



UNODC

United Nations Office on Drugs and Crime

COMPENDIUM OF BILATERAL AND REGIONAL INSTRUMENTS FOR SOUTH ASIA

International Cooperation in Criminal Matters

Volume I

**COMPENDIUM OF BILATERAL AND
REGIONAL INSTRUMENTS FOR SOUTH ASIA**
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Volume I

UNODC Regional Office for South Asia, New Delhi and
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Foreword

With the increased mobility of people, information and goods, terrorism has progressively evolved into a transnational threat, transcending classic geographic and cultural borders, as both actors and victims alike have become involved on a worldwide scale. With this ever-growing challenge for the international community, one State alone is no longer in a position to respond to terrorism. Rather, international cooperation has become a fundamental necessity in the global fight against terrorism.

Legal responses, from the national, bilateral and regional levels serve to facilitate cooperation and harmonize criminal justice responses to terrorism by and amongst States. The implementation of effective judicial cooperation through extradition and mutual legal assistance allows for an effective response. The authorities of eight countries in South Asia - Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, have cooperated with the United Nations Office on Drugs and Crime (UNODC) in an effort to produce this compilation of legal documents on international cooperation in criminal matters, namely mutual legal assistance and extradition. The Compendium aims to provide practitioners and other actors involved in international cooperation in criminal matters with a reference tool to assist them in information sharing and the gathering of evidence for use in criminal investigations and prosecutions involving terrorism, in addition to traditional police to police cooperation. It contains bilateral and regional agreements, as well as related national legislative provisions.

It is with the hope that its wide distribution among legal practitioners and criminal justice officials in the region will contribute to facilitating international cooperation in criminal matters.

This Compendium has been elaborated by UNODC, in cooperation with the Indian Law Institute, New Delhi, as well as the Research Society of International Law, Pakistan. This Compendium would not have been finalized without the indispensable contribution from the national government counterparts in the eight countries, including Ministries of Foreign Affairs, Home Affairs, Interior, Law and Justice, Attorney General Offices, and distinguished research institutes from the countries in the region, as well as the generous financial contribution of the Government of the United States of America.

Note for the Reader

The Compendium of bilateral and regional instruments and national legislative provisions on extradition and mutual legal assistance with and within the States of the South Asia region is compiled in two hard copy and electronic volumes. The instruments are produced in English and are in force on extradition and mutual legal assistance. The Compendium is an extensive compilation of relevant documents made available directly by national governments, as well as through in depth desk research. However, please note that the instruments in this Compendium may not be an exhaustive list for every country within the South Asia region.

It is worth mentioning that the legal texts contained in the Compendium were either provided directly by the concerned Ministries (Foreign Affairs, Home Affairs, Law and Justice), Attorney General Offices, and Permanent Missions, National research institutes or found on official websites of relevant countries. In order to effectively update the Compendium, practitioners are encouraged to turn to their national administrations and provide us, as soon as possible, with legal texts which are either missing or which recently entered into force.

You are invited to consult our website regularly for the latest update and for an optimal use of the Compendium.

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Volume I

AFGHANISTAN

NATIONAL LAWS

Criminal Procedure Code Islamic Republic of Afghanistan, 2014

Relevant Provisions

Crime Requiring Covert Surveillance Measures:

Article 113

Covert surveillance measures may be taken against the suspect or accused person of the following crimes:

- 1– Crimes related to terrorism, money laundering and financing terrorism.
- 2– Crimes stipulated in the law against internal and external security.
- 3– Crimes related to drugs and intoxicants.
- 4– Corruption crimes.
- 5– Kidnapping and human trafficking crimes.
- 6– Murder crimes.
- 7– Crimes related to threatening of the witness, judges and prosecutors and family members of each of them under their investigation when committed for the purpose of preventing application of justice.
- 8– Crimes stipulated in Statute of the International Criminal Court and Final Document of Rome Diplomatic Conference.

Amendment of Punishment in Case of Extradition and Pardon and Commutation

Article 353

Afghan citizens who are sentenced to imprisonment exceeding 20 years by a foreign court, and who are extradited to Afghanistan, may have their punishment decreased if permitted by provisions of enforced law.

Law on Extradition of the Accused, Convicted Individual and Legal Cooperation, 2013

Official Gazette No. 1103
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CHAPTER ONE

General Provisions

Article One

Basis

This law is enacted as per Articles 8 and 28 of the Constitution to regulate issues related to extradition of an accused, convicted individual and legal cooperation regarding cases involving Afghanistan and foreign countries.

Article Two

Objectives

Below are objectives of this law:

- 1- Cooperation with foreign nations in the detection of crimes, identification, arrest, investigation and trial of an accused.
- 2- Regulation of methods to request extradition of an accused, convicted individual as well as addressing related issues.
- 3- Regulation of handover, reception and transfer of an accused and convicted individual that are subject to extradition.
- 4- Seizure, freezing, confiscation and submission of documents, evidence, proceeds and assets related to the commission of crimes and related proceeds.
- 5- Transfer of prosecution including the [authority of] decision making and enforcing of judicial verdicts.
- 6- Compliance with extradition conventions and strengthening rule of law and international criminal justice.
- 7- Cooperation of Afghanistan with foreign countries to prevent the commission of crimes.

Article Three

Terms

The terms below are defined as follows [for the purpose of this law:]

- 1- **Extradition:** Requesting handover of the accused for prosecution or the convicted individual for imprisonment in relation to crimes committed.
- 2- **Legal cooperation:** Exchange of information, documents, evidence, sending witnesses and other evidence during detection, investigation and trial phases as well as during enforcement of judicial orders.
- 3- **Confiscation:** Permanent deprivation from possessing monies and assets as per order of a competent court of Afghanistan or a foreign country under which ownership of the monies and assets along with their documents of ownership are transferred to the Afghan or a foreign government based on provisions of this law, extradition agreement or an international convention.
- 4- **Seizure:** Temporary keeping or control of money and assets based on the order of a competent court of Afghanistan or a foreign country.
- 5- **Freeze:** Impermanent postponement of a transaction, temporary prevention of modification, change, sale, losing and transfer of money and assets based on the order of a competent Afghan or a foreign court.
- 6- **Suspect:** A person who is under suspicion by Afghanistan or a foreign country for committing a criminal act and the crime is [formally] attributed to him/her.
- 7- **Accused:** A person who, based on evidence, is charged by Afghan or foreign authorities or a criminal case is filed against him in the court.
- 8- **Convict:** A person who is convicted by a final decision of an Afghan or a foreign court.
- 9- **Money and assets:** Any physical or non-physical, moveable and immoveable assets, legal documents and evidence including electronic and digital evidence that prove ownership of or interest in assets.

Article Four

Legality of extradition

An accused [or]convict will be extradited, and legal cooperation between Afghanistan and other countries to address criminal cases, is to be provided based on treaties or conventions to which Afghanistan is a party.

Article Five

Sending/Accepting the request

A request to extradite an accused or convict, [or a request for] legal cooperation under this law is to be sent via the Ministry of Foreign Affairs to the [foreign country's] diplomatic mission [inside Afghanistan] or to the Foreign Ministry of the requesting country. A request of a foreign country in aforementioned circumstances is accepted through the same mechanism.

Article Six

Limitation of extradition

The extradited person is to be imprisoned or punished, investigated and tried only in relation to the crime [for which] he is being extradited.

Article Seven

Prohibition to extradite women and children

Women or children who are Afghan nationals, or a foreign stateless child, cannot be extradited to any foreign country, and shall be prosecuted pursuant to Afghan law.

Article Eight

Extradition of foreigner to a third country

A foreigner shall [only] be extradited to a third country if there is an existing treaty between Afghanistan and the foreigner's country.

CHAPTER TWO

Extradition

Article Nine

Mechanism for sending a request

- (1) The Attorney General shall decide whether to send a request seeking extradition of a suspect or accused from a foreign country, whereas acceptance of [such a] request sent by a foreign country is referred by the Attorney General [with a recommendation] and approved [or rejected] by the High Council of the Supreme Court. When a convict is also a suspect or an accused in a second crime, his extradition shall be subject to the same order [of the High Council of the Supreme Court].
- (2) Extradition of an Afghan who is convicted for imprisonment by a competent foreign court, or acceptance of a request from a foreign country for extradition of a foreigner who is convicted for imprisonment by a competent Afghan court, shall be decided by the Minister of Justice.
- (3) The Ministry of Foreign Affairs is required to send a request for extradition to relevant authorities of [the target country] in conformity with paragraphs 1 and 2 of this article.

Article Ten

Contents of the request and its attachments

- (1) The request for extradition and its attachments shall include:
 - a. Name and title of competent authority of Afghanistan [making the request].
 - b. Name and title of competent authority of the receiving country.
 - c. If the individual is an accused, an original or a verified copy of AGO's or the competent court's warrant for his arrest and extradition.
 - d. Explanation and details of the crime committed.
 - e. Explanation about degree of involvement of the individual in committing the crime.
 - f. If the individual is an accused, a copy of the indictment including the article that specifies the crime committed and prescribes the punishment for the crime.
 - g. Article of the law, agreement, or convention upon which extradition of the individual is requested.
 - h. Information about the identity of the individual for whom extradition is requested and any other type of data pertaining to his/her full identity, nationality, residence or occupation, or other evidence such as picture, fingerprint, DNA, blood group, and other information that shall help identify the criminal, [as well as] tools of commission, and benefits [money and assets] derived from commission of the crime.
- (2) The request for extradition of a convict shall also include, in addition to the provisions of sections a and b of paragraph (1) of this article, [information about] his full identity.

Article Eleven

Requirements for accepting the request

- (1) A request for extradition of an accused to be investigated or tried will be accepted for consideration under the following requirements:
- a. The crime that the suspect or accused is being extradited for shall be mentioned in the extradition treaty.
 - b. Commission of the act shall be considered a crime in the laws of both Afghanistan and the foreign country, and the punishment for the act shall be [imprisonment for] more than a year in laws of both the countries.
 - c. [The party requesting extradition] shall commit to abide by the provisions of the UN Convention on Civil and Political Rights and UN Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment while investigating and trying the individual whose extradition is being requested.
 - d. [The party requesting extradition] shall commit to provide information regarding the process of investigation and trial, or any change in the status of the extradited individual.
 - e. Avoiding double jeopardy for the individual whose extradition is requested, based on a final verdict of the court in relation to the crime committed.
 - f. Compliance with provisions of paragraph (1) of Article 10 of this law.
- (2) A request for extradition of a convict for [purposes of] imprisonment will be accepted for consideration provided the following requirements are met, in addition to compliance with the sections a, b and c of paragraph (1) of this article:
- a. Conviction of the individual by a final verdict of the court [shall be] for more than one year of imprisonment
 - b. If sentenced to both imprisonment and a fine, [the money shall be] paid or a guarantee for payment of it [shall be received].
 - c. Commitment to avoid double jeopardy
 - d. Commitment to share information on any type of change [that may occur] in status of the convict.
 - e. Compliance with provisions of Article 10, paragraph (1) of this law.

Article Twelve

Time limit for sending the request

The Ministry of Foreign Affairs shall immediately send the request of extradition and its attachments to the relevant authorities after it is assured that the request abides by provisions of Articles 10 and 11 of this law.

Article Thirteen

Taking proper measure as per the request

- (1) When Afghanistan requests extradition of an accused from a foreign country, the Attorney General's Office collects the reasons and evidence regarding commission of the crime and sends the request for extradition to the Ministry of Foreign Affairs.
- (2) When a foreign country requests extradition of an accused from Afghanistan, the Attorney General's Office undertakes the following measures:
 - a. Review of the request based on the allegation attributed.
 - b. Collection of information about the personality and background of the accused to be submitted to the foreign country.
 - c. Arrest of the individual based on an order of the court and notice to the accused of the allegation [against him].
 - d. An investigation of the suspect or accused.
 - e. Presenting the request for extradition to the Supreme Court.
- (3) The High Council of the Supreme Court may, upon request by the Attorney General's Office, issue an order to search the location where the arrest took place, other suspected places, and/or seize or freeze money recovered from the arrestee either during the arrest or as detected later.

Article Fourteen

Rights of arrestees

- (1) Any foreign citizen or a stateless individual residing in Afghanistan who, on the basis of a request from a third country, is arrested, taken into custody or detained, is entitled to the following rights:
 - a. Immediate contact with the [diplomatic] mission of his country or any other person who has the authority to protect his rights.
 - b. Meeting between the stateless individual and the representative of the country where he has habitual residence.
 - c. Advise of rights under sections a and b of this paragraph.
- (2) When contact and meeting under sections a and b of this paragraph (1) are impossible, the Attorney General's Office shall take proper measures to ensure that a meeting between the arrested individual and a representative of the International Red Cross Committee occurs.

Article Fifteen

Notice in emergency situations

- (1) In an emergency situation, notice of extradition that is directly sent to MOFA via electronic means may be accepted. In that case, until a formal request of extradition and its attachments are received, [Afghanistan may] arrest the individual per order of a competent court issued pursuant to Article 10 of this law, and as a precautionary measure, take him into custody and then notify the requesting country of the matter. The [Afghan] Ministry of Foreign Affairs, in a similar situation, can also send notice of extradition to a foreign country in the same manner.
- (2) A prosecutor [then] conducts the required investigations after arrest of the individual and takes proper precautionary measures when necessary.
- (3) If [a formal] request for extradition and its attachments are not received [from the requesting country] within 30 days, the individual shall be released.

Article Sixteen

Taking temporary precautionary measures

- (1) When a foreign country requests [that Afghanistan] take temporary precautionary measures regarding an individual, the High Council of the Supreme Court takes proper actions as per laws of the land.
- (2) If the request of a foreign country to take temporary precautionary measures contradicts the laws of Afghanistan, the Attorney General's Office is not required to implement [the request]. Instead, it shall take proper measures abiding by the laws of Afghanistan.

Article Seventeen

Requesting additional information

- (1) When information in a request from a foreign country is not sufficient for Afghan judicial authorities to make a decision, the Attorney General's Office or the High Council of the Supreme Court can ask the requesting country for further details/explanations.
- (2) The Ministry of Foreign Affairs sends the decision of the Afghan judicial authorities within 14 days [of the date of the decision] to the requesting country [with instructions to] provide the [additional] details/explanations. If the individual is in custody, the time to respond after receiving the request cannot be more than 30 days. If a formal response is not received in thirty days, the arrested individual will be released.
- (3) When details and reasons are provided after release of the individual, the issue shall be addressed again as per provisions of this law.

Article Eighteen

Reviewing the request and decision making

If the Attorney General's Office believes that the request for extradition contains sufficient information, [and] after conducting [its own] investigation, it will send the request and its attachments, together with an acceptance or rejection recommendation letter, to the Supreme Court to make a decision. The High Council of the Supreme Court will then address the issue and will make a decision in the presence of the accused or his defense lawyer, and a representative of the Attorney General's Office.

Article Nineteen

Simultaneous request for extradition

- (1) If more than one country sends a request for extradition of an accused for committing identical crimes, the request of the country whose interest or citizens were first affected shall prevail.
- (2) If more than one country sends a request for extradition of an accused for different crimes, the request of the country whose interest or citizens were more severely affected shall prevail.

Article Twenty

Handing over the individual [in request]

If the High Council of the Supreme Court decides to extradite an individual, the handover shall occur in presence of a delegation consisting of representatives from the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Interior Affairs and the Attorney General's Office. The individual shall be handed over to the diplomatic mission of the requesting country; if there is not any diplomatic mission of that country in Afghanistan, the individual shall be handed over to a diplomatic mission determined by the requesting country.

Extradition of a convict for the purpose of enforcement of the punishment will occur based on the decision of the Minister of Justice, and the mechanism to hand him over is subject to this [same] provision.

Article Twenty One

Returning the money and assets

- (1) If an accused is handed over to a foreign country, the money and assets [which were] derived from commission of crime(s) inside Afghanistan will also be given to the same country, as per provisions of this and other laws complying with rights of third person(s).
- (2) If the extradition of an accused to a foreign country does not take place despite an effective agreement or convention, the proceeds of the crime [related to the extradition request] shall still be ceded to the requesting country.

- (3) Money and assets that are inside Afghan territory, and are therefore subject to seizure/confiscation, may be temporarily held by the Afghan government or may be delivered to the country to which the accused is extradited.
- (4) When the laws of land or rights of a third person require that money and assets [seized pursuant to this law] be returned to the Afghan government, the foreign country shall, after [a formal] request from the Afghan government and completed the criminal proceedings, return the money and assets bearing all expenses of the delivery.

Article Twenty Two

Pardon, reduction in punishment and other facilities

When the extradited individual is convicted [and sentenced to] imprisonment, he can benefit from pardon decrees, reduction in punishment [rules] and other [such] facilities [given] under the laws of the land. Pardon [from payment of] fines is the exception to this rule, but still can occur upon an agreement with the foreign country.

Article Twenty Three

Postponing the extradition

If a foreign country is requesting the extradition of an accused that is being investigated or tried for commission of another crime, the extradition will be delayed until the final decision of the court is heard unless the High Council of the Supreme Court agrees on an immediate extradition or the issue is stipulated differently in the treaty.

Article Twenty Four

Optional rejection of the extradition

- (1) The High Council of the Supreme Court can reject the extradition request of an accused for the following reasons:
 - a. If the crime is under prosecution in Afghanistan and the criminal procedure has begun but not concluded against the accused.
 - b. Considering the nature of the crime and interests of the Afghan Government, extradition is contradicted from the view point of the accused's old age, health conditions, or other humanitarian issues.
 - c. If the crime listed in the request for extradition of the accused is completely or partly committed in the territory of Afghanistan and the act is considered a crime under Afghan law.
- (2) If the person whose extradition is requested has been or is being tried in a special court, the request can be rejected by the High Council of the Supreme Court.

Article Twenty Five

Rejection of extradition request

- (1) The High Council of the Supreme Court may not issue an order of extradition when:
 - a. There are enough reasons [to believe that] the request for extradition is to prosecute and punish for causes such as ethnicity, religion, nationality, tribe, political belief or social status, or the purpose of the request is to harm the reputation of the accused.
 - b. An Afghan court [has already] issued a final verdict on the crime which forms the basis for the extradition request.
 - c. The prosecution and implementation of the punishment is pardoned due to the expiration of a statute of limitation or a general pardon based on either Afghan or the requesting country's laws.
 - d. The act is committed outside the territories of Afghanistan and the requesting country, and [the act] is not prescribed as a crime under Afghan Laws.
 - e. The accused or convict faces torture, severe or inhuman or degrading punishment in the requesting country, or is [deprived of] a guarantee [to ensure] fair criminal procedures outlined in the [Afghan] Constitution, other enforced legislative documents, UN Convention on Civil and Political Rights and other international agreements to which Afghanistan is a party.
 - f. The requesting country has issued a verdict in absentia, or the convict was not notified of the trial, or [he was not given an opportunity to prepare] his defense, or [he was not given] the chance to appeal.
- (2) The High Council of the Supreme Court will reject the extradition request based on paragraph (1) of this article, [or] Article 24 of this law, and will send the case to the relevant authorities for prosecution.
- (3) If the Ministry of Foreign Affairs rejects the request for extradition, it shall notify the requesting authority within 14 days by sending a copy of the rejection.

CHAPTER THREE

Legal Cooperation

Article Twenty Six

Request for cooperation

- (1) A request for legal cooperation shall be accepted and presented in the detection, investigation and trial stages, depending upon the particular situation, and in accordance with the recommendations from the Ministry of Interior, the Attorney General's Office and High Council of the Supreme Court, and can include the following:
 - a. Collecting evidence or obtaining statements from relevant individuals.
 - b. Assisting in the submission of individuals under custody; summoning of other individuals to give evidence, and assisting in investigations with judicial authorities of the requesting country.
 - c. Sending and enforcing judicial verdicts.
 - d. Searching for and confiscation of items.
 - e. Examining items and locations.
 - f. Providing the information and evidence of a crime.
 - g. Providing an original or verified copy of documents including bank statements, accounting documents, and other papers giving information on a company or its commercial activities.
 - h. Other parts of the jurisdiction provided that they are not in contrary with the provisions of this and other laws of land.
- (2) When the Ministry of Interior, the Attorney General's Office or High Council of the Supreme Court asks for legal cooperation from a foreign country, the Ministry of Foreign Affairs shall send the request and its attachments to the diplomatic mission of the relevant country as soon as possible.
- (3) A request for legal cooperation can be submitted in emergency circumstances through the Interpol, or directly by the competent authorities of the requesting country, to the Ministry of Interior or the Attorney General's Office via mail or other immediate delivery methods that provide receipts or other written records [of the delivery]. In such a case and until an [official] notice through the diplomatic mission of the requesting foreign country is received, no official response shall be given.
- (4) The Ministry of Foreign Affairs, once it receives the request, sends it for legal cooperation within 14 days to the Ministry of Interior, the Attorney General's Office or the Supreme Court.
- (5) The Ministry of Interior, the Attorney General's Office and the Supreme Court are required to process,[in accordance with law], the received request for legal cooperation within 60 days and shall make a decision in accordance with the provisions of this Law.

Article Twenty Seven

Conditions for legal cooperation

The request of a foreign country for legal cooperation will be accepted for consideration when it complies with sections b and c of paragraph (1) of Article 11 of this law, and when location of the arrest of the accused or location of commission of the crime [is in Afghanistan or the requesting country] or when the accused or the victim is a citizen of Afghanistan or the requesting country.

Article Twenty Eight

Contents of the request for legal cooperation and its attachments

- (1) A request for legal cooperation, in addition to the conditions set forth in paragraph (1) of Article 10 of this law, [shall] also include the following:
 - a. [Detailed] explanation of the subject matter underlying the request for legal cooperation.
 - b. The date by which the requesting country expects the information to be returned.
 - c. Information on property, financial document(s), or bank statement(s) which are going to be inspected and investigated.
 - d. Complete information regarding the identity of the accused, witnesses, and individuals who are to be investigated, [as well as] information about their residence and the questions to be asked of them.
- (2) Request for legal cooperation in certain cases shall also include the following:
 - a. Specific direction as to how any temporary measures are to be enforced.
 - b. Explanation of the facts and reasons upon which the confiscation order was issued, and an explanation of how said order was obtained in a manner that is not inconsistent with Afghan law.
 - c. Information regarding the rights of third person(s) [affected by the request] and their [rights in any] receivables in monies, assets, and revenues derived [from any innocent third party interests].
- (3) The following shall be considered while requesting precautionary measures or confiscation:
 - a. A verified copy of the verdict and legal grounds on which the verdict was issued.
 - b. Document that confirms the final verdict is not appealable.
 - c. Explanation on the limits for enforcing the verdict, and a description of the total amount of money requested to be recovered from the monies and assets.
 - d. If the contents outlined on the request for legal cooperation are not sufficient to process [the request] or make a decision, the requesting country may be asked for additional information and explanation.

