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## **TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE REPUBLIC OF KOREA AND THE REPUBLIC OF INDIA**

**Signed at New Delhi October 5, 2004**

The Republic of Korea and the Republic of India (hereinafter referred to as "the Parties"),

Recognising the need to facilitate the widest measure of mutual cooperation to combat crime, and

Desiring to improve the effectiveness of both countries in the prevention, investigation, prosecution, and suppression of crime through cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

### **ARTICLE 1 Scope of Application**

1. The Parties shall, in accordance with the provisions of this Treaty, grant each other the widest measure of assistance in criminal matters.
2. For the purpose of this Treaty:
  - (a) Criminal matters mean, for the Republic of Korea, investigations, prosecutions and proceedings relating to any offence the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the Republic of Korea and, for India, investigations, prosecutions, or other proceedings relating to any offence created by a law of Parliament or by the legislature of a state.
  - (b) Criminal matters shall also include investigations, prosecutions or proceedings relating to offences concerning taxation, customs or other duties, international transfer of capital or payments, foreign exchange control, or other revenue matters.
3. 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) measures to assist in relation to the proceeds and instruments of crime, including locating, restraining, forfeiting or confiscating;
  - (e) serving documents;
  - (f) executing requests for search and seizure;
  - (g) making persons in custody and others available to give testimony or assist in investigations; and
  - (h) other forms of assistance not prohibited by the laws of the Requested Party.
4. This Treaty does not apply to:
  - (a) the extradition of any person;

- (b) the execution in the Requested Party of criminal judgements imposed in the Requesting Party except to the extent permitted by the law of the Requested Party and this Treaty;
- (c) the transfer of prisoners to serve sentences;
- (d) the transfer of proceedings in criminal matters; and
- (e) an offence under military law which would not be an offence under ordinary criminal law.

## **ARTICLE 2**

### **Other Arrangements**

This Treaty shall be without prejudice to the rights and obligations subsisting between the Parties pursuant to other international treaties or arrangements to which they both are parties.

## **ARTICLE 3**

### **Central Authority**

1. Each Party shall designate a Central Authority to make or receive requests for the purpose of this Treaty. The Central Authority for the Republic of Korea shall be the Ministry of Justice. The Central Authority for the Republic of India shall be the Ministry of Home Affairs.
2. The Central Authorities shall communicate through diplomatic channels for the purpose of this Treaty.

## **ARTICLE 4**

### **Refusal or Postponement of Assistance**

1. Assistance shall be refused if the request seeks the restraint, forfeiture or confiscation of proceeds or instruments of an activity which, had it occurred within the jurisdiction of the Requested Party, would not have been an activity in respect of which an order of restraint, forfeiture or confiscation of proceeds or instruments could have been made;
2. Assistance may be refused if, in the opinion of the Requested Party:
  - (a) the request relates to a political offence, except serious offences against the life, physical integrity or freedom of any person;
  - (b) the execution of the request would impair its sovereignty, security, public order or other essential public interests;
  - (c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinions or that person's position may be prejudiced for any of those reasons;
  - (d) the request relates to the prosecution or proceedings of a person for conduct that would not, if it had taken place within the jurisdiction of the Requested Party, have constituted an offence;
  - (e) the execution of the request would be contrary to the domestic law of the Requested Party; or
  - (f) the request relates to an offence in respect of which the accused person has been finally acquitted or pardoned in the Requested Party.
3. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or proceedings in the Requested Party.
4. Before refusing a request or postponing its execution, the Requested Party shall consult with the Requesting Party whether assistance may be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.
5. If the Requested Party refuses or postpones assistance, it shall inform the Requesting Party of the reasons for the refusal or postponement.

