

# United Nations Office on Drugs and Crime

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## TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF SPAIN

The United States of America and the Kingdom of Spain,

Wishing to cooperate within the framework of their friendly relations, and

Inspired by the desire to cooperate to facilitate the administration of justice in criminal matters,

Have decided to conclude a mutual legal assistance Treaty under the following terms:

### ARTICLE 1

#### Object of the Treaty

1. The Contracting States shall provide mutual assistance, in accordance with the provisions of this Treaty with respect to investigations and prosecutions in criminal matters conducted in each.

2. Assistance shall include:

- (a) taking the testimony or statements of persons;
- (b) providing documents, records, and articles of evidence;
- (c) serving documents;
- (d) locating or identifying persons or items;
- (e) transferring persons in custody for testimony or other purposes;
- (f) executing requests for searches and seizures;
- (g) immobilizing assets;
- (h) assisting in proceedings related to forfeiture and restitution;
- (i) initiating criminal proceedings in the Requested State; and
- (j) any other form of assistance not prohibited [15] by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the act giving rise to the request for assistance is a crime in the Requested State. If, however, assistance is requested for purposes of paragraph 2(h), it will be necessary for the act giving rise to that proceeding to constitute a crime and be punishable by a sentence consisting of the deprivation of liberty for a period of more than one year under the laws of both Contracting States.

4. This Treaty is intended solely for mutual legal assistance between the Contracting States. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain,

suppress, or exclude any evidence, or to impede the execution of a request.

## ARTICLE 2

### Central Authorities

1. Each Contracting State shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. For the United States of America, the Central Authority shall be the Attorney General or such persons designated by him. For Spain, the Central Authority shall be the Ministry of Justice (Office of the Technical General Secretariat) or such persons designated by it.
3. The Central Authorities [16] shall communicate directly with one another for the purposes of this Treaty.

## ARTICLE 3

### Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if: (a) the request relates to an offense under military law which would not be an offense under ordinary criminal law; or  
(b) the execution of the request would prejudice the security or similar essential interests of the Requested State.
2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.
3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

## ARTICLE 4

### Form and Content of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in cases of urgency. In any such case, the request shall be confirmed [17] in writing within ten days unless the Central Authority of the Requested State agrees otherwise. The request shall be in the language of the Requested State, unless otherwise agreed.
2. The request shall include the following:
  - (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
  - (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses which relate to the matter;
  - (c) a description of the evidence, information, or other assistance sought; and
  - (d) a statement of the purpose for which the evidence, information, or other assistance is sought.
3. To the extent necessary and possible, a request shall also include:

- (a) information on the identity and location of any person from whom evidence is sought;
- (b) information on the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;
- (c) information on the identity and whereabouts of a person to be located;
- (d) a precise description of the place or person to be searched and of the items to be seized;
- (e) a [18] description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked of a witness;
- (g) a description of any particular procedure to be followed in executing the request;
- (h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and
- (i) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

## ARTICLE 5

### Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.
2. When necessary, the request shall be presented to the appropriate authority by the persons designated by the Central Authority of the Requested State.
3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this [19] Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.
4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.
5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching the requested confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.
6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the [20] Requesting State concerning progress toward execution of the request.
7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the denial.

## ARTICLE 6

### Costs

The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses, the costs of translation and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which fees, allowances, and expenses shall be paid by the Requesting State.

## ARTICLE 7

### Limitations of Use

The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. In that case, the Requesting State shall use its best efforts to comply with the conditions. Information or evidence which has been made public in the Requesting State in accordance with this Treaty may thereafter be used for [21] any purpose.

## ARTICLE 8

### Taking Testimony or Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce any item, including, but not limited to, documents, records, and articles of evidence. A person who gives false testimony, either orally or in writing, in execution of a request, shall be subject to prosecution and punishment in the Requested State in accordance with the criminal laws of that State.
2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.
3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the person whose testimony or evidence is being taken.
4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the [22] Requesting State for resolution by the authorities of that State.
5. Any items produced in the Requested State pursuant to this Article or which are the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. Documents authenticated by Form A shall be admissible in evidence in the Requesting State as proof of the matters set forth therein.

## ARTICLE 9

### Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of publicly available documents, records, or information in the possession of government departments and agencies in the Requested State.
2. The requested State may provide copies of any documents, records, or information which are in the

possession of a government department or agency in that State, but which are not publicly available, to the same extent and under the same conditions as such copies would be made available, in Spain, to its judicial authorities and the Fiscal Ministry, and, in the United States, to its own law enforcement and judicial authorities. The Requested State may, in [23] its discretion, deny a request pursuant to this paragraph entirely or in part.

3. Official records produced pursuant to this Article may be authenticated under the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, dated 5 October 1961. No further authentication shall be necessary. Documents authenticated under this paragraph shall be admissible in evidence in the Requesting State.

## ARTICLE 10

### Testimony in the Requesting State

1. Upon request, the Requested State shall invite a person in that State to appear before the appropriate authority in the Requesting State. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.

2. The request shall indicate the extent to which the invited person's expenses will be reimbursed. If that person so requests, the Requesting State may provide funds with respect to those expenses in advance through its embassy in the Requested State.

3. The request may indicate the extent to which the Requesting State will give the invited person assurances pursuant to Article 11(4). If the Requesting State provides no assurances, the [24] Requested State shall so notify the person.

4. Any safe conduct provided pursuant to this Article shall cease when the person invited voluntarily extends his stay in the Requesting State more than 15 days from the time his presence is no longer required by that State or when the person, having left the Requesting State, voluntarily returns.