Article Twenty Nine

Entities for Legal Cooperation

Entities for legal cooperation and their limits,[in accordance with law], are the Ministry of Interior, the Central Bank, the Attorney General's Office and the Supreme Court in the following manner:

- a. In the detection stage, the Police agency in the jurisdiction in which the crime took place or the Financial Investigation Unit, as outlined in Article 19 of the Anti-Money Laundering Law.
- b. In the investigation stage, the Prosecution Office in the jurisdiction in which the crime took place or the Prosecution Office where the monies and assets are located.
- c. In the trial stage, the court in jurisdiction in which the crime took place or the court where the monies and assets are located.

Article Thirty

Transfer and Submission of Documents and Evidence by Prosecution Office

The Attorney General's Office can agree to the request of the requesting country in relation to legal cooperation, [and a request for] transfer and submission of documents and evidence[only] when:

- a. The documents and evidence are the tools used in commission of the crime, or are the tools needed to prove the crime.
- b. The evidence is not needed by an Afghan judicial authority for a pending Afghan trial or prosecution.
- c. The sending of the [the requested] evidence does not abuse rights of a third person(s).
- d. The sending of the [the requested] evidence will not unduly harm an innocent third party with an interest in said evidence.

Article Thirty One

Request for Money and Asset Recovery

The Afghan government can request recovery of monies and assets [which have been] confiscated by a verdict of a relevant foreign court or can accept [a similar type of] request from a foreign country.

Article Thirty two

Transfer and Submission of Documents and Evidence by the Court

- (1) The Court may, under the following circumstances, make decision about the sending of the requested items to the requesting country of assets, documents and evidence that have considerable [evidentiary] value and with no possibility of claim of right by a third person:
 - a. When the assets, evidence and documents are prohibited items, or are residues or tools needed to prove the commission of a crime, or are used in commission of a crime.

- b. When documents, evidence and assets are the proceeds of a crime or were in possession of the accused during or after the arrest.
- (2) The Court can order, until it [formally] receives a request, freezing and confiscation of assets when necessary, as per notice of the requesting country. In this case, the freezing and confiscation of assets cannot continue for more than one month, except for [when] the requesting country provides the court with satisfactory reasons for an extension of the order [freezing or confiscating the assets].

Article Thirty Three

Transfer of Moveable Assets and the Price of Immoveable Assets

Moveable assets of a citizen of Afghanistan or a foreigner which are confiscated based on the verdict of a competent court of a foreign country may be ceded to the requesting country. Immoveable assets are sold through a bidding process and the amount [received from the sale] shall be transferred to the foreign country. Based on an agreement, Afghanistan can be one of the stakeholders in the monies and assets that are located in Afghanistan and confiscated through a verdict of a foreign court.

Article Thirty Four

Request made by more than one Country for Transfer of Documents, Evidence and Assets

- (1) When more than one country requests the transfer of documents and evidence or return of the assets derived from the same crime, the Attorney General's Office or the High Council of the Supreme Court can accept for consideration the request of the country whose interest or citizens were affected.
- (2) When more than one country requests the transfer of documents and evidence or the return of the assets derived from different crimes, the Attorney General's Office or the High Council of the Supreme Court shall decide to accept the request of the country whose interest and citizens were more severely affected, considering the loss incurred to the victim. If the loss [incurred] is equal in all requesting countries, the request of the country that came first shall prevail.

Article Thirty Five

Temporary Transfer of the Documents and Evidence

The Prosecution Office, before preparing the indictment, and the court, before addressing the case, can make a decision on [any] request for temporary transfer of the documents and evidence.

Article Thirty Six

Postponement of proceedings

- (1) When prosecution of a suspect or accused on whom legal cooperation is requested has already started in Afghanistan, the request for legal cooperation may be postponed.
- (2) Postponement of request for legal cooperation shall not preclude resubmission of the request by the requesting country.

Article Thirty Seven

Rejection or postponement of returning assets

If the assets to be frozen, seized, or confiscated, are related to a case under [Afghan] prosecution, the court can reject, or can postpone a request to send the items to the requesting country.

Article Thirty Eight

Rejection of request for cooperation

- (1) The request for legal cooperation shall be rejected when:
 - a. The request is not presented according to the laws of the requesting country.
 - b. Accepting the request contradicts Afghan laws or disrupts civil order/safety of the society.
 - c. The case in relation to which legal cooperation is requested has already been decided by [an Afghan] court.
 - d. Taking the requested measures is contrary to the Afghan law, or it is not practical to take such measures in relation to the crime stated.
 - e. The request to implement the verdict is against the laws of Afghanistan.
 - f. The request to take measures or implement the verdict is based on race, religion, nationality, tribe, political belief, gender, or social status.
- (2) Bank privacy cannot be a reason to reject the request.
- (3) The relevant authorities of Afghan government shall notify the foreign country of the reason(s) for rejection of the request as soon as possible.

Article Thirty Nine

Safety of the witness and expert

- (1) Witnesses and experts who, based on the request for legal cooperation of the Afghan judicial entities, show up [for legal cooperation] shall not be subject to prosecution or detention for crimes previously committed inside the Afghan territory.
- (2) Judicial authorities of Afghanistan commit to safety of the witnesses and experts under paragraph 1 of this Article. This safety [rule] shall be valid until 30 days after the date when a notice is issued stating that the witnesses and experts are no longer needed [for cooperation]. Circumstances outside their will shall be exception to this rule.

Article Forty

Testimony of the prisoner

- (1) A prisoner can be temporarily sent to testify before foreign judicial authorities except in the following circumstances:
 - a. The prisoner is needed to testify in a case under trial in an Afghan court.
 - b. Time to send and bring him back would exceed the remaining time of his sentence.
- (2) Prisoner who is requested from a foreign country to testify[in Afghanistan] shall be kept in prison and returned to the relevant country after testimony within the specified time limit.

Article Forty One

Participation of a foreign agent in investigation and trial stages

A judicial agent or the person who is assigned by the relevant authorities of a foreign country can participate in an investigation and trial stages, both to gather information and make sure [proper] investigative measures are taken.

Article Forty Two

Conditions to enforce a verdict

Verdict of a foreign court will be enforced when:

- a. The verdict is finalized as per the laws of the foreign country; [and]
- b. The act in relation to which the person is convicted is[also] considered a crime under Afghan law.

Article Forty Three

Circumstances when a foreign verdict can not apply

A foreign verdict does not apply if:

- a. An Afghan court has already issued a final decision on the same crime.
- b. The act on which [a foreign court] issued a decision is not considered a crime in Afghanistan.
- c. Prosecution of the crime is against the Afghan law(s) or the punishment is pardoned as per the law.
- d. The verdict of the foreign court is contrary to Afghan law or disrupts civil order/safety of [the society].

CHAPTER FOUR

Final Provisions

Article Forty Four

Necessity of privacy

When contents of the request are to be [kept] confidential, the relevant authorities are required to abide by [the rule]. If it is not possible to keep the contents confidential, the requesting authorities will be informed as soon as possible.

Article Forty Five

Delay in case referral

If the request of a foreign country disrupts the process of an investigation or proceedings, the Prosecution Office can delay referring the case to the investigation agent or to the court and shall immediately notify the requesting country of the situation.

Article Forty Six

Limitations to use evidence

It is forbidden for the Afghan authorities to use the evidence requested by a foreign country for the purposes other than what is specified for in the request, unless the evidence is so used in light of a prior consent of the requesting country. Investigations or proceedings conducted in contradiction with the provisions of this article are invalid.

Article Forty Seven

Difficulties in application of verdict

Difficulties in application of a foreign verdict are reported by the Attorney General's Office to the Supreme Court. The High Council of the Supreme Court, after reviewing the issues, shall make a decision on the matter.

Article Forty Eight

Reliability of documents

The request, its attachments, and other [related] documents are valid when they are presented as an attachment with the request and in one of the official languages of Afghanistan.

Article Forty Nine

Compliance with provisions of law

The Ministry of Foreign Affairs is required to abide by provisions of this law when entering into any agreement of extradition of an accused, convicted, or legal cooperation with foreign countries.

Article Fifty

Allocation of expenses

The requesting country is required to bear the expenses of any extradition, transfer, or request for legal cooperation.

Article Fifty One

Enactment

This law is enacted after approval of the National Assembly and ratification by the President and shall be published in the Official Gazette. When enacted, this law nullifies chapters 10 and 11, Articles 64 through 73 of chapter 12 of the Anti-Money Laundering Law published in Official Gazette No. 840 in 2004 and chapter 4 of the Law on Financing Terrorism published in Official Gazette No. 839 in 2004.

Law on Combat against Terrorist Offences, 2008

Chapter One General Provisions

Basis

Article 1:

This Law has been enacted in the light of the provision of Paragraph (2), Article (7) of the Afghanistan Constitution for combat against terrorist offences.

Responsible Institutions for Combating

Article 2:

The Ministry of Internal Affairs, the General Directorate of National Security and other relevant institutions with cooperate and exchange of information under their remit according to the provisions of this Law and other related laws, shall combat against terrorist offences.

Definitions

Article 3:

The terms used in this Law mean as following:

- 1. Terrorist Offences:** is the commission of crime mentioned in this Law, in order to affect the political affairs of the Government of Afghanistan, a foreign Government, national or international organizations or to destabilize the Government system of Afghanistan or of a foreign government.
- 2. Terrorist and Terrorist Organization:** is real or legal person which has committed one of the offences mentioned in this Law or designated as a terrorist or terrorist organization by Resolution of the Security Council of the United Nations, provided that the Resolution is certified by the National Assembly.
- 3. Severity:** is any physical action (attack) with weapon including beating and lacerating tools and firearms or use of physical force that a person takes measures to commit and continues with that threat.
- 4. Support:** is providing financial source, residence, training, shelter, counsel and assistance, falsification of identification, communication equipments, and weapon, chemical, nuclear and other explosive substances, human resources, transportation services and other facilities.
- 5. Internationally Protected Person:** is a person who is entitled to special protection rights, based on international legal documents.

6. **Infrastructural Establishments:** are governmental and non-governmental establishments that provide public services including production, storage and distribution of gas, fuel and water, water supply and canalization systems, generation of electricity, financial services, education, banking, health, fire fight and rescue services, transportation including land, air and sea, surveillance of roads and highways, protective, security and communication lines or other social and economical services.
7. **Naval or Sea Fixed Platforms:** means an area or a facility built permanently attached to the seabed for the purpose of research and exploitation of mines or other economical purposes.
8. **Explosive Materials and Lethal Devices:** incendiary device, toxic chemical substances, biological factors and other substances that has the capability to cause death, serious injury, diseases, and physical damages.
9. **Nuclear Materials:** includes the following materials:
 - Plutonium
 - Uranium is not in the form of ore or ore residue that contains the mixture of isotopes in their natural form.
 - Enriched uranium is the uranium that contains isotope 233 and/or 235 or the difference between the number of these isotopes and the number of isotope 238 is larger than the difference between isotope 235 and isotope 238 as found in their natural form.
 - Uranium 233.
10. **Radioactive substances:** are nuclear substance and other radioactive substances that contain nucleus and spontaneously get dismantled (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, due to their radiological or fissile properties, cause death, serious body injuries, psychological damage or considerable damages to properties or to the environment.
11. **Aircraft in flight:** An aircraft from the moment all external doors are closed for the purpose of flying and until the moment when one of the external doors is opened to allow passengers leave the aircraft. In case of forced landing, until the moment when competent authorities take over responsibility for the aircraft, passengers and the property on board, they aircraft shall be considered in flight.

Jurisdiction

Article 4:

If a citizen of Afghanistan, a citizen of a foreign government or a person without a citizenship commits the offences mentioned in this Law under the following circumstances, the provisions of this Law shall be applied to him/her:

1. The offence is committed in the territory of Afghanistan.
2. The offence is committed against a citizen of Afghanistan or other individuals residing in Afghanistan or against Afghanistan's interests outside of the country.

3. The offence is committed inside or against an aircraft registered in Afghanistan.
4. The offence is committed inside or against a ship carrying a flag of Afghanistan.
5. The offence is committed inside or against a facility where the diplomatic or other missions of Afghanistan is located or against the facilities belonging to the Government of Afghanistan.
6. The offence is committed inside an aircraft registered in Afghanistan and it lands in the territory of Afghanistan while the perpetrator of the offence mentioned in Article (9) of this Law is inside the aircraft.
7. The offence is committed against the person mentioned in Article (13) of this Law who has work-related relationship with the Government of Afghanistan.

Proceeding of Juvenile Terrorist Offences

Article 5:

If the offences mentioned in this Law are committed by juveniles, the proceedings to these offences shall be carried out according to the Law on Juvenile Violations.

Rights of the Suspect and Accused

Article 6:

During investigation and trial, the suspect and accused of terrorist offences shall have the same legal rights as the suspects and accused of other offences.

Rights of Suspect and Accused of Foreign Citizens

Article 7:

If a suspect or accused of the offences mentioned in this Law is a foreign citizen, after arrest and detention, they shall have the following rights in addition to the rights stated in other legislations:

1. Notification of his/her country's diplomatic mission through the Ministry of Foreign Affairs without any delay.
2. Visit with the representative of his/her government.
3. Informing him/her of his/her rights under subparagraphs (1&2) of this Article.

Chapter Two

Terrorist Offences and their Punishment

Possession or Taking Control of an Aircraft, Ship or Fixed Platform

Article 8:

- (1). A person who by use of force (severity) or other intimidating means takes possession or control of an aircraft in flight or a ship or the fixed platform or part of them, with consideration of circumstances, he/she shall be sentenced to long term or continuous imprisonment.
- (2). If the person mentioned in Paragraph (1) of this Article commits serious injury or death, with consideration of circumstances, he/she shall be sentenced to continuous imprisonment or execution.
- (3). If the person threatens to commit the acts mentioned in Paragraph (1) of this Article, he/she shall be sentenced to medium term imprisonment of not less than three years.
- (4). If as a result of the threat mentioned in Paragraph (3) of this Article, the person is put under physical or psychological pressure, with consideration of circumstances, he/she shall be sentenced to imprisonment of not less than three and more than seven years.

Offences against Air safety

Article 9:

- (1). A person commits one of the following acts shall be punished as following:
 1. If the person takes a severe action against one of the passengers while the aircraft is in flight and this action endangers the safety of the aircraft, with consideration of circumstances, he/she shall be sentenced to imprisonment of not less than five and more than ten years.
 2. If the person damages an operational aircraft in a way that prevents it from flying or likely endangers the safety of the aircraft, or damages or destroys a non-operational aircraft, he/she shall be sentenced to long term or continuous imprisonment or execution.
 3. If the person places or causes to be placed in an aircraft devices or materials that could result in the destruction of the aircraft or cause damage that prevents it from flying or likely endangers the safety of the aircraft in flight, with consideration of circumstances, he/she shall be sentenced to imprisonment of not less than ten and more than fourteen years.
 4. If the person destroys or damages the civil aviation facilities or disrupts their activities in a way that endangers the safety of the flight, with consideration of circumstances, he/she shall be sentenced to imprisonment of not less than ten years or continuous imprisonment.
 5. If the person knowingly provides false information in away that endangers the safety of the aircraft, with consideration of circumstances, he/she shall be sentenced to medium term imprisonment of not less than three years.

- (2). If the person threatens to commit offences mentioned in subparagraphs (1, 2 & 3) of Paragraph (1) of this Article in order to compel the Government employees or any other real or legal person to carry out or avoid carrying out an action, with consideration of circumstances, he/she shall be sentenced to imprisonment of not less than three and more than seven years.
- (3). If as a result of threat mentioned in subparagraph (1) of Paragraph (1) of this Article the person is put under physical or psychological pressure, with consideration of circumstances, the perpetrator shall be sentenced to imprisonment of not less than ten and more than fifteen years.

Offence against Airports

Article 10:

- (1). If a person commits any of the following acts and as result endangers the safety of the airport and international transport or causes a likely danger, he/she shall be punished as following:
 1. If the person takes an severe action against a person working in the international civil airport and causes serious injury or death of the person or causes a likely serious injury or death, with consideration of circumstances, the perpetrator shall be sentenced to continuous imprisonment or execution.
 2. If the person seriously damages or destroys the facilities of an international civil airport or disrupts their operation, he/she shall be sentenced to maximum punishment of long term imprisonment.
 3. If the person threatens to commit the offences mentioned in subparagraph (1) of Paragraph (1) of this Article in order to compel the Government employees or another real or legal person to carry out or avoid carrying out an action, with consideration of circumstances, the perpetrator shall be sentenced to imprisonment of not less than three and more than seven years.
- (2). If as a result of threat mentioned in subparagraph (1&2) of Paragraph (1) of this Article, the person is put under physical or psychological pressure, with consideration of circumstances, the perpetrator shall be sentenced to imprisonment of not less than five and more than ten years.

Offences against Person in Ship or in Fixed Platforms

Article 11:

- (1). If a person commits any of the following acts, he/she shall be punished as following:
 1. If the person takes an severe action against a person on board a ship or against fixed platforms, with consideration of circumstances, he/she shall be sentenced to long term imprisonment.
 2. If the action causes serious damage or destruction to the ship or the consignment of the ship or to the fixed platforms, or likely endangers the safety of the ship or the fixed platform of the sea transportation, with consideration of circumstances, the perpetrator shall be sentenced to long term imprisonment.

3. If the person places or cause placing in the ship or fixed platforms devices or materials that can cause damage or destruction of the ship or fixed plat forms, with consideration of circumstances, he/she shall be sentenced to imprisonment of not less than six and more than ten years.
 4. If the acts mentioned in subparagraphs (1&2) of this Paragraph endangers the safety of the ship or damages or destroys the facilities of sea transportation or disrupts their services, with consideration of circumstances, the perpetrator shall be sentenced to long term imprisonment in case of serious injury or execution in case of death.
 5. If the person knowingly provides false information in a way that endangers the safety of the ship or fixed platforms, with consideration of circumstances, the perpetrator shall be sentenced to medium term imprisonment.
- (2). If the person threatens to commit the acts mentioned in subparagraphs (1, 2, 3 & 4) of Paragraph (1) of this Article in order to compel the Government employees or another real or legal person to carry out or avoid carrying out an action, with consideration of circumstances, the perpetrator shall be sentenced to imprisonment of not less than three and more than seven years.
 - (3). If as a result of the threat mentioned in Paragraph (2) of this Article the person is put under physical or psychological pressure, with consideration of circumstances, the perpetrator shall be sentenced to long term imprisonment of not less than six and more than ten years.

Offences Against Persons

Article 12:

- (1). If a person for the purpose of compelling the Government of Afghanistan, a foreign government, an international organization or a non-government foreign organization arrests or detains another person to carry out or avoid carrying out an action or threatens the person to death or physical torture or keeps the person in captivity and makes his/her release explicitly or implicitly conditional to carrying out or avoid carrying out an action, with consideration of circumstances, he/she shall be sentenced to maximum punishment of long term imprisonment.
- (2). If the detained person mentioned in Paragraph (1) of this Article is injured or disabled or killed, with consideration of circumstances, the perpetrator shall be sentenced to maximum punishment of continuous imprisonment or execution.
- (3). If as a result of the act mentioned in Paragraph (1) of this Article, the person is put under physical or psychological pressure, with consideration of circumstances, the perpetrator shall be sentenced to long term imprisonment of not less than six and more than ten years.

Offences Against Internationally Protected Persons

Article 13:

- (1). A person who commits one of the following acts against an internationally protected person shall be punished as following:
 1. If the person with international protection has been physically or psychological attacked, kidnapped or killed with consideration of circumstances, the perpetrator shall be sentenced to long term imprisonment of less than ten years or continuous imprisonment or execution.
 2. If the official residence place, personal residence or the vehicle of the person with international protection has been attacked or a danger threatens the safety or freedom of the internationally protected person, with consideration of circumstances, the perpetrator shall be sentenced to long term imprisonment of not less than six and more than ten years.
 3. If the person threatens to commit the acts mentioned in Paragraph (1 & 2) of this Article in order to compel the person with international protection to carry out or avoid carrying out an action, with consideration of circumstances, the perpetrator shall be sentenced to medium term imprisonment of not less than three years.
- (2). If as a result of the threat mentioned in subparagraph (3) of Paragraph (1) of this Article, the person with international protection is put under physical or psychological pressure, with consideration of circumstances, the perpetrator shall be sentenced to medium term imprisonment of not more than ten years.

Offences related to the Use of Explosive and Other Lethal Devices

Article 14:

- (1). If the person transfers, positions, fires or detonates one of the devices mentioned below in a public place or a Government facility or in public transport or other infrastructure facilities or towards them, with consideration of circumstances, the perpetrator shall be sentenced to the maximum punishment of long term or continuous imprisonment or execution.
 1. Explosive materials, incendiary or other devices with the capacity of killing or seriously injuring a person or inflicting enormous financial damage.
 2. Weapons or devices which as a result of their poisonous chemical, biological or radioactive materials kill or seriously injure a person or inflict enormous financial damage.
- (2). A person who instructs another person to commit one of the offences mentioned in Paragraph (1) of this Article or in any forms or ways participates in the commission of one of the offences through a group of persons who work for a common purpose, and if the participation is intentional and for the purpose of carrying out the general criminal activities or aim of the group or if the participation takes place with prior knowledge concerning the intention of the group for committing these offences, with consideration of circumstances the perpetrator shall be sentenced to the same punishment prescribed for the principal offence.

Offences involving Nuclear Materials

Article 15:

If a person commits one of the following acts, they shall be punished as following:

1. If a person obtains or provides for oneself, uses, transfers, exchanges, destroys or spreads nuclear materials which cause serious injury, death or damage to property or has the likely capability of causing serious injury, death or damage to property, with consideration of circumstances, he/she shall be sentenced to the maximum punishment of continuous imprisonment or execution.
2. If the nuclear material is obtained through stealing, robbery, embezzlement or other unlawful means, with consideration of circumstances the perpetrator shall be sentenced to the maximum punishment of long term or continuous imprisonment.

If the person demands the obtaining of nuclear material by use of threat or force (severity) or other intimidating means, with consideration of circumstances, he/she shall be sentenced to maximum punishment of long term imprisonment.

3. If the person threatens to use nuclear material to kill or seriously injure a person or inflict enormous financial damage, with consideration of circumstances, the perpetrator shall be sentenced to imprisonment of not less than six and more than ten years.
4. If the person threatens to commit one of the offences mentioned in subparagraph (2) of this Article for the purpose of compelling the Government of Afghanistan or another government, international organizations of intergovernmental, international non-government organizations or other real or legal persons to carry out or avoid carrying out an action, with consideration of circumstances, he/she shall be sentenced to long term imprisonment.

Destruction of Infrastructure Facility

Article 16:

- (1). A person who causes the infliction of damage or destruction to infrastructure facility mentioned in Subparagraph (5) of Article (3) of this Law in the territory of Afghanistan or disrupts its activities for the purpose of carrying out a terrorist act, the perpetrator shall be sentenced to the maximum punishment of long term imprisonment.
- (2). If the offence mentioned in Paragraph 1 of this Article causes death, the perpetrator shall be sentenced to execution.