## **ARTICLE 5**

### **Form and Contents of Requests**

1. Requests for assistance shall include:

- (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
  - (b) the purpose of the request and a description of the assistance sought;
  - (c) a description of the subject matter and the nature of investigations or proceedings, including a summary of relevant facts and laws, except in cases of requests for the service of documents; and
  - (d) any time limit within which compliance with the request is desired.
2. Requests for assistance, to the extent necessary and possible, shall also include:
- (a) information on the identity, nationality 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 or items to be located;
  - (d) a description of the person or place to be searched and of the items to be seized;
  - (e) a description of any particular procedure or requirement to be followed in executing the request;
  - (f) information as to the allowances and expenses to which a person asked to appear in the Requesting Party will be entitled;
  - (g) the need for confidentiality and the reasons therefor; and
  - (h) such other information as is necessary for the proper execution of the request.
3. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, 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 promptly thereafter unless the Requested Party agrees otherwise.
5. Requests by Korea along with supporting documents and other communications made pursuant to this Treaty shall be made in the Korean language accompanied by a translation thereof into the English language, and requests by India along with supporting documents and other communications made pursuant to this Treaty shall be made in the English language accompanied by a translation thereof into the Korean language.

## **ARTICLE 6**

### **Execution of Requests**

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

## **ARTICLE 7**

### **Transmission of Documents and Objects**

1. When the request for assistance concerns the transmission of records and documents, the Requested Party may transmit certified true copies thereof if transmission of the originals is not possible.
2. Insofar as it is not prohibited by the law of the Requested Party, documents, objects and records shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting Party in order to make them admissible according to the law of the Requesting Party.
3. The original records or documents and the objects transmitted to the Requesting Party shall be returned to the Requested Party as soon as possible, upon the latter's request.

## **ARTICLE 8**

### **Protection of Confidentiality**

The Requested Party, if so requested, shall use its best efforts to keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

**ARTICLE 9**  
**Limitation on Use**

1. The Requesting Party shall not use any information or evidence obtained under this Treaty in any investigation, prosecution or proceedings other than that described in the request without the prior consent of the Requested Party.
2. The Requesting Party, if so requested, shall keep confidential information and evidence provided by the Requested Party, except to the extent that the information and evidence is needed for the investigation and proceedings described in the request.

**ARTICLE 10**  
**Taking Testimony or Evidence in the Requested Party**

1. The Requested Party shall, in conformity with its law and upon request, take testimony or otherwise obtain statements from persons or require them to produce items of evidence for transmission to the Requesting Party.
2. The Requested Party 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 asked to the persons whose testimony or evidence is being taken.
3. A person who is requested to give evidence under this Article may decline to give evidence where the law of the Requested Party permits that person not to give evidence in similar circumstances in proceedings originating in the Requested Party.
4. Where a person who is requested to give evidence in the Requested Party under this Article claims that there is a right to decline to give evidence under the laws of the Requesting Party,
  - (a) the Requested Party shall either:
    - (i) request the Requesting Party to provide a certificate as to the existence of that right; or
    - (ii) request the person to give proof of that right for it to be transmitted to the Requesting Party for its determination as to the existence of that right and the issuance of a certificate; and
  - (b) the certificate from the Requesting Party, in the absence of evidence to the contrary, shall be sufficient evidence as to the existence of that right.

**ARTICLE 11**  
**Availability of Persons to Give Evidence or Assist in Investigation in the Requesting Party**

1. The Requesting Party may request the assistance of the Requested Party in inviting a person to appear as a witness or expert in proceedings or assist in investigations. The Requesting Party shall indicate the extent to which the expenses and allowances will be paid.
2. The Requested Party shall promptly inform the Requesting Party of the person's response.

**ARTICLE 12**  
**Transfer of Persons in Custody**

1. A person in custody in the Requested Party shall, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to assist in investigations or proceedings, provided that both the person and the Requested Party consent to that transfer.
2. Where the person transferred is required to be kept in custody under the laws of the Requested Party, the Requesting Party 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 Requested Party advises the Requesting Party 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 referred to in Article 11.
4. For the purpose of this Article, the person transferred shall receive credit for service of the sentence imposed in

the Requested Party for the time served in the custody of the Requesting Party.

