

**TREATY BETWEEN
THE REPUBLIC OF INDIA
AND
THE SOCIALIST REPUBLIC OF VIETNAM
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The Republic of India and the Socialist Republic of Vietnam (hereinafter referred to as "the Contracting Parties"),

GUIDED by the traditional friendly relations between the two countries;

DESIRING to improve the effectiveness of cooperation between the two countries in the field of mutual legal assistance in criminal matters on the basis of mutual respect for sovereignty, equality and mutual benefit,

HAVE AGREED as follows:

**Article 1
Scope of Application**

1. The Contracting Parties shall, in accordance with the provisions of this Treaty, grant each other the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested Party in respect of investigations, prosecutions or other proceedings to the Requesting Party 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 Party would constitute an offence under the laws of the Requested Party.
4. Assistance shall include:
 - (a) taking evidence or Statements from persons;
 - (b) providing information, documents, records and articles of evidence;
 - (c) locating or identifying persons or items;

- (d) serving documents;
 - (e) executing requests for search and seizure;
 - (f) authorizing the presence of persons from the Requesting Party at the execution of requests;
 - (g) making arrangements for persons to give evidence or assist in criminal investigations, prosecutions or proceedings in the Requesting Party;
 - (h) making detained persons available to give evidence or assist investigations;
 - (i) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities including those related to terrorism
 - (j) any other assistance consistent with the object of this Treaty which is not inconsistent with the laws of the Requested Party.
5. Assistance granted under this Treaty does not include:
- (a) the extradition, or the arrest or detention for that purpose, of any person;
 - (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party and this Treaty;
 - (c) the transfer of persons in custody to serve sentences;
 - (d) the transfer of proceedings in criminal matters.

Article 2

Definitions

1. For the purpose of this Treaty, criminal matters mean investigations (including inquiries), prosecutions or proceedings relating to any offence, including offences against a law related to taxation, customs duties, foreign

exchange control or other revenue matters, the punishment of which at the time of the request for assistance falls within the jurisdiction of the Requesting Party.

2. For the purpose of this Treaty, “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.

Article 3 Central Authorities

1. The Contracting Parties shall, at all times, have a person or an authority designated as the Central Authority, to transmit and receive requests for the purposes of this Treaty.

2. The following shall be the Central Authorities at the commencement of this Treaty:

- (a) For the Republic of India, the Central Authority shall be the Ministry of Home Affairs
- (b) For the Socialist Republic of Vietnam, the Central Authority shall be the People's Supreme Procuracy;

3. Each Party shall notify the other of any change of its Central Authority referred to in paragraph 2 of this Article.

4. The Central Authorities shall normally communicate directly with one another, but may, if they choose, communicate through diplomatic channels.

Article 4 Execution of Requests

1. Requests for assistance shall be carried out promptly by the competent authorities of the Requested Party in accordance with the laws of that Party and, to the extent those laws permit, in the manner requested 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 may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in that Party. If this is the case, the Requested Party shall, upon request, provide certified copies of documents.

4. The Requested Party shall promptly inform the Requesting Party of circumstances, when they become known to the Requested Party, which are likely to cause a significant delay in carrying out the request.

5. The Requested Party shall not refuse to execute a request on the ground of bank secrecy.

Article 5

Contents of Requests

1. Requests for assistance shall:

- (a) indicate the name of the competent authority conducting the investigation, prosecution or other proceedings to which the request relates;
- (b) specify the purpose of the request and the nature of the assistance sought;
- (c) identify the person, agency or authority that initiated the request;
- (d) include a description of the nature of the criminal matter, including a summary of the relevant facts and laws and applicable penalties;
- (e) include a Statement indicating the current status of the investigation or proceeding;
- (f) include a Statement specifying any time frame within which compliance with the request is desired.