Attempt to Commit the Offence or Participation

Article 17:

- (1). A person who attempts to commit the offences mentioned in Articles (9-16) of this Law, or is an accomplice in committing these offences, with consideration of circumstances, he/she shall be sentenced to the same punishment prescribed for the perpetrator of the offence.
- (2). The provisions of this Law are not applicable concerning the attempt to threaten the commission of any offences mentioned in Articles (9-16) of this Law.

Unity

Article 18:

A person who unites with another person in order to participate in the commission of offences mentioned in Articles (9-16) of this Law or incites or encourages others for the commission of these offences or plans, organizes for the commission of these offences, with consideration of circumstances, he/she shall be sentenced to long term imprisonment of not less than ten years or continuous imprisonment.

Supporting or Service to the Offence

Article 19:

- (1). A person who obtains the membership of a terrorist organization, shall be sentenced to medium term imprisonment.
- (2). A person who recruits another person in order to participate in or carry out the commission of offences mentioned in Articles (9-18) of this Law, the recruiter shall be sentenced to the punishment prescribed for the perpetrator of the offence.
- (3). A person who helped in any forms or ways in order to complete the commission of offences mentioned in Paragraph (1) of this Article and with intention to support including the provision of service and weapon used in the commission of the mentioned offences, shall be sentenced to the same punishment prescribed for the perpetrator of the offence.

Creating Obstacle or Disruption

Article 20:

A person who creates obstacles or disrupts the process of discovery and investigation of terrorist offences or the trial of offenders, or destroys the incriminating evidence and grounded reasons through false testimony, bribing, intimidation, exertion of influence or any other forms or ways, he/she shall be sentenced to long term imprisonment.

Chapter Three

Miscellaneous Provisions

Observing Provisions of Criminal Procedure Code

Article 21:

The discovery, investigation and trial of suspects and accuseds of terrorist offences shall be carried out according to the provisions of the Criminal Procedure Code and this Law.

Interim Measures

Article 22:

- (1). The Attorney General shall adopt interim measures based on incriminating evidence and grounded reasons collected by the intelligence office of the Da-Afghanistan Bank, the General Directorate of National Security and the police after consultation with the Council of National Security concerning the person or organization that financially supports terrorist acts or a person or organization identified by the United Nations standards as the financial supporter of terrorist acts.
- (2). If sufficient evidence related to the terrorist case is collected, the Prosecution Office confidentially and in accordance with the provisions of the Law submits the evidence and documents to the competent court and requests the adoption of necessary measures.

Information related to Property

Article 23:

- (1). The prosecutor can requests information about the property of the suspect of a terrorist offence from banks and other financial institutions, if he/she has obtained permission from a competent court prior to making the request.
- (2). Banks and other financial institutions are obliged to provide the information referred to in Paragraph (1) of this Article in a documented and genuine manner without consideration of the obligation for preserving banking secretes or confidentiality entrusted upon them by laws or other forms and ways.

Inspection of Correspondence

Article 24:

The officials of the General Directorate of National Security, police and the prosecutor can inspect the correspondence, telephone conversation and other Subparagraphs sent through the post or other means to the suspect for the commission of terrorist act, with prior permission of the competent court. The circumstances related to a witnessed offence are exempted from this provision.

Chapter Four
Final Provisions

International Cooperation

Article 25:

The competent authorities of Afghanistan can cooperate with other countries in the combat against terrorist offences in accordance with the provisions of the Law on Extradition of Suspects, Accuseds and Convicts.

Date of Enforcement

Article 26:

This Law shall come into force after date signed and shall be published in the Official Gazette. Upon the enforcement of this Law, all other contradictory provisions shall be invalid.

The Islamic Republic of Afghanistan
law on Combating the Financing of Terrorism, 2004
Law No. 839

CHAPTER 1 - GENERAL PROVISIONS

Article 1. Basis

This law is adopted pursuant to Article 7 of this constitution of the Islamic Republic of Afghanistan.

Article 2. Purpose

The purpose of this Law is to:

1. Implement the International Convention for the Suppression of Financing of Terrorism (1999) and its successor conventions.
2. Prevent provision of funds or property for terrorist acts, terrorist organizations, or terrorist/s; and
3. Implement UN Security Council Resolutions on combating financing of terrorism and the financing of proliferation of weapons of mass destructions.

Article 3. Definitions

For the purposes of this law:

- 1- "Terrorist acts" means :
 - a. an act which constitutes an offense within the scope of and as defined in one of the treaties listed in the Annex to the Convention for the Suppression of Financing of Terrorism; and
 - b. any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act
- 2- "Terrorist" shall mean any natural person who:
 - a. commits or attempts to commit terrorist acts by any means, directly or indirectly, unlawfully and willfully.
 - b. participates as an accomplice in terrorist acts;
 - c. organizes, leads, or directs others to commit, terrorist acts;
 - d. contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act
 - 1) "Terrorist organization" means any group of persons who, acting with a common purpose to perform actions set forth under sub paragraph 2.

- 2) “Non Profit Organization” means any legal person or arrangement or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes.
- 3) Terminologies such as “Funds and Property”, “Reporting Entity”, “Proceed of Crimes”, “Transaction”, “Freeze”, “Seize” and “Confiscation” shall have the same meaning as provided in Anti Money Laundering Law.

Article 4. Financing of Terrorism offence

- 1) Any person commits the offense of financing of terrorism who by any means, directly or indirectly, unlawfully and willfully, provides or collects funds or property or attempts to provide or collect funds or property, or provides or attempts to provide financial or other services with the intention that they should be used or in the knowledge that they are to be used, in full or in part:
 1. in order to carry out a terrorist act; or
 2. by a terrorist; or
 3. a terrorist organization.
- 2) An offence under paragraph 1 of this article is considered as committed:
 1. even if the terrorist act referred to in paragraph 1 of this article does not occur or is not attempted;
 2. even if the funds or property were not actually used to commit or attempt the terrorist act referred to in paragraph 1 of this article;
 3. even if the funds or property cannot be linked to a specific terrorist act, regardless of the State or territory in which the terrorist act is intended to or does occur and regardless of the State or territory in which the terrorist or terrorist organization is located.
- 3) Any person also commits an offense if that person:
 1. attempts, abets or participates as an accomplice, conspires in an offense as set forth in paragraph 1 and 2 of this Article;
 2. organizes, directs or motivates others to commit an offense as set forth in this Article;
 3. contributes to the commission of one or more offenses as set forth in this Article by a group of persons acting with a common purpose, when this contribution is made intentionally and such contribution is made:
 - (i) with full knowledge of the intention of the group to commit an offense as set forth in paragraph 1 of this Article;
 - (ii) with the aim of facilitating or furthering the criminal activity or purposes of the group or to serve its purposes, and that activity or purpose involves the commission of an offense as set forth in paragraph 1 of this Article;

- 4) Knowledge, intent or purpose required as elements of an offence set forth in this article may be inferred from objective factual circumstances.
- 5) No consideration of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature may be taken into account in order to justify the commission of any of the aforementioned offenses.
- 6) The financing of terrorism offence is a predicate offence for money laundering.

Article 5. Scope of the law

- 1) The provisions of this law are applicable to the offenses indicated under Article 4 when:
 1. The offense was committed in the territory of the Islamic Republic of Afghanistan;
 2. The offense was committed on board a vessel flying the flag of the Islamic Republic of Afghanistan or an aircraft registered pursuant to its laws or operated by the Islamic Republic of Afghanistan at the time the offense was committed;
 3. The offense was committed by a national of the Islamic Republic of Afghanistan;
 4. the offense was committed outside its territory by someone now present in its territory, in all cases where the Islamic Republic of Afghanistan does not extradite such a person to a state requesting extradition for the same offense;
 5. The offense was directed against a national of the Islamic Republic of Afghanistan;
 6. The offense was directed against a government facility of the Islamic Republic of Afghanistan located outside its territory, including its diplomatic or consular premises;
 7. The offense was directed to or resulted in the commission of an offense indicated in Article 4, paragraph 2, subparagraph (a) and (b), in an attempt to compel the Islamic Republic of Afghanistan to do or abstain from doing any act;
 8. The offense was committed by a stateless person who has his or her habitual residence in the territory of the Islamic Republic of Afghanistan; or
- 2) The Supreme Court of Afghanistan may establish a specific court for hearing of the cases involving offenses committed outside of the national territory of Afghanistan.

CHAPTER II - INTERNATIONAL COOPERATION

Article 6. Mutual Cooperation

The authorized authority of the Islamic Republic of Afghanistan shall cooperate as widely as possible with those of other states for the purposes of information exchange, investigation, and proceedings, provisional measures, confiscation, production of documents, freezing of funds or property associated with financing of terrorism, for the purposes of extradition, mutual legal assistance, judicial cooperation, requests for investigative measures or requests for provisional measures and the confiscation of and disposal of confiscated funds or property, mutual legal assistance with counterparts and the implementation of related judicial orders.

Article 7. Right of Communication

- 1) Anyone, not a citizen of the Islamic Republic of Afghanistan or not a resident in Afghanistan, with respect to whom the measures indicated in this law are applied is entitled to:
 - a. Communicate without delay with the nearest representative of the state where he or she is a citizen or with someone otherwise qualified to protect his or her rights or, in the case of a stateless person, the country where he or she customarily maintains a residence;
 - b. be visited by a representative of that state, where applicable; and
 - c. be informed of the rights afforded to him or her under subparagraphs (a) and (b) of this paragraph.
- 2) When the public prosecutor's office receives the request from a state that has established its jurisdiction over the offense, it shall make the necessary arrangements to ensure that the person detained under this law may be visited by a representative from the International Red Cross, and official representative(s) of the person's country of origin.

Article 8. Notification to Competent States

When the person who is the subject of the investigation indicated in Article 7 has been detained, the public prosecutor's office, through the Government of the Islamic Republic of Afghanistan, shall immediately inform, directly or through the Secretary General of the United Nations, the states that have established their jurisdiction over the offense and, if deemed appropriate, any other interested states, of the detention as well as of the circumstances justifying the detention. The public prosecutor shall promptly inform said states of the conclusions and indicate to them whether it intends to exercise its jurisdiction.

CHAPTER III - OPERATIONAL MEASURES

Article 9. Seizure and Provisional measures

- 1) The competent court, by its own discretion, or at the request of the public prosecutor's office, may without delay, in relation to terrorist financing:
 1. seize, freeze, restrain, funds or property associated with the offense that is the subject of investigation or subject to confiscation,
 2. identify, trace, evaluate funds or property subject of investigation or subject to confiscation
- 2) Funds or property subject to the measures under paragraph(1) should include:
 1. funds or property used or intended or allocated to be used to commit the offenses referred to in Article 4,
 2. laundered property
 3. funds or property that are the proceeds of these offenses,
 4. funds or property directly or indirectly derived from the proceeds, including income or other benefits derived from such proceeds,
 5. instrumentalities used in, or intended for use in the commission of the offense of financing of terrorism,
 6. property of corresponding value, and
 7. all evidence facilitating their identification.
- 3) This provision shall apply without prejudice to the rights of third parties acting in good faith.
- 4) The lifting of these measures can be ordered by the competent court at any time at the request of the public prosecutor's office or, with the consent of the public prosecutor at the request of the owner of the frozen funds or property.

Article 10. Designation Authority

- a. The Afghanistan National Security Council is responsible for proposing designations and for providing the necessary evidence for such designations to the United Nations Security Council under UNSCRs 1267, and 1988 committees or successor mechanisms through diplomatic channels.
- b. The Afghanistan National Security Council shall designate any person, entity or organization as a terrorist or terrorist organization on its own motion and is also authorized to give effect to, promptly and after due examination,, requests for designations by other countries.

- c. Such person, entity or organization may be designated as a terrorist or terrorist organization if the Afghanistan National Security Council finds or has reasonable grounds to believe that such person, entity or organization is
 - (a) a terrorist or a terrorist organization or
 - (b) a person, entity or organizations who finance terrorist or terrorist organizations or
 - (c) a person, entity or organization that is attempting to commit terrorist acts or participating in or facilitating the commission of terrorist acts or
 - (d) a person, entity or organization owned or controlled directly by such person, entity or organization as set out under paragraph (a)(b) or (c) or
 - (e) any person, entity or organization acting on behalf of or at the direction of such person, entity or organization as set out under paragraph (a)(b) or (c).
- d. The designations shall be implemented in accordance with related regulations established under this law and conventions Afghanistan is party thereto.
- e. The Afghanistan National Security Council shall immediately notify the Attorney General's Office and any other authorized authority of any designations made in accordance with paragraph (2 and 3).

Article 11. Freezing of Funds or Property under United Nations Security Council Resolution

- 1) The Afghanistan National Security Council shall immediately notify Attorney General's Office of any person, entity and organizations designated under UNSCR 1267 (1999), UNSCR 1988 (2011), and any successor resolutions issued by the United Nations Security Council acting under Chapter VII of the United Nations Charter e.
- 2) The Attorney General's Office shall, without delay and without prior notice, freeze the Funds or Property of any person, entity and organization designated pursuant to the paragraph 1 of this Article and Article 10.
- 3) Upon the issuance of an order by Attorney General's Office, pursuant to sub paragraph 2 of this article,
 - a. All persons, including any reporting entity shall without delay freeze the funds or properties of persons designated as set out in Article 10 or paragraph [1], and
 - b. All persons, including any reporting entity are prohibited from making available any such funds or property, economic resources or financial or other related services available directly or indirectly to or for the benefit of designated persons.
- 4) Any person not in compliance with paragraph (3) of this Article commits an offence and shall be subject to a fine equivalent to funds and properties mentioned under subparagraph 3.a or 3.b.

- 5) Any reporting entity not in compliance with paragraph (3) shall also be liable to any sanctions that may be applied by the appropriate supervisory authority under Article 24 of the Anti-Money Laundering and Proceeds of Crime Act.
- 6) Measures stated in subparagraph 3 of this article shall be applied to the following funds or property:
 - a. Funds or property owned or controlled wholly or jointly, directly or indirectly by individuals and entities referred in paragraph 2.
 - b. Funds or property derived or generated from the funds or property stated under subparagraph 5.a of this article and funds or properties of individuals and entities acting on behalf of or at the direction of persons referred to subparagraph 5.a
 - c. When the funds or property to be freeze cannot be presented or is not available for freezing, funds or property of the same kind or of a corresponding value shall be frozen.
- 7) The Afghanistan National Security Council shall immediately notify Attorney General's Office of any changes in designation of any person, entity and organization who designated based on UNSCR 1267, 1988 or successor resolutions as set out in Article 11, domestic designation or designation based on the request of another country under Article 10.
- 8) The Afghanistan National Security Council or the Attorney General's Office shall issue relevant regulations, as necessary, in their respective areas of competency with respect to
 1. Proposing designations under UNSCRs 1267,1988, and successor resolutions as well as domestic designations,
 2. Obligation to freeze without delay;
 3. Communications to private sector;
 4. Arrangements for monitoring and ensuring reporting entities' compliance with this Law and regulations', rules and directives issued thereunder;
 5. Protection of bona fide third party interests;
 6. Procedures for collecting information and evidence related to the identification of persons to be designated or being proposed for designations pursuant to article 10;
 7. Publicly known procedures to submit delisting requests of designations made if Afghanistan is of view that criteria for designation is no longer applicable and to delist once freeze ceases;
 8. Procedures to review or amend designations by the Attorney General's Office and to unfreeze funds or assets of persons, entities or groups designated domestically if criteria no longer exists/ not applicable;
 9. Mechanisms to authorize access to funds or assets for basic or other expenses;
 10. Mechanisms for designated persons/entities to challenge designations;
 11. Procedures to unfreeze assets/funds of persons with same/similar names upon verification that person is not designated person,

12. The regulation making power relating to target financial sanctions in relation to proliferation financing.
13. Other procedures and mechanisms to implement provisions set out in the law.

Article 12. Procedure for Disputing Freezing orders

- (1) Any person, entity or organization whose funds or property have been frozen pursuant to designations made by United Nations Security and determines that they were designated as the result of an error or where they are of the view that the designation criteria do not or no longer applies may seek to have their names removed from the sanction lists by submitting a request to this effect to relevant committees of United National Security Council.
- (2) Any person, entity or organization whose funds or property have been frozen pursuant to domestic designation under Article 10, and determines that they were designated as the result of an error or where they are of the view that the designation criteria do not or no longer applies may seek to have their names removed from the sanction lists by submitting a request to this effect to National Security Council.

Article 13. Confiscation

- 1) The following funds or property may be confiscated by the competent court:
 - a. funds or property that are the proceeds of the offense, property used or intended or allocated to be used to commit the terrorist financing offense under Article 4
 - b. funds or property directly or indirectly derived from the proceeds, including income or other benefits derived from such proceeds
 - c. instrumentalities used in, or intended for use in the commission of the offense of financing of terrorism.
- 2) Funds or property listed in paragraph 1- 3 except if the owner of the funds or property proves that he is a bona fide third party acting in good faith or that it has been transferred to him in exchange of services provided by a transferee or fair value has been paid for such funds or property or acquired through any other legitimate way and the transferee was not aware of the origin of the funds or property.
- 3) When the funds or property to be confiscated pursuant to paragraph 1 above are connected to an offence and are mixed with the legitimate funds or property of a bone fide third party, such funds or property can be confiscated to the extent to equal to the offence committed based on a court determination.
- 4) When the funds or property to be confiscated cannot be presented or is not available for confiscation, funds or property of the same kind or of a corresponding value shall be confiscated.
- 5) The amount of the funds or property to be confiscated shall be stated in the confiscation order.

Article 14. Confiscation of the Property and Funds of the Terrorist Organization

Funds or property of which the terrorist organization has the authority to dispose of may be confiscated without considering its link to the offence committed.

Article 15. Invalidity of Certain Legal Documents

Any legal instrument, executed free of charge or for a valuable consideration inter vivos or mortis causa, or any other action the purpose of which is to safeguard or prevent funds or property from confiscation, seizure or freeze as provided for in articles 9-14 shall be void based on a court order. In the case of avoidance of a contract involving payment, the buyer shall be reimbursed only for the amount actually paid.

Article 16. Disposal of Confiscated Funds or Property

1. Confiscated funds or property accrue to the state according to relevant regulations, unless any rights of third parties over the funds or property are established. In this case, the funds or property remain encumbered up to their value.
2. In cases where confiscation is ordered under a judgment by default, the confiscated funds or property accrue to the state. However, if the court acquits the person prosecuted, and sets aside the confiscation order, the funds or property confiscated or its corresponding values shall be returned to its owner, unless it is established that such property represents the proceeds of a crime or offense.

Article 17. Third Parties Claims

Any claims of bona fide third parties, acting in good faith, over the confiscated funds or property (or any other provisional measures) can be heard in the competent court within three years from the date of final ruling.

Article 18. Humanitarian exemptions

- (1) While freezing the assets of a person, under a domestic designation made pursuant to UNSCR 1373 as set out in Article 10 the following assets could be exempted from asset freeze:
 - a. funds necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurances premiums, and public utility charges;
 - b. funds intended exclusively for payment of reasonable legal service fees and expenses associated with the provision of such services; or
 - c. funds intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or frozen economic resources.

- (2) Humanitarian and other exemption from the freeze order for UNSCR 1267 and 1988 and successor resolutions designations as set out in Article 11 will be handled as set out in by UNSCRs 1452 and 1735.

Article 19. Delisting

1. Individuals, groups, undertakings, companies and entities placed on the Sanctions pursuant to Security Council Resolution 1267 or 1988 and successor resolutions may submit a petition directly to the Office of the ombudspersons of the Security Council's 1267 or 1988 Committee, to take measures conducive to the removal of their names from Taliban Sanctions List.
2. Individuals, groups, undertakings, companies and entities placed on the Sanctions pursuant to Security Council Resolution 1267 and successor resolutions, and who are nationals of the Islamic Republic of Afghanistan, or have residence in the Islamic Republic of Afghanistan, or are incorporated/located in the Islamic Republic of Afghanistan, may submit a petition to the National Security Council of Afghanistan to convey such requests to the Office of the Ombudsperson of the Security Council 1267 or 1988 Committee pursuant to paragraph 1.

CHAPTER IV - PENALTIES

Article 20. Penalties Applicable to natural person

1. Any person who commits a terrorism financing offense as set forth in Article four of this law, shall be sentenced to imprisonment for not less than five years or more than fifteen years and a fine of not less than 400,000 Afghani to 2,000,000 Afghani.
2. Any participants, accessories, providers of facilities, persons intended to commit a crime, and person who provided advices in a crime, and other persons which crime has been committed with their agreement or assistance, shall be punishable as if the offense had been committed by them.

Article 21. Penalties Applicable to Legal Persons

1. When a terrorism financing offense has been committed by an employee, agent or representative of a legal person, the legal person shall be punishable by a fine of not less than 1, 500,000 Afghani and not more than 4,500,000 Afghani, without prejudice to the conviction of those individuals associated to the legal person.
2. In addition to penalties set forth in Paragraph 1 of this article, the legal person may be:
3. Banned permanently or for a maximum period of five years from directly or indirectly carrying on certain business activities; or
4. Ordered to close permanently or for a maximum period of five years their premises that were used for the commission of the offense;
5. Dissolved if they were created for the purpose of committing the offense;
6. Required to publicize the judgment through the mass media.
7. The application of penalties under this Article shall not preclude any other parallel criminal, civil or administrative proceedings with respect to a corporate entity for the offence of financing of terrorism.

Article 22. Penalties Applicable to Non Profit Organizations

- a) If a non- profit organization violates the provisions of Articles 25 and 26 of this Law, the non- profit organization shall be subject to one or more of the following penalties:
 - a. A fine of not less than 50000 Afghani and not more than 500000 Afghani
 - b. Being banned temporarily for a period of not more than 6 months.
 - c. Dissolution of the organization.

Article 24. Penalties Applicable to Terrorist Organization

1. When a terrorism financing offense has been committed by a terrorist organization, or by a corporate entity owned or controlled by such organization the penalty applicable in such cases shall be:
 1. The natural persons shall be subject to imprisonment for not less 15 years or life imprisonment, and a fine of not less than 1000000 Afghani and not more than 12000000 Afghani,
2. The corporate entity shall be subject to a fine of not less than 4500000 Afghani and not more than 20,000,000Afghani.

Article 25. Aggravating and mitigating Circumstances

The Aggravating and mitigating circumstances as provided in the Criminal Procedure Code of Afghanistan shall be applicable to the offences provided for under this law.

CHAPTER V - MISCELLANEOUS MEASURES

Article 26. None Profit Organization

Any non-profits organization operating to collect or receive grants, or transfer funds and property, or gifts and donations are required to align their activities in compliance with provisions of NPO law and other enforced laws.