### **ARTICLE 13**

#### **Safe Conduct**

1. A person present in the Requesting Party pursuant to a request made under Article 11 or 12 shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that Party for any acts or omissions which preceded that person's departure from the Requested Party, nor shall that person be obliged to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if a person, being free to leave, has not left the Requesting Party within a period of thirty (30) days after that person has been officially notified that that person's presence is no longer required or, having left, has voluntarily returned.
3. A person who does not consent to a request pursuant to Article 11 or 12 shall not, by reason thereof, be liable to any penalty or coercive measure by either of the Parties.

### **ARTICLE 14**

#### **Provision of Publicly Available and Official Documents**

1. The Requested Party shall provide the Requesting Party with copies of publicly available documents, records, or information in the possession of government departments and agencies in the Requested Party.
2. The Requested Party may provide copies of any documents, records, or information which are in the possession of a government department or agency in that Party but which are not publicly available, to the same extent and under the same conditions as they would be made available to its own law enforcement or judicial authorities.

### **ARTICLE 15**

#### **Service of Documents**

1. The Requested Party shall effect service of documents that are transmitted to it for this purpose by the Requesting Party, in so far as it is not prohibited under its domestic law.
2. A request for the service of documents requiring the appearance of a person shall be received by the Requested Party not less than forty-five (45) days before the date on which the appearance is required. In urgent cases, the Requested Party may waive this requirement.
3. The Requested Party shall forward to the Requesting Party a proof of service that shall include a description of the date, place and manner of service, and be affixed with the signature or seal of the authority which served the document. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.

### **ARTICLE 16**

#### **Search and Seizure**

1. The Requested Party shall, in so far as its law permits, carry out a request for search and seizure and delivery of any material to the Requesting Party, provided that the request includes information justifying such action under the laws of the Requesting Party.
2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the material seized.
3. The Requested Party may require that the Requesting Party agree to terms and conditions deemed necessary to protect third party interests in the items to be transferred.

### **ARTICLE 17**

#### **Proceeds and Instruments of Crime**

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds and instruments of crimes are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds and instruments may be located in its jurisdiction.
2. Where, pursuant to paragraph 1, suspected proceeds and instruments of crimes are found, the Requested Party shall take such measures as are permitted by its law to restrain, forfeit and confiscate such proceeds and instruments.
3. In the application of this Article, the rights of a bona fide third party shall be respected under the law of the Requested Party.
4. The Requested Party in control of forfeited or confiscated proceeds and instruments shall deal with those proceeds and instruments in accordance with its law. To the extent permitted by its laws and upon such terms as it deems appropriate, the Requested Party may transfer forfeited or confiscated proceeds and instruments to the Requesting Party.

#### **ARTICLE 18**

##### **Certification and Authentication**

Evidence or documents transmitted pursuant to this Treaty shall not require any form of certification or authentication, save as is specified in Article 7.

#### **ARTICLE 19**

##### **Expenses**

1. The Requested Party shall meet the cost of executing 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 at the request of the Requesting Party, and any allowances or expenses payable to that person while in the Requesting Party pursuant to a request under Article 11 or 12; and
  - (b) the expenses and fees of experts.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

#### **ARTICLE 20**

##### **Consultation**

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

#### **ARTICLE 21**

##### **Entry into Force and Termination**

1. This Treaty shall be subject to ratification. This Treaty shall enter into force on the date of the exchange of the instruments of ratification.
2. This Treaty applies to any requests presented after its entry into force even if the relevant acts or omissions occurred prior to the entry into force of this Treaty.
3. Either Party may terminate this Treaty by giving notice in writing through diplomatic channels at any time. Termination shall take effect six months after the date on which notice is given.

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

DONE in duplicate at New Delhi on this fifth day of October, 2004 in the Korean, Hindi, and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA    FOR THE REPUBLIC OF INDIA

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