of requests;
- (h) making detained persons available to give evidence or assist investigations, prosecutions, trial, or proceedings in the Requesting State;
- (i) facilitating the appearance of witnesses or the assistance of persons in investigations;
- (j) taking measures to trace, restrain, freeze, confiscate, forfeit and return the proceeds and or instrumentalities of crime; and
- (k) any other form of assistance not prohibited by the law of the Requested State.

- 4. This Treaty shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.
- 5. Assistance may also be granted in connection with investigations, prosecutions, trial, or proceedings relating to offences concerning taxation, duties customs and foreign exchange control or any other revenue matters.
- 6. This Treaty shall apply solely to the provisions of mutual legal assistance between the Contracting States. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress, or exclude any evidence or impede the execution of any request for assistance.

ARTICLE 2
EXCLUSION

- 1. This Treaty does not apply to:
 - (a) the arrest or detention of any person with a view to the extradition of that person;
 - (b) the transfer of persons in custody to serve sentences; and
 - (c) the transfer of proceedings in criminal matters.
- 2. Nothing in this Treaty entitles a Contracting State to undertake in the territory of another Contracting State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Contracting State by its domestic laws.

ARTICLE 3
CENTRAL AUTHORITIES

1. Each Contracting State shall designate a Central Authority for the purpose of the implementation of this Treaty.
2. For the Government of the Republic of India, the Central Authority shall be the Ministry of Home Affairs and for the Government of the Republic of Indonesia, the Central Authority shall be the Ministry of Law and Human Rights.
3. A request for assistance and all communications relating thereto will be sent through diplomatic channel or directly by the Central Authority of a Contracting State to the Central Authority of the other Contracting State as may be necessary.

ARTICLE 4
CONTENTS OF REQUEST

1. In all cases, requests for assistance shall indicate:
 - (a) the name of the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
 - (b) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;
 - (c) the purpose of the request and the nature of the assistance sought;
 - (d) a description of nature of the criminal matter and its current status and statement setting out summary of relevant facts and law including the maximum penalty for the offence to which the request relates;
 - (e) the degree of confidentiality required and the reasons thereof;
 - (f) any time limit within which the request should be executed; and
 - (g) such other information or undertakings as may be required under the domestic law of the Requested State or which is otherwise necessary for the proper execution of the request.
2. In the following cases, requests for assistance shall include:
 - (a) in the case of requests for the taking of evidence, search and seizure, or the tracing, freezing, confiscation and forfeiture of proceeds and or instrumentalities of crime, a statement stating information or any other ground

indicating the existence of such proceed and or instrumentalities of crime in the jurisdiction of the Requested State; and

(b) in the case of making detained persons available, an indication of the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the probable date of that person's return.

3. If necessary, and where possible, requests for assistance shall include:

(a) the identity, nationality and location of a person or persons who is/are the subject of the investigation, prosecution or proceedings;

(b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons thereof;

(c) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought person to be asked to produce them; and

(d) description of the documents, records, or items of evidence to be produced.

4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.

5. A request for assistance shall be made in writing. However, in urgent circumstances or where otherwise permitted by the Requested State, a request may be made orally but shall be confirmed in writing promptly thereafter.

ARTICLE 5
REFUSAL OF ASSISTANCE

MANDATORY GROUNDS

1. Request for legal assistance shall not be granted where:

a. in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order, or public interest;

b. the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned;

c. the Requested State has substantial grounds for believing that the request for

mutual legal assistance has been made for the purpose of prosecuting a person on account of that person's race, religion, nationality, ethnic origin, political opinion, or that person may, for any of those reasons, be subjected to unfair treatment in judicial proceedings;

- d. the Requesting State fails to provide assurance that the assistance requested will not be used for the purposes other than those stated in the request without the prior consent of the Requested State;
- e. the Requesting State fails to provide the assurance of the return of evidence obtained pursuant to the request of legal assistance under this Treaty;
- f. the request relates to an offence only punishable under military law, which is not an offence under the ordinary criminal law;
- g. the request relates to an offence of a political character.

2. For the purpose of this Treaty, the following shall not be considered as political offences:

- a. an offence against the life or person of the Head of State or the Head of Government or member(s) of their immediate family;
- b. an offence under any international convention to which the Contracting States have the obligation by virtue of becoming a State Party thereto, to provide mutual legal assistance in criminal matters;
- c. offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character;
- d. 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.

3. Serious offences against the body, person, life and property, even if politically motivated shall not be considered as political offence for the purpose of this Treaty.

