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Kazakhstan

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

(5)

The Republic of Kazakhstan and the Republic of India, hereinafter referred to as "the Parties";

guided by the traditional friendly relations between the two states;

recognising the need to facilitate the widest measures of mutual legal assistance in criminal matters; have agreed as follows:

Article 1 Scope of legal assistance

1. Under this Treaty, the Parties shall grant each other the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance shall include:
 - 1) measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime;
 - 2) taking of evidence and obtaining of statements of persons;
 - 3) providing of information, documents and other records, including criminal and judicial records;
 - 4) location of persons and objects, including their identification;
 - 5) search and seizure of materials and objects related to the case;
 - 6) delivery of property, including lending of exhibits;
 - 7) making detained persons and others temporarily available to give evidence or assist investigations;
 - 8) service of documents, including documents seeking the attendance of persons; and
 - 9) other assistance consistent with the objects of this Treaty which does not contradict with the national laws of the requested Party.

3. For the purpose of this Treaty mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a Court or some other authority.
4. The provisions of this Treaty shall be without prejudice to other obligations subsisting between the Parties pursuant to the other international treaties.
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

or the purpose of this Treaty:

"Criminal matters" mean:

- 1) for Kazakhstan, the whole complex of procedural actions and decisions implemented under the particular criminal case in the course of its institution, preparation prior to its submission to the court, trial, and execution of a sentence (court decision);
- 2) for India, investigations, inquiries, trials or other proceedings relating to an offence created by a law of parliament or by the legislature of a state;
- 3) criminal matters shall also include investigations or proceedings relating to economical offences.

"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.

"Property" includes money, securities, and all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property.

"Confiscation" means any compulsory forfeiture of all or part of the property under the court's decision.

"Instruments of crime" means any property, thing or means which are, or are intended to be, used in connection with the commission of an offence.

"Restraint of property" means measures for the prevention of dealing in or transfer or disposal of property.

Article 3 Central Authorities

1. Requests for assistance under this Treaty shall be made through the Central Authorities of the Parties.
2. In the Republic of Kazakhstan the Central Authority is the Office of the Attorney General. In the Republic of India the Central Authority is the Ministry of Home affairs.
3. In case of change of the Central Authority in either Party, the concerned Party shall immediately inform the other Party through diplomatic channels.

Article 4 Contents of Requests

1. Requests for assistance under this Treaty shall be made in writing. However, in urgent circumstances, or where otherwise permitted by the requested party, requests may be made by fax, e-mail or other means of communication pending the complete request which should be submitted within sixty (60) days.
2. Requests for assistance shall include a statement of:
 - 1) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - 2) the matters, including the relevant facts and laws, to which the investigation or proceedings relates;
 - 3) the purpose for which the request is made and the nature of the assistance sought;
 - 4) details of any particular procedure or requirement that the requesting Party wishes to be followed;
 - 5) any time limit within which compliance with the request is desired;
 - 6) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;

- 7) in the case of requests for the taking of evidence or search and seizure of materials and objects related to the case, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the requested Party;
 - 8) in the case of lending of exhibits, the body and official 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;
 - 9) 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;
 - 10) the need, if any, for confidentiality and the reasons therefor; and
 - 11) in the case of requests 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 monies or property are the proceeds or instruments of crime; and
 - c) a statement describing the evidence that would be available for a proceeding in the requested Party.
3. The requested Party shall not refuse to execute the request solely because it does not include all of the information described under this article if it can be executed according to the law of the requested Party.
 4. If the requested Party considers that additional information is needed to enable the request to be dealt with, that Party may request such additional information.

Article 5 Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the requested Party and may be executed in accordance with any requirements/manner specified in the request if not incompatible with the law of the requested Party.

2. The requested Party shall, upon request, inform the requesting Party of any circumstances which are likely to cause a significant delay in execution of the request
3. The requested Party shall promptly inform the requesting Party of a decision of the requested Party 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 Party may refuse the assistance, if:
 - 1) the execution of the request would impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person;
 - 2) the execution of the request would be contrary to the domestic law of the requested Party;
 - 3) if the request seeking restraint, forfeiture or confiscation of proceeds or instruments of activity which, had it occurred within the jurisdiction of the requested Party, would not have been an activity in respect of which a confiscation order could have been made;
 - 4) the request relates to an offence in respect of which the accused person had been finally acquitted, pardoned or amnestied.
2. Before refusing to grant a request for assistance, the requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the requesting Party accepts assistance subject to conditions, it shall comply with them.

Article 7 Transmission of Documents and Objects

1. When the request for assistance concerns the transmission of records and documents, the requested Party may transmit certified true copies thereof, unless the requesting Party expressly requests the originals.
2. The original records or documents and the objects transmitted to the requesting Party shall be returned to the requested Party, as soon as possible, upon the latter's request.

3. Insofar as not prohibited by the laws of the requested Party, documents, objects and records shall be transmitted in a form or accompanied by such certification as may be requested by the requesting Party in order to make them admissible according to the law of the requesting Party.
4. Evidence or documents transmitted pursuant to this Treaty shall not require any form of authentication, save as specified in the present Article.

