

**TREATY
BETWEEN
THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA
AND
THE GOVERNMENT OF THE KINGDOM OF THAILAND
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Kingdom of Thailand (hereinafter referred to as "the Contracting States"),

Desiring to maintain and to strengthen the longstanding bonds which unite the two countries, and to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through cooperation and mutual assistance in criminal matters,

Have agreed as follows :

ARTICLE 1

OBLIGATION TO GRANT MUTUAL LEGAL ASSISTANCE

(1) The Contracting States agree, in accordance with the provisions of this Treaty, to provide each other the widest measure of mutual legal assistance in connection with investigations, prosecutions and other proceedings relating to criminal matters. The provisions of this Treaty will apply whether the assistance is sought by or provided to a court or some other authority.

(2) Criminal matters for the purpose of paragraph 1 means, investigations, prosecutions or other proceedings relating to any offence established by law of the Contracting States.

(3) Assistance shall include:

(a) identifying and locating persons or objects;

- (b) serving of documents;
- (c) the obtaining of statements and evidence from persons;
- (d) executing requests for search and seizure;
- (e) facilitating the personal appearance of persons to give evidence or to assist investigations;
- (f) effecting the temporary transfer of persons in custody for testimonial purposes;
- (g) providing information, documents, articles and records (including judicial and official records);
- (h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities.

(4) Assistance under this Treaty may be granted in connection with offences against a law related to taxation, customs duties or other revenue matters but not in connection with non-criminal proceedings relating thereto.

(5) This Treaty is intended solely for mutual legal assistance between the Contracting States. The provisions of this Treaty shall not give rise to any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

(6) This Treaty shall not apply to the execution of arrest warrants or to military offences. For the purposes of this Treaty, military offences are violations of military laws and regulations which do not constitute offences under ordinary criminal law.

ARTICLE 2

CENTRAL AUTHORITY

(1) The Central Authorities of the Contracting States shall process requests for mutual legal assistance in accordance with the provisions of this Treaty.

(2) The Central Authority of Sri Lanka is the Secretary to the Ministry of the Minister in charge of the subject of Justice or his or her duly authorised officer. The Central Authority of the Kingdom of Thailand shall be the Attorney General or an official designated by the Attorney General. Either Contracting State may change its designation of the Central Authority in which case it shall notify the other of the change, through diplomatic channels.

(3) The Central Authorities shall communicate directly with each other for the purposes of this Treaty.

ARTICLE 3

OTHER ASSISTANCE

This Treaty shall not derogate from obligations subsisting between the Contracting States whether pursuant to other treaties, arrangements or otherwise, or prevent the Contracting States from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

ARTICLE 4

GROUND FOR REFUSAL OR POSTPONEMENT

(1) The Requested State may, and shall if required by its law, refuse assistance if:

- (a) the granting of the request would be contrary to the respective Constitutions of the Contracting States or impair the sovereignty, security or public order of the Contracting States;
- (b) the request for assistance relates to an offence of a political character except where it is an offence which the Requested State considers as excluded from being a political offence by any international agreement to which the Contracting States are parties;

- (c) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, religion, nationality or political opinions;
- (d) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted or acquitted in the Requested State or the Requesting State;
- (e) the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested State, have constituted an offence, except where the Central Authority of the Requested State is of the opinion that such act or omission is of a serious nature and is a criminal matter within the meaning of this Treaty.

(2) The Requested State may postpone assistance if execution of the request would interfere with an ongoing investigation, prosecution or proceeding or prosecution in the Requested State.

(3) Before denying or postponing assistance pursuant to this Article, the Requested State, through its Central Authority,

- (a) shall promptly inform the Requesting State of the reason for considering denial or postponement; and
- (b) shall consult with the Requesting State to determine whether assistance may be given subject to such terms and conditions as the Requested State deems necessary.

(4) If the Requesting State accepts assistance subject to the terms and conditions referred to in paragraph (3)(b), it shall comply with those terms and conditions.

ARTICLE 5**CONTENTS OF REQUESTS FOR MUTUAL LEGAL ASSISTANCE**

(1) Requests shall be made in writing. In urgent circumstances or where otherwise permitted by the Requested State, a request may be made by facsimile but shall be confirmed in writing promptly thereafter.

(2) Requests for assistance shall include:

- (a) the name of the competent authority conducting the investigation, prosecution or proceeding to which the request relates;
- (b) a description of the nature of the investigation, prosecution or proceeding, including a summary of the relevant facts and laws;
- (c) a description of the evidence or information sought or the acts of assistance to be performed; and
- (d) the purpose for which the evidence, information or other assistance is sought.