2. Requests for assistance, where relevant and so far as possible, shall also include:

- (a) the identity, nationality and location of the person or persons who are the subject of, or who may have information relevant to, the criminal matter;
- (b) where the request is for assistance under Article 11:-
 - (i) 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 matter about which persons are to be examined including, where appropriate, any questions that the Requesting Party wishes to put to those persons;
 - (ii) a description of any documents, records or articles of evidence to be produced and, where relevant, a description of the appropriate person to be asked to produce them;
- (c) 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 taken, any tests to be conducted and the date by which the exhibit will be returned;
- (d) in the case of making persons in custody available, an indication of the person or class of persons who will have custody during the transfer, the place to which the person in custody is to be transferred and the probable date of that person's return;
- (e) where the request is for assistance under Article 13 or 14, information about the allowances and expenses to which a person traveling to the Requesting Party would be entitled;
- (f) where the request is for assistance under Article 10 or Article 16 or Article 17 a description of the material sought and, where relevant, its likely location;
- (g) where the request is for assistance under Article 16 or Article 17:-
 - (i) a Statement outlining the basis of Requesting Party's belief that proceeds of crime may be located in its jurisdiction, and

- (ii) the court order, if any, sought to be enforced and a Statement about the status of that order;
- (h) where the request is for assistance that may lead to or result in the discovery or recovery of proceeds of crime, a Statement as to whether a special arrangement under Article 16 (4) is sought.
- (i) a Statement outlining any particular requirement or procedure that the Requesting Party may have, or wish to be followed in giving effect to the request, including details of the manner or form in which any information, evidence, document or item is to be supplied;
- (j) a Statement setting out the wishes, if any, of the Requesting Party concerning the confidentiality of the request, and the reasons for those wishes;
- (k) where an official of the Requesting Party intends traveling to the Requested Party in connection with the request, information about the purpose of that person's visit, the proposed time frame and travel arrangements;
- (l) any other supporting information, evidence or documents that is necessary to enable, or may assist, the Requested Party to give effect to the request.

3. If the Requested Party considers that the information contained in a request is not sufficient to enable the request to be dealt with in accordance with this Treaty, it may request additional information.

4. A request shall be made in writing except that the Requested Party may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing within 45 days unless the Requested Party agrees otherwise.

Article 6

Refusal or Postponement of Assistance

1. Assistance shall be refused if, in the opinion of the Requested Party:
 - (a) the request relates to an offence that is regarded by the Requested Party as a purely military offence;

- (b) the request relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party;
 - (c) the request, if granted, would impair the Requested Party's sovereignty, security, public order or essential interests.
- 2. Assistance may be refused if, in the opinion of the Requested Party,
 - (a) the execution of the request would be contrary to the domestic law of the Requested Party.
 - (b) the request seeking restraint, forfeiture or confiscation of proceeds of crime or seizure of property are in respect of conduct/ activity which cannot be made basis for such restraint, forfeiture, confiscation or seizure in the Requested Party.
- 3. Assistance may be postponed by the Requested Party if the request would interfere with an ongoing investigation or prosecution in the Requested Party.
- 4. Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority, shall:
 - (a) promptly inform the Requesting Party of the reason for considering denial or postponement; and
 - (b) consult the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.
- 5. If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph 4 (b), it shall comply with those terms and conditions.

Article 7

Service of Documents

1. The Requested Party shall, to the extent its laws permit, carry out requests for the service of documents in respect of a criminal matter.

2. A request for service of a summons requiring the appearance of a person as a witness in the Requesting Party shall be made to the Requested Party within 45 days before the scheduled appearance. In urgent cases, the Requested Party may waive this requirement.

3. The Requested Party shall forward to the Requesting Party proof of service of the documents. If service cannot be affected, the Requesting Party shall be so informed and advised of the reasons.

Article 8 Provision of Information

1. The Requested Party shall provide copies of publicly available documents, records or information that are open to public access.

2. The Requested Party may provide copies of any documents, records or information in the same manner and under the same conditions as they may be provided to its own law enforcement and judicial authorities. As and when requested by the Requested Party, the documents shall be certified as per the requirement of Law of the Requesting Party.

3. The Requested Party may provide certified true copies of documents of records, unless the Requesting Party expressly requests originals.

Article 9 Return of Material to the Requested Party

Where required by the Requested Party, the Requesting Party shall return material provided under this Treaty when it is no longer needed for the criminal matter to which the request relates.

