

TREATY BETWEEN
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA
AND
THE REPUBLIC OF INDIA
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Democratic Socialist Republic of Sri Lanka and the Republic of India
(hereinafter referred to as Contracting States):

Guided by the traditional friendly relations between the two countries;

Recognizing the need to facilitate the widest measures of mutual assistance in
criminal matters between the two countries;

Desiring to improve the effectiveness of both countries in the prevention,
investigation, prosecution and suppression of crimes including crimes related to terrorism
and tracing, restraint, forfeiture or confiscation of funds meant for financing of terrorism
and 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, in accordance with this Treaty, provide each other
with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of
investigations, prosecutions or proceedings to the Requesting State in criminal matters,
irrespective of whether the assistance is sought or is to be provided by a court or some
other authority.
3. Assistance shall be provided without regard to whether the conduct which is the
subject of the investigation, prosecution or proceedings in the Requesting State would
constitute an offence under the laws of the Requested State.

- 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;
- 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;
- i) facilitating the appearance of witnesses or the assistance of persons in investigations;
- j) taking measures to locate, restrain or forfeit the proceeds of crime and instruments of crime; and
- k) any other forms of assistance not prohibited by the law of the Requested State.

5. This Treaty shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.

Article 2 Definitions

For the purpose of this Treaty-

1. "Criminal Matter" means investigations, inquiries, trials or other proceedings relating to an offence created by the legislature of the Requesting State 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.

Article 3 Central Authorities

The Central Authorities shall transmit and receive all requests for the purposes of this Treaty. The Central Authority for the Republic of India shall be the Ministry of Home Affairs; and the Central Authority for the Democratic Socialist Republic of Sri Lanka shall be the Ministry of Justice and Law Reforms.

Article 4
Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, in so far as not prohibited by that law, 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. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

Article 5
Contents of Requests

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 other proceedings, including a summary of the facts and copies of the provisions of relevant laws; and where applicable a description of the offence to which the request relates, and a description of the evidence;
 - (c) the purpose of the request and the nature of the assistance sought;
 - (d) the degree of confidentiality required and the reasons therefore; and
 - (e) any time limit within which the request should be executed.
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 location, restraint or forfeiture of proceeds or instruments of crime, a statement indicating the basis for belief that evidence, proceeds or instruments of crime may be found in the Requested State;
 - b. 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;
 - c. in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, 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;

- d. 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; and
- e. in the case of restraint or forfeiture of proceeds or instruments of crime where possible, the requests for assistance shall include:-
 - (i) detailed description of the proceeds and instruments including location;
 - (ii) statement describing the basis for belief that the monies or properties are the proceeds or instruments of crime;
 - (iii) a statement describing the evidence that will be available for proceedings in the Requesting Party.

3. If necessary, and when 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 therefore.

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 6 Refusal or Postponement of Assistance

1. Assistance may be refused if, in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order, essential public interest or prejudice the safety of any person.

2. Assistance may be refused if the execution of the request would be contrary to the domestic law of the Requested State.

3. Assistance may be refused if the request relates to an offence in respect of which the accused person had been finally acquitted, convicted or pardoned in respect of that

existence of another offence constituted by the same act or omission that constitutes the offence for which such person has been already acquitted, convicted or pardoned.

4. Assistance may be refused where 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.

5. 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.

6. 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.

7. 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 serve any document transmitted to it for the purpose of service.

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 return a proof of service in accordance with its laws and procedures.

Article 8 Provision of Information, documents, Records and Objects

1. The Requested State shall provide copies of publicly available information, documents and records of government departments and agencies.

2. The Requested State may provide 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 own law enforcement 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 unless the latter waives its right of return thereof.

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 execute a request for a search and seizure where:-

(a) an investigation, prosecution or proceeding relating to a criminal matter has commenced in the Requesting State; and

(b) there are reasonable grounds to believe that the document or thing relevant to the proceeding or investigation is located in the Requested State.