(3) When appropriate, a request shall also include:

- (a) to the extent possible, the identity, nationality and location of the person or persons who are the subject of the investigation, prosecution or proceeding in the Requesting State;
- (b) available information on the identity and whereabouts of a person to be located in the Requested State;
- (c) the identity and location of a person to be served with legal documents, that person's relationship to the investigation, prosecution or proceeding, and the manner in which service is to be effected;
- (d) the identity and location of persons from whom evidence is sought;

- (e) 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;
- (f) a precise description of the place to be searched and of the evidence to be searched for;
- (g) the need, if any, for confidentiality and the reasons therefor;
- (h) a description of the manner in which any testimony or statement is to be taken and recorded;
- (i) the questions to be put to the witnesses or the subject matter about which they are to be examined;
- (j) in the case of requests to take evidence from a person, a statement as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought, as well as any provisions of the law of the Requesting State as to privileges or exemptions from giving evidence which appear relevant to the request;
- (k) a description of any particular procedure to be followed in executing the request;
- (l) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled;
- (m) details of the period within which the request should be complied with ;
- (n) in the case of making detained persons available, the person or the authority who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that persons returned; and
- (o) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

(4) Requests and supporting documents shall be accompanied by a translation into the official language of the Requested State or English.

(5) Any document in support of a request from the Requesting State shall be duly certified or authenticated in accordance with the requirements of the law of the Requested State.

(6) If the Requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, that State may request that additional details be furnished.

ARTICLE 6

EXECUTION OF REQUESTS

(1) The Central Authority of the Requested State shall promptly execute the request or arrange for its execution through its competent authorities.

(2) A request shall be executed in accordance with the law of the Requested State and, to the extent not prohibited by the law of the Requested State, in accordance with the directions stated in the request so far as practicable.

(3) The Requested State shall promptly inform the Requesting State of any circumstances which are likely to cause a significant delay in responding to the request.

(4) The Requested State shall promptly inform the Requesting State of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.

(5) The Requested State shall not decline execution of a request on the ground of bank secrecy.

ARTICLE 7

REPRESENTATION AND EXPENSES

(1) The Requested State shall, in so far as its law permits, make all necessary arrangements for the representation of the Requesting State in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting State.

(2) The Requested State shall assume all ordinary expenses of executing a request within its boundaries, except:

- (a) fees of counsel retained at the request of the Requesting State;
- (b) fees of experts;
- (c) expenses of translation or interpretation; and
- (d) travel expenses, accommodation and allowances of persons who travel between the Requesting and Requested States.

(3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Contracting States shall consult to determine the terms and conditions under which the execution of the request may continue.

ARTICLE 8

LIMITATIONS ON USE AND CONFIDENTIALITY

(1) Information and evidence furnished under this Treaty, including documents, articles or records shall not be disclosed or used for purposes other than those stated in the request without the prior consent of the Requested State.

(2) The Requesting State may require that the application for assistance, its contents and related documents, and the granting of assistance be kept confidential. If the request cannot be executed without breaching the required confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.

(3) The Requested State may require that information or evidence furnished and the source of such information or evidence be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting State shall comply with the conditions except to the extent that the information or evidence is needed in a public trial which is the consequence of the investigation, prosecution, or proceeding described in the request.

ARTICLE 9

TAKING EVIDENCE IN THE REQUESTED STATE

(1) Upon a request that a person be summoned to give testimony or produce documents, records or articles in the Requested State, that person may be compelled to do so in accordance with the requirements of the law of the Requested State.

(2) The Requested State shall, upon request, furnish information in advance as to the date and place of the taking of the evidence.

(3) The Requested State shall authorize the presence of such persons as specified in the request for the taking of testimony during the execution of the request and allow such persons to question the person whose testimony is sought, to the extent permitted by the laws and the applicable procedures of the Requested State.

(4) Where evidence is to be taken, pursuant to a request for assistance under this Article, the person to whom the investigation, prosecution or proceeding in the Requesting State relates and the person who is to give evidence may, subject to the laws of the Requested State, appear or have legal representation or both for the purpose of questioning the person giving the evidence.

(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 would permit that witness to decline to give evidence in similar circumstances in proceedings which originated in the Requested State; or

- (b) the law of the Requesting State would permit him to decline to give evidence in such proceedings in the Requesting State.

(6) If any person claims that there is a right to decline to give evidence under the law of the Requesting State, the Requested State shall with respect thereto rely on a certificate of the Central Authority of the Requesting State as prima facie evidence of the matters stated therein.

ARTICLE 10

OBTAINING STATEMENTS OF PERSONS

Where a request is made to obtain the statement of a person for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter in the Requesting State, the Requested State shall endeavour to obtain such statement.

ARTICLE 11

LOCATING PERSONS OR OBJECTS

(1) The Requested State shall, upon request, take all reasonable measures to locate persons or objects believed to be in that State and needed in connection with a criminal investigation, prosecution or proceeding in the Requesting State.

(2) The Requested State shall communicate as soon as possible the results of its inquiries to the Requesting State.

ARTICLE 12

SERVICE OF DOCUMENTS

(1) The Requested State shall serve any legal 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 as proof of service a dated receipt signed by the person served or a declaration signed by the officer effecting service, specifying the form and date of service.

(4) A person who has been served pursuant to this article with a legal document calling for an appearance in the Requesting State shall not be subjected to any civil or criminal forfeiture, or other legal sanction or measure of restraint, because of failure to comply therewith, even if the document contains a notice of penalty.

