

BIMSTEC CONVENTION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Governments of the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of the Union of Myanmar, Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand, Member States of the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), hereinafter referred to collectively as the "Parties" and individually as "Party":

Mindful of the principles of the cooperation enshrined in the BIMSTEC establishing document;

Reaffirming the principles of sovereignty, territorial integrity and non interference in the internal affairs of States;

Concerned about the escalation of criminal activities, both national and transnational;

Convinced that the establishment of regional arrangements for mutual assistance in criminal matters will greatly contribute to more effective cooperation for the control of criminal activities;

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in international instruments including the Universal Declaration of Human Rights;

Recognizing the importance of a convention on mutual assistance in criminal matters as an effective way of dealing with the complex aspects and serious consequences of crime in its new forms and dimensions;

Recalling the discussions in BIMSTEC on cooperation measures for combating criminal activities including but not limited to those related to terrorism, transnational organized crime, drug trafficking, money laundering and cyber crimes;

Desirous of extending to each other the widest measures of cooperation in combating crime by strengthening cooperation in the prevention, investigation and prosecution of crime, including but not limited to crime relating to terrorism, transnational organized crime, drug trafficking, money laundering and cyber crimes.

Have agreed as follows:

Part I - General Provisions

Article 1

Scope of Application

1. The Parties to this Convention shall, subject to their national laws, and in accordance with the provisions of the Convention, provide to each other the widest measures of mutual assistance in criminal matters.
2. Mutual assistance shall be provided by the requested Party to the requesting Party in respect of offences the punishment of which at the time of request for assistance falls within the jurisdiction of the judicial authorities of the requesting Party and irrespective of whether the assistance is sought or is to be provided by a Court or other competent authority.
3. Assistance may be provided without regard to whether the conduct, which is the subject of the investigation, prosecution or proceedings in the requesting Party, would constitute an offence under the laws of the requested Party.
4. Mutual assistance in accordance with the present Convention shall include:
 - (i) locating and identifying persons and objects;
 - (ii) service of documents, including documents seeking the attendance of persons;

- (iii) providing information, documents and records;
- (iv) providing objects, including lending of exhibits;
- (v) search and seizure;
- (vi) taking evidence, obtaining statements and testimony of witnesses;
- (vii) making detained persons available to give evidence or assist in investigations;
- (viii) facilitating the appearance of witness or the assistance of persons in investigations;
- (ix) taking measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime;
- (x) taking measures to locate, freeze and forfeit or confiscate any funds or finances meant for the financing of all criminal acts in the territory of either Party and;
- (xi) any other assistance consistent with the objectives of this Convention and the laws of the requested Party, as may be mutually agreed upon.

5. This Convention shall apply to all requests for assistance made after its entry into force regardless of whether the acts or omissions involved were committed before or after its entry into force.

6. The provisions of this Convention shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

7. This Convention shall not apply to:

- (i) the arrest or detention of any person with a view to the extradition of that person;
- (ii) the transfer of persons in custody to serve sentences;

- (iii) the transfer of proceedings in criminal matters; and
- (iv) the enforcement in the requested Party of criminal judgments passed in the requesting Party, except to the extent permitted by the law of the requested Party;
- (v) offences under military law, which are not also offences under ordinary criminal law.

8. Nothing in this Convention entitles a Party to undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic laws.

Article 2

Definitions

For the purpose of this Convention:

1. 'Criminal Matter' means investigations, inquiries, trials or other proceedings relating to an offence created by the legislature of the requesting Party and includes investigations, prosecutions and proceedings relating to economic or fiscal offences concerning taxation, duties, customs and foreign exchange.
2. 'Proceeds of Crime' means any property derived or obtained directly or indirectly by any person as a result of criminal activity including crime involving currency transfers or the value of any such property.
3. 'Property' means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime.
4. 'Person' means natural or juridical person.

Article 3
Other Conventions/Treaties

This Convention shall not affect the rights and obligations of the Parties arising from other conventions/treaties concerning mutual assistance in criminal matters to which they are parties.

Article 4
Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the requested Party and, insofar as not prohibited by that law, in the manner specified by the requesting Party.
2. The requested Party shall, upon request, inform the requesting Party of the date and place of execution of the request for assistance.
3. The requested Party shall not refuse to execute a request on the ground of bank secrecy.