OPTIONAL GROUNDS

4. Request for assistance may not be granted where:

- a. the provision of the assistance would, or would be likely to prejudice the safety of any person, whether that person is within or outside the territory of the Requested State;

- b. the request seeking restraint, forfeiture or confiscation of proceeds of crime or seizure of property are in respect of conduct/activity which cannot be made basis for such restraint, forfeiture, confiscation or seizure in the Requested State.
 - c. the request relates to the investigation, prosecution or punishment of a person with regard to a ground that may be used as a basis for refusal as per the domestic law of the requested State.
5. Assistance shall not be refused solely on the ground of bank secrecy or similar financial institution or that the offence is also considered to involve fiscal matters.

ARTICLE 6
EXECUTION OF REQUEST

- 1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and in the manner specified by the Requesting State.
- 2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
- 3. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.
- 4. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
- 5. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

ARTICLE 7
SERVICE OF DOCUMENTS

- 1. The Requested State shall carry out request for service of documents which are transmitted to it for this purpose by the Requesting State.
- 2. The Requesting State shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting State within a reasonable time, before the scheduled response or appearance.

- 3. The Requested State shall forward to the Requesting State proof of service of the documents. If service cannot be effected, the Requesting State shall be so informed of the reasons.

ARTICLE 8

PROVISION OF INFORMATION, DOCUMENTS, RECORDS AND OBJECTS

- 1. The Requested State shall, upon request, provide to the Requesting State copies of publicly available information, documents and records of government departments and agencies.
- 2. The Requested State may, upon request, provide to the Requesting State any information, documents, 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 law enforcement agencies and judicial authorities.
- 3. The Requested State may provide certified true copies of documents of records, unless the Requesting State expressly requests originals.
- 4. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible upon request.
- 5. In so far as not prohibited by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 9

SEARCH AND SEIZURE

- 1. The Requested State shall, to the extent its law permits, execute a request for a search and seizure in respect of a criminal matter to the Requesting State.
- 2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions in accordance with its laws.
- 3. The competent authority of the Requested State shall provide such information as may be required by the Requesting State concerning, but not limited to, the result of any search, the place, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure, and the subsequent custody of the material seized.

ARTICLE 10
TAKING OF EVIDENCE

1. The Requested State shall, to the extent its law permits and upon request, take testimony and obtain documents of a person, including person in custody, or produce items for evidence for transmission to the Requesting State.
2. To the extent its law permits, the Requested State shall allow the presence of competent authorities of the Requesting State, persons concerned in the proceedings in the Requesting State and their representatives when testimony or evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State.
3. The method of taking of evidence include the right to pose questions. The competent officials of the Requesting State present at the execution of a request may be permitted to make a verbatim transcript of the proceedings. The use of technical means such as video conferencing to make such a verbatim transcript may be permitted.
4. If any person in the Requested State claims that there is a right or obligation to decline to give evidence under the law of the Requesting State, that State shall, upon request, provide a formal notification to the Requested State as to the existence of that right. In the absence of evidence to the contrary, such formal notification shall be sufficient evidence of the matters stated in it.

ARTICLE 11
PRESENCE AT THE EXECUTION OF REQUESTS

To the extent not prohibited by the law of the Requested State, competent officials of the Requesting State shall be permitted to be present at the execution of the request.

ARTICLE 12
AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE OR PROVIDE ASSISTANCE

1. Upon request, a person in custody or serving a sentence in the Requested State may be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person gives his/her consents. The Requesting State shall agree to comply with any conditions as specified by the Requested State.
2. When the person transferred is required to be kept in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall

322
49
return the person in custody at the conclusion of the execution of the request.

3. When the sentence imposed expires, or where the Requested State advises the Requesting State 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 present in the Requesting State pursuant to a request seeking that person's attendance.

ARTICLE 13
PROVIDING EVIDENCE OR ASSISTING INVESTIGATIONS IN THE
REQUESTING STATE

The Requested State shall invite the person, subject to his/her prior consent, to assist in the investigation or to appear as a witness in the proceedings in the Requesting State. That person shall also be informed of protection, facilities and allowances that would be provided.

ARTICLE 14
SAFE CONDUCT

1. Subject to Article 13, a person present in the Requesting State in response to a request shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceeding other than that to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if a person, being free to leave the Requesting State, has not left within (30) thirty days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.
3. Any person who consents to give evidence pursuant to Article 12 and 13 of this Treaty shall not be subject to prosecution based on his or her testimony, except for perjury or contempt of court.
4. Any person who does not give his/her consent or fails to appear in the Requesting State may not be subjected to any coercive measure in the Requested State.

ARTICLE 15
PROCEEDS AND INSTRUMENTALITIES OF CRIME

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds and or instrumentalities of crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. The Requesting

State shall also provide necessary information or any other ground indicating the existence of such proceeds and or instrumentalities of crime in the jurisdiction of the Requested State.