2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions as would be applicable for its own law enforcement and judicial authorities in accordance with its laws.

3. The competent authority that has executed a request for a search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.

Article 10 Taking Evidence in the Requested State

1. Where a request is made that evidence be taken for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter in the jurisdiction of the Requesting State, the Requested State shall arrange to have such evidence taken.

2. For the purposes of this Treaty the giving or taking of evidence shall include the production of documents, articles or records.

3. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate to the extent possible as may be permissible in accordance with the law of the Requested State.

4. The right to participate in the taking of evidence includes the right to suggest questions to be posed. 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.

5. A person who is required to give evidence in the Requested State, pursuant to a request for assistance, may decline to do so, where either:-

(a) the law of the Requested State permits that person to decline to give evidence in similar circumstances in proceedings which may have originated in the Requested State; or

(b) the law of the Requesting State permits him to decline to give evidence in such proceedings in the Requested State.

6. If any person claims that there is a right to decline to give evidence under the laws of the Requesting State, the Requested State may with respect thereto rely on a certificate of the Central Authority of the Requesting State as prima facie evidence of the legal position of such a claim.

Article 11

Presence of Persons at the Execution of Requests

To the extent not prohibited by the law of the Requested State, persons specified in the request shall be permitted to be present at the execution of the request.

Article 12

Making Detained Persons Available to give Evidence or Assist Investigation

1. Upon request, a person serving a sentence in the Requested State shall be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person consents to such transfer.

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 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.

1. The Requesting State may request that a person(s) be made available to give evidence or assist in an investigation.
2. The Requested State 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 14 **Safe Conduct**

1. Subject to Article 12(2), 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 fifteen (15) days after receiving official notification that the person's attendance is no longer required or, having left, 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 the Requested State.

Article 15 **Proceeds and Instruments of Crime**

1. The Requested State 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 State of the results of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of 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 State 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 State shall, upon request, take such measures as are permitted by its law 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 State.

4. Subject to the provisions of domestic laws of the Requested State, property forfeited or confiscated pursuant to the present Article shall accrue to the Requesting State unless otherwise agreed in each particular case.

5. The Requested State 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 State or take other appropriate action to secure the proceeds or instruments of crime following a request by the Requesting State.

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

Article 16 **Restitution and Fine Enforcement**

The Requested State shall to the extent permitted by its law, provide assistance concerning restitution to the victims of crime and the collection of fines imposed as a sentence in a criminal prosecution.

Article 17 **Confidentiality**

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

2. The Requesting State 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 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 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 19 Authentication

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

Article 20 Language

1. Requests shall be submitted in the English language.
2. Supporting documents, if not in the English language, shall be accompanied by an English translation.

Article 21 Expenses

1. 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 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 12 or 13 of this Treaty;
 - (b) the expenses and the 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 22 Compatibility with other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either State from granting assistance to the other State through the provisions of other applicable international conventions/agreements, or through the provisions of its domestic law. The States may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

Article 23
Consultation

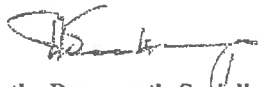
The Central Authorities of the Contracting States shall consult, at times mutually agreed to by them on matters concerning interpretation and application of the provisions of this Treaty and to promote its effective implementation.

Article 24
Entry into Force, Amendment and Termination

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force from the date of exchange of instruments of ratification.
3. This Treaty may be amended by mutual consent.
4. Either Contracting State may terminate this Treaty. The termination shall take effect six (6) months from the date on which it was notified to the other Contracting State.
5. The States may also by mutual consent terminate this Treaty on such terms and conditions as may be agreed to between the States.

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

DONE at *Kesbala* on this *9th* day of *June* 2010 (Two Thousand and Ten) in two originals each in Sinhala, Hindi and English Languages, all texts being equally authentic. In the event of any divergence of interpretation, the English text shall prevail.



For the Democratic Socialist
Republic of Sri Lanka



For the Republic of India