Article 27. Record Keeping and Annual Financial Statements

1. Any donation and gifts made to a non-profit organization indicated in the article 26 of this law in an amount equal to or greater than an amount established by the appropriate supervisory authority shall be recorded in a record maintained for that purpose by the association or organization, containing the full details on the donor, the date, the nature, and the amount of the donation. The record shall be kept for a period of five years and shall be submitted to any authority responsible for the oversight of nonprofit organizations or to any public prosecutor, at their request.
2. Non-profit organizations shall maintain for a period of at least five years, 1) records of domestic and international transactions demonstrating that funds have been spent in a manner consistent with the purpose and objectives of the organization, and
3. Issue annual financial statements that provide detailed breakdowns of incomes and expenditures. Non-profit organizations shall make these available to appropriate supervisory authority or any public prosecutor, at his/her request.

Article 28. Ban and dissolution of non-profit organizations

1. When a non-profit organization, with full knowledge of the facts, encourages, promotes, organizes, or commits the offenses indicated in Article 4 of this law, the competent prosecution office shall impose a temporary ban on the activities of such nonprofit organization.
2. Dissolution of the nonprofit organization referred to in Paragraph 1 of this Article, shall be ordered by the court at the request of the persecution office.

Article 29. Entry into Force

This law shall enter into force upon its enactment by president and shall published in the Official Gazette. Upon its enforcement, the Combating of Financing of Terrorism Law published in the official gazette 839 dated 30/7/1383, shall be considered null and void.

Law on Crimes against Internal and External Security, 1987

**Approved by the Revolutionary Council of the Democratic Republic of
Afghanistan by decree No. 153 dated Oct. 1987**

Received from Checchi by M. Hartmann JSSP 2005 Dec.

Article 1:

The Law on Crimes against Internal and External Security (LCIE) contains two chapters and thirty articles.

Article 2:

Investigation of the crimes mentioned in this law with exception of articles 25 and 26 shall be carried out by the investigating authorities of the Ministry of State Security. Handling crimes mentioned in article one of this law based on jurisdiction specified in article two of the decree No. 177 dated 9/11/1364 of the Revolutionary Council on Law of Military Crimes shall be the authority of the respective organs.

Article 3:

The Ministry of Justice in cooperation with Ministry of State Security as well as other law protection authorities shall be duty bound to amend the Law on Crime Detection and Investigation and Attorney General Office Monitoring Legitimacy of its Implementation in accordance with this law and present it to the Revolutionary Council for approval.

Article 4:

The Ministry of Justice of the Democratic Republic of Afghanistan shall be duty bound to develop the table of contents of the Penal Code which would be repealed by this law within 15 days time and present it to the Revolutionary Council.

Article 5:

This decree shall be approved in the same time as the Law on Crimes against Internal and External Security is approved and shall come into force after publication in official gazette.

Chapter One

Crimes against Internal and External Security

Democratic Republic of Afghanistan

Article 1:

National Embezzlement (National Treachery)

1. Intentional acts by a citizen of Democratic Republic of Afghanistan against national sovereignty, preservation, territorial integrity, independence and public security and country's defense capability which are:
 - a. Joining enemy, armed activity against national sovereignty, espionage, surrendering forces, handover of arms, military techniques, war fortifications and other equipments, disclosing state and military secrets to countries or organizations or other anti-state individuals.
 - b. Sharing efforts and cooperate with other anti-state foreign states or organizations/groups in conducting their hostile acts against Democratic Republic of Afghanistan,
 - c. Hatching plots for winning seats in governments
 - d. Embezzlement crime against one's country shall be punished by continuous imprisonment or death penalty as well as confiscating criminal's property.
2. If the citizen of Democratic Republic of Afghanistan who is intending or is forced to commit any acts mentioned in this article voluntarily reports to state authorities such intention, he/she shall be exempted from any punishments.

Article 2:

Espionage

Any person submitting, stealing or collecting secret information of the state for the purpose of handing to a foreign state, anti-state organization/entity or their appointees and any person submitting and collecting any information ordered by any foreign intelligence agencies which could be used against the Democratic Republic of Afghanistan except when the perpetrator is a foreign national or someone without any nationality, shall be punished with life imprisonment or death penalty and forfeiture of property.

Article 3:

Terror

1. Any one who assassins any governmental, political, social, religious personality, government representatives and tribal leader, clan and tribe because of their governmental or social status for the purpose of subverting and weakening the sovereignty, shall be punished with continuous imprisonment or death penalty and forfeiture of property.

2. If the person mentioned in clause 1 of this article is physically or psychologically pressured to commit such acts, he/she shall be sentenced to 3 to 10 years imprisonment.

Article 4:

1. If a foreign representative gets killed when provoking for war or cheating tension between the diplomatic relations of Democratic Republic of Afghanistan and other countries, he/she shall be sentenced to death penalty and forfeiture of property.
2. If a foreign representative is psychologically or physically pressure to commit the above mentioned purposes, he/she shall be sentenced to 3 to 10 years imprisonment.

Article 5:

Subversive activities

1. If a person, in order to weaken the sovereignty and national economy, detonates and burns or by other means any institutions, high ways, transportation vehicles, communication means and other state, social, cooperative and personal properties or causes spread of epidemics or mass intoxication, he/she shall be sentenced to 10 to 20 years of imprisonment.
2. If the acts mentioned in clause 1 of this article brings about human loss or leads to permanent disability, great economical loss or other critical consequences for the country, he/she shall be sentenced to death penalty or continuous imprisonment.

Article 6:

Sabotage activities

1. If a person by using any institution, entities or social or personal organizations dismantles either intentionally or unintentionally for the purpose of weakening state authority, industry, trade, transportation, agriculture, livestock, financial system, communication means and other economical sources of the state or activities of state agencies, social organizations, cooperative and personal, he/she shall be sentenced to 3 to 10 years imprisonment.
2. If such acts result in a huge national economical loss, the perpetrator shall be sentenced to continuous imprisonment.

Article 7:

Propaganda against government

1. If a person for the purpose of ensuring his/her own interests and weakening sovereignty intentionally publicizes false declarations and statements or verbally/in written in any forms propagandizes against or possess such publications, he/she shall be sentenced to medium imprisonment.
2. If the acts mentioned in this article leads to breach of peace (public disorder) and dismantling routine activities of state agencies, institutions, organizations and other entities or leads to demolitions,

ravages and fires or that such acts were as result of communication or other means of contact with anti-government groups or with any foreign hostile states, the perpetrator shall be sentenced to long term imprisonment.

3. If the above acts lead to public disorder or human loss, the perpetrator shall be sentenced to continued imprisonment or death penalty.

Article 8:

War proclamation

Any person who makes any kind of proclamation for war shall be sentenced on the basis of the circumstances to medium imprisonment.

Article 9:

Organizational activities against internal and external security

1. A person, who establishes, regulates or administers any secret organization under the name of a union, body or party for the purpose of committing crimes set forth in chapter one of this Law, shall be sentenced to continued imprisonment
2. A person, who obtains the membership of any the organization set forth in clause (1) of this Article or any of their branches, shall be sentenced to long imprisonment.

A person who himself or through anyone else establishes relationship with any of the organizations set forth in clause (1) of this Article or with any of their branches on the purpose of attainment of illegitimate objectives or caused to encourage and terror the others or to use physical and mental pressures, shall be sentenced on the basis of the circumstances to long imprisonment.

Article 10:

Crimes against Diplomatic Relations of Afghanistan with Foreign Countries

Whenever an act of a person harms mutual relations of Afghanistan with foreign countries, he/she shall be sentenced to imprisonment of three to ten years.

Whenever an act of a person causes disconnection of diplomatic relations between Afghanistan and foreign countries, the perpetrator shall be sentenced to continued imprisonment.

CHAPTER TWO

Other Crimes against internal and External Security

Article 11:

Violation of national, religious and racial equality of rights

1. A person who make proclamation with intention to motivate national, racial, religious, tribal and linguistic disputes and differences he/she shall be sentenced to medium imprisonment up to three years.
2. In case such activities cause insurrection or affect social order among communities, the perpetrator shall be sentenced to long imprisonment.

Article 12:

Obstinately command and control of armed forces

A person who with the intention of crime takes the leadership of armed forces without the order of responsible authority and without legitimate reason or in spite of the issued order of the responsible authority based on the prevention of his/her leadership he or she continue to his/her action shall be sentenced to long imprisonment or to death penalty.

Article 13:

Disclosure of state-secrets

1. A person who discloses state secrets without the intention of national treachery, which were referred to him/her as part of his duty or discovered those secrets while he /she was in-service, he or she shall be sentenced to medium imprisonment
2. In case the above mentioned actions results a tremendous consequences to the Democratic Republic of Afghanistan in various aspects such as economy, politics and military, the perpetrator of this action shall be sentenced to long imprisonment.

Article 14:

Loss of documents containing state-secrets

1. A person who loses the documents containing state-secrets or things which deemed to be state-secrets, at the result of negligence of his duty, he/she on the basis of circumstances shall be sentenced to medium imprisonment.
2. In case the above mentioned crime results to tremendous consequences, the perpetrator of this crime shall be sentenced to long imprisonment.

Article 15:

Armed Plunder (banditism)

Conducting armed attack on governmental, social, economical, private joint- stock institutions for the purpose of looting and damaging including participation in armed gang is called banditism. And the perpetrator of this action shall be sentenced to continued imprisonment or death penalty.

Article 16:

Taking hostage

1. Whenever a person takes others as hostages by means of menace and violence or by any other means, shall be sentenced to long imprisonment and to the compensation of the damaged thing itself or to its equal cost or to the benefit achieved from.
2. If the hostage is wounded, disabled or killed, the perpetrator of the action shall be sentenced to continued imprisonment or death penalty in addition to the compensation of the damaged thing itself or to its equal cost or to the benefit achieved from.

Article 17:

Violation of the international flights regulations

Whenever entrance and departure takes place through the Aerial territory of Afghanistan without official permission as well as non-observance of allowed specific routes, landing areas, flying altitude or other violations of the international flights regulations, the perpetrator of such action shall be sentenced to medium imprisonment.

Article 18:

Illegal occupation of public buildings

Anyone who commits forced occupation of the public buildings, institutions and other places which are built for the public interest, shall be sentenced on the basis of circumstances to long or continued imprisonment.

Article 19:

Fabrication and circulation of money and negotiable instruments

1. Whenever a person under any circumstances fabricates valid currency in Afghanistan, negotiable instruments or foreign currencies, shall be sentenced to continued imprisonment.
2. A person who intentionally uses or deals with the fabricated currency or negotiable instruments or keeps them in his/her possession for the purpose of using or dealing, shall be sentenced to long imprisonment no longer than ten years.
3. If a person, in spite of being aware or through other person, brings in or takes out of Afghanistan counterfeit currency or forged negotiable instruments, he/she will be sentenced to long imprisonment.

4. The person who, makes or uses or sells or supplies for sale or puts in lease or brings in his ownership the tools, instruments or accessories to fabricate money or negotiable instruments, shall be sentenced to long imprisonment which shall not be less than ten years.

Article 20:

Collection of money and material assistance to Non-Governmental Organizations

The person who himself or through other person, in any way whatever, obtains money or any other kind of benefit or assistance from national or international sources to commit the crimes mentioned in this law, shall be, according to the situation, sentenced to long imprisonment not less than ten years.

Article 21:

Illegal trade during the war

1. During the war, if a person by himself or through his/her representative, without an agreement from the Government of the Democratic Republic of Afghanistan, establishes commercial relationship with a foreign country or with its representative, which is engaged in war with the Government of the Democratic Republic of Afghanistan, no matter where is his/her residence, he/she shall be sentenced to long imprisonment which is not more than ten years and in addition, the goods of the issue of the crime shall be confiscated.
2. If the things related to the issue of crime mentioned in the clause (1) of this article are not yet confiscated, the Court shall order for the payment of price of those things.

Article 22:

Procrastination in the fulfillment of commitments during the war

1. During the war, if a person deliberately does not fulfill all or parts of his/her commitments to the government, which is based on import or supply of needed material for the armed forces or basic food needs of the community, shall be sentenced to long imprisonment.
2. If the crime set forth in the upper mentioned clause weakens the defensive power of the country or the operations of the Armed Forces, the perpetrator of this crime shall be sentenced to continued imprisonment.
3. During the war, if a person hesitates in the fulfillment of his/her assigned duties, he/she shall be sentenced to medium imprisonment.

Article 23:

Assistance to the forces of enemy

If a person, in order to gain material or virtual benefit for himself or for someone else, directly or indirectly serves the forces of the enemy in situations other than that set forth in the articles of this law, shall be sentenced to long imprisonment which shall not be more than ten years.

Article 24:

Indignity or humiliation of the governmental flag and badge

If a person through an aboveboard tool humiliates the Flag or badge of the government of Afghanistan, according to the situation, he/she shall be sentenced to medium imprisonment.

Article 25:

Provision and sale of things that leads to vileness

1. The person who, for trading purposes, distributes puts in lease, supplies or owns or provides or imports or exports media material, writings, drawings, slides, photo types, sculptures, paintings or other things that are contrary to the public culture and manners, shall be sentenced to one to three years of imprisonment.
2. If the actions specified in clause (1) of this article take place for vileness purposes, the perpetrator shall be sentenced to imprisonment from one to five years.

Article 26:

Abuse or thievery of the cultural and ancient relics

1. Misuse or thievery of the cultural and ancient relics and ancient writings and the use of the signboards, sculptures and other cultural and ancient relics related to public property, as well as the alienation, gifting and renting of such things necessitates imprisonment punishment from one to three years.
2. Robbery, sale, destruction or deliberate demolition of the cultural relics necessitates long imprisonment or restitution for the loss and a cash fine equal to the loss.

Article 27:

Failure to report about crimes that are against the internal and external security

If a person obtains authentic information or knows about crimes being carried out and that are considered treacherous act against the country, like terror, harmful espionage, obstructionism, propaganda, organization of anti-government crimes, banditism, and he/she does not report about those activities to the related organs of public rule, he/she shall be sentenced to medium imprisonment.

Article 28:

Occultation of anti-government crimes and other crimes contrary to the national interest

If a person, without prior agreement with the perpetrators, has authentic information about the foreseen crimes that are considered treacherous like parricide, terror, harmful espionage, obstructionism, propaganda, organization of anti-government crimes, banditism, fabrication of money and negotiable instruments and hides such information, he/she shall be sentenced to medium imprisonment.

Article 29:

Legal Exemption from criminal responsibility

1. If a person, after the perpetration of a crime and prior to legal suit, reports to the responsible officials and provides complete information about the perpetrators or the partners of the crime or provides any other information helpful in the exposure of the crime or introduces the perpetrators of the similar crimes to the responsible officials, the court shall observe the mitigatory measures for him/her.
2. If the information is provided to the officials prior to perpetration and completion of crime, the reporter shall be exempted from punishment.
3. In case of occultation or failure in reporting, the husband, wife, children or parents shall not be put under criminal prosecution.

Article 30:

Enforceability

This law shall come into force after publication in the Official Gazette.

Afghanistan
Amendments to the Anti-Money Laundering
and Proceeds of Crime, 2004

Relevant Provisions

Chapter I

Article 2: Purpose

The purpose of the law is to:

1. Protect and promote the financial integrity of Afghanistan.
2. Fight against use of financial institutions and designated non-financial businesses and professions (DNFBPS), as stipulated in Article 5 of this law, for money laundering, proceeds of crime, the proliferation of weapons of mass destruction and the financing of terrorism.

CHAPTER IX

Request for International Cooperation and Extradition

Article 55: Legal Assistance

- 1) The competent authorities shall provide the widest possible range of cooperation, including but not limited to measures that are set out in this law, to the competent authorities of other States for purposes mutual legal assistance in connection with criminal investigations and proceedings related to money laundering, financing of terrorism and predicate offences.
- 2) Dual criminality shall be deemed fulfilled irrespective of whether the laws of the requesting State places the offence within the same category of offence or denominate the offence by the same terminology as in Afghanistan, provided the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of the States concerned.
- 3) Mutual legal assistance may be rendered in the absence of a bilateral treaty on the basis of reciprocity.
- 4) Money Laundering and the Financing of Terrorism are extraditable offences for purposes of the Law on Extradition and Legal Cooperation No. 1103 (2013).

Article 56: Purpose of requests for mutual legal assistance

- 1) Upon application by a foreign State, requests for mutual legal assistance in connection with money laundering, terrorist financing or predicate offences shall be executed in accordance with the principles set out in this title.

- 2) Mutual legal assistance may include in particular:
- a) taking evidence or statements from persons;
 - b) assisting in making detained persons, voluntary witnesses or others available to the judicial authorities of the requesting State in order to give evidence or assist in investigations;
 - c) effecting service of judicial documents;
 - d) executing searches and seizures;
 - e) examining objects and sites;
 - f) providing information, evidentiary items and expert evaluations;
 - g) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
 - h) identifying or tracing the proceeds of crime, funds or property or instrumentalities or other things for evidentiary or confiscation purposes;
 - i) confiscation of proceeds of crime and other funds or property, including confiscation based on non-conviction based confiscations;
 - j) executing freezing, seizing and other provisional measures
 - k) Executive investigative measures, including special investigative techniques, undercover operations, controlled deliveries; any other form of mutual legal assistance not contrary to the domestic laws of Afghanistan.

Article 57: Refusal to execute requests

- 1) A request for mutual legal assistance may be refused only if:
- a) it was not made by a competent authority according to the legislation of the requesting country, if it was not transmitted in accordance with applicable laws or its contents are in substantial non-conformity with Article 59;
 - b) its execution is likely to prejudice the law and order, sovereignty, security, public order or other essential interests of Afghanistan;
 - c) the offence to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in Afghanistan;
 - d) there are substantial grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions, gender or status;
 - e) if the offence referred to in the request is not provided for under the legislation of Afghanistan or does not have features in common with an offence provided for under the legislation of Afghanistan; however, assistance shall be granted if it does not entail coercive measures;

- f) if the measures requested cannot be ordered or executed by reason of the statute of limitations applicable to money laundering or financing of terrorism under the legislation of Afghanistan or the law of the requesting State;
 - g) if the decision whose execution is being requested is not enforceable under the legislation of Afghanistan;
 - h) if the decision rendered abroad was issued under conditions that did not afford sufficient protections with respect to the rights of the defendant.
- 2) No request for mutual legal assistance shall be refused on the basis of, or made subject to, unduly restrictive conditions.
 - 3) Secrecy or confidentiality provisions binding banks and other financial institutions or DNFBPs cannot be invoked as a ground for refusal to comply with the request.
 - 4) Assistance shall not be refused on the sole ground that the offence is also considered to involve fiscal matters.
 - 5) A decision of a court in relation to a request for mutual legal assistance may be subject to appeal.
 - 6) The Attorney General's Office shall promptly inform the foreign competent authority of the grounds for refusal to execute the request.

Article 58: Nature of offences

For the purposes of this law, money laundering and financing of terrorism shall not be regarded as political offences, or offences connected with a political offence, or offences inspired by political motives or fiscal offences.

Article 59: Transmission and processing of requests

- 1) The Ministry of Foreign Affairs has the responsibility and power to receive mutual legal assistance requests sent by competent foreign authorities with respect to money laundering, financing of terrorism, and predicate offences and it shall either execute them or transmit them to the competent authorities for execution. It shall ensure speedy and proper execution or transmissions of the request received or, if forwarded for execution, encourage speedy execution by competent authorities. In urgent cases, such requests may be sent through the International Criminal Police Organization (ICPO/Interpol) or directly by the foreign authorities to the judicial authorities of Afghanistan. In such cases the authority receiving the request shall notify the Attorney General's office.
- 2) Requests and answers shall be transmitted either by post or by other more rapid means of transmission that provides a written or materially equivalent record under conditions allowing the Attorney General to establish authenticity.

Article 60: Content of requests

- 1) Requests shall specify:
 - i) the identity of the authority requesting the measure;
 - ii) the name and function of the authority conducting the investigation, prosecution or proceedings;
 - iii) the requested authority;
 - iv) the purpose of the request and any relevant contextual remarks;
 - v) the facts in support of the request;
 - vi) any known details that may facilitate identification of the persons concerned, in particular name, marital status, nationality, address and location and occupation;
 - vii) any information necessary for identifying and tracing the persons, instrumentalities, funds or property in question;
 - viii) the text of the statutory provision establishing the offence or, where applicable, a statement of the law applicable to the offence and an indication of the penalty that can be imposed for the offence;
 - ix) a description of the assistance required and details of any specific procedures that the requesting State wishes to be applied.
- 2) In addition to requirements set forth in Paragraph 1, requests shall include the following particulars in certain specific cases:
 - a) in the case of requests for provisional measures: a description of the measures sought;
 - b) in the case of requests for the issuance of a confiscation order: a statement of the relevant facts and arguments to enable the judicial authorities to order the confiscation under domestic law;
 - c) in the case of requests for the enforcement of orders relating to provisional measures or confiscations:
 - i) a certified copy of the order, and a statement of the grounds for issuing the order if they are not indicated in the order itself;
 - ii) a document certifying that the order is enforceable and not subject to ordinary means of appeal;
 - iii) an indication of the extent to which the order is to be enforced and, where applicable, the amount for which recovery is to be sought in the item or items of property; i
 - iv) where necessary and if possible, any information concerning third-party rights of claim on the instrumentalities, proceeds, property or other things in question;

Article 61: Additional information

The Attorney General's Office or the competent authority handling the matter shall, either on their own initiative or at the request of the Attorney General, may request additional information from the competent foreign authority if it appears necessary to execute or facilitate the execution of the request.

Article 62: Requirement of confidentiality

Where a request requires that its existence and substance be kept confidential, such requirement shall be observed. If that is not possible, the requesting authorities shall be promptly informed thereof.

Article 63: Delay in complying with request

The Attorney General may delay the referral of requests to the competent authorities responsible for the execution of the request if the measure or order sought is likely to substantially interfere with an ongoing investigation or proceeding, it shall immediately so advise the requesting authority.

Article 64: Costs

The requesting country is required to bear the expenses of for legal cooperation.

Article 65: International cooperation for confiscation

- 1) The confiscation order issued pursuant to this law shall apply to funds and property listed in Article 40 under this Law, or to funds and property used or intended to be used to commit a terrorist financing or money laundering offense, notwithstanding if such funds or properties are located outside the Country.
- 2) If the confiscated funds and property cannot be presented, the court may provide for payment of a sum of money corresponding to the value of the funds and property.
- 3) If a request for the enforcement of a confiscation order of a foreign court is referred to an afghan court, the order of the afghan court shall be bound by the findings of fact on which the order of the foreign court is based.

Article 66: Establishment of Fund for Asset Recovery and for Asset Sharing

- (1) There is hereby established in the accounts of Afghanistan an account to be known as the [Afghanistan Recovered Assets Fund].
- (2) All moneys derived from the fulfillment of confiscation, recovery and forfeiture orders and from settlements of confiscation, recovery and forfeiture claims and ancillary income shall be credited to the [Afghanistan Asset Recovery Fund].

- (3) Provisions for implementation of this Fund, including receipts and disbursements, authorized payments and recovered assets from confiscation of proceeds, from money laundering, predicate offences and terrorist financing, instrumentalities or property of corresponding value or proceeds from non-conviction based proceedings and related provisional measures shall be made by regulation.

