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TREATY BETWEEN CANADA AND THE CZECH REPUBLIC ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

CANADA AND THE CZECH REPUBLIC,

DESIRING 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:

PART I - GENERAL PROVISIONS

ARTICLE 1

Obligation to Grant Mutual Assistance

1. The Contracting Parties shall, in accordance with this Treaty, grant each other the widest measure of mutual assistance in criminal matters.
2. Mutual assistance for the purpose of Paragraph 1 shall be any assistance given by the Requested State in respect of criminal proceedings, including investigations and judicial proceedings, in the Requesting State in a criminal matter, irrespective of whether the assistance is sought or to be provided by a court or some other authority.
3. Criminal matters for the purpose of Paragraph 1 mean criminal proceedings, including investigations and judicial proceedings, relating to any offence created by a law of Parliament or by the legislature of a province for Canada, and by a law of Parliament for the Czech Republic.
4. Criminal matters shall also include criminal proceedings, including investigations and judicial proceedings, relating to offences concerning taxation, duties, customs and international transfer of capital or payments.
5. Assistance shall include:
 - (a) the locating of persons and objects, including their identification;
 - (b) the service of documents, including documents seeking the attendance of persons;
 - (c) the provision of information, documents and other records, including criminal records, judicial records and government records;
 - (d) the delivery of property, including lending of exhibits;
 - (e) the taking of evidence and obtaining of statements of persons;
 - (f) search and seizure;
 - (g) making persons, including detained persons, available to give evidence or assist criminal proceedings, including investigations and judicial proceedings;
 - (h) measures to locate, restrain and forfeit the proceeds of crime; and

(i) other assistance consistent with the objects of this Treaty.

6. The competent authorities of the Requested State shall make best efforts to ascertain the location and identity of persons and objects specified in the request.

ARTICLE 2

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as it is not prohibited by that law, in the manner requested by the Requesting State.

2. The Requested State shall, upon request, inform the Requesting State of the time and place of execution of the request for assistance.

ARTICLE 3

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 or essential public interest, or be contrary to its law.

2. Assistance may be postponed by the Requested State if execution of the request would interfere with criminal proceedings, including investigations and judicial proceedings, in the Requested State.

3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

4. Before refusing to grant a request for assistance or before postponing the grant of such assistance, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

PART II - SPECIFIC PROVISIONS

ARTICLE 4

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 the manner required by the Requesting State. Unless otherwise indicated in the request, service shall be on the person named and proof of service shall include the signature of the person and the date of service.

ARTICLE 5

Transmission of Documents and Objects

1. When the request for assistance concerns the transmission of records and documents, the Requested State may transmit certified true copies thereof, unless the Requesting State expressly requests the originals.

2. The original records or documents or objects transmitted to the Requesting State shall be returned to the Requested State as soon as possible, upon the latter's request.

3. Insofar as not prohibited by the law of the Requested State, records, documents or objects shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 6

Taking of Evidence in the Requested State

1. The Requested State shall take necessary measures to obtain the appearance of requested persons before a competent authority to testify and produce documents, records or other articles in the Requested State, according to the law of the Requested State.

2. The Requested State shall allow the presence of persons specified in the request at the taking of evidence under this Article and shall allow such persons to question the person giving testimony or producing evidence.

3. The Requested State shall permit the persons of the Requesting State present at the execution of a request to make a verbatim transcript of the proceedings and allow these persons to use technical means for this purpose.

ARTICLE 7

Search and Seizure

1. The Requested State shall execute a request for search and seizure and 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 things seized and the circumstances of the seizure.

2. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized documents, records or things which may be delivered to the Requesting State.

ARTICLE 8

Availability of Persons to Provide Assistance in the Requesting State

1. The Requesting State may request that a person be made available to testify or to assist criminal proceedings, including investigations and judicial proceedings.

2. The Requested State shall invite the person to provide such assistance or to appear as a witness and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable and the availability of advance payment.

