

Bahrain

No. 11011/12/2002-LX-T

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भारत सरकार
Ministry of Home Affairs
Government of India

AGREEMENT BETWEEN
THE REPUBLIC OF INDIA

AND

THE KINGDOM OF BAHRAIN

ON

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the Republic of India and the Government of the Kingdom of Bahrain, hereinafter referred to as "the Contracting States";

Desirous to strengthen traditional friendly relations between their respective countries;

Recognising the need for mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

Desirous to improve the mutual cooperation between 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. The Contracting States shall grant each other the widest measure of mutual legal assistance in criminal matters in accordance with the terms of this Agreement.
2. For the purpose of this Agreement mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a Court or some other authority.
3. This Agreement shall be without prejudice to other obligations between the States pursuant to other treaties or arrangements, and shall not prevent the States or their law enforcement agencies from providing assistance to each other pursuant to other treaties or arrangements.
4. The measure taken by a Requested State pursuant to a request for a mutual assistance in accordance with this agreement shall have the same legal effect as that which would have been taken by the competent authority of the Requesting State.
5. This Agreement shall apply to any requests for mutual legal assistance relating to acts or omissions committed before or after its entry into force.

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Definitions

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1. For the purpose of this Agreement, unless the context requires otherwise, the following words and expressions shall have their corresponding meaning:

- a) "criminal matters" means taking of evidence, searches, investigations, inquiries and other proceedings relating to an offence punishable by the laws of both Contracting States, including proceedings related to offences concerning taxation, duties, customs and international transfer of capital or payments and money laundering.
- b) "property" includes money and all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property;
- c) "proceeds of crime" means any property that is derived or realised directly or indirectly by any person from an offence or the value of any such property;
- d) "confiscation" means any measure resulting in the deprivation of property;
- e) "instruments of crime" means any property which is or is intended to be used in connection with the commission of an offence; and
- f) "the restraint of property" means any measure for the prevention of dealing in or transfer or disposal of property temporarily.

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 objects and persons connected with the offence including their identification;
- (v) search and seizure;
- (vi) delivery of property, including lending of seized objects ;
- (vii) making detained persons and others available to give evidence or assist investigations;

- (viii) service of documents, including documents seeking the attendance of persons;
- (ix) Judicial commissions; and
- (x) other assistance consistent with the objects of this agreement.

Article 3 Central Authorities

1. Requests for assistance under this Agreement shall be made through the Central Authorities of the Contracting States.
2. In the Republic of India, the Central Authority is the Ministry of Home Affairs. In the Kingdom of Bahrain, the Central Authority is the Ministry of Justice.

Article 4 Contents of Requests

1. Requests for assistance under this Agreement shall be made in writing. However, in urgent circumstances, or where otherwise permitted by the Requested State, requests may be made orally but shall be confirmed in writing thereafter.
2. Requests for assistance shall be effected in accordance with the procedures provided for in the laws of the Requested State. The request shall be signed by a competent official under the seal of the Requesting State without a need for authentication.
3. 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 State 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 State;
 - (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 sought;
 - (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 class of persons 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 the case of a Commission, the request for assistance shall be accompanied by an official copy of the records of the investigation conducted by the Requesting State, a detailed statement on the facts, the related evidence and the applicable laws together with a statement on the measures and investigation required;
 - (l) the need, if any, for confidentiality and the reasons thereof.
4. In the case of requests for assistance for restraint or forfeiture of proceeds or instruments of crime, where possible:
- (a) a detailed description of the proceeds or instruments including their location;
 - (b) a statement describing the basis for belief that the property is a proceed or instrument of crime; and
 - (c) a statement describing the evidence that would be available in or for proceedings in the Requested State.
5. The Requested State shall not refuse to execute the request solely because it does not include all the information described under this Article if it can otherwise be executed according to the law of the Requested State.
6. If the Requested State considers that additional information is needed to enable the request to be dealt with, that State may request such additional information.

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Article 5

Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the Requested State and may be executed in accordance with any requirements/manner specified in the request if not incompatible with the law of the Requested State.
2. The Requested State shall, upon request, inform the Requesting State of any circumstances which are likely to cause a significant delay in execution of the request.
3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State 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 State may refuse the assistance if:
 - (a) the execution of the request would, in its judgement, 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 laws of the Requested State;
 - (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 State, would not have been an activity in respect of which a confiscation order could have been made;
 - (d) if the request is not, in accordance with its laws, within the jurisdiction of the Requested State ;
 - (e) the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned .
2. Before refusing to grant a request for assistance, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems it necessary. If the Requesting State accepts assistance subject to conditions, it shall comply with those conditions.

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Transmission of Documents and Objects

1. When the request for assistance concerns the transmission of records and documents, the Requested State may transmit certified true copies thereof, unless the Requesting State expressly requests the originals.
2. The original records or documents and the objects transmitted to the Requesting State shall be returned to the Requested State as soon as possible, unless agreed otherwise on a case by case basis.
3. Insofar as not prohibited by the law of the Requested State, documents, objects and records shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State.

