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TREATY BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND,

DESIRING to maintain and to strengthen the longstanding bonds which unite the two countries, and 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:

ARTICLE 1

Obligation to Grant Mutual Assistance

1. The Contracting States agree, in accordance with the provisions of this Treaty, to provide each other the widest measure of mutual assistance in connection with investigations, prosecutions and other proceedings relating to criminal matters, irrespective of whether the assistance is sought or to be provided by a court or some other authority.
2. Criminal matters for the purpose of paragraph 1 means, for Thailand, investigations, prosecutions or other proceedings relating to any offence created by law, and, for Canada, investigations, prosecutions or other proceedings relating to any offence created by a law of Parliament or by the legislature of a province.
3. Assistance shall include but not be limited to:
 - a) taking the testimony and statements of persons;
 - b) providing information, documents, records and evidence;
 - c) serving documents;
 - d) executing requests for searches and seizures;
 - e) transferring persons in custody or facilitating the appearance of others in the Requesting State for testimonial purposes;
 - f) locating persons or objects;
 - g) measures to locate, restrain and forfeit the proceeds of crime; and
 - h) other assistance consistent with the objects of this Treaty.
4. Assistance shall be provided without regard to whether the conduct under investigation, prosecution or proceedings in the Requesting State constitutes an offence in the Requested State or may be prosecuted by the Requested State.
5. This Treaty is intended solely for mutual assistance between the criminal law enforcement authorities of the Contracting States and is not intended or designed to provide such assistance to private parties.

6. A private party may not rely upon any provision of this Treaty to impede the execution of a request, or to exclude or suppress evidence obtained under the Treaty.

7. This Treaty shall not apply to the execution of arrest warrants or to military offences. For the purposes of this Treaty, military offences are violations of military laws and regulations which do not constitute offences under ordinary criminal law.

ARTICLE 2

Grounds for Refusal or Postponement

1. The Requested State may refuse to execute a request if it considers that:

a) the request would prejudice the sovereignty, security or other essential public interest of the Requested State or the safety of any person; or

b) the request relates to a political offence.

2. Assistance may be postponed by the Requested State if the execution of the request would interfere with an ongoing investigation, prosecution or proceeding in the Requested State.

3. Before refusing or postponing the execution of any request pursuant to this article, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts the assistance subject to these conditions, it shall comply with the conditions.

4. The Requested State shall promptly inform the Requesting State of the reasons for refusing or postponing the execution of a request.

ARTICLE 3

Central Authorities

1. A Central Authority shall be established by each Contracting State.

2. For Canada, the Central Authority shall be the Minister of Justice or an official designated by the Minister of Justice.

3. For the Kingdom of Thailand, the Central Authority shall be the Attorney General or an official designated by the Attorney General.

4. Requests under this Treaty shall be made by the Central Authority of the Requesting State to the Central Authority of the Requested State.

ARTICLE 4

Language

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

ARTICLE 5

Contents of Requests for Mutual Assistance

1. A request for assistance shall be submitted in writing. In urgent circumstances or where otherwise permitted by the Requested State, a request may be made by facsimile but shall be confirmed in writing promptly thereafter.

2. All requests shall include the following:

a) the name of the competent authority conducting the investigation, prosecution or proceeding to which the request relates;

- b) a description of the nature of the investigation, prosecution or proceeding, including a summary of the relevant facts and laws;
 - c) a description of the evidence or information sought or the acts of assistance to be performed;
- and
- d) the purpose for which the evidence, information, or other assistance is sought.
3. When appropriate, a request shall also include:
- a) where possible, the identity, nationality and location of the person or persons who are the subject of the investigation, prosecution or proceeding in the Requesting State;
 - b) available information on the identity and whereabouts of a person to be located in the Requested State;
 - c) the identity and location of a person to be served, that person's relationship to the investigation, prosecution or proceeding, and the manner in which service is to be effected;
 - d) the identity and location of persons from whom evidence is sought;
 - e) 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;
 - f) a precise description of the place to be searched and of the evidence to be searched for;
 - g) the need, if any, for confidentiality and the reasons therefor;
 - h) a description of the manner in which any testimony or statement is to be taken and recorded;
 - i) a list of questions to be answered;
 - j) 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;
 - k) a description of any particular procedure to be followed in executing the request;
 - l) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled;
 - m) in the case of making detained persons available, the person or the authority 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; and
 - n) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.
4. 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.

ARTICLE 6

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 7

Costs

1. The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses and the allowances and expenses related to travel of persons pursuant to Articles 14 and 17, which fees, allowances, and expenses shall be borne by 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.