## ARTICLE 11

### Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is needed for purposes of assistance under this Treaty shall be transferred to the Requesting State if both the person and the Central Authority of the Requested State consent to the transfer.

2. A person in the custody of the Requesting State whose presence in the Requested State is needed for purposes of assistance under this Treaty may be transferred to the Requested State if both the person consents and the Central Authorities of both States agree.

3. For purposes of this Article:

(a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

(b) the receiving State shall return the person transferred to the custody [25] of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;

(c) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and

(d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

4. A person transferred pursuant to this Article may not, while in the receiving State:

(a) be subject to service of process or be detained or subject to any restriction of personal liberty by reason of any acts which preceded his departure from the sending State other than as provided in paragraph 3; or

(b) without his consent, be required to testify in proceedings not specified in the request.

5. The safe conduct established in the above paragraph shall cease when a person freed in accordance with paragraph 3 voluntarily extends his stay in the Receiving State more than 15 days from the time his presence is no longer required by that State or when the person, having left the receiving State, voluntarily returns.

6. Persons appearing in a trial in the Requesting State under [26] the provisions of this Article may not be prosecuted on the basis of their testimony except for contempt or perjury.

## ARTICLE 12

### Location or Identification of Persons or Items

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

## ARTICLE 13

### Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating to a request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit a request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the request or acceptable under the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

## ARTICLE 14

### Search and Seizure

1. The Requested State shall execute a request for the search, seizure and delivery of any item, including, but not limited to, any document, record, or article of evidence, to the Requesting [27] State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request, every official who has custody of a seized item shall certify, through the use of Form B appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificate shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed necessary to protect the interests of bona fide third parties in the item to be transferred.

## ARTICLE 15

## Return of Items

The Central Authority of the Requesting State shall return all original documents, records, or articles of evidence furnished to it in execution of a request as soon as possible unless the Central Authority of the Requested State waives their return. The Central Authority of the Requesting State need not return any copy so furnished unless the Central Authority of the Requested State specifically so requests at the time it furnishes the copy.

## ARTICLE 16 [28]

### Proceeds of Crime

1. The Central Authority of either State shall notify the Central Authority of the other State of proceeds of crime believed to be located in the territory of the other State.
2. The Contracting States shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the fruits and instrumentalities of offenses and restitution to the victims of crime.
3. Proceeds or property forfeited to a Contracting State pursuant to this Article shall be disposed of by that State according to its domestic law and administrative procedures. Either State may transfer such property, the proceeds of its sale, or a percentage thereof, to the other State, to the extent permitted by its respective laws, upon such terms as they may determine.

## ARTICLE 17

### Compatibility With Other Agreements

Assistance and procedures set forth in this Treaty shall not prevent either of the Contracting States from granting assistance to the other State through the provisions of other international agreements to which it may be a party, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, [29] agreement, or practice which may be applicable.

## ARTICLE 18

### Consultations

1. The Central Authorities may consult, at times mutually agreed to by them, to enable the most effective use to be made of this Treaty.
2. The Contracting States agree to consult as appropriate to develop other specific agreements or arrangements, formal or informal, on mutual legal assistance.

## ARTICLE 19

### Initiation of Criminal Proceedings in the Requested State

1. Either Contracting State may transmit a request for the purpose of initiating a criminal proceeding before the appropriate authorities of the other Contracting State where both States have jurisdiction to investigate or prosecute. Such requests shall be transmitted through the respective Central Authorities.
2. The Requested State shall consider initiating an investigation or prosecution to the extent appropriate under its laws, practices and procedures. The Requested State shall notify the Requesting State of any action taken on the request.
3. The request and documentation shall be written in the language of the Requested State or accompanied by a translation into that language.

ARTICLE 20

Ratification, Entry into Force, and Termination

1. This [30] Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Madrid as soon as possible.
2. This Treaty shall enter into force on the last day of the month following the exchange of instruments of ratification.
3. This Treaty shall have no fixed term. Either of the two States may terminate it by written notification through the diplomatic channel. The termination shall take effect beginning on the last day of the sixth month following the month of notification.

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

DONE at Washington this twentieth day of November, 1990, in duplicate, in the English and Spanish languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR THE KINGDOM OF SPAIN:

Form A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, \_\_\_ (name), attest on penalty of criminal punishment for false statement or false attestation that I am employed by \_\_\_ (name of business from which documents are sought) and that my official title is \_\_\_ (official title). I further state that each of the records attached hereto is the original or a duplicate [31] of the original records in the custody of \_\_\_ (name of Business from which documents are sought).

I further state that:

- A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- B) such records were kept in the course of a regularly conducted business activity;
- C) the business activity made such records as a regular practice; and
- D) if such record is not the original, such record is a duplicate of the original.

\_\_\_ Signature \_\_\_ Date

Sworn to or affirmed before me, \_\_\_ (name), a \_\_\_ (Judge, Magistrate, or Commissioner of the Court), this \_\_\_ day of \_\_\_, 19\_\_.

Form B

ATTESTATION WITH RESPECT TO SEIZED ITEMS

I, \_\_\_ (name), attest on penalty of criminal punishment for false statement or attestation that my position with the Government of \_\_\_ (country) is \_\_\_. I received custody of the items listed below from \_\_\_ (name of person) on \_\_\_ (date) at \_\_\_ (place) in the same condition as when I received them (or, if



different, as noted below).

Description of Item:

Changes in condition while in my custody:

Official Seal

\_\_\_\_ Signature

\_\_\_\_ Title

\_\_\_\_ Place

\_\_\_\_ Date

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