Article 8

Taking evidence in the Requested State

1. A person, including a person in custody, requested to testify and produce documents, records or other articles in the Requested State may be compelled by subpoena or order issued by the competent authority to appear and testify and produce such documents, records and other articles, in accordance with the law of the Requested State.
2. The provisions of the preceding paragraph do not preclude the right of each State to take evidence of the nationals of the other contracting state, with their consent, through its consular or diplomatic representatives. Nationality of the person requested to be heard shall be determined in accordance with the legislation of the Requested State.
3. Subject to the law of the Requested State, commissioners and other officials of the Requesting State concerned in the proceedings shall be permitted to be present when evidence is taken in the Requested State.

Article 9

Availability of Persons to give Evidence or Assist in Investigation in the Requesting State

1. The Requesting State may request that a person be made available to testify or to assist in an investigation.
2. The Requested State shall invite the person, with his consent, to assist in the investigation or to appear as a witness in the proceedings. That person shall be informed of any expenses and allowances payable.

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3. Serving of summons to a person to appear to testify or assist in an investigation in the Requesting State shall be subject to the applicable procedure in the Requested State. The service of the summons may be effected by compulsion in accordance with the relevant legislation of the Requested State.

Article 10

Making Detained Persons Available to give Evidence or Assist in Investigations

1. A person in custody in the Requested State may, at the request of the Requesting State, be temporarily transferred to the Requesting State to give evidence or 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 State, the Requesting State 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 on the transferred person 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 person present in the Requesting State pursuant to a request seeking that person's attendance.
4. The Requested State may refuse the transfer of the person in custody if his presence in the Requested State is necessary due to criminal proceedings.

Article 11

Safe Conduct of the Transmitted Person

1. A person transmitted, even with his consent, to the Requesting State 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 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 the proceedings to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if a person, being free and provided with the means to leave the Requesting State, as set forth under Paragraph 1(a) of Article 16, has not left it within a period of 30 days after being officially notified that his or her attendance is no longer required or, having left that territory, has voluntarily returned.
3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in either of the Contracting States.

4. Except in the cases referred to under Paragraph (2), a person may not be transmitted to any third state or other body except with the prior consent of the Requested State.

Article 12 Proceeds and Instruments of Crime

1. The Requested State shall upon request endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting State 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 State by whatever means are appropriate. This assistance may include giving effect to an order made by a court or other competent authority in the Requesting State or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested State.
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 agreement shall be disposed of in accordance with the law of the Requested State, unless otherwise agreed on a case-by-case basis.
5. Where action has been taken in the Requested State pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in either of the Contracting States as the case may be by a person affected by the order, the relevant State shall inform the other State as soon as possible and shall also inform it promptly of the outcome of that representation.
6. In all cases where assistance is rendered pursuant to this Article, the rights of the Requested State, and those rights acquired by third parties in good faith, over such matters shall not be affected.

Article 13 Confidentiality and Limitation of Use

1. The Requested State may require, after consultation with the Requesting State, that information or evidence furnished pursuant to this Agreement 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.

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2. The Requested State 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 State 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 State.

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 one of the official languages of the Requested State or into English.

Article 16 Costs

1. The Requested State shall meet the cost of executing within its territory the request for assistance, and the Requesting State shall bear the other expenses including:
 - (a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State, and any allowance or expenses payable to that person during his presence in the territory of the Requesting State pursuant to a request under Articles 9 or 10 of this Agreement; and
 - (b) the expenses and fees of experts either in the Requested State or the Requesting State.
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 17 Other Agreements and Treaties

The present Treaty shall not affect the rights and obligations of the Contracting States arising from international conventions, treaties or agreements to which they are parties.

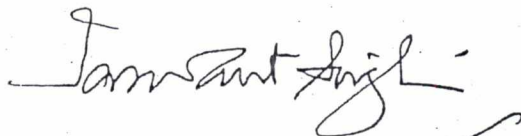
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Entry into Force, Termination, Settlement of Difficulties or Disputes

1. This Agreement is subject to ratification in accordance with the constitutional procedures and practice in each of the Contracting States and the instruments of ratification shall be exchanged through diplomatic channels as soon as possible. It shall come into force on the date of exchange of instruments of ratification.
2. Either of the Contracting States 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.
3. Any difficulties or dispute in the application and/or interpretation of this Agreement shall be settled amicably between the Contracting States through diplomatic channels.

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

Done at New Delhi on this 13 day of January 2004, in two originals each in the Hindi, Arabic and English languages, all texts being equally authentic. However, in case of difference, the English text shall prevail.



FOR THE GOVERNMENT OF
 THE REPUBLIC OF INDIA



FOR THE GOVERNMENT OF
 THE KINGDOM OF BAHRAIN

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