ARTICLE 8

Limitations on Use and Confidentiality

1. Information and evidence obtained under this Treaty shall not be disclosed or used for purposes other than those stated in the request without the prior consent of the Requested State.
2. The Requesting State may require that the application for assistance, its contents and related documents, and the granting of assistance be kept confidential. If the request cannot be executed without breaching the required confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.
3. The Requested State may be require that information or evidence furnished and the source of such information or evidence be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting State shall comply with the conditions except to the extent that the information or evidence is needed in a public trial resulting from the investigation, prosecution, or proceeding described in the request.

ARTICLE 9

Taking Testimony and Statements and Producing Evidence in the Requested State

1. Upon a request that a person be summoned to give testimony, make a statement, or produce documents, records, or articles in the Requested State, that person may be compelled to do so in accordance with the requirements of the law of the Requested State.
2. The Requested State shall, upon request, furnish information in advance as to the date and place of the taking of the evidence.
3. The Requested State shall authorize the presence of such persons as specified in the request for the taking of testimony or a statement during the execution of the request and allow such persons to question the person whose testimony or statement is sought, insofar as it would not be prohibited by the laws of the Requested State.
4. 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 10

Providing Records of Government Offices or Agencies

1. The Requested State shall provide copies of publicly available records of a government office or agency.
2. The Requested State may provide any record or information in the possession of a government office or agency which is not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part.

ARTICLE 11

Transmission of Documents and Objects and Authentication

1. When the request for assistance concerns the transmission of records and documents, the Requested State may transmit the originals or certified true copies thereof.
2. The Requesting State shall, upon request, return any original documents or records, or articles furnished in execution of requests as soon as possible.
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.
4. Evidence or documents transmitted pursuant to this Treaty shall not require any form of authentication, save as specified in paragraph 3.

ARTICLE 12

Service of Documents

1. The Requested State shall effect service of any legal document transmitted for this purpose by the Requesting State.
2. Any request for the service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.
3. The Requested State shall return as proof of service a dated receipt signed by the person served or a declaration signed by the officer effecting service, specifying the form and date of service.
4. A person who has been served pursuant to this article with a legal document calling for an appearance in the Requesting State shall not be subjected to any civil or criminal forfeiture, or other legal sanction or measure of restraint, because of failure to comply therewith, even if the document contains a notice of penalty.

ARTICLE 13

Search and Seizure

A request for search, seizure, and delivery of any article to the Requesting State shall be executed if it includes the information justifying that action under the laws of the Requested State.

ARTICLE 14

Transferring Persons in Custody for Testimonial Purposes

1. A person in custody in the Requested State who is needed as a witness in the Requesting State shall be transported to that State if the person and the Requested State consent.
2. For the purposes of this article:
 - a) the Requesting State shall have the authority and obligation to keep the person transferred in custody unless otherwise authorized by the Requested State;
 - b) The Requesting State shall return the person transferred to the custody of the Requested State as soon as the request has been executed;
 - c) 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 15

Locating Persons or Objects

1. The Requested State shall, upon request, take all reasonable measures to locate persons or objects believed to be in that State and needed in connection with a criminal investigation, prosecution or proceeding in the Requesting State.
2. The Requested State shall communicate as soon as possible the results of its inquiries to the Requesting State.

ARTICLE 16

Proceeds of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction 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 jurisdiction.
2. Where, pursuant to paragraph 1 of this article, suspected proceeds of crime are found, the Requested State shall take such measures as are permitted by its law to freeze, seize and confiscate such proceeds.

ARTICLE 17

Appearance in the Requesting State

When the appearance of a person who is in the Requested State is needed in the Requesting State, the Central Authority of the Requested State shall, upon request, invite the person to appear before the appropriate authority in the Requesting State, and shall indicate the extent to which expenses will be paid. The response of the person shall be communicated promptly to the Requesting State.

ARTICLE 18

Safe Conduct

1. No person in the territory of the Requesting State to testify or provide a statement in accordance with the provisions of this Treaty shall be subject to service of process or be detained or subjected to any other restriction of personal liberty by reason of 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 proceeding to which the request relates.
2. The safe conduct provided for by this article shall cease when the person, having had the opportunity to leave the Requesting State within 15 consecutive days after notification that person's presence is no longer required by the appropriate authorities, shall have nonetheless stayed in that State or shall have voluntarily returned after having left it.

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

ARTICLE 20

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
2. Consular officials may serve documents on an individual who appears voluntarily at the consular premises.

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

Scope of Application

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

ARTICLE 23

Entry into force

This Treaty shall enter into force upon signature.

ARTICLE 24

Termination

Either Contracting State may terminate this Treaty by means of written notice to the other Contracting State at any time. Termination shall take effect six months following the date of notification.

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

DONE at Ottawa this 3rd day of October, 1994, in duplicate, in the English, French and Thai languages, each text being equally authentic.

André Ouellet

FOR THE GOVERNMENT OF CANADA

Prasong Soonsiri

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND

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