Article 5
Refusal and Postponement of Assistance

1. Assistance may be refused if:
 - (i) in the opinion of the requested Party, the execution of the request would impair its sovereignty, national security, public order or other essential interests or prejudice the safety of any person;
 - (ii) the execution of the request would be contrary to the domestic law of the requested Party;
 - (iii) the request relates to an offence in respect of which the accused person has already been tried and as a result convicted or acquitted, or he has been pardoned in respect of that offence;

- (iv) the request seeking location, freezing, restraint, attachment, forfeiture or confiscation of proceeds or instruments of activity which, had it occurred within the jurisdiction of the requested Party, would have been an activity in respect of which a forfeiture or confiscation order could not have been made;
- (v) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, religion, gender, nationality, ethnic origin or political opinions or that person's position may be prejudiced for any of those reasons;
- (vi) the offence is regarded by the requested State as being of a political nature. For the purpose of this Convention, the following offences shall not be considered offences of political nature:
 - (a) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State;
 - (b) an offence against the life or person of a Head of a Government, or of a Minister of a Government;
 - (c) an offence within the scope of any international convention to which both the requesting and requested Parties are parties; and
 - (d) any attempt, abetment or conspiracy to commit any of the offences referred to in sub-paragraphs (a) to (c).

2. 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.

3. 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, or to postpone execution, and shall give reasons for that decision.

4. 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.

Part II - Specific Provisions

Article 6 Service of Documents

1. The requested Party shall serve any document relating to a criminal matter transmitted to it for the purpose of service.
2. 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.
3. The requested Party shall return a proof of service in the manner required by the requesting Party, to the extent not prohibited by the law of the requested Party.

Article 7 Obtaining Documents, Records, Objects and Information

1. The requested Party shall provide copies of publicly available information, documents and records of government departments and agencies.
2. The requested Party may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available to the extent and under the conditions they would be available to its own law enforcement and judicial authorities.
3. The requested Party may provide certified copies of documents or records, unless the requesting Party specifically requests originals.
4. Original documents, records or objects provided to the requesting Party shall be returned, to the requested Party as soon as possible, unless the latter waives its right of return thereof.
5. In so far as not prohibited by the law of the requested Party, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the requesting Party in order to make them admissible according to the law of the requesting Party.

Article 8
Search and Seizure

The requested Party shall, to the full extent permissible by its laws, execute requests for search and seizure and delivery of any material to the requesting Party for evidentiary purposes, provided that the rights of bona-fide third parties are protected.

Article 9
Taking Evidence in the Requested Party

The requested Party, shall subject to its domestic laws and upon request, take the sworn or affirmed testimony, documents or records or otherwise obtain statements of persons including a person in custody or require them produce items of evidence relating to a criminal offence for transmission to the requesting Party.

Article 10
Making Detained or Sentenced Persons Available to give Evidence or to assist in Investigation

1. Upon request, a detained or sentenced person in the requested Party may, subject to its domestic laws and practice, be temporarily transferred to the requesting Party to assist investigations or to testify, provided that person consents to it.
2. When the person transferred is required to be held in custody under the law of the requested Party, the requesting Party shall hold that person in custody and shall return the person in custody to the requested Party immediately after the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.
3. When 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 present in the requesting Party pursuant to a request seeking that person's attendance.
4. The period during which a person transferred is in custody in the requesting Party shall be deemed to be service in the requested Party of an equivalent period of sentence/custody in that country for all purposes.

Article 11

Giving Evidence or Assisting Investigations in the Requesting Party

1. The requesting Party may request the assistance of the requested Party in inviting a person:
 - a. to appear in proceedings in relation to a criminal matter in the requesting Party unless that person is the person charged; or
 - b. to assist in the investigations in relation to a criminal matter in the requesting Party.
2. 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 thereto. That person shall be informed of any expenses and allowances payable. Where appropriate, the requested Party shall satisfy itself that sufficient arrangement has been made by the requesting Party for the person's safety.
3. A person whose appearance as a witness is the subject of a request and who does not agree to appear shall not by reason thereof be made liable to and penalty or measure of compulsion in either the requesting or the requested Party.