ARTICLE 9

Making Detained Persons Available to Assist Criminal Proceedings in the Requesting State

1. A person in custody in the Requested State shall, at the request of the Requesting State, be temporarily transferred to the Requesting State to assist criminal proceedings, including investigations and judicial proceedings, provided that the person consents to that transfer. The transfer may be refused by the Requested State if it determines, taking into account the importance of the assistance sought by the Requesting State, that overriding grounds exist against transferring the person.

2. Where 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 until the person is returned to the Requested State. The person shall be returned to the Requested State once the purpose of the transfer has been achieved.

3. The Requesting State shall provide to the Requested State a statement setting out the period of time during which the person transferred was kept in custody in the Requesting State.

4. 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 10

Safe Conduct

1. Subject to Article 9(2), a person present in the Requesting State in response to a request seeking that that person's attendance 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 the proceedings 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 it within a period of fifteen days after being officially notified that person's attendance is no longer required or, having left that territory, has voluntarily returned.

ARTICLE 11

Failure to Appear in the Requesting State

Any person who fails to appear in the Requesting State may not be subjected, by reason of this failure, to any sanction or compulsory measure in the Requested State.

ARTICLE 12

Proceeds of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its territory 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 may be located in the latter's territory.

2. Where, pursuant to Paragraph 1 of this Article, proceeds of crime are found, the Requested State shall take, in accordance with its law, measures to confiscate such proceeds, including the seizure and restraining thereof.

PART III - PROCEDURE

ARTICLE 13

Contents of Requests

1. In all cases requests for assistance shall include:

(a) the competent authority conducting the criminal proceedings, including investigations and judicial proceedings, to which the request relates;

- (b) a description of the nature of these criminal proceedings, including a copy or summary of the relevant facts and laws;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) any time limit within which compliance with the request is desired.
2. Requests for assistance shall also contain the following information:
- (a) where possible, the identity, nationality and location of the person or persons who are the subject of the criminal proceedings described in Paragraph (1)(b) of this Article;
 - (b) where necessary and possible, the identity and location of any person from whom evidence is sought;
 - (c) where necessary, details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor;
 - (d) 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 territory of the Requested State;
 - (e) 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;
 - (f) in the case of lending of exhibits, the person or class of persons 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;
 - (g) 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;
 - (h) where applicable, the need for confidentiality, its extent, and the reasons therefor.
3. 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.
4. A request shall be made in writing. 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. The Requesting State shall promptly provide the original of a request made by facsimile.

ARTICLE 14

Central Authorities and Channel of Communications

Central authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty. The central authority for Canada shall be the Minister of Justice or an official designated by that Minister; the central authority for the Czech Republic shall be the Ministry of Justice or an official representative designated by the Minister of Justice.

ARTICLE 15

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

ARTICLE 16

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 central authority of the Requested State.

ARTICLE 17

Authentication

Evidence or documents transmitted pursuant to this Treaty shall not require any form of authentication, save as is specified in Article 5.

ARTICLE 18

Language

Requests and supporting documents shall be in, or accompanied by a translation into, one of the official languages of the Requested State.

ARTICLE 19

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 allowance or expenses payable to that person while in the Requesting State or Requested State pursuant to a request under Articles 6(2), 8 or 9 of this Treaty;

(b) the expenses and fees of experts either in the Requested State or the Requesting State.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

PART IV - FINAL PROVISIONS

ARTICLE 20

Compatibility with Other Obligations

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

ARTICLE 21

Scope of Application

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

ARTICLE 22

Consultations

The Contracting Parties shall consult promptly, at the request of either Party, concerning the interpretation and the application of this Treaty.

ARTICLE 23

Entry into Force and Termination

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Prague as soon as possible.
2. This Treaty shall enter into force on the first day of the third month following the month in which the instruments of ratification have been exchanged. This Treaty shall remain in force for an unspecified period of time.
3. Either Contracting Party may terminate this Treaty at any time. The termination shall be effective six months following the date on which notice of termination was received.

IN WITNESS THEREOF the undersigned, being duly authorized thereto, have signed this Treaty.

DONE in duplicate at Ottawa, on the 3rd day of November One Thousand nine hundred and ninety-seven, in the English, French and Czech languages, each version being equally authentic.

FOR CANADA

Anne McLellan

FOR THE CZECH REPUBLIC

Vlasta Parkanova

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