Article 10 Search and Seizure

1. The Requested Party shall, to the extent its laws permit, carry out requests made in respect of a criminal matter in the Requesting Party for the search, seizure and delivery of material to that Party as is got done for its own law enforcement and judicial authorities.

2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the material seized.

3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party.

Article 11

Taking of Evidence

1. The Requested Party shall, to the extent its laws permit and upon request, take testimony, or otherwise obtain Statements of persons or require them to produce items of evidence for transmission to the Requesting Party.

2. The Requested Party, to the extent permitted by its law, shall permit the presence of such persons as specified in the request during the execution of the request, and may allow such persons to question the person whose testimony or evidence is being taken. In the event that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the persons whose testimony or evidence is being taken. However, 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.

3. A person from whom evidence is to be taken in the Requested Party pursuant to a request under this Article may decline to give evidence where:

- (a) the law of the Requested Party would permit or require that person to decline to give evidence in similar circumstances in criminal proceedings originating in the Requested Party; or
- (b) the law of the Requesting Party would permit or require that person to decline to give evidence in such criminal proceedings in the Requesting Party.

4. If any person in the Requested Party claims that there is a right or obligation to decline to give evidence under the law of the Requesting Party, the Central Authority of the Requesting Party shall, upon request, provide a certificate to the Central Authority of the Requested Party as to the existence or

otherwise of that right. In the absence of evidence to the contrary, the certificate shall be sufficient evidence of the matters stated in it.

5. For the purposes of this Article, the taking of evidence includes the production of documents or other articles.

Article 12

Presence of Persons at the Execution of Requests

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

Article 13

Transfer of Persons in Custody to Give Evidence or Assist Investigations

1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party to give evidence in criminal proceedings or assist investigations in that Party. For the purposes of this Article, a person in custody also includes a person not detained in prison but who is subject to a sentence imposed for an offence, not being a sentence of a monetary nature.

2. The Requested Party shall transfer a person in custody to the Requesting Party only if:

- (a) the person freely consents to the transfer; and
- (b) the Requesting Party agrees to comply with any conditions specified by the Requested Party relating to the custody or security of the person to be transferred.

3. 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 released.

4. A person who is transferred pursuant to a request under this Article shall be returned to the Requested Party in accordance with arrangements agreed by the Requested Party as soon as practicable after the evidence has been given or at such earlier time as the person's presence is no longer required.

Article 14
Availability of Other Persons to Give Evidence or Assist Investigations

1. The Requesting Party may request the assistance of the Requested Party in arranging for the transfer of a person (not being a person to whom Article 13 of this Treaty applies) to the Requesting Party to give or provide evidence or assistance in respect of a criminal matter in the Requesting Party.
2. The Requested Party shall, if satisfied that satisfactory arrangements for that person's safety will be made by the Requesting Party, invite the person to consent to give or provide evidence or assistance in the Requesting Party. The person shall be informed of any expenses or allowances payable. The Requested Party shall promptly inform the Requesting Party of the person's response and, if the person consents, take all steps necessary to facilitate the request.

Article 15
Safe Conduct

1. Subject to paragraph 2 of this Article, a person present in the Requesting Party pursuant to a request made under Article 13 or Article 14 of this Treaty, shall not:
 - (a) be detained, prosecuted or punished in the Requesting Party for any offence, nor be subject to any civil proceedings, being civil proceedings to which the person could not be subjected if the person were not in the Requesting Party, in respect of any act or omission which preceded the person's departure from the Requested Party; and
 - (b) without his/ her consent, be required to give evidence in any criminal proceeding or to assist any criminal investigation other than the criminal matter to which the request relates.
2. Paragraph 1 of this Article ceases to apply if that person, being free to leave, has not left Requesting Party within a period of 30 days after that person has been officially notified that his or her presence is no longer required or, having left, has returned.
3. A person who does not consent to give evidence pursuant to Article 13 or Article 14 of this Treaty shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

4. A person who consents to give evidence pursuant to Articles 13 or Article 14 of this Treaty shall not be subject to prosecution based on his or her testimony, except for perjury or contempt of Court.