Article 12

Safe Conduct

1. Subject to provisions in the Article 10 pertaining to making detained or sentenced persons available to give evidence or assist investigations, a person present in the requesting Party in response to a request shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that Party 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 proceedings other than to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if a person, being free to leave the requesting Party, has not left within fifteen (15) days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned. In such cases, the date and place of release of the person in question should be officially informed to the requested Party.
3. Any person who fails to appear in the requesting Party may not be subjected to any sanction or compulsory measure in the requested Party.

Article 13

Funds Meant for Financing Criminal Acts

Where either of the Parties has reasonable grounds to believe that any person or group of persons in its jurisdiction has collected or has been collecting or has contributed or has been contributing to any funds meant, directly or indirectly, for the financing or furthering the criminal acts, and acts of terrorism, transnational organized crime, drug trafficking and money laundering in the territory of other Party, including offences within the scope of any multilateral or regional conventions to which they are parties, it shall bring these facts to the notice of the other Party and shall take steps subject to its national law for search, seizure, forfeiture or confiscation of such funds and the prosecution of the person(s) or group(s) involved.

Article 14

Proceeds and Instruments of Crime

1. The requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments of the alleged crime are located within its jurisdiction and shall notify the requesting Party of the results of its inquiries. In making the request, the requesting Party shall notify the requested Party sufficient reasons for its belief that such proceeds or instruments of crime are located within its jurisdiction.
2. In pursuance of a request made under paragraph 1 of the present Article, the requested Party shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds or instruments of crime.
3. Where pursuant to paragraph 1 of the present Article, suspected proceeds or instruments of crime are found, the requested Party shall, upon request, take such measures as are permitted by its laws to prevent any dealing in, transfer or disposal of those suspected proceeds or instruments of crime, pending a final determination in respect of those proceeds or instruments by the requesting Party.
4. Subject to the provisions of domestic laws of the requested Party, property forfeited or confiscated pursuant to the present article shall accrue to the requesting Party unless otherwise agreed in each particular case.

5. The requested Party shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds or instruments of crime made by the requesting Party or take other appropriate action to secure the proceeds or instruments of crime following a request by the requesting Party.

6. The Parties shall ensure that the rights of bona-fide third parties shall be respected in the application of the present Article.

Part III – Procedure

Article 15

Central Authorities

1. Each Party shall designate a Central Authority to transmit, receive, examine and process for execution requests for assistance under this Convention.

2. The designation of Central Authorities shall be made at the time of the deposit of its instrument of ratification.

3. Each Party shall expeditiously notify the others of any change in the designation of its Central Authority.

Article 16

Contents of Requests

1. The requests for assistance under the Convention shall include:

- (i) the name of the competent authority conducting the investigation, prosecution or other proceedings to which the request relates;
- (ii) the nature and stage of the investigation, prosecution or other proceedings including a summary of the facts, a brief description of offence(s) and copies of the provisions of relevant laws;
- (iii) the purpose of the request and the nature of the assistance sought including the evidence required to be collected;
- (iv) the degree of confidentiality required and the reasons for that;

- (v) any time limit within which the request should be executed; and
- (vi) such other information as may be required under the domestic laws of the requested Party or which is otherwise necessary for the proper execution of the request.

2. In the following cases, request for assistance shall also include:

- (i) in the case of requests for the taking of evidence, search and seizure, or the location, freezing, restraint, attachment, or forfeiture or confiscation of proceeds or instruments of crime, or of funds meant for financing of acts of terrorism, transnational organized crime, drug trafficking and money laundering, a statement indicating reasonable grounds for its belief that evidence or proceeds or instruments may be found in the requested Party;
- (ii) the request shall specify, as appropriate and so far as the circumstance of the case permit:
 - (a) the documents, records, property or digital or electronic data to be inspected, preserved, photographed, copied or transmitted;
 - (b) the samples of any property or digital or electronic data to be taken, examined or transmitted; and
 - (c) the site to be viewed, photographed or video graphed.
- (iii) in the case of requests to take evidence, statement or testimony from any 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 or a list of questions to be put to that person;
- (iv) in the case of lending of exhibits, the current location of the exhibits in the requested Party and an indication of the person or class of persons who will have custody of the exhibits in the requesting Party, 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;