ARTICLE 13

PROVIDING DOCUMENTS, RECORDS OR INFORMATION OF GOVERNMENT OFFICES OR AGENCIES

(1) Subject to its law, the Requested State shall provide copies of publicly available documents, records or information of a government office or agency.

(2) The Requested State may provide copies of any document, record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own law enforcement and judicial authorities. The Requested State in its discretion may deny the request entirely or in part.

ARTICLE 14

TRANSMISSION OF DOCUMENTS AND OBJECTS AND AUTHENTICAIION

(1) When the request for assistance concerns the transmission of records and documents, the Requested State may transmit the originals or certified true copies thereof.

(2) The Requesting State shall, upon request, return any original documents or records, or articles furnished in execution of requests as soon as possible.

(3) Documents, objects and records shall be transmitted in a form or accompanied by such certification or authentication as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 15

TRANSFERRING PERSONS IN CUSTODY FOR TESTIMONIAL PURPOSES

(1) A person in custody in the Requested State whose presence is requested in the Requesting State for the purposes of giving testimony as a witness pursuant to this Treaty shall if the Requested State consents be transferred from the Requested State to the Requesting State for that purpose, provided the person consents and the Requesting State has guaranteed the maintenance in custody of the person and his subsequent return to the Requested State.

(2) For the purposes of this article:

- (a) the Requesting State shall have the authority and obligation to keep the person transferred in custody;
- (b) the Requesting State shall return the person transferred to the custody of the Requested State as soon as the request has been executed;
- (c) where 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 16**APPEARENCE OF PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS**

(1) The Requesting State may request the assistance of the Requested State in inviting a person to appear in the Requesting State to give evidence or assist investigations pursuant to this Treaty. Such request shall indicate the extent to which the expenses will be paid.

(2) Upon receipt of such a request the Requested State shall invite the person to travel to the Requesting State and promptly inform the Requesting State of the person's response.

ARTICLE 17**SAFE CONDUCT**

(1) No person in the territory of the Requesting State to testify, provide a statement or assist investigations in accordance with the provisions of this Treaty shall be subject to service of process or be detained or subjected to any other restriction of personal liberty by reason of any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence or assist investigations in any proceeding other than the proceeding to which the request relates.

(2) The safe conduct provided for by this article shall cease when the person, having had the opportunity to leave the Requesting State within 15 consecutive days after notification that that person's presence is no longer required by the appropriate authorities, shall have nonetheless stayed in that State or shall have voluntarily returned after having left it.

(3) A person who consents to give evidence or assist investigations under Articles 15 or 16 shall not be subject to prosecution based on his testimony, except for perjury.

(4) A person who does not consent to give evidence or assist investigations pursuant to Articles 15 or 16 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting State or Requested State.

ARTICLE 18**SEARCH AND SEIZURE**

- (1) Insofar as its law permits, the Requested State shall
 - (a) carry out requests for search, seizure and delivery of any material to the Requesting State which is relevant to an investigation, prosecution or proceeding in relation to a criminal matter;
 - (b) provide such information as may be required by the Requesting State concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.
- (2) The Requesting State shall, insofar as its law permits observe any conditions imposed by the Requested State in relation to any seized property which is delivered to the Requesting State.

ARTICLE 19**PROCEEDS OF CRIME**

- (1) The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime against the law of the Requesting State are located within its jurisdiction and shall notify the Requesting State of the result of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of its belief that such proceeds may be located in its jurisdiction.
- (2) Where pursuant to paragraph (1) suspected proceeds of crime are found in the Requested State shall take such measures as are permitted by its law to freeze, seize or to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a Court of the Requesting State.

(3) Where a request is made for assistance in securing the confiscation or forfeiture of proceeds, such request shall be executed pursuant to the laws of the Requested State. This may include enforcing an order made by a court in the Requesting State and initiating or assisting in proceedings in relation to the proceeds to which the request relates.

(4) Proceeds confiscated pursuant to this Treaty shall become the property of the Requested State unless otherwise agreed upon between the Contracting States.

ARTICLE 20

SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application or implementation of this Treaty shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

ARTICLE 21

SCOPE OF APPLICATION

This Treaty shall apply to any request presented after its entry into force even if the relevant acts or omissions occurred before that date.

ARTICLE 22

ENTRY INTO FORCE AND TERMINATION

(1) This Treaty shall enter into force upon exchange of instruments of ratification.

(2) Each of the Contracting States may terminate this Treaty at any time by giving notice to the other. In that event the Treaty shall cease to have effect six months after the date of notice. Requests for assistance which have been received prior to termination of the Treaty shall nevertheless be processed in accordance with the terms of the Treaty as if the Treaty was still in force.

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

DONE at Bangkok, this 30th day of July, in the Year 2004 in duplicate in the Sinhala, Thai and English languages, each text being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF
THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**


(Lakshman Kadirgamar, *PC, MP*)
Minister of Foreign Affairs

**FOR THE GOVERNMENT OF THE
KINGDOM OF THAILAND**


(Surakiart Sathirathai)
Minister of Foreign Affairs