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## TREATY BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF SWEDEN ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF SWEDEN,

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 in respect of investigations or 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. However, requests regarding the taking of evidence of persons, the production of documents and objects and the restraining of property shall emanate from a court or public prosecutor of the Requesting State.
3. Criminal matters for the purpose of paragraph 1 mean, for Sweden, investigations or proceedings relating to any offence created by the Penal Code or any other offence subject to the jurisdiction of a court, and, for Canada, investigations or proceedings relating to any offence created by a law of Parliament or by the legislature of a province.
4. Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments.
5. Assistance shall include:
  - a) taking of evidence and obtaining of statements of persons;
  - b) provision of information, documents and other records, including criminal records, judicial records and government records;
  - c) location of persons and objects, including their identification;
  - d) search and seizure;
  - e) delivery of property, including lending of exhibits;
  - f) making detained persons and others available to give evidence or assist investigations;
  - g) service of documents, including documents seeking the attendance of persons;
  - h) measures to locate, restrain and secure the confiscation of proceeds of crime; and

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

## 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 not decline execution of a request on the ground of bank secrecy.

## ARTICLE 3

### Refusal or Postponement of Assistance

1. Assistance may be refused if the request does not meet the legal requirements for execution in the Requested State or, in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order or similar essential public interest, prejudice the safety of any person or be unreasonable on other grounds.
2. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution 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

#### Presence of Persons Involved in the Proceedings in the Requested State

1. The Requested State shall, upon request, inform the Requesting State of the time and place of execution of the request for assistance.
2. To the extent not prohibited by the law of the Requested State, judges, or officials of the Requesting State and other persons concerned in the investigation or proceedings shall be permitted to be present at the execution of the request. Judges, prosecutors and counsel for the accused shall be permitted to participate in the proceedings in the Requested State.
3. The right to participate shall include the right of judges or officials of the Requesting State to propose questions and the right of counsel for the accused to pose questions directly. The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. The use of technical means to make such a verbatim transcript shall be permitted.

### 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 and 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, documents, objects and records 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

### Availability of Persons to Give Evidence or Assist Investigations in the Requesting State

1. The Requesting State may request that a person be made available to testify or to assist an investigation.

2. The Requested State shall invite the person to assist an investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto.

3. The request shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable by the Requesting State.

4. At the request of the Requesting State, the Requested State may grant the person an advance which shall be refunded by the Requesting State.

## ARTICLE 7

### Making Detained Persons Available to Give Evidence or Assist Investigations

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 investigations or to appear as a witness in the proceedings, provided that the person consents to that transfer and there are no overriding grounds 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 and shall return the person in custody at the conclusion of the execution of the request.

3. 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 8

### Service of Documents

1. The Requested State shall effect service of documents that are transmitted to it for this purpose by the Requesting State.

2. Service may be effected by simple transmission of the document to the person to be served. If the Requesting State expressly so requests, service shall be effected by the Requested State in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

3. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the Requested State that service has been effected and stating the form and date of such service. If service cannot be effected, the reasons shall be communicated

immediately by the Requested State to the Requesting State.

4. Requests for service of a summons on an accused person who is in the territory of the Requested State shall be transmitted to the central authority of that State at least thirty (30) days before the date set for appearance.

## ARTICLE 9

### Safe Conduct

1. A person present in the Requesting State in response to a request seeking that person's attendance, including the service of a summons, 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. A person, present in the Requesting State by consent as a result of a request for the person's attendance, including the service of a summons, to answer before a judicial authority for any acts, omissions or convictions, shall not be prosecuted or detained or subjected to any other restriction of personal liberty for acts and omissions or convictions which preceded that person's departure from the Requested State, 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 State, has not left it within a period of fifteen (15) 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 fails to appear in the Requesting State in response to a request, may not be subjected to any sanction or compulsory measure for such failure to appear.

## ARTICLE 10

### Proceeds of Crime

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

2. Upon request, the Requested State shall take such measures as are permitted by its law to restrain property which is believed to constitute the proceeds of crime, pending a final determination by a court of the Requesting or Requested State.

3. A request may be made for assistance in securing the confiscation of proceeds of crime. Such assistance shall be given in accordance with the law of the Requested State by whatever means are appropriate. This may include enforcing an order made by a court in the Requesting State or submitting the request to the competent authorities for the purpose of seeking a confiscation order and the enforcement thereof in the Requested State.

4. Proceeds of crime confiscated pursuant to this Treaty shall accrue to the Requested State, unless otherwise agreed in a particular case.

5. In the application of this Article the rights of *bona fide* third parties shall be respected.

6. The Requesting State shall promptly inform the Requested State of any circumstances, including any other enforcement action, which may affect the request or its execution or which may make it inappropriate to proceed with giving effect to it.