Article 67: Asset Sharing

Based on an agreement Afghanistan may share recovered assets with other States and Afghanistan can be one of the stakeholders in the monies and assets that are located in Afghanistan and confiscated through a verdict of a foreign court.

Article 68: Other Forms of International Cooperation

Competent authorities may, both spontaneously and upon request, rapidly, effectively and constructively cooperate with foreign competent authorities in relation to money laundering, terrorist financing, predicate offences. Competent authorities may use any powers that they have under this law in response to requests for assistance from any foreign competent authority.

EXTRADITION TREATIES

Extradition agreement between the Islamic Republic of Afghanistan and the State of the United Arab Emirates, 2008

THE ISLAMIC REPUBLIC OF AFGHANISTAN (sic) and THE STATE OF THE UNITED ARAB EMIRATES hereinafter referred to as “the Parties”.

Recalling the brotherly and friendly relations that exist between the two countries.

Deeply concerned at the magnitude of and rising trend in acts of international terrorism and organized crime, and

Desirous of strengthening and reinforcing cooperation between the two countries in combating crime.

Have agreed as follows:

Article 1

The Parties agree, in accordance with the provisions of this Agreement, to extradite to each other any person, found within the territories of one Party who is wanted by the other Party for the offences committed in the Requesting Party or for the execution of penalty for a crime that occurred partially or wholly within the jurisdiction of the Requesting Party subject to provisions of Article (2) of this Agreement, provided that the offence is extraditable according to the laws of both the Requesting and Requested Parties.

Article 2

Extradition shall be granted under this Agreement in the following cases:

- 1 - If the acts of the accused, according to the laws of Requesting and Requested Parties, constitute a crime that is punishable for imprisonment for a period not less than one year.
- 2 - If the competent Court in the Requesting Party, whether in the presence of or in absentia, has convicted the accused to imprisonment for a period not less than six months.

Article 3

- 1- The extradition shall be granted if, prima facie, the evidence available shows that according to the laws of the Requested Party that the person required for extradition has committed the crime for which extradition is requested or the person sought is convicted by the courts of the Requesting Party.

- 2- The requesting party shall not extradite the person to a third State, without the consent of the requested party. The person may be extradited to a third State, if he has not left the territory of the Requesting Party, within forty five days from the day when he has been set free to do so voluntarily returned to it, in pursuance of the provisions of paragraphs b and c of article (6) of this agreement.

Article 4

- 1- Extradition shall not be granted under this Agreement, in any of the following cases:
 - a. If the crime for which the extradition is requested is a political crime or a crime of a political nature or when it appears that the request for extradition is made with a view to prosecuting, trying or punishing the person for a political crime.
 - b. If the person sought had been tried and convicted or acquitted by the courts of the Requested Party or of a third State of the crime for which extradition is requested.
 - c. When the prosecution of the person sought would be barred by lapse of time under the laws of the Requested Party.
 - d. If the person has already undergone the punishment for the crime for which extradition is requested whether in the Requested Party or a third state.
 - e. If the person is enjoying political asylum in the Requested Party.
 - f. If the crime for which extradition has been requested is military crimes.
- 2- When the person sought is under investigation or has been convicted and is undergoing punishment in the Requested Party for a crime other than that for which extradition is requested, the Requested Party may defer his extradition till he completes his sentence or is discharged.
- 3- When the person whose extradition is requested is a national of the Requested Party it may refuse to extradite him in accordance with its national law. If it decides to refuse extradition, it shall submit the case to its competent authority to initiate the proceedings for the prosecution of the person in respect of all or any of the crimes for which extradition has been sought. The Requested Party shall inform the Requesting Party of any action taken and the outcome of the proceedings. Nationality shall be determined at the time of the commission of the crime for which extradition is requested.

Article 5

The following shall not be regarded as political crimes:

- a. Crime of assault or attempted assault against the President of the State, Head of Government or any member of their families. Crimes of assault or attempted assault against a member of the Supreme Council of the United Arab Emirates or any member of his family;
- b. Acts of terrorism.

Article 6

The Requesting Party shall not, except in any of the following circumstances, detain, prosecute, try or punish a person surrendered under this Agreement for an offence other than that for which extradition has been granted:

- a. when the extradited person commits a offence during his prosecution, trial, or during the interim period of serving the sentence;
- b. when he has not left the territory of the Requesting Party within forty-five days from the day when he has been set free to do so;
- c. when he has left the territory of the Requesting Party after his extradition and has voluntarily returned to it.

Article 7

1 - All requests for extradition shall be supported by:

- a. documents, statements, or other types of information which describe the identity, nationality and probable location of the person sought.
- b. a statement of facts of the crime and the procedural history of the case.
- c. a statement of the provision of the law describing the essential elements of the crime for which extradition is requested;
- d. a statement of the provisions of law describing the punishment for the crime.
- e. a statement of the provisions of the law describing any time limit on the prosecution or the execution of punishment for the crime, and.

2- In addition to the documents referred to in subparagraph (a) of paragraph (1) request for extradition of a person who is sought for prosecution shall be accompanied by such evidence as, according to the law of the Requested Party would provide probable cause for his arrest and committal for trial, if the crime had been committed there and:

- a. a copy of the warrant or order of arrest issued by a judge or other competent authority, and.
- b. a copy of the charging document.

3- A request for extradition relating to a person who has been convicted of the crime for which extradition is sought shall also be supported by:

- a. a copy of the judgment (sic) of conviction or if such copy is not available, statement by a judicial authority that the person has been convicted.
- b. information establishing that the person sought is the person to whom the conviction refers.

- c. a copy of the sentence imposed, and a statement establishing to what extent the sentence has been carried out, and
 - d. in the case of a person who has been convicted in absentia, the documents required in paragraph 2.
- 4- The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:
- a. they are certified by the diplomatic or consular officers of the Requested Party resident in the Requesting Party, or.
 - b. they are certified or authenticated in any other manner accepted by the law of the Requested Party.
- 5- If the competent authority in the Requested Party considers the information given in support of the request is not satisfactory to fulfill the conditions required by this Agreement, the Requesting Party should be informed of the same so as to submit additional information before a decision is taken on the extradition request. An extension of time limit may be mutually agreed for providing such information, if there are satisfactory reasons for the extension of time limit.

Article 8

- 1- The authorities concerned in the Requested Party shall inform the authorities concerned in the Requesting Party preferably within a period of two months from receipt of the extradition request of the decision taken in respect to the extradition whether negative or positive through the diplomatic channels or by any other means agreed upon.
- 2- In case the extradition is granted, the Requested Party shall determine the suitable means, notify the Requesting Party of the time, and place where and how the extradition shall take place.

Article 9

- 1- Upon receipt of the request for extradition, the Requested Party shall arrest and detain the person sought in accordance with its laws, until the Requested Party decides on the request for extradition. If the request for extradition is granted, the detention period shall continue until the person sought is handed over to the authorities of the Requesting Party. The detention period shall be remitted from the sentence passed against him.
- 2- If an order to surrender has been issued by the competent authorities of the Requested Party, it shall specify therein the place and the date of surrender and the length of time the person sought has already been kept in custody and give to the Requesting Party reasonable notice thereof. If the Requesting Party fails to take custody of the requested person within such time as may be stipulated by laws of the Requested Party, the Requested Party may set the person at liberty and may subsequently refuse to extradite such person.

Article 10

If extradition is requested concurrently by more than one State, of the same person, either for the same offence or for different offences, the Requested Party shall make its decision to which of such State it will extradite the person, having regard to all the circumstances especially the relative seriousness and place of commission of the offence(s), the respective dates of the requested, the nationality of the person claimed and the possibility of subsequent extradition to another State.

Article 11

- 1- In case of urgency and on a request by the competent authority in the Requesting Party, the Requested Party shall take prompt and appropriate action, pending the receipt of documents referred to Article (7).
- 2- The competent authority in the Requested Party shall terminate the action taken under paragraph (1), if the documents referred to in Article (7) are not delivered to the Requested Party within thirty days from the date of such request.

Article 12

- 1- The Requested Party, within the authority of the law and without prejudice to the rights of others, shall seize the materials stated below and deliver the same to the Requesting Party at the time of extradition of the person or immediately after that:
 - a- things used to commit the crime or which constitute an evidence of the crime;
 - b- things obtained by committing the crime if in the possession of the wanted person or found at the time of his arrest;
 - c- things exchanged with other things obtained from the crime.
- 2- The Requesting Party shall pay all expenses incurred on the delivery of the seized materials.
- 3- If the seized materials, as in Paragraph (1) of this Article are still required for the investigation of the crime pending in the Requesting Party, then the delivery of those materials may be delayed, or be delivered on condition that they shall be returned after the conclusion of the proceedings in the case in the Requesting Party.
- 4- If the Requested Party or any other country has any legal rights in the seized materials, these rights shall not be affected due to delivery. The Requesting Party shall be obliged to return those materials without any charges wherever the purposes for the delivery are completed.

Article 13

- 1- When either of the Parties is to have a person extradited from a third State through the territory of the other Party, the former shall request the latter for the permission of such transit.
- 2- The Requesting Party shall, in so far as it is not contrary to its national laws, approve the request for transit made by the Requesting Party.
- 3- No permission is required where air transport is used and no landing is scheduled for.
- 4- In case of an un-scheduled landing, the Requesting Party in whose territory landing occurs shall assist in effecting the transit. If the person who is being extradited, is a national of the Party in whose territory such landing occurs, that person shall be handed over to that Party which shall in turn comply with the provisions of Article (4) of this Agreement.

Article 14

- 1- Each of the Parties undertakes to grant, in accordance with its laws, passage across its territory to the person to be extradited under the provisions of Article 13 on a request to that effect made through the diplomatic channels.
- 2- The request shall be supported by the documents pertaining to crime for which extradition may be granted under the provisions of this Agreement.

Article 15

The Requesting Party shall bear all expenses necessary for the implementation of the extradition request and also pay all expenses for the return of the extradited person to the Requested Party, in case the said expenses are excessive the parties shall consult with each other to settle the same.

Article 16

- 1- The Requesting Party shall notify the Requested Party of the outcome of the proceedings against the extradited person.
- 2- In case of conviction, the Requesting Party shall provide the Requested Party with an authenticated copy of the final judgement.

Article 17

- 1- The Central Authority of each Party shall make and receive requests pursuant to this Agreement:
For The Islamic Republic of Afghanistan, the Central Authority- shall be the Ministry of Justice.
For the State of the United Arab Emirates the Central Authority shall be the Ministry of Justice.

- 2- The Central Authorities shall communicate with one another through diplomatic channels for the purpose of this Agreement.
- 3- All requests and supporting documents shall be done in duplicate in the language of the Requested Party or in English language, and shall be officially signed and sealed by the competent authorities and authenticated by the central authority in the Requested Party unless otherwise the Parties agree.

Article 18

- 1- This Agreement is subject to ratification, the instruments of ratification shall be exchanged. This Agreement shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.
- 2- Either Party may terminate this Agreement by notice in writing through diplomatic channels at any time. Termination shall take effect six months after the date on which the notice is given. However, proceedings already commenced before notification shall continue to be governed by this Agreement until conclusion therein.

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

DONE at Abu Dhabi on Sunday the 19th of October 2008, in duplicate in the Dari, Arabic and English languages, all texts being equally authentic. In the event of any differences in interpretation of this Agreement, The English text shall prevail.

**FOR THE
ISLAMIC REPUBLIC OF
AFGHANISTAN**

**Rangin Dadfar Spanta
Minister of Foreign Affairs**

**FOR THE
STATE OF THE UNITED ARAB
EMIRATES**

**Hadef Bin Jouan Al Dhaheri
Minister of Justice**

TRANSFER OF OFFENDERS TREATIES

Agreement on the Transfer of sentenced Persons between the Islamic Republic of Afghanistan and the United Arab Emirates, 2013

The Islamic Republic of Afghanistan and the United Arab Emirates hereinafter referred to as the “States”

DESIRING to facilitate the integration of the sentenced persons into society through giving them the opportunity to serve their sentences in their own countries,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement the following words and terms shall bear the meanings given opposite each:

1. “**Punishment**” any punishment or imprisonment or detention or any other measure involving deprivation of liberty issued by court or Tribunal in the territory of the sentencing State on account of a Criminal offence.
2. “**Sentenced Person**” the person against whom a judgment” is passed involving deprivation of liberty issued in the territory of the Sentencing State.
3. “**Sentencing State**” the State in which the sentence is imposed on the person who may be, or has been transferred
4. “**Administering State**” the State to which the sentenced person may be transferred to serve the sentence or the remaining term thereof.
5. “**Sentence**” any judicial decision involving deprivation of liberty for a limited term on account of a criminal offence.
6. “**Citizen**” shall mean what is provided for in the laws of both States.

Article 2

The States undertake to cooperate to the extent possible regarding the transfer of sentenced persons in accordance with the terms provided for in this Agreement.

Article 3

A sentenced person may be transferred from the territory of the Sentencing State to the territory of the Administering State in order to serve the sentence or the remaining term thereof, in accordance with the terms provided for in this Agreement.

Article 4

Subject to the provisions of article 8 of this Agreement, a request for transfer may be made by the Sentencing State or the Administering State, just as the sentenced person, or his legal representative may express his interest to the Sentencing State or the Administering State in being transferred.

Article 5

Central Authority

1. For the purposes of this Agreement, the Central Authorities designated by the States shall communicate with each other through diplomatic channels in connection with the matters relating to requests for transfer.
2. The Central Authority for the Islamic Republic of Afghanistan shall be the Ministry of Justice and for the United Arab Emirates shall be the Ministry of Justice.
3. In case any State changes its Central Authority, it shall notify in writing the other State of such change, through diplomatic channels.

Article 6

Requests

1. Requests for transfer and supporting documents shall be made in writing and addressed to the central authority of the Requested State through diplomatic channels.
2. Requests for transfer and attached documents shall be made in the official language of the Requesting State accompanied by a translation into the official language of the Requested state or into the English language, and shall be signed, sealed and certified by the requesting authority and without any further authentication in this respect.

Article 7

Form and Content of Requests

1. For the purpose of taking a decision as to a request made by the Sentencing State under this Agreement, the Sentencing State shall provide the administering state provide the Administering State with the following information and documents:
 - a) the full name, date and place of birth of the sentenced person;
 - b) the nature, duration, and date of execution of the sentence, and a statement indicating the remaining term of the sentence and the information regarding the provisional detention or remission of the sentence or any other element relating to the execution of the sentence.
 - c) a true copy of the sentence and a copy of the text of the law which has been applied.

- d) a medical or social report or any other report concerning the sentenced person, if necessary, and any information regarding the treatment he has been receiving in the sentencing State and any recommendation in respect of which such treatment is followed in the Administering State – if necessary.
2. For the purpose of taking a decision as to a request made by the Administering State under this Agreement, the Administering State shall forward the following information and documents to the Sentencing State;
 - a) statement or a document indicating that the sentenced person is a national of the Administering State;
 - b) a copy of the relevant legal provisions which provide that the act or omission on account of which the sentence has been imposed constitute a criminal offence in the Administering State if it is committed in its territory.
 - c) a statement whether the transferred person is requested or accused or sentenced for other cases in the Sentencing State.
 - d) an undertaking not to grant pardon for the person requested to be transferred without the consent of the Sentencing State.
 3. In case the Sentencing State agrees to transfer a person according to a request submitted by the Administering State, the Sentencing State shall transfer the information and documents mentioned in Paragraph 1 of this Article.

Article 8

Conditions for Transfer

The sentenced person may be transferred under this Agreement on the following conditions:

1. If the sentenced person is a national of the Administering State.
2. If the judgment is final and executable.
3. If the part of the sentence still to be served at the time of the receipt of the request is at least six (6) months, unless otherwise agreed.
4. If the act or omission subject of the sentence constitutes an offence under the laws of the Administering State if committed in its territory.
5. If both the Sentencing and the Administering States agree to the transfer.

Article 9

Denial of Request for Transfer

1. A request for transfer shall be denied:
 - a) If transfer would prejudice sovereignty, security, public order or any other essential interest of the Sentencing State.
 - b) If the offence for which the sentence is delivered is an offence under military law.
 - c) If the execution of sentence in the Administering State differs from that in the Sentencing State, to an extent that affects the execution of the sentence, unless otherwise agreed on the terms and conditions under which the request may be executed.
 - d) If the Administering State does not submit undertaking not to grant pardon for the person to be transferred as provided for in Article 7/2/d of this Agreement.
2. A request for transfer may also be denied:
 - a) If the sentenced person has not satisfied the payment of fines, court costs, compensations or other pecuniary judgments in the Sentencing State.
 - b) If a law suit is filed against the sentenced person before the courts of the sentencing state asserting any other right to pecuniary amounts.

Article 10

1. The competent authorities of the Administering State shall follow up the execution of the sentence according to its laws in pursuance of Article 11 of this Agreement.
2. Sentence shall be executed according to the laws of Administering State that solely has the right to take the appropriate decisions, subject to the provisions of Articles 12 and 13 of this Agreement.

Article 11

Continued Execution

The Administering State shall be bound nature and term of the sentence.

Article 12

Amnesty and Pardon

1. The Sentenced person shall be subject to the general amnesty granted by the Sentencing State or the Administering State.
2. The sentenced person shall be subject to pardon granted by the Sentencing State.
3. The sentenced person shall not be subject to pardon or conditional discharge or other pardon granted by the Administering State, safe with consent of the Sentencing State.

Article 13

Termination of Execution

The Administering State shall terminate the sentence as soon as it is informed by the Sentencing State of any decision or measure terminating the execution of the sentence.

Article 14

Information on Execution

The Administering State shall inform the Sentencing State of the following:

1. Expiry of the sentence.
2. Escaping of the sentenced person before completion of the sentence. In such case the Administering State shall have to take the appropriate measures to arrest and commit him for trial according to the law in the Administering State.
3. The Administering State shall provide, on a case by case basis, a periodic report on the execution of the sentence if so requested by the Sentencing State, and in pursuance of the remaining term of the execution.

Article 15

Ne bis In Idem

A sentenced person may not be arrested, committed for trial or convicted in the Administering State for the same offences he was sentenced before transfer to the Sentencing State.

Article 16

Expenses

1. The Administering State shall bear the expenses resulting from transfer of the sentenced persons, save that expenses incurred in the territory of the Sentencing State which shall be born only by the same State.
2. If it appears that the execution of the request requires expenses of extraordinary nature, the States shall consult with each other to determine the terms and conditions under which the request may be executed.

Article 17

Consultation

The Central Authorities of the States may consult with each other to promote the effectiveness of this Agreement. The Central Authorities may also take any practical measures that may be necessary for facilitating the implementation of this Agreement.

Article 18

Application

This Agreement shall apply to the sentences delivered before or after its entry into force.

Article 19

Settlement of Disputes

Any disputes arising from the interpretation or application of this Agreement shall be settled by consultation between the States through diplomatic channels.

Article 20

Entry into Force, Duration and Termination

1. This Agreement shall be subject to ratification and the instruments of ratification shall be exchanged. This Agreement shall come into force on the thirtieth day after the date of the exchange of the instruments of ratification.
2. This Agreement may be amended by mutual agreement of the States, and the provisions of paragraph 1 shall be applied thereof.
3. Either State may terminate this Agreement by a notice in writing through diplomatic channels at any time. Termination shall take effect six months after the date on which the notice is given. However termination of this Agreement shall not affect any proceedings commenced until the conclusion thereof.

IN WITNESS WHEREOF the undersigned being duly authorized thereto by their respective governments have signed this Agreement.

signed in Abu Dhabi this **Wednesday** day of **31** Month of **July 2013**, into two originals, each in Dari, Pashto, Arabic and English languages. All texts being equally authentic, in the event of any differences in interpretation of this Agreement the English text shall prevail.

FOR
THE ISLAMIC REPUBLIC
OF AFGANISTAN

FOR
THE UNITED ARAB EMIRATES

BANGLADESH

NATIONAL LAWS

The Extradition Act, 1974 (ACT No. LVIII of 1974)

An Act to consolidate and amend the law relating to the extradition of fugitive offenders.

WHEREAS it is expedient to consolidate and amend the law relating to the extradition of fugitive offenders;

It is hereby enacted as follows:-

CHAPTER I PRELIMINARY

1. **Short title, commencement and application.** (1) This Act may be called the Extradition Act, 1974.
 - (2) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.
 - (3) It shall apply in relation to the return of persons to, and to persons returned from,-
 - (a) a treaty State, subject to a declaration under section 3, if any; and
 - (b) a foreign State not being a treaty State, subject to a direction under section 4.
2. **Definitions.** (1) In this Act, unless there is anything repugnant in the subject or context,-
 - (a) “extradition offence” means an offence the act or omission constituting which falls within any of the descriptions set out in the Schedule and, if it took place within, or within the jurisdiction of, Bangladesh would constitute an offence against the law of Bangladesh and also-
 - (i) in the case of a treaty State, an offence a person accused of which is, under the extradition treaty with that State, to be returned to or from that State; and
 - (ii) in the case of a foreign State not being a treaty State, an offence specified in a direction issued under section 4;
 - (b) “extradition treaty” means a treaty or agreement between Bangladesh and a foreign State for the extradition to or from such State of a person accused or convicted of an extradition offence;
 - (c) “foreign State” includes every constituent part, or dependency, of such State and any territory under the sovereignty or trusteeship of the State;

- (d) “fugitive offender” means the person who, being accused or convicted of an extradition offence is, or is suspected to be, in any part of Bangladesh;
 - (e) “prescribed” means prescribed by rules made under this Act;
 - (f) “treaty State” means a foreign State with which an extradition treaty is for the time being in operation.
- (2) In determining for the purposes of this Act whether an offence against the law of a foreign State falls within a description set out in the Schedule, any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute that offence under the law shall be disregarded.
3. **Treaty State.** (1) As soon as may be after the commencement of this Act, the Government shall publish in the official Gazette a list of the foreign States with which an extradition treaty is in operation, specifying in respect of each such State the offences persons accused of which are, under the treaty, to be returned to or from that State.
- (2) Whenever there is concluded an extradition treaty between Bangladesh and a foreign State, the Government may, by notification in the official Gazette, declare such State to be a treaty State for the purposes of this Act.
- (3) A declaration under sub-section (2) in relation to a foreign State shall specify the offences persons accused of which are, under the extradition treaty with that State, to be returned to or from that State and may provide that this Act shall apply in relation to that State with such modifications, exceptions, conditions and qualifications, if any, as may be set out therein; and the provisions of this Act shall have effect accordingly.
4. **Application of Act to non-treaty States.** (1) Where the Government considers it expedient that the persons who, being accused or convicted of offences at places within, or within the jurisdiction of, a foreign State, are or are suspected to be in Bangladesh should be returned to that State, notwithstanding that there is no extradition treaty with that State, it may, by notification in the official Gazette, direct that the provisions of this Act shall, with respect to such offences and subject to such modifications, exceptions, conditions and qualifications, if any, as may be specified therein, have effect in relation to that State.
- (2) Where a direction under sub-section (1) in relation to a foreign State is in force, the provisions of this Act shall, with respect to the offences specified in that direction, have effect in relation to such State as if it were a treaty State.