Article 16

Proceeds and Instruments of Crime

1. The Requested Party shall, upon request; endeavour to ascertain whether any proceeds or instruments of crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.

2. Where, pursuant to paragraph 1, suspected proceeds or instruments of crime are found, the Requested Party shall take such measures as are permitted by its law to restrain or confiscate such proceeds or instruments of crime.

3. In the application of this Article, the rights of bona fide third parties shall be respected under the law of the Requested Party.

4. The Requested Party shall retain any proceeds or instruments of crime that are confiscated unless otherwise agreed in a particular case.

Article 17

Funds meant for financing acts of terrorism

Where either of the Contracting States have reasons to believe that any person or group of persons in their 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 acts of terrorism in the territory of the other State, it shall bring these facts to the notice of the other signatory State and shall take steps as permitted by its law for search, seizure and confiscation of such funds and the prosecution of the individual concerned.

Article 18

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, 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.

3. The Requesting Party shall, if so requested, use its best efforts to ensure that the information or evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.

Article 19 Limitation of Use

The Requesting Party shall not use information or evidence obtained, nor anything derived from either, for purposes other than those stated in a request without the prior consent of the Requested Party.

Article 20 Certification and Authentication

1. Subject to paragraph 2 of this Article, a request for assistance, the documents in support thereof, and documents or materials furnished in response to a request, shall not require any form of certification or authentication.

2. Where, in a particular case, the Requested or Requesting Party requests that documents or materials be authenticated, the documents or materials shall be duly authenticated in the manner provided in paragraph 3.

3. Documents or materials are authenticated for the purposes of this Treaty if they purport to be signed or certified by an official or competent authority under the laws of the Party sending the document and to be sealed with an official seal of that authority.

Article 21 Language

A request, any supporting documentation and any communications made pursuant to this Treaty, shall be in the language of the Requesting Party and be accompanied by a translation into the language of the Requested Party or in the English language.

Article 22 Subsidiary Arrangements

The Central Authority of each Party may enter into subsidiary arrangements consistent with the purposes of this Treaty and with the laws of both Parties.

Article 23 Representation and Expenses

1. Unless otherwise provided in this Treaty, the Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

2. The Requested Party shall meet the cost of fulfilling the request for assistance except that the Requesting Party shall bear:

- (a) the expenses associated with conveying any person to or from the territory of the Requested Party, and the accommodation expenses of the person and any fees, allowances or other expenses payable to that person while in the Requesting Party pursuant to a request under Articles 7, 13 or 14 of this Treaty;
- (b) the expenses associated with conveying custodial or escorting officers;
- (c) fees and expenses of experts,
- (d) expenses associated with interpretation and the translation of documents and taking of evidence from the Requested Party to the Requesting Party via video, satellite or other technological means;

- (e) where required by the Requested Party, exceptional expenses incurred in fulfilling the request.

Article 24

Compatibility with other Treaties

This Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international conventions/agreements, or through the provisions of its domestic law. The Contracting Parties may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

Article 25

Consultations

The Contracting Parties shall consult promptly, at the request of either, concerning any issue relating to the interpretation, application or implementation of this Treaty, either generally or in relation to a particular case.

Article 26

Entry into Force and Termination

1. This Treaty :
 - (a) is subject to ratification and the instruments of ratification shall be exchanged as soon as possible;
 - (b) shall enter into force from the date of exchange of instruments of ratification;
 - (c) applies to requests regardless of the fact whether the relevant acts or omissions occurred before or after its entry into force; and
 - (d) may be amended by mutual consent.

2. Either Contracting Party may terminate this Treaty. The termination shall take effect six (6) months from the date on which it is notified to the other Contracting Party.

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

DONE at Hanoi this the 8th day of October, 2007(Two Thousand and Seven) in two originals, each in Hindi, Vietnamese and English, all texts being equally authentic. However, in case of divergence of interpretation, the English text shall prevail.

For the Republic of India

For the Socialist Republic of Vietnam