2. When, pursuant to paragraph 1 of this Article, suspected proceeds and/or instrumentalities of crime are found, the Requested State shall take such measures as are permitted by its law to search, freeze, restrain and confiscate those suspected proceeds and/or instrumentalities of crime, pending a final determination in respect of those proceeds and/or instrumentalities of crime by a court of the Requesting State.

3. The Requested State in control of the forfeited or confiscated proceeds and or instrumentalities of crime shall, in giving effect to the order of the court of the Requesting State, take action on those proceeds and or instrumentalities of crime in accordance with its law. To the extent permitted by its laws, the Requested State shall transfer forfeited or confiscated proceeds and or instrumentalities of crime to the Requesting State.

In the application of this article, the rights of bona fide third parties shall be respected under the law of the Requested State. Where there is a claim from a third Country, the Requested State shall represent the interests of the Requesting State in seeking to retain the proceeds and or instrumentalities of crime until a final determination by competent court in the Requesting State.

ARTICLE 16
TRANSIT OF PERSONS IN CUSTODY

1. The Requested State may, subject to its domestic laws and practises, authorize the transit through its territory of a person/witness held in custody, by the Requesting State of a third Country, whose personal appearance has been requested by the Requesting State in a criminal matter.

2. Where the aircraft, vessel or train by which the person is being transported lands or calls or stops in the Requested State, the custodial or escorting officers of the Requesting State, or if applicable, the third Country that is assisting the Requesting State to facilitate the transfer shall continue to be responsible for the custody of the person being transported while he/she is on transit to the Requested State, unless otherwise agreed by the Requested State.

3. Without prejudice to Paragraph 2 and where the Requested State agrees, the person/witness being transported may be kept temporarily in the custody of a competent authority of the Requested State until his/her transportation continued.

4. Where the transit and/or the person's transportation is not continued or has exceeded prescribed time limit of the request, the Requested State may direct that

the person/witness be transported in custody to the State from which the person was first transported.

ARTICLE 17
CONFIDENTIALITY

1. The Requested State shall ensure to:
 - a. Keep information or evidence furnished or the source of such information confidential pursuant to the request for assistance;
 - b. Keep its contents, supporting documents and any action taken confidential pursuant to the request;
 - c. protect the information or evidence against loss, unauthorized access, modification, disclosure or misuse.

2. If the request pursuant to paragraph 1 of this Article cannot be executed without breaching the confidentiality requirement or to the extent that the evidence and information is needed for criminal matters to which the request, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

ARTICLE 18
LIMITATION OF USE

The Requesting State shall undertake not to disclose or use information or evidence furnished for purposes other than those stated in the request, without the prior consent of the Requested State.

ARTICLE 19
AUTHENTICATION

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 8(3), or as required by the Requesting State.

ARTICLE 20
EXPENSES

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

- (a) the expenses associated with conveying any person to or from the territory of the

325
52

Requested State at the request of the Requesting State, and any expenses payable to that person while in the Requesting State pursuant to a request under Article 13 of this Treaty;

- (b) the expenses and fees of experts either in the Requested State or the Requesting State;
- (c) the expenses of translation, interpretation and transcription; and
- (d) the expenses associated with the taking of evidence from the Requested State to the Requesting State via video, satellite or other technological means.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting States shall consult to determine the terms and conditions under which the Requested assistance can be provided.

ARTICLE 21
INTERNATIONAL OBLIGATIONS

This Treaty shall not affect the rights and obligations of the Contracting States concerning mutual legal assistance in criminal matters pursuant to international conventions or other arrangements to which they are a party.

ARTICLE 22
CONSULTATION

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

ARTICLE 23
SETTLEMENT OF DIFFERENCES

Any differences arising from the interpretation or application of this Treaty shall be settled by consultation between the Contracting States through diplomatic channels.

ARTICLE 24
AMENDMENT

This Treaty may be amended at any time by mutual consent of the Contracting States. Such an amendment shall enter into force by the same procedure as applicable for the entry into force of this Treaty.

ARTICLE 25
FINAL PROVISIONS

1. The Contracting States shall notify each other about the completion of their respective domestic requirements for the entry into force of this Treaty. The Treaty shall enter into force on the date of the receipt of the later notification.
2. Either Contracting State may terminate this Treaty by giving a notice in writing to the other Contracting State through diplomatic channels at any time. Termination shall take effect after six months of the receipt of such notice. Termination of this Treaty shall not affect the legal assistance requests submitted prior to the termination.

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

DONE at New Delhi on this 25th day of January, 2011, in two originals each, in the Hindi, Indonesian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF INDIA

FOR THE REPUBLIC OF INDONESIA