CHAPTER II

SURRENDER OF FUGITIVE OFFENDERS

5. **Liability of fugitive offenders to be surrendered.** (1) Subject to the provisions of sub-section (2), every fugitive offender shall be liable to be apprehended and surrendered in the manner provided in this Act, whether the offence in respect of which his surrender is sought was committed before or after the commencement of this Act and whether or not a Court in Bangladesh has jurisdiction to try that offence.
- (2) No fugitive offender shall be surrendered,-
- (i) if the offence in respect of which his surrender is sought is of a political character or if it is shown to the satisfaction of the Government or of the Magistrate or Court before whom he may be produced that the requisition for his surrender has, in fact, been made with a view to his being tried or punished for an offence of a political character;
 - (ii) if the offence in respect of which his surrender is sought is not punishable with death or with imprisonment for life or a term which is not less than twelve months;
 - (iii) if the prosecution for the offence in respect of which the surrender is sought is, according to the law of the State asking for the surrender, barred by time;
 - (iv) if there is no provision in the law of, or in the extradition treaty with, the state asking for the surrender that the fugitive offender shall not, until he has been restored or has had an opportunity of returning to Bangladesh, be detained or tried in that State for any offence committed prior to his surrender, other than the extradition offence proved by the facts on which the surrender is based;
 - (v) if he has once been tried in Bangladesh in respect of which his surrender or return is sought and convicted or acquitted of such offence;
 - (vi) if it appears to the Government that he is accused of alleged to have been convicted of such an offence that if he were charged with that offence in Bangladesh he would be entitled to be discharged under any law relating to previous acquittal or conviction;
 - (vii) if he has been accused of some offence in Bangladesh not being the offence for which his surrender is sought, or is undergoing sentence under any conviction in Bangladesh, until after he has been discharged, whether by acquittal or on the expiration of his sentence or otherwise;
 - (viii) if it is shown to the satisfaction of the Government or of the Magistrate or Court before whom he may be produced that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
6. **Extradition by endorsed warrant procedure.** (1) Where a warrant for arrest of a fugitive offender has been issued in a treaty State, being a Commonwealth Country or such neighbouring country as the Government may specify in this behalf, and the extradition treaty with that State so provides, the Government may, if it is satisfied that the warrant was issued by a person having lawful authority to

issue the same, endorse such warrant in the manner prescribed, and the warrant so endorsed shall be sufficient authority to arrest the person named in the warrant and to bring him before any Magistrate in Bangladesh.

(2) When a fugitive offender appears or is brought before a Magistrate in pursuance of a warrant endorsed under sub-section (1), the Magistrate,-

(a) if he is satisfied on inquiry that the warrant so endorsed is duly authenticated and that the offence of which the fugitive offender is accused or has been convicted is an extradition offence, shall commit such offender to prison to await his return and shall forthwith send to the Government a certificate of committal; and

(b) if he is not so satisfied, may, pending receipt of the orders of the Government, detain such offender in custody or release him on bail.

(3) The Magistrate making an inquiry under sub-section (2) shall report the result of the inquiry to the Government and together with such report forward any written statement which the fugitive offender may desire to submit for consideration of the Government.

(4) The Government may, after a fugitive offender has been committed to prison under sub-section (2), issue a warrant for the custody and removal of the fugitive offender to the state concerned and for his delivery at a place and to the person to be named in the warrant.

7. **Requisition for surrender and order of Magisterial enquiry.** (1) Except as provided in section 7, a requisition for the surrender of a fugitive offender shall be made to the Government,-

(a) by a diplomatic representative in Bangladesh of the State asking for the surrender; or

(b) by the Government of the State asking for the surrender through the diplomatic representative of Bangladesh in that State; or

(c) in such other manner as may have been settled by arrangement between the Government and the Government of the State asking for the surrender.

(2) Where a requisition is made under sub-section (1), the Government may, if it thinks fit, issue an order to enquire into the case to any Magistrate of the first class who would have had jurisdiction to enquire into the extradition offence to which the requisition relates if it had been an offence committed within the local limits of his jurisdiction.

(3) On receipt of an order under sub-section (2), the Magistrate shall issue a summons or a warrant for the arrest of the fugitive offender according as the case appears to be one in which according to the law of Bangladesh a summons or warrant would ordinarily issue.

8. **Magisterial enquiry.** When the fugitive offender appears or is brought before him in pursuance of a summons or warrant issued under sub-section (3) of section 7 the Magistrate shall enquire into the case in the same manner, and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a Court of session and shall take such evidence as may be produced in support of the surrender and on behalf of the fugitive offender, including any evidence to show that the offence of which the fugitive offender is accused or alleged to have been convicted is an offence of a political character or is not an extradition offence.

9. **Receipt in evidence of exhibits depositions etc.** (1) In any proceedings against a fugitive offender under this Act, exhibits and depositions whether or not they are received or taken in the presence of the person against whom they are used, and copies thereof, and official certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence.
- (2) Warrants, depositions or statements on oath which purport to have been issued, received or taken by any Court of Justice outside Bangladesh or copies thereof, and certificates of, or judicial documents stating the fact of, conviction before any such Court, shall be deemed duly authenticated,-
- (a) if the warrant purports to be signed by a Judge, Magistrate, or officer of the State where the same was issued or acting in or for such State;
- (b) if the depositions or statements or copies thereof purport to be certified, under the hand of a Judge, Magistrate or officer of the State where the same were taken of acting in or for such State, to be the original depositions or statements or to be true copies thereof, as the case may require;
- (c) if the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a Judge, Magistrate or officer of the State where the conviction took place or acting in or for such State; and
- (d) if the warrant, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a Minister of the State where the same were respectively issued, taken or given.
- (3) For the purposes of this section, “warrant” includes any judicial document authorising the arrest of any person accused or convicted of an offence.
10. **Magistrate to report after enquiry.** If, after the enquiry under section 8, the Magistrate is of opinion,-
- (a) that a prima facie case has not been made out in support of such requisition, for surrender of the fugitive offender, he shall discharge the fugitive offender and make a report to that effect to the Government;
- (b) that a prima facie case has been made out in support of such requisition, he shall-
- (i) report the result of his enquiry to the Government;
- (ii) forward, together with such report, any written statement which the fugitive offender may desire to submit for the consideration of the Government; and
- (iii) subject to any provision relating to bail, commit the fugitive offender to prison to await the orders of the Government.
11. **Removal and delivery of the fugitive offender.** If, upon receipt of the report and statement under clause (b) of section 10, the Government is of opinion that the fugitive offender ought to be surrendered, it may issue a warrant for the custody and removal of the fugitive offender and for his delivery at a place and to a person to be named in the warrant:

Provided that the fugitive offender shall not be so delivered until after the expiration of fifteen days from the date he has been taken in custody under such warrant.

12. **Discharge of person apprehended if not surrendered within two months.** If a fugitive offender who, in pursuance of this Act, has been taken into custody to await his surrender, is not conveyed out of Bangladesh within two months after such committal, the High Court Division upon application made to it by or on behalf of the fugitive offender and upon proof that reasonable notice of the intention to make such application has been given to the Government may order such prisoner to be discharged unless sufficient cause is shown to the contrary.
13. **Power to the Government to discharge a fugitive offender.** If it appears to the Government that by reason of the trivial nature of the case or by reason of the application for the surrender of a fugitive offender not being made in good faith or in the interest of justice or for any other reason, including unreasonable delay on the part of the state asking for the surrender to receive delivery of the fugitive offender, it would be unjust or inexpedient to surrender the fugitive offender, it would be unjust or inexpedient to surrender the fugitive offender, it may, by order, at any time stay the proceedings under this Act against him and direct any summons or warrant issued under this Act to be cancelled and the fugitive offender, if he is in custody or under detention, to be discharged.
14. **Simultaneous requisitions.** If requisitions for the surrender of a fugitive offender are received from more than one treaty State, the Government may, having regard to the circumstances of the case, surrender the fugitive offender to such State as it may think fit.

CHAPTER III

SURRENDER TO BANGLADESH OF THE PERSONS ACCUSED OF EXTRADITION OFFENCES

15. **Requisition for surrender of persons to Bangladesh.** A requisition for the surrender to Bangladesh of a person who, being accused or convicted of an extradition offence, is or is suspected to be in a treaty State may be made by the Government,-
 - (a) to the diplomatic representative in Bangladesh of that State;
 - (b) to the Government of that State through the diplomatic representative of Bangladesh in that State; or
 - (c) in such other manner as may have been settled by arrangement between the Government and the Government of that State.
16. **A person surrendered by a treaty State not to be tried for previous offence.** A person surrendered by a treaty State in pursuance of a requisition under section 15 shall not, until he has been restored or has had an opportunity of returning to that State, be tried in Bangladesh for an offence committed prior to the surrender, other than the extradition offence proved by the facts on which the surrender is based.
17. **Return of the persons surrendered to Bangladesh.** The Government may, if it thinks fit, on

the request of a person surrendered to Bangladesh in pursuance of a requisition under section 15, arrange for him to be sent back at the cost of the Government and with as little delay as possible to that State by which he was so surrendered if,-

- (a) proceedings against him for the offence for which he was surrendered are not begun within the period of six months from the day of his arrival in Bangladesh; or
- (b) he is acquitted or discharged on his trial for that offence.

CHAPTER IV MISCELLANEOUS

18. **Jurisdiction as to offences committed at sea or in air.** Where the offence in respect of which the surrender of a fugitive offender is sought was committed on board any vessel on the high seas or any aircraft in the air outside Bangladesh or the Bangladesh territorial waters and such vessel or aircraft comes into any port or aerodrome of Bangladesh with the fugitive offender on board, the Government and any Magistrate having jurisdiction in such port or aerodrome may exercise the powers conferred on it or him by this Act.
19. **Release of persons arrested on bail.** The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to bail shall apply to a fugitive offender arrested or detained under this Act in the same manner as they would apply if he were accused of committing in Bangladesh the offence of which he is accused or has been convicted; and in relation to such bail the Magistrate before whom he is brought shall have, as far as may be, the same powers and jurisdiction as a Court of session under that Code.
20. **Property found on fugitive offender.** Everything found in the possession of a fugitive offender at the time of his arrest which may be material as evidence in proving the extradition offence may be delivered up with the fugitive offender on his surrender, subject to the rights, if any, of third parties with respect thereto.
21. **Custody and re-taking on escape of fugitive offender.** (1) Any person to whom a warrant issued in pursuance of the provisions of this Act is directed may receive, hold in custody and convey the fugitive offender mentioned in the warrant to the place named therein.
- (2) Where a fugitive offender escapes out of any custody to which he may be delivered in pursuance of a warrant, he may be re-taking as if he were a person accused of an offence against the law of Bangladesh and had escaped from lawful custody.
22. **Power to make rules.** (1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
- (a) the form in which a requisition for the surrender of a fugitive offender may be made;

- (b) the removal of fugitive offenders apprehended or in custody under this Act and their control and maintenance until such time as they are handed over to the persons entitled to receive them;
- (c) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence with respect to which this Act applies; and
- (d) the form and manner in which the Magistrate may be required to make his report to the Government under this Act.

23. **Power to amend the Schedule.** The Government may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.

24. **Repeal.** The Extradition Act, 1903 (XV of 1903), is hereby repealed.

Government of the People's Republic of Bangladesh
Ministry of Law, Justice and Parliamentary Affairs
Legislative and Parliamentary Affairs Division

NOTIFICATION

Dated the 09th July, 2012

S.R.O. No. 255- Law/2012. -In exercise of the powers conferred by section 40 of the Mutual Legal Assistance in Criminal Matters Act, 2012 the Government is pleased to publish the following English translation of the Act to be called the Authentic English Text of the Act, and it shall be effective from the date on which the Act comes into force under sub-section (2) of section 1 of the Act:

The Mutual Assistance in Criminal Matters Act, 2012

Act No. IV of 2012

[20 February, 2012/8 Falgun, 1418]

An Act to provide for Mutual Legal Assistance in Criminal Matters

Whereas it is expedient and necessary to make provisions for giving or receiving inter-states assistance in enquiry, prosecution and judicial proceedings in relation to criminal matters including the matters for freezing and seizing of the proceeds of crime or terrorist property;

Therefore it is hereby enacted as follows :-

Chapter I

Preliminary

1. Short title and commencement.-(1) This Act may be called the Mutual legal Assistance in Criminal Matters Act, 2012.
(2) It shall come into force at once.
2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-
 - (1) "**criminal matters**" means enquiry, investigation, judicial or other proceeding in respect of the offences falling under the laws of Bangladesh and the requesting State and includes the following matters, namely :-
 - (a) to determine whether any property is proceeds of crime or instrumentalities of crime or terrorist property or is involved in money laundering;
 - (b) a possible confiscation order, whether or not based on an criminal charge;
 - (c) the freezing or seizure of proceeds of crime or instrumentalities of crime or terrorist property.

- (2) “**competent authority**” means any organization which is asked for by the Central Authority on request of a foreign State for assistance under this Act to take steps and is authorized and able for affording such assistance;
- (3) “**agreement**” means any treaty, convention or other international contracts in which Bangladesh is a party and there contains one or more provisions regarding mutual assistance in criminal matters;
- (4) “**Central Authority**” means the authority determined in accordance with section 3 of this Act;
- (5) “**computer data**” means representation of any facts, information or concepts in a form suitable for processing in a computer system and also includes a programme suitable for any function;
- (6) “**computer system**” means one or more interconnected devices which make any programme or automatically process or record data;
- (7) “**subscriber information**” means any information contained in the form of data or any other form that is held by a service provider for the services of subscriber; but shall not include such traffic or content data by which the following matters can be established, namely:—
 - (a) the type of communication services used, the technical provisions relating thereto and the period of service;
 - (b) the subscribers identity, postal or other address, telephone and other access number; billing and payment information as well as any other information on the site of the installation of the communication equipments which is disclosed by or from the service;
- (8) “**traffic data**” means any computer data relating to a communication by means of a computer system that is generated by a computer system and forms a part in the chain of communication indicating the origin, destination, route, time, date, size, duration or type of communication;
- (9) “**freezing or seizure**” means temporarily prohibiting the transfer, conversion, disposition or movement of any property or temporarily assuming custody or control of the property on the basis of an order issued by a court or other competent authority and shall also include a restraining order;
- (10) “**Code of Criminal Procedure**” means the Code of Criminal Procedure, 1898 (Act No. V of 1898);
- (11) “**assistance**” means enquiry, prosecution, confiscation and judicial and other criminal proceedings;
- (12) “**terrorist property**” means any property which is, partly or on the whole, used or derived from by using directly or indirectly in terrorist activities and any property of any person, organization or entity identified as terrorist by Bangladesh or any foreign State;
- (13) “**service provider**” means-
 - (a) any government or non-government person or organization that provides any user with the ability to communicate by means of a computer system; and
 - (b) any other person, entity or organization that processes or stores computer data on behalf of such service or the users of such service.

Chapter-II

Central Authority

3. **Central Authority.**-(1) For the purposes of this Act, the Government shall by notification in the official Gazette, determine the Central Authority.
 - (2) The Central Authority may vest in all or any of its powers to any government officer.
4. **Power and duties of the Central Authority.**- The Central Authority shall have the following duties, namely:-
 - (a) to receive requests for assistance from any foreign State and to send it to a competent authority for taking action;
 - (b) to receive requests made by Bangladesh for assistance from any foreign State and upon the request, to make a request to the foreign State for giving the assistance;
 - (c) to consider and determine whether any assistance shall be given or received;
 - (d) to follow up the activities of the concerned competent authority in giving assistance and assist to conclude the activities of the requesting State through disposition thereof;
 - (e) to exercise the authority and power of a coordinator in the case of giving or receiving assistance to or from a foreign State under this Act;
 - (f) to determine terms and conditions and make procedural provisions with a view to responding the requests for assistance for the purposes of this Act; and
 - (g) to take necessary measures for the implementation of the requested assistance under this Act.
5. **Advisory Board.**- There shall be an Advisory Board to assist the competent authority by giving opinion in any case where there is possibility of involving the question of sovereignty and national security, important public interest, international relation or military offences in the matter of receiving assistance from any foreign State or giving assistance to any foreign State, and the Advisory Board shall consist of the following members, namely :-
 - (a) one representative not below the rank of Additional Attorney General nominated by the Attorney General, who shall also be the Chairman of the Advisory Board;
 - (b) one representative not below the rank of a Joint Secretary nominated by the Ministry of Home;
 - (c) one representative not below the rank of a Joint Secretary nominated by the Ministry of Defence;
 - (d) one representative not below the rank of the Director General nominated by the Ministry of Foreign Affairs;
 - (e) one representative not below the rank of Joint Secretary nominated by the Legislative and Parliamentary Affairs Division;
 - (f) one representative not below the rank of a Joint Secretary nominated by the Finance Division;

- (g) one representative not below the rank of a Joint Secretary nominated by the Bank and Financial Institution Division;
 - (h) the Solicitor, Ministry of Law, Justice and Parliamentary Affairs;
 - (i) one representative not below the rank of a Joint Secretary nominated by the Division of Armed Forces;
 - (j) one member nominated by the Central Authority, who shall perform the duties of the Member-Secretary of the Advisory Board; and
 - (k) one representative having experience in the relevant matter nominated by the Government.
6. **Procedures of the Advisory Board.**-(1) If the Central Authority requests, the meetings of the Advisory Board shall be convened by the Member-Secretary of the Advisory Board with consent of the Chairman of the Advisory Board at such places and times as may be determined by him.
- (2) The Central Authority shall provide the secretarial assistance to the Advisory Board.
 - (3) Subject to the other provisions of this section, the Advisory Board may determine its procedures.
 - (4) The Advisory Board shall determine its tenure unanimously, unless it is determined by the Central Authority.
 - (5) The first meeting of the Advisory Board may be convened by the Central Authority.
7. **Finality of decision.**- In case of receiving or giving assistance under this Act, the decision of the central authority shall be deemed to be final:

Provided that, if the Central Authority does not agree with the opinion of the Advisory Board, the matter shall be referred to the Minister in charge of the Ministry of Law, Justice and Parliamentary Affairs and in this regard his decision shall be final.

Chapter-III
Giving Assistance and Requests for Assistance

Part-1
General Provisions

8. **Scope of assistance.**-(1) Whether there is any agreement between Bangladesh and any other foreign State regarding mutual assistance in criminal matters or not, if any request is made by a foreign State for assistance in any enquiry, investigation and in any judicial or other proceedings in respect of committing any offence and if the offence is punishable under the laws of that country, the best mutual assistance about the matter shall be given:

Provided that, in the request letter, it shall be certified that if such assistance is asked for by Bangladesh to the requesting State, the State shall also reciprocally give such assistance.

- (2) Notwithstanding anything contained in sub-section (1), if there is no agreement between the requesting State and Bangladesh regarding the mutual assistance in criminal matters, or otherwise provided in the agreement, if there is any, the offence for which assistance is asked for shall be required to be punishable under the existing laws of Bangladesh.

- (3) In case of mutual assistance under this Act, the following matters shall be included, namely:-

- (a) searching or identifying any person;
- (b) taking testimony or statements of any person;
- (c) issuing the process of any foreign court;
- (d) providing original or certified copies of documents, records and information regarding the relevant matter in which the banking, financial, corporate or commercial records shall also be included;
- (e) ensuring the availability of the arrested or any other person for giving assistance in any investigation or taking testimony;
- (f) enquiry and confiscation or arrest; and
- (g) any kinds of assistance not inconsistent with this Act which the concerned States are mutually agreed upon to provide with.

- (4) In case of mutual assistance under this Act, the following matters shall not be included, namely:-

- (a) detaining or keeping detained any person for the purpose of extradition;
- (b) transferring any person kept in custody for giving punishment;
- (c) transferring any subject matter under trial in a court of Bangladesh; and
- (d) on offence committed under Military Law, but not an offence under ordinary criminal law.

- (5) In the case of request for assistance from any International Tribunal, the provisions of this Act may also be applied.

9. **To send and receive requests for assistance.**-(1) The countries having agreements with Bangladesh may make a request to the Central Authority for assistance following the Rules of Business of the Government.
- (2) The countries having no agreement with Bangladesh regarding assistance shall submit its request to the Central Authority through diplomatic channel.
- (3) A request for any kind of assistance shall be submitted in accordance with such form, provisions or procedures as may be prescribed by the Central authority.
- (4) If any request for assistance is received from any foreign State, the Central Authority shall consider whether the request is sent by following the proper procedure and necessary documents are affixed along with the request that is, whether the request for assistance is fit for giving assistance, and if the request seems to be fit for giving assistance, the Central Authority shall send it to the competent authority for taking next measures.
10. **To refuse or suspend request for assistance.**-(1) If the request for assistance is not fit for giving assistance, it may be refused, and the matter regarding the refusal, shall, with reasons thereof, be informed to the requesting state.
- (2) If the request may, subject to meeting up any specific condition, be executed, a request may be made to the requesting State to meet up such condition and the execution may be suspended until such condition is met up.
- (3) If it appears to the Central Authority that, the execution of any specific request may affect any enquiry, investigation, prosecution or criminal proceedings, which are under consideration in Bangladesh, the request for assistance may be suspended or stipulated and the requesting State shall be informed of the matter.
- (4) If the subject matter of assistance is of such a nature that the trial has been concluded under the existing laws of Bangladesh, a request for such assistance may be refused.
- (5) If there is any apprehension of affectively impediment that sovereignty of Bangladesh, national security, important public interest and public order, international relationship or any other interest in execution of the request for assistance, the request may be refused.
- (6) If the subject matter of the execution of the request for assistance is repugnant to the existing laws of Bangladesh, it may be refused.
- (7) In respect of the execution of the request for seizure, freezing or arrest, forfeiture, it may be refused if such seizure, freezing or arrest or forfeiture is not enforceable under the existing laws of Bangladesh.
- (8) If there is any reasonable ground to believe that the request for assistance is made for in consideration of the religion, race, sex, nationality or political back-ground of the concerned person or for the purpose of prejudicing the social status of the person, the request for assistance may be refused.
- (9) In case or any military offence, the request for assistance may be refused.