- (v) 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;
 - (vi) in case of requests for seizure and confiscation of funds meant for financing criminal acts including, but not limited to, acts of terrorism, transnational organized crime, drug trafficking, money laundering and cyber crimes, the reasonable grounds for its belief that the funds are being so used; and
 - (vii) in case of a request pursuant to a court order, copy of the order pertaining to the assistance requested and a statement relating to the finality of the order.
3. If necessary, and where possible, requests for assistance shall include:
- (i) the identity, nationality and location of a person or persons who is/are the subject of the investigation, prosecution or other proceedings; and
 - (ii) details of any particular procedure or requirement that the requesting Party wishes to be followed and the reasons for that.
4. If the requested Party 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 Party, a request may be made orally but shall be confirmed in writing promptly thereafter.

Article 17 **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, or that it be disclosed or used only subject to such terms and conditions as it may specify.

2. The requesting Party may require that the request, 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 18

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. However, in cases where the charge is altered, the material provided may be used in respect of the altered charge, provided a ground for refusal of assistance under the Convention is not attracted.

Article 19

Authentication

Documents, records or objects transmitted pursuant to this Convention shall not require any form of authentication, except as specified in Article pertaining to the obtaining of documents, records, objects and information as required by the requesting Party.

Article 20

Language

1. Requests for assistance under the Convention shall be submitted in English.
2. Supporting documents, if not in English, shall be accompanied by an English translation.

Article 21

Expenses

1. Unless otherwise agreed by the concerned Parties, the requested Party shall meet the cost of executing the request for assistance, except that the requesting Party shall bear;

- (i) 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 expenses payable to that person while in the requesting Party pursuant to a request under the Convention;
 - (ii) the expenses and fees of experts either in the requested Party or the requesting Party;
 - (iii) the expenses of translation, interpretation and transcription; and
 - (iv) the expenses associated with the taking of evidence from the requested Party to the requesting Party *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 requesting and the requested Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 22

Consultation

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

Part IV - Final Clauses

Article 23

Entry into Force

This Convention is subject to ratification and shall enter into force on the thirtieth day of the date of deposit of the last instrument of ratification with the Secretary-General by the signatory State.

Article 24

Amendment

A Party may propose an amendment to the present Convention to the Secretary-General of BIMSTEC who shall communicate the proposal to other State Parties to the Convention for consideration. Any amendment to the Convention shall be adopted by consensus.

Article 25
Depositary

The Secretary-General of BIMSTEC shall be the depositary for this Convention. The Secretary-General shall notify the Member States of signatures of this Convention and the deposit of instruments of ratification and shall transmit certified copies of instruments of ratification to each Member State. The Secretary-General shall also notify the Member States of the date of entry into force of the Convention in accordance with Article 23.

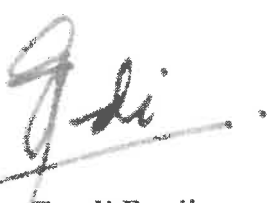
IN WITNESS WHERE OF, the undersigned plenipotentiaries, being duly authorised by their respective Governments, have signed this Convention.

DONE in Colombo on the Thirtieth Day of March in the year Two Thousand and Twenty-Two, in eight originals, in the English language, all texts being equally authentic.

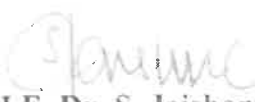
For the People's Republic of Bangladesh


H.E. Dr. A. K. Abdul Momen, MP
Foreign Minister

For the Kingdom of Bhutan


H.E. Dr. Tandi Dorji
Foreign Minister

For the Republic of India


H.E. Dr. S. Jaishankar
External Affairs Minister

For the Republic of the Union of Myanmar



H.E. U Han Thu

**Ambassador Extraordinary and Plenipotentiary of the Republic of the
Union of Myanmar to the Democratic Socialist Republic of Sri Lanka**

For Nepal



**Honourable Dr. Narayan Khadka
Minister for Foreign Affairs**

For the Democratic Socialist Republic of Sri Lanka



**H.E. Mr. U. M. Ali Sabry P.C.
Minister of Justice**

For the Kingdom of Thailand



Deputy Prime Minister and Minister of Foreign Affairs