Article 8 **Taking evidence in the Requested Party**

1. A person, including a person in custody, requested to testify and produce documents, records or other objects in the requested Party may be compelled by subpoena or order to appear and testify and produce such documents, records and other objects, in accordance with the laws of the requested Party.
2. Subject to the law of the requested Party, commissioners, other officials of the requesting Party and persons concerned in the proceedings in the requesting Party shall be permitted to be present when evidence is taken in the requested Party and to participate in the taking of such evidence.
3. The right to participate in the taking of evidence includes the right of counsel present to pose questions. 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.

Article 9 **Availability of persons to give evidence or assist in investigation**

1. The requesting Party has the right to send a request to the requested Party to make available a person or persons for giving evidence or assisting in the investigation.
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.

Article 10

Requesting Detained Persons Available to Give Evidence or Assist in Investigations

A person in custody in the territory of the requested Party, summoned before the court or other competent authority of the requesting Party shall be temporarily transferred to that Party to assist in investigation or proceedings, with the following conditions:

- 1) the summoned person agrees to the transfer;
 - 2) the temporarily transferred person shall be returned to the requested Party at the conclusion of the proceedings of the criminal matter, in respect of which the person has been transferred, but no later than in three months beginning from the date of transfer of that person. When required, under the submission of a corresponding justification the term of three months can be extended by the agreement of the Parties;
 - 3) where no overriding grounds exist against transferring the person;
- Where the person transferred is required to be kept 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 at the conclusion of the execution of the request.
- A temporarily transferred person shall not be obliged to give evidence in the course of any proceeding or assist in investigation of criminal matter other than of the proceeding or investigation in respect of which a request has been made.
- Where 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 person present in the requesting Party pursuant to a request seeking that person's attendance.

Article 11 **Safe conduct**

1. A person present in the requesting Party 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 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 proceeding other than the proceedings to which the request relates.
2. A person, who is present in the requesting Party by consent as a result of a request for the person's attendance to answer before a judicial authority any acts, omissions or convictions shall not be prosecuted or detained or subjected to any other restriction of personal liberty for act and omissions or convictions which preceded that person's departure from the requested Party, not specified in the request.
3. Paragraphs 1 and 2 of this Article shall cease to apply if a person, being free to leave the requesting Party, has not left it within a period of thirty (30) days after being officially notified that that person's attendance is no longer required or, having left that territory, has voluntarily returned.
4. Any person who does not consent to appear in the requesting Party may not be subjected to any sanction or compulsory measure in either Party.
5. Any person who is in the territory of the requesting Party pursuant to a request under this Treaty and who fails to appear before the competent authority of the requesting Party, may be compelled to appear before the above mentioned such competent authority according to the national laws of the requesting Party.

Article 12 **Proceeds and Instruments of Crime**

1. The requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments are located within its jurisdiction and shall notify the requesting Party 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 Party by whatever means are appropriate. This may include giving effect to an order made by a court or

submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the requested Party.

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 and instruments of crime or damages done by the crime.
4. Proceeds or instruments forfeited or confiscated pursuant to this Treaty shall accrue to the requested Party unless otherwise agreed in a particular case.
5. Where action has been taken in the requested Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in either of the Parties by a person affected by the order, the relevant Party shall inform the other Party as soon as possible and shall also inform it promptly of the outcome of that representation.

Article 13 **Confidentiality and Limitation of Use**

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 be disclosed or used only subject to such terms and conditions as it may specify.
2. The requested Party 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 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.

Article 14 **Language**

Requests and supporting documents shall be accompanied by a translation into one of the languages of the requested Party.

Article 15 Costs

1. The requested Party shall bear the costs of executing the request for assistance, except that the requesting Party shall bear:
 - 1) 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 allowance or expenses payable to that person while in the requesting Party pursuant to a request under Articles 9 or 10 of this Treaty; and
 - 2) the expenses and fees of experts either in the requested Party or the requesting Party.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult each other to determine the terms and conditions under which the requested assistance can be provided.

Article 16 Amendments and changes

The Parties may by mutual consultation amend or change this Treaty, if required. Such amendments or changes shall constitute a separate protocol, which shall be treated as a part of this Treaty.

Article 17 Settlement of differences

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

Article 18 Entry into Force

This Treaty is subject to ratification and it shall come into force from the date of exchange of instruments of ratification.

Article 19

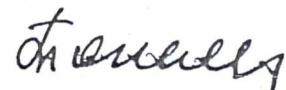
Termination

This Treaty shall be valid till either of the Parties terminates it by giving six (6) months notice thereof through diplomatic channels. The Treaty shall cease to have any force or effect on the expiry of such notice.

IN WITNESS WHEREOF, the undersigned, having been duly authorised, have signed this Agreement.

DONE at New Delhi this seventeenth day of August, One thousand nine hundred and ninety _____ in two originals, each in Hindi, English,Kazakh and Russian, all being equally authentic. In case of any interpretational difference the English text shall prevail.


For the Republic of India


For the Republic of Kazakhstan