11. **Execution of the request.**-(1) The Government may, by notification in the official Gazette, determine the competent authority and until such authority is determined, the Central Authority may determine the competent authority for the execution of the request for assistance.
- (2) If the request relates to recording of any statement of a person, documents, material and evidence collected from outside the court, service of document or process, search, seizure of any document or material and identification of any person the matters may be referred to the Inspector General of Police and in this regard, he shall be deemed to be the competent authority.
- (3) Any request received for any evidence taken and any confiscation or seizure order passed by the court shall be submitted to the relevant public prosecutor and in this regard, he shall be deemed to be the competent authority.
- (4) If any request for assistance is received from the Central Authority, the relevant competent authority shall execute the request promptly and submit a report to it along with every document and material regarding such execution.
- (5) If any request for assistance is such a nature that it is not possible to execute, the Central Authority shall be informed of the matter without delay.
- (6) If the competent authority reports about the result of any request after its execution, the Central Authority shall submit it with all relevant documents and materials to the proper authority of the requesting State.
12. **Assistance under other laws.**-If any request is made by a foreign State for such assistance which is not mentioned specifically in this chapter but there are provisions regarding this in existing laws relating to criminal matters in Bangladesh, then assistance for such requested matter may be given in accordance with the existing laws of Bangladesh.
13. **Not to disclose any secrecy.**-Unless empowered by any law, no person being on official duty or holding any position shall disclose any body any requested matter which is confidential in nature in the case of acceptance or rejection of such request.

Part-2

Procedure regarding Specific Forms of Assistance

14. **Production of statements and testimony.**-(1) Where a request is made by a foreign State for recording a statement or taking testimony of a person with a view to conducting investigation, the competent authority shall appoint an investigating officer in the concerned matter and issue direction to execute it.
- (2) The investigating officer directed under sub-section (1) shall have the power to record the statement and to take the testimony of the person in accordance with the provisions of the Code of Criminal Procedure and, if necessary, may search and seize any document or thing in this behalf.
- (3) The investigating officer shall, concluding his work, submit it to the competent authority with a report.

- (4) If there is no agreement between the requesting State and Bangladesh or there is no provision in respect of attesting documents in the agreement and if any document is required to be attested, the competent authority may direct the custodian of the document to attest the document in accordance with rules and regulations or shall act in accordance with the procedure or provision determined by the Central Authority.

15. Taking of testimony by the court of Bangladesh.-(1) Notwithstanding anything contained in any other law, where a testimony or statement is asked for from a witness, or as the case may be, an expert or defendant under section 14, the court or any competent authority of Bangladesh may permit-

- (a) the person to whom the investigation, prosecution or judicial proceeding relates or the person's legal representative; or
- (b) the legal representative of the foreign State;

to participate in the judicial proceeding and question the witness.

- (2) In the case of taking testimony in any court of Bangladesh for the execution of a request for assistance made by a foreign country, the Central Authority shall give direction to the public prosecutor to take measures for the execution thereof.
- (3) If the public prosecutor empowered under sub-section (2) applies to the concerned court, the court shall take steps to take testimony in accordance with the Code of Criminal Procedure.
- (4) For the purpose of sending the testimony taken under sub-section (3) to the Central Authority directly, a copy of the testimony shall be given to the public prosecutor.
- (5) the public prosecutor shall, without any delay, send the copy received by him to the Central Authority.

16. Special provisions relating to taking testimony or statement.- (1) Where a testimony or statement of a witness is asked for under section 15, the court may permit the person for whom the investigation or judicial proceeding is made or taken or his legal representative or any legal representative of a foreign State to question the witness at the time of his taking testimony or statement.

- (2) The person mentioned in the order issued under section 15 shall be entitled to be paid the same expenses as a witness would be entitled to if required to attend in the judicial proceedings in Bangladesh.
- (3) The person ordered for giving testimony may refuse to answer any question or to produce any other evidentiary material for the following reasons, namely:-
- (a) on the basis of a law for the time being in force in Bangladesh, unless this Act provides otherwise;
- (b) by virtue of any privilege recognized by a law in force in the requesting State; and
- (c) on the reason that answering of any specific question or production of any evidence or documents would constitute a crime under any existing law of the requesting State.

- (4) If the answering of a question by a person in accordance with sub-section (3) (c) may result in a breach of law of the requesting State or affect the privilege recognized in the requesting State in accordance with sub-section (3)(b), the court or any other competent authority or the investigating officer may permit the refusal on a temporary basis and writing a note of it continue with the examination.
- (5) If the competent authority of the requesting State requests the Central Authority of Bangladesh to resume the proceedings by determining the objections for answering any question in accordance with sub-section (3) to be unfounded, the concerned witness may be required to answer the question.
17. **Identification of any person, entity or material.**- If any foreign State has reason to believe that any person, entity or thing may be located in Bangladesh and it requires to be determined for the inquiry, prosecution or any other criminal proceeding, the competent authority shall proceed on to identify the person, entity or thing and inform the Central Authority about the result.
18. **Use of video conferencing technology.**-(1) The court or any other competent authority may issue an order that the testimony or statement, the identification of a person or thing or any other form of assistance may be provided by use of video or audio transmission technology.
- (2) By the order issued under sub-section (1) the person or the chief of the entity may be directed for the following matters, namely:-
- (a) to attend at such time and place as may be determined by the court or any other competent authority for giving a statement, testimony or otherwise providing assistance by video conference, and to remain in attendance until discharge of;
- (b) to answer any question raised by the authority of the foreign State, or any person authorized by the authority in accordance with the existing law of the concerned foreign State.
- (3) The Central Authority may determine the procedure of taking testimony under this section by use of video conference technology.
- (4) Notwithstanding anything contained in section 35, the costs of establishing a video or telephone link shall be borne by the requesting State, unless otherwise provided in this agreement.
19. **Search and seizure.**-(1) Where a request is made by a foreign State for search and seizure to be carried out in Bangladesh, the court may issue a search warrant if satisfied that there are reasonable grounds to believe that the evidence relevant to the investigation, prosecution or judicial proceedings may be found in Bangladesh.
- (2) In issuing the search warrant in accordance with sub-section (1), the court of Bangladesh may impose conditions on its execution and may permit for the presence and participation of officers of the foreign State in the search.
- (3) The person who conducts search and seizure shall affix a certificate regarding the activities performed by him with the service report.
20. **Transfer of a person detained in Bangladesh.**-(1) Where a foreign State requests to transfer a person detained in Bangladesh for examining him as a witness by it in its territory, the Central Authority may give necessary directions to the competent authority in this regard to take necessary

steps for transferring the person in accordance with procedure prescribed by rules if it considers that such transfer is necessary and the person consents to it.

(2) The time spent in the custody of the foreign State by the person transferred under sub-section (1) shall be counted as party of the time detaining in Bangladesh.

(3) The following conditions shall be applicable in transferring a person to a foreign State in accordance with sub-section (1), namely:-

(a) the person shall not be detained, prosecuted or punished or subjected to any other restriction of personal liberty or subjected to any civil proceeding in respect of any act or omission that occurred before the person's departure from Bangladesh;

(b) the person shall not be required to assist in any investigation or proceeding other than that to which the request relates without his consent or the consent of Bangladesh;

(c) the person shall be returned to Bangladesh in accordance with the arrangement made or initiated by the Central Authority of Bangladesh.

21. **Custody of a person in transit.**-(1) Where a person is transferred in custody from a foreign State (transferring State) to another foreign State (receiving State) through Bangladesh for the purposes of identification, giving evidence or otherwise providing assistance, the Central Authority of Bangladesh may approve the transportation of the person through Bangladesh and the holding of that person in custody by the authority of the transferring State.

(2) Where an unscheduled transit occurs in Bangladesh, the competent authority of Bangladesh may, at the request of the escorting officer, hold person in custody for the required time.

Part-3

Request for Freezing, Seizure and Confiscation

22. **Order for freezing or seizure.**-Where a request is made by a foreign State for freezing or seizure of property as proceeds of crime or instrumentalities of crime or terrorist property, the Central Authority may, if satisfied that there is sufficient reason of obtaining such an order under the laws of Bangladesh, direct the competent authority to make an application to a court for issuing order for freezing or seizure.

23. **Enforcement of the judgment of a foreign court.**-(1) If any order for confiscation which seems to be final is passed by a court of a foreign State and if it is also confiscable under the laws of Bangladesh, the Central Authority may, in consultation with the Advisory Board, give necessary direction to the competent authority to take measures for executing the judgment of the court of the foreign state.

(2) If the court of the foreign State issued an order for attachment before judgment or the attachment order is at the final stage or at the stage of concluding an appeal, an application may be made for attachment before judgment if it is attachable or confiscable under the laws of Bangladesh.

(3) The court or any competent authority may dishonor the freezing or seizure or confiscation order if the court is satisfied that:-

(a) a foreign freezing or seizure order has ceased to have effect; or

(b) a foreign confiscation order has been executed or has ceased to have effect.

24. **Rights of third parties.**-(1) Prior to any execution action in respect of any freezing or seizure or confiscation order, notices with copies of such order, shall be given to all third persons or the head of any entity appearing to have an interest in the concerned property and, in appropriate cases, it may be published in newspapers or electronic media.
- (2) Any third person or head of any entity having an interest in the property against which an order shall be executed, may, within 30 (thirty) days of receiving the notice, make an application for excluding his interest in the property from execution of the order.
- (3) The time limit for making an application under sub-section (2) may be extended by order of the court or other competent authority.
- (4) The provision relating to the rights of the third party in the existing laws of Bangladesh regarding the proceeds of crime, terrorist financing, etc. shall mutatis mutandis apply for disposing any application made under sub-section (2).
- (5) If any person or head of any entity receives any notice of the confiscation proceeding of the foreign State, he shall not make any application under sub-section (2).
- (6) Nothing in this section shall prejudice the power of the court or a competent authority to pass necessary order in the interest of justice.
25. **Disposition of the proceeds of crime.**-Upon request of a foreign State if the whole or any part of the proceeds or instrumentalities of crime is confiscated, it shall, subject to the final decision of the court of requesting state, be disposed of by the order passed by a court of Bangladesh having jurisdiction.

Part-4

Delivering the Documents or Information of the Government Office

26. **Delivering of the document or information of the Government office.**-(1) If any foreign State requests to deliver the documents or information preserved in any Government office of Bangladesh, the Central Authority shall deliver it to the concerned office.
- (2) The relevant office shall on the request received in accordance with sub-section(1), deliver the documents or information to the Central Authority.
- (3) If the documents or information required under sub-section (1) is such a nature that may not be published, and if the concerned organization thinks that the publication of such documents or information is impossible or inexpedient or is reasonable to publish subject to specific conditions, the reason for not delivering it or the conditions shall be informed to the Central Authority without any delay.
- (4) If there is any agreement in respect of the assistance between the requesting State and Bangladesh and unless otherwise provided in the agreement, the custodian of the relevant documents shall attest it in the manner or provision determined by the Central Authority.

27. **To initiate criminal proceedings.**-If a foreign State, though able to initiate criminal proceedings, requests Bangladesh to initiate such proceedings and the Central Authority considers that, it is under the jurisdiction of the court of Bangladesh and upon such request it is justified to initiate criminal proceedings, the Central Authority may direct the competent authority to take steps in accordance with the criminal procedure and to inform it about the actions taken thereof.

Part – 5

Assistance relating to Computer System and Computer Data

28. **To store computer data.**- If any foreign state requests for providing any information relating to computer data and traffic data and if the matters relating thereto exists in Bangladesh, the Central Authority may issue order to any person or organization for storing such data and rendering security thereof.
29. **Production of stored computer data.**- Upon request of a foreign State the court or other competent authority may issue an order to produce the following matters, namely:-
- (a) specific computer data in the possession or control of a person which is stored in a computer system or a computer data storage medium; and
 - (b) subscriber information in the possession or control of a service provider, where such data or information is relevant to the criminal proceeding of the requesting State.
30. **Search and seizure of computer data.**-(1) Upon request of a foreign State, the court or any other competent authority may issue a search warrant or any other order authorizing a person designated by it to search or otherwise access any computer system or part thereof as well as any computer storage medium in which computer data may be stored.
- (2) For the purpose of sub-section (1), the person to whom the search warrant and other order is issued shall have power, where necessary, to:-
- (a) seize or otherwise secure a computer system or part thereof or computer data storage medium;
 - (b) make a copy of such computer data;
 - (c) maintain the integrity of the relevant stored computer data; and
 - (d) render inaccessible or remove those computer data in the accessed computer system.

Chapter-IV

Requests for Assistance by Bangladesh

31. **Requests for assistance by Bangladesh.**-(1) Any request for assistance from any foreign State by the relevant organization of Bangladesh shall be made to the Central Authority.
- (2) Such requests shall be made following the prescribed procedure or provision and conditions determined by the Central Authority properly and along with all necessary papers.
- (3) If the Central authority considers the request for assisting fit to be made, it shall send the request for assistance to the competent authority of the relevant state.
32. **Special provision relating to transferred persons in custody.**- (1) Where a person in custody in a foreign State is brought to Bangladesh pursuant to a request for assistance under this Act, that person shall :-
- (a) be permitted to enter and remain in Bangladesh for the purposes of the request;
- (b) be required to leave Bangladesh when no longer required for those purposes;
- (c) be deemed to be in lawful custody if he is kept longer than the required time for the purposes of the request.
- (2) The Central Authority shall make necessary arrangements for the transfer of a person in custody in the foreign State to Bangladesh, including arrangements to keep the person in custody and to return the person to the requested State when that person's presence is no longer required pursuant to the request.
- (3) Any person who escapes from custody while in Bangladesh pursuant to a request made under this section may be arrested under this section without warrant for bringing him back to the safe custody.
33. **Safe conduct for the person remaining in Bangladesh pursuant to a request for assistance.**-
- (1) A person whose presence in Bangladesh has been sought pursuant to a request for assistance under this Act, and to whom the Central Authority has granted safe conduct under this section, shall not:-
- (a) be detained, prosecuted or punished or subjected to any other restriction of personal liberty or subjected to any civil proceedings in respect of any act or omission that occurred prior to that person's departure from the foreign State pursuant to the request;
- (b) be required, without his consent and the consent of the foreign state, to assist in the investigation or proceeding other than the investigation or proceeding to which the request relates.
- (2) Any safe conduct provided in accordance with sub-section (1) shall cease to apply when the person has had the opportunity to leave Bangladesh and has not done so within a period of 15 (fifteen) days from the date on which he has been informed that his presence is no longer required for the purpose of the request, or when the person has returned to Bangladesh.

34. **Limitation on use of evidence obtained pursuant to a request for assistance.**-If any evidentiary material is sent to Bangladesh for assistance under this Act, it shall not be used for any purpose other than the following, namely:-
- (a) for the criminal investigation and proceedings;
 - (b) for prevention of any imminent threat to the public security;
 - (c) for any civil, judicial or administrative proceedings directly related to investigations or proceedings mentioned in sub-clause(a);
 - (d) for any other purposes, if the information or evidence has made public within the framework of relevant proceeding mentioned in sub-clauses (a), (b) and (c); and
 - (e) for any other purpose, with the prior approval of the informant foreign State.

Chapter-V

Miscellaneous

35. **Costs.**-If there is any agreement between Bangladesh and requesting State and unless provided different treatment therein or otherwise agreed, the execution of a request for assistance in Bangladesh shall be conducted without charge to the foreign State, except for:
- (a) costs incurred by the attendance of experts in the territory of Bangladesh; or
 - (b) costs incurred by the transfer of a person from Bangladesh to the custody of a foreign state and bringing back the person from the requesting state; or
 - (c) costs incurred by establishing a video or telephone link, the remuneration given to the interpreters and allowances to the witnesses; or
 - (d) any costs of substantial or extraordinary nature.
36. **Admissibility as evidence.**-All the evidences, documents and information taken under this Act shall legally be admissible in a court as evidence.
37. **Language of the request.**-(1) In the case of taking assistance from a foreign State, all requests for assistance shall be made in English and if the attached documents and other papers are not in English, the copies thereof translated into English shall be sent.
- (2) The requests sent from foreign States may be made either in English or in Bangla and the attached documents and other papers shall, if required, be sent translating them in Bangla.
 - (3) If in Bangladesh any evidence is taken in Bangla and the documents or other papers collected are in Bangla, the attested copies of their English translation may be sent on the request of the requesting State.
- 38 **Power to make rules.**-For the purposes of this Act, the Government may, by notification in the official Gazette, make rules.

- 39 **Power of the Government to remove difficulty.**-If any difficulty arises in giving effect to the provisions of this Act because of ambiguity of any provision of this Act, the Government may, by notification in the official gazette, give directions about the measures to be taken with the clarification or explanation of the provision, keeping consistency with the other provisions of Act.
40. **Publication of English Text.**-After the commencement of this Act, the government shall, by notification in the official Gazette, publish an Authentic English Text of this Act:
- Provided that in the event of conflict between the Bangla and the English text the Bangla Text shall prevail.
- 41 **Repeal-** The Mutual legal assistance in Criminal Matters Ordinance , 2012 (Ordinance No. 1 of 2012) is hereby repealed.

Government of the People's Republic of Bangladesh
Legislative and Parliamentary Affairs Division
Ministry of Law, Justice and Parliamentary Affairs

NOTIFICATION

S.R.O. No. 296- Law/2013.-In exercise of powers conferred by section 38 of the Mutual Legal Assistance in Criminal Matters Act, 2012 the Government is pleased to make the following Rules, namely-

Part-I

Preliminary

1. **Short title and commencement.**-(1) This Rules may be called as the Mutual Legal Assistance on Criminal Matters Rules, 2013.
(2) It shall come into force immediately.
2. **Definitions.**-(1) In this Rules, unless there is anything repugnant to the subject or context-
 - (a) 'Act' means Mutual Legal Assistance in Criminal Matters Act, 2012;
 - (b) 'Ancillary criminal matter' the restraining of dealing with or seizure, forfeiture or confiscation of property in connection with an offence committed in Bangladesh or in a foreign country and also includes the obtaining, enforcement or satisfaction of a Bangladesh confiscation order or a foreign confiscation order;
 - (c) 'Appropriate authority' in relation to a foreign country means a person or authority, which the central authority constituted under this Act is satisfied that under the law of that country-
 - (i) is authorized to make a request for assistance in criminal matters; or
 - (ii) is authorized to receive a request of assistance in criminal matters, if made by Bangladesh;
 - (d) 'Authorised officer' means any investigator or police officer or any other person or class of persons appointed by the Government or central authority for the purpose of this Act;
 - (e) 'Criminal matters' means any criminal matter as defined in section 2(1) of the Act and also includes ancillary criminal matters;
 - (f) 'Criminal investigation' means an investigation into an offence committed in Bangladesh or in a foreign country or of an ancillary criminal matter;
 - (g) 'Criminal proceeding' means trial of a person for an offence committed in Bangladesh or in a foreign country, and also includes any proceeding to determine whether a particular person should be tried for the offence;

- (h) **‘Dealing with’** in relation to a property means-
 - (i) receiving or acquiring the property;
 - (ii) concealing or disguising the property as to its source, nature, location, disposition, movement or ownership or any right with respect to it;
 - (iii) disposing of or converting the property;
 - (iv) bring the property into or moving the property from Bangladesh; using the property to borrow money or as a security whether by way of charge, mortgage, pledge or otherwise; and
 - (v) where a debt is owed to the person holding the property, making a payment to any person in reduction of the amount of the debt;
 - (i) **‘Foreign confiscation order’** means an order made by a court in a foreign country for the recovery, forfeiture, or confiscation of payments or other rewards received in connection with an offence against the law of that country, or the value of such payments or rewards, or the property derived or realized from payments or other rewards received in connection with such an offence, or the value of such property;
 - (j) **‘Foreign country’** means any country or territory other than Bangladesh and also includes ships and aircraft of that country;
 - (k) **‘Legal privilege’** means communications made between advocate and his client or any person representing the client, in connection with or in contemplation of judicial proceedings which are privileged communications under the Evidence Act, 1872;
 - (l) **‘Material’** means any book, document or other record in any form whatsoever, and any container or article relating thereto;
 - (m) **‘Premises’** means any structure, building, tent, vehicle, vessel, hovercraft or aircraft and also includes a place or part of a premise;
 - (n) **‘Process’** means any summons, warrant, order or other document in respect of a criminal matter issued by a court;
 - (o) **‘Proceeds of crime’** means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence; and
 - (p) **‘Thing’** means material.
3. **Constitution of the central authority.**-(1) An inter-ministerial committee to be known as the ‘central authority’ under the Act shall be constituted which shall be chaired by the Foreign Secretary.
- (2) The committee shall be consisting of such other representatives not below the rank of Deputy Secretary from the following Ministries/Government agencies:
- (a) Ministry of Home Affairs;

- (b) Bank and Financial Institutions Division, Ministry of Finance;
 - (c) Legislative and Parliamentary Affairs Division, Ministry of Law, Justice and Parliamentary Affairs;
 - (d) Bangladesh Bank;
 - (e) A Deputy Attorney-General nominated by Attorney General's office.
- (3) The Committee may co-opt or invite representatives from any other Ministries/Government agencies with a view to facilitating its work on specific issues.
- (4) The Director-General (UN)/ Legal Adviser, Ministry of Foreign Affairs shall ex-officio act as the Member-Secretary of the Committee.
- (5) Central authority may delegate its power by issuing an order as and when required on case to case basis.
- (6) While delegating the power the central authority shall specify the terms and conditions and power and responsibilities of the person so delegated to deal with the case.

Part-II

Request by Bangladesh

4. **Requests for assistance by Bangladesh.**- (1) A request for assistance under this Act may be made to a foreign country by Bangladesh.
- (2) A request by Bangladesh for assistance under this Act may be made only by the central authority.
- (3) The central authority may request the appropriate authority of a foreign country to arrange for-
- (a) evidence to be taken in the foreign country; and
 - (b) the evidence to be sent to the central authority,
- if the central authority is satisfied that there are reasonable grounds for believing that such evidence would be relevant to any criminal proceedings in Bangladesh.
- (4) Any evidence received by the central authority pursuant to a request under sub-rule (1) and (2) may, subject to the provision of the Code of Criminal Procedure, 1898 and the Evidence Act, 1872 be admitted as evidence in any criminal proceedings to which such a request relates.
- (5) In estimating the weight, if any, to be attached to a statement contained in any thing received by the central authority pursuant to a request under sub-rule (1) which has been admitted as evidence in any criminal proceeding to which the request relates, the court shall have regard to-
- (a) whether it was possible to challenge the statement by questioning the person who made it; and
 - (b) whether the law of the foreign country concerned allowed the parties to the criminal proceedings to be legally represented when the evidence was being taken.