7. For the purpose of this Treaty:

a) "proceeds of crime" means any property that is derived or realised directly or indirectly by any person from an offence or offences, or the value of any such property;

b) "property" includes money and all kinds of moveable or immovable and tangible or intangible property, and includes any interest in such property; and

c) "restraint" means seizure, attachment or other measures for the prevention of dealing in or transfer or disposal of property.

### PART III - PROCEDURE

#### ARTICLE 11

##### Contents of Requests

1. In all cases requests for assistance shall include :

a) the name of the competent authority conducting the investigation or proceedings to which the request relates;

b) a description of the nature of the investigation or proceedings, including a summary of the relevant facts and laws;

c) the purpose for which the request is made and the nature of the assistance sought;

d) where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;

e) a statement as to whether assistance should be provided by a court or some other authority;

f) the need, if any, for confidentiality and the reasons therefor; and

g) any time limit within which compliance with the request is desired.

2. Requests for assistance shall also contain the following information :

a) where necessary, details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor;

b) 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;

c) 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;

d) 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; and

e) 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.

3. In addition to the requirements of paragraph 1, a request for the location and restraint of proceeds of crime shall include :

a) a statement describing the proceedings which have been or are about to be instituted;

b) to the extent possible, a statement describing the property to which measures of restraint are to be applied, including its location and its connection with the person against whom proceedings have been or are to be instituted;

c) to the extent possible, a statement describing the person or persons in possession of the property and their connection, if any, to the investigation;

d) a statement describing the grounds for belief that the property represents the proceeds of crime;

- e) where appropriate, a statement of the amount which it is desired to restrain and the grounds on which this amount is estimated;
  - f) a statement of the estimated time expected to elapse before a final confiscation order may be given in the Requesting State; the Requesting State shall advise the Requested State of any alteration in this respect;
  - g) where the Requested State so requires, a statement describing the evidence which would be available for proceedings in the Requested State; and
  - h) where a confiscation order has been made, a copy of that order.
4. In addition to the requirements of paragraph 1, a request for the confiscation of proceeds of crime or the enforcement of a confiscation order shall include or be accompanied by:
- a) where available, a copy of any order made in the Requesting State relating to the proceeds of crime, including a confiscation order or an order imposing a fine or pecuniary penalty, and a statement that neither the order nor any conviction to which it relates is subject to appeal and that the order, but for the location of the property, would be enforceable in the Requesting State;
  - b) a description of the property to which the measures of confiscation are to be applied, including its location, and its connection to any offence and any person against whom an order referred to in subparagraph (a) has been made; and
  - c) such evidence as may be required by the Requested State.
5. If the Requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional details be furnished.
6. A request shall be made by any means affording a record in writing. Where electronic means of transmission are used, the original of the request shall be transmitted as soon as possible. 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.

## ARTICLE 12

### Central Authorities

Central authorities shall transmit and receive all requests and responses thereto for the purpose 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 Sweden shall be the Ministry for Foreign Affairs.

## ARTICLE 13

### 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 only subject to such terms and conditions as it may specify.
2. The Requested State shall to the extent requested and permitted by its law 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 14

## Limitation of Use

1. The Requesting State shall not 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.
2. 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 used only subject to such terms and conditions as it may specify.

## ARTICLE 15

### Authentication

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

## ARTICLE 16

### Language

Requests and supporting documents shall be accompanied by a translation into an official language of the Requested State.

## ARTICLE 17

### Consular Officials

1. Consular officials may take evidence in the territory of the receiving state from a witness on a voluntary basis without a formal request. Prior notice of the intended proceedings shall be given to the receiving state. That state may refuse its consent for any reason provided in Article 3.
2. Consular officials may serve documents on a person who appears voluntarily at the consular premises.

## ARTICLE 18

### 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 pursuant to a request under Articles 6 or 7 of this Treaty; and
  - 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 19

### Other Assistance

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 providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

## ARTICLE 20

### 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 21

### Consultations

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

## ARTICLE 22

### Entry Into Force and Termination

1. This Treaty shall be ratified; the instruments of ratification shall be exchanged in Ottawa as soon as possible.
2. This Treaty shall enter into force on the first day of the second month after the exchange of the instruments of ratification.
3. Either Contracting Party may terminate this Treaty. The termination shall take effect one year from the date on which it was notified to the other party.

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

DONE in duplicate, at Stockholm this 15th day February, 2000 in the English, French and Swedish languages, each version being equally authentic.

FOR THE GOVERNMENT OF CANADA

Philippe Kirsch

FOR THE GOVERNMENT OF SWEDEN

Anna Lindh

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