- (6) Where the central authority is satisfied that-
- (a) there are reasonable grounds to believe that a person in a foreign country is capable of giving evidence or assistance relevant to a criminal matter involving offence in Bangladesh; and
 - (b) that person consents to travel to Bangladesh for the purpose of giving such evidence or assistance, the central authority may request the appropriate authority of the foreign country to assist in making available the attendance of that person in Bangladesh for the purpose of giving such evidence or assistance.
- (7) The central authority may make arrangement with the appropriate authority of the foreign country for the purpose of return of that person from Bangladesh to the foreign country of origin or such other relevant steps as required.
- (8) Where pursuant to sub-rule (6) the central authority requests the assistance of the appropriate authority of a foreign country for attendance of any person in Bangladesh, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason of his refusal or failure to consent to attend as requested.
- (9) A person who is in Bangladesh pursuant to a request made under sub-rule 6 shall not -
- (a) be detained, prosecuted or punished for any offence alleged to have been committed that person's departure from the foreign country; or
 - (b) be subjected to any civil suit in respect of any act or omission alleged to have occurred before that person's departure from the foreign country concerned pursuant to the request; or
 - (c) be required to give evidence or assistance in relation to any criminal matter other than the criminal matter to which the request relates.
- (10) The provision of sub-rule (9) shall not apply, if the person has left Bangladesh or has had the opportunity of leaving Bangladesh, and has remained in Bangladesh otherwise than for the purpose to which the request relates.
- (11) Where a person is in Bangladesh pursuant to a request made under sub-rule (6) and that person has made a statement in relation to a criminal matter to which the request relates, that statement-
- (a) shall not be admitted or otherwise used in any prosecution against him unless the appropriate authority of the concerned foreign country consents to its being so used;
 - (b) may be admitted or used against him in any criminal proceeding in Bangladesh, for the purpose of impeaching his credibility or as evidence of any fact of which direct oral evidence is admissible; or
 - (c) shall not be admitted if it brings inconsistency with the material fact.
5. **Content of requests.**-(1) Request for assistance shall include-
- (a) The name of the requesting office and the competent authority conducting the investigation or court proceedings of which the request relates;

- (b) The purpose of the request and a brief description of the assistance sought;
 - (c) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;
 - (d) The name and address of the person to be served, where necessary;
 - (e) The reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required; and
 - (f) Specification of any time-limit within which compliance with the request is desired.
- (2) Requests, supporting documents and other communications accompanied by a translation into made pursuant to this Act shall be English language or in Bengali.
- (3) If requested country considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.
6. **Special rules on certain measures.**-(1) Execution of searching, freezing and seizing order under this Act, property may be searched, seized, freezed and attached by the competent authority in accordance with the respective substantive law under which the offence is alleged to have been committed.
- (2) Where execution of a request requires freezing, seizing or attaching any property which does not cover by executive order the competent authority shall make an application to the competent court for freezing, seizing or attachment.
- (3) The central authority shall in so far as law of Bangladesh permits, carry out requests for search and seizure, and delivery of any material to the requesting country for evidentiary purposes, provided that the rights of *bonafide* third parties are protected.
7. **Requests for enforcement of confiscation order made by Bangladesh.**-(1) Where there are reasonable grounds for believing that some of or all of the property concerned is located in a foreign country, the central authority may request the appropriate authority of that foreign country to make arrangement for the enforcement of a confiscation order made by Bangladesh in a judicial process.
- (2) A certificate shall be issued by or on behalf of the appropriate authority of a foreign country stating that the property has been recovered in the foreign country pursuant to a request so made and also include the value of the property so recovered. Such a certificate shall be admissible in evidence in judicial proceedings.
- (3) Where the value of property recovered is expressed in a currency other than that of Bangladesh, the extent to which the amount payable under Bangladesh confiscation order is to be reduced in writing, and shall be calculated on the basis of exchange rate prevailing on the date on which the property was recovered in the foreign country concerned.
8. **Assistance in locating or identifying persons.**-Where the central authority is satisfied that there are reasonable grounds for believing that there is, in any foreign country a person who is or might be concerned in or affected by or could give or provide evidence or assistance relevant to any

criminal matter in Bangladesh, the central authority may request that country to assist in locating or identifying that person.

9. **Assistance in service of process.**-The central authority may request the appropriate authority of a foreign country to assist in effecting service of any process where the central authority is satisfied that, for the purpose of, or in connection with, any criminal matter in Bangladesh, it is necessary or desirable to serve that process on a person or authority in that country.

Part-III

Request to Bangladesh

10. **Request for assistance to Bangladesh.**-(1) An appropriate authority of a foreign country may request central authority of Bangladesh for assistance in criminal matters, on condition that such foreign country will comply with a future request of Bangladesh to that country for similar assistance, involving an offence which corresponds to an offence under the law of that foreign country, for which assistance is sought.

(2) Every request by a foreign country to Bangladesh for assistance shall be made to the central authority. Such request shall-

- (a) specify the purpose of the request and the nature of the request sought for;
- (b) identify the authority that initiated the request;
- (c) be accompanied by a certificate from the appropriate authority of that country to the effect that the request is made in respect of a criminal matter within the scope of the Act;
- (d) specify a description of the nature of the criminal matter and a statement setting out a summary of the relevant fact and laws;
- (e) specify the location of a suspected person or property involving the commission of an offence under the Act, the name, identity, nationality, location or description of that person or property (if known) and a statement setting forth such suspicion;
- (f) state a description of the offence to which the criminal matter relates, including its maximum penalty;
- (g) specify details of the procedure that the requesting foreign country wishes to be followed by Bangladesh in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that country pursuant to the request;
- (h) specify that the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign confiscation order have not been instituted in that country, a statement indicating that they are likely to be instituted;
- (i) contain a statement setting out the wishes of that foreign country concerning the confidentiality of the request and the reason for those wishes;
- (j) state details of the period within which that country wishes the request to be met;

- (k) specify if the request involves a person travelling from Bangladesh to that foreign country, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person while he is in that country pursuant to the request;
- (l) specify any other information required to be included with the request under any treaty, memorandum of understanding or other agreement between Bangladesh and that country; and
- (m) contain any other information that may assist in giving effect to the request or which is required under the provisions of this Act.

11. Execution of the request and procedures to be followed.-

- (1) Apart from notification in official gazette, central authority may determine competent authority depending on the subject matter for execution of the request for assistance by issuance of office order.
- (2) In executing the request, laws and practices in the related field as applied in Bangladesh shall be followed unless otherwise provided in this Act.
- (3) Having received the request of assistance the Competent Authority shall acknowledge as to the acceptance of the request to the Central Authority immediately.
- (4) Where execution of a request is sent to the higher authority as competent authority, he may by himself or by taking assistance of his competent subordinate may execute the same.
- (5) If in any case the execution of a request becomes impossible due to conflict of laws, force majeure, technicalities or for some other reasonable cause, the competent authority shall forthwith communicate it to the central authority recording reasons thereof.

12. Refusal of assistance by Bangladesh.- (1) A request by a foreign country for assistance under this Part shall be refused if, in the opinion of the central authority-

- (a) the appropriate authority of that country has, in respect of that request, failed to comply with the terms of any treaty, memorandum of understanding or other agreement between Bangladesh and that country;
- (b) the request relates to the investigation prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (c) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Bangladesh, would have constituted an offence under the military law applicable in Bangladesh but not also under the ordinary criminal law of Bangladesh;
- (d) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;

- (e) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person-
 - (i) has been convicted, acquitted or pardoned by a competent court or other authority in that country; or
 - (ii) has undergone the punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;
 - (f) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Bangladesh, would not have constituted an offence;
 - (g) the offence to which the request relates is not an offence of sufficient gravity;
 - (h) it is contrary to public interest to provide the assistance;
 - (i) the thing requested for is of insufficient importance to the investigation or could reasonably be obtained by other means;
 - (j) the appropriate authority fails to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made, except with the consent of the central authority; or
 - (k) the provision of the assistance could prejudice a criminal matter in Bangladesh.
- (2) A request by a foreign country for assistance under this Part may be refused by the central authority of Bangladesh-
- (a) pursuant to the terms of any treaty, memorandum of understanding or other agreement between Bangladesh and that country;
 - (b) if, in the opinion of the central authority, the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in Bangladesh or elsewhere);
 - (c) if, in the opinion of the central authority, the assistance would impose an excessive burden on the resources of Bangladesh; or
 - (d) if, in the case of any assistance the appropriate authority of that foreign country fails to give an undertaking to the central authority that the requesting foreign country will comply with a future request by Bangladesh to that country for similar assistance in a criminal matter involving an offence that corresponds to be the foreign offence for which assistance is sought.

13. **Taking of evidence for criminal proceedings.**-(1) where a request is made by the appropriate authority of a foreign country that evidence be taken in Bangladesh for the purposes of any criminal proceedings pending in a court in the foreign country, the central authority may by notice in writing, subject to such conditions as specified in the notice, authorize a First class Magistrate to take the evidence and transmit the evidence to the appropriate authority.

- (2) Upon receipt of the notice made under sub-section (1), the Magistrate shall-
 - (a) take the evidence of each witness appearing before him to depose in relation to the criminal matter, as if the witness were giving evidence on a charge against a person for an offence committed under the law of Bangladesh;
 - (b) cause the evidence to be reduced in writing and certify at the end of that writing that the evidence was taken by him; and
 - (c) cause the writing, so certified, to be sent to the 'central authority'.
 - (3) The proceedings may be conducted in the presence or absence of the person to whom the criminal proceedings in the foreign country relates or his legal representative (if any).
 - (4) The evidence so taken under sub-section (2) shall state whether the person to whom the criminal proceedings in the foreign country relates or his legal representative (if any) was present at the proceedings.
 - (5) The laws for the time being in force with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, upon the hearing of a charge against a person for an offence against the law of Bangladesh shall apply, so far as they are capable of application, with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, for the purposes of this section.
 - (6) For the purposes of this section, the person to whom the criminal proceedings in the foreign country relates is competent, but not compellable, to give evidence.
 - (7) No person who is required under this section to give evidence for the purposes of any criminal proceeding in a foreign country shall be required to answer any question that the person could not be compelled to answer in those proceedings in that country.
 - (8) Evidence taken under this section shall not be admissible in evidence, or otherwise used, for the purpose of any judicial proceedings, disciplinary proceedings, or other proceedings, in Bangladesh except a prosecution of the person who gave that evidence for the offence of giving false evidence or contempt of court, in respect of that evidence.
14. **Production orders for criminal matters.**-(1) Where a request is made by the appropriate authority of a foreign country that any particular thing in Bangladesh shall be produced in that country for the purpose of any criminal matters, the central authority may file an application to the court having competent jurisdiction, seeking for an order to that effect.
- (2) If such an application is made and the court is satisfied that there are reasonable grounds for believing that the thing is likely to be of substantial value to the criminal matter in respect of which the application is made, and is not contrary to the public interest for the thing to be produced, and does not include any privileged communication under Evidence Act, 1872, it may pass an order.
 - (3) Such a proceeding may be conducted in presence or absence of the person to whom the criminal proceedings in the foreign country relates to and such a proceeding may be heard in camera.

- (4) Where such an application relates to a thing in possession of any financial institution, it shall be made to the District and Session Judge.
 - (5) No person who is required by an order under this section to produce anything in any criminal proceedings in the requesting foreign country shall be required to produce that thing and such a person could not be compelled to do so.
 - (6) Where a court orders a person to give an authorized officer or police officer appointed by the central authority access to any thing on any premises, it may, order any person who appears to him to be entitled to grant entry to the premises to allow such an authorized officer or police officer appointed by the central authority, to enter the premises to obtain access to the thing.
 - (7) Where any material to which such an order relates to any information contained in or accessible by means of any data equipment shall have effect as an order to produce the material in a form which can be taken away and which is visible and legible, and shall have effect as an order to give access to the material in a form which is visible and legible.
 - (8) Where an order is passed by a court, no person is excused from producing or making available anything on the ground that the production or making available of the thing might tend to incriminate the person or make the person liable to a penalty, or the production or making available of the thing would be in breach of an obligation of the person not to disclose the existence of the contents of the thing unless it is subject legal privilege, or there is any secrecy or other restrictions upon the disclosure of information imposed by statute or otherwise.
 - (9) An authorised officer may photograph or make copies of any thing produced or to which access is granted pursuant to an order made by the court.
 - (10) Where an authorised officer takes possession of anything by an order of the court or takes any photograph or makes any copy of the thing, he may retain the thing, photograph or copy for a period of up to one month pending a written direction from the central authority as to the manner in which the thing, photograph or copy is to be dealt with for sending it to the appropriate authority of the foreign country concerned.
15. **Immunities-** (1) No civil or criminal action, shall lie against any person for producing or giving access to any thing, if he had produced or given access to the thing in good faith in compliance with an order of the court made against him under rule-14, or for doing any act if he had done the act in good faith as a result of complying with such an order of the court.
- (2) Any person who complies with an order made under rule-14, shall not be treated as being in breach of any restriction upon the disclosure of information or thing imposed by law, contract or rules of professional conduct.
16. **Failure to comply with production order.-** Any person who without reasonable excuse contravenes or fails to comply with an order under rule-14 or in purported compliance with such an order, produces or makes available to an authorized officer any material known to the person to be false or misleading, without indicating to the authorised officer that the material is false or misleading, shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or shall be liable to a fine not exceeding TK.1,00,000/-(one lac) or with both.

17. Requests for attendance of person in foreign country.-

- (1) Where the appropriate authority of a foreign country is satisfied that-
- (a) there are reasonable grounds to believe that a person in Bangladesh is capable of giving evidence or assistance relevant to a criminal matter involving offence in that foreign country; and
 - (b) that person consents to travel to the requesting foreign country for the purpose of giving such evidence or assistance,

the appropriate authority of that foreign country may request the central authority of Bangladesh to assist in making available the attendance of that person in the requesting foreign country for the purpose of giving such evidence or assistance.

- (2) The central authority may make arrangement with the appropriate authority of the foreign country for the purpose of return of that person from the foreign country to Bangladesh or such other relevant steps as required.
- (3) Where pursuant to sub-rule (1) the appropriate authority of a foreign country requests the assistance of the central authority of Bangladesh for attendance of any person in that foreign country, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason of his refusal or failure to consent to attend as requested.
- (4) A person who is in foreign country pursuant to a request made under sub-rule (1) shall not -
- (a) be detained, prosecuted or punished for any offence alleged to have been committed that person's departure from Bangladesh; or
 - (b) be subjected to any civil suit in respect of any act or omission alleged to have occurred before that person's departure from Bangladesh pursuant to the request; or
 - (c) be required to give evidence or assistance in relation to any criminal matter other than the criminal matter to which the request relates.
- (5) The provision of sub-rule (4) shall not apply, if the person has left the foreign country or has had the opportunity of leaving the foreign country, and has remained in the foreign country otherwise than for the purpose to which the request relates.
- (6) Where a person is in foreign country pursuant to a request made under sub-rule (1) and that person has made a statement in relation to a criminal matter to which the request relates, that statement-
- (a) shall not be admitted or otherwise used in any prosecution against him unless the central authority of Bangladesh consents to its being so used;
 - (b) may be admitted or used against him in any criminal proceeding in foreign country, for the purpose of impeaching his credibility or as evidence of any fact of which direct oral evidence is admissible; or
 - (c) shall not be admitted if it brings inconsistency with the material fact.

18. **Custody of persons in transit.**-(1) A person who is in custody in a foreign country and has consented to give evidence or assistance in relation to a criminal matter in another foreign country may be transported through Bangladesh, in the custody of that other foreign country, if the first-mentioned foreign country gives prior notice of this to the central authority.
- (2) The person being transported through Bangladesh in custody may, if an aircraft, vessel or train by which the person is being transported lands or calls in Bangladesh, be kept in such custody in Bangladesh with such authorized officer as the central authority directs in writing until his transportation is continued.
- (3) Where a person is being held in custody pursuant to a direction under sub-rule (2) and the person's transportation is not, in the opinion of the central authority, continued within a reasonable time, the central authority may direct that the person be transported in custody to the foreign country from which the person was first transported, and such direction shall be sufficient authority for that person's removal from Bangladesh by such means as the central authority directs.
19. **Requests for enforcement of foreign confiscation order.**-
- (1) Where there are reasonable grounds for believing that some of or all of the property concerned is located in Bangladesh, the appropriate authority of foreign country may request the central authority of Bangladesh to make arrangement for the enforcement of a confiscation order made by foreign country in a judicial process.
- (2) On receipt of a request under sub-rule (1) the central authority may take action to implement foreign confiscation order under the existing law.
- (3) A certificate shall be issued by or on behalf of the central authority of Bangladesh stating that the property has been recovered in the Bangladesh pursuant to a request so made and also include the value of the property so recovered. Such a certificate shall be admissible in evidence in judicial proceedings.
- (4) Where the value of property recovered is expressed in a currency other than that of Bangladesh, the extent to which the amount payable under foreign confiscation order is to be reduced in writing, and shall be calculated on the basis of exchange rate prevailing on the date on which the property was recovered in Bangladesh.
20. **Assistance in locating or identifying persons.**-Where the appropriate authority of a foreign country is satisfied that there are reasonable grounds for believing that there is, in Bangladesh a person who is or might be concerned in or affected by or could give or provide evidence or assistance relevant to any criminal matter in foreign country, the appropriate authority of that foreign country may request the central authority of Bangladesh to assist in locating or identifying that person.
21. **Assistance in service of process.**-The appropriate authority of foreign country may request the central authority of Bangladesh to assist in effecting service of any process where the appropriate authority is satisfied that, for the purpose of, or in connection with, any criminal matter in that foreign country, it is necessary or desirable to serve that process on a person or authority in Bangladesh.

22. Proof of orders, process etc. of foreign country.-(1) For the purposes of rule 19 , 20 and 21-

(a) any order made or judgment given by a court of a foreign country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and

(b) any process issued, or a document duly authenticated, that purports to be a copy of any summon process issued or order made or judgment given by a court of a foreign country shall be deemed without further proof to be a true copy.

(2) A document is duly authenticated for the purpose of sub-rule (1)(a) and 1(b), if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of that country.

23 Special rules on certain measures.-(1) On receipt of a request for execution of searching, freezing and seizing order of a foreign country under this Act, property may be searched, seized, freezed and attached by the competent authority being directed by the central authority in accordance with the respective substantive law under which the offence is alleged to have been committed.

(2) Where execution of a request requires freezing, seizing or attaching any property which does not cover by executive order the competent authority shall make an application to the competent court for freezing, seizing or attachment.

(3) The central authority shall in so far as law of Bangladesh permits, carry out requests for search and seizure, and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of bonafide third parties are protected.

PART-IV

Miscellaneous provisions

24. Central authority to give notice to the Government.-(1) The central authority shall give notice in written form as to every request made by Bangladesh and every request received from foreign country.

(2) A notice under sub-rule (1) shall in case of a request made by Bangladesh be given before the request is made, and in case of foreign request soon after the receipt of the request and before being processed.

(3) Every such notice shall be accompanied by a copy of the request, relevant documents, summary of material facts and such other materials as may be required by the Government.

(4) Upon receipt of a notice under sub-rule (1), the Government may give such direction to the central authority not to take action, where it contravenes any provision of the Act or where such a request by Bangladesh or by any foreign country is against the sovereignty, security or public order of Bangladesh.

- (5) Where a foreign request has been complied with, the central authority shall, if the Government so requires, provide the Government with particulars of any evidence, documents or other assistance provided pursuant to the request.
25. **Authentication of documents.**-(1) Subject to the law relating to the admissibility of evidence, any document that is obtained, provided, or produced pursuant to a request made under this Act and that is duly authenticated is admissible in evidence in any criminal proceedings.
- (2) A document is duly authenticated for the purposes of sub-rule (1), if it purports to be signed or certified by a judge, magistrate, or official of a foreign country, and either it is verified by the oath of a witness, or of an official of the government of that country or it purports to be sealed with an official or public seal of that country or of a department or official of the government, of that country.
- (3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other provision of this Act or any other law of Bangladesh.
26. **Provisions of publicly available documents and other records.**-(1) The requested country shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for the purchase or inspection by the public.
- (2) The requested country may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.
27. **Costs.**-The ordinary costs of executing a request shall be borne by the requesting country unless otherwise determined by the parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.
28. **Protection of confidentiality.**-(1) The requested country shall use its best endeavours to keep confidential the request for assistance, its contents and supporting documents as well as fact of granting such assistance. If the request cannot be executed without breaching confidentiality, the requested country shall so inform the requesting country, which shall then determine whether the request should nevertheless be executed.
- (2) The requesting country shall keep confidential evidence and information provided by the requested country, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

29. **Proceeds of crime.**-(1) The requested country shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting country of the results of its inquiries. In making the request, the requesting country shall notify the requested country of the basis of its belief that such proceeds may be located within its jurisdiction.
- (2) In pursuance of a request made under sub-rule (1), the requested country shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.
- (3) Where, pursuant to sub-rule (1), suspected proceeds of crime are found, the requested country shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting country.
- (4) The requested country shall to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting country or take other appropriate action to secure the proceeds following a request by the requesting country.
- (5) Nothing in sub-rule (1) shall prejudice the rights of bona fide third parties.

Government of the People's Republic of Bangladesh
Ministry of Law, Justice and Parliamentary Affairs
Legislative and Parliamentary Affairs Division

Notification
Date: 13 October, 2013

S.R.O.No.324-Law/2013-In exercise of the powers conferred by section 44 of the Anti-terrorism Act, 2009, the Government is pleased to publish the following English translation of the Act to be called the Authentic English Text of the Act, and it shall be effective from the date on which the Act comes into force under sub-section(3) of section 1 of the Act:

Anti-terrorism Act, 2009

Act No. 16 of 2009

[24 February, 2009 / 12 Falgun, 1415]

**An Act to make provisions for the prevention of certain terrorist activities,
effective punishment thereof and the matters ancillary thereto**

Whereas it is expedient and necessary to make provisions for the prevention of certain terrorist activities, effective punishment thereof and the matters ancillary thereto;

Therefore, it is hereby enacted as follows: –

First Chapter

Preliminary

1. **Short title, extent and commencement.**– (1) This Act may be called the Anti-terrorism Act, 2009.
¹[(2) It extends to the whole of Bangladesh, and applies also to persons on ships and aircrafts registered in Bangladesh, where ever they may be.]
(3) It shall be deemed to have come into force on 11 June, 2008.
2. **Definitions.**– In this Act, unless there is anything repugnant in the subject or context,–
 - (1) “**offence**” means an offence punishable under this Act;

¹Substituted by section 2 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

- ¹[(2) “**arms**” means arms mentioned in section 4 of the Arms Act, 1878 (Act No. XI of 1878), and shall also include all types of atomic, chemical and biological weapons;]
- (3) “**court**” means the court of a Sessions Judge or, as the case may be, the court of an Additional Sessions Judge;
- ²[(3A) “**Convention**” means the United Nations conventions, treaties and protocols duly ratified by the Government of Bangladesh included in Schedule 1 of this Act, and the United Nations conventions, treaties and protocols that may, by notification in official Gazette, be included from time to time in Schedule 1 by the Government of Bangladesh;]
- (4) “**imprisonment**” means imprisonment of any description mentioned in section 53 of the Penal Code;
- (5) “**Code of Criminal Procedure**” or “**Code**” means the Code of Criminal Procedure, 1898 (Act No. V of 1898);
- (6) “**Schedule**” means the Schedule to this Act;
- (7) “**Penal Code**” means the Penal Code, 1860 (Act No. XLV of 1860);
- (8) “**inflammable substance**” means any substance which normally has a high propensity to cause or to intensify or to spread fire, such as- octane, petrol, diesel, compressed natural gas (CNG), gun powder, and shall also include any other inflammable substances;
- (9) “**Bangladesh Bank**” means the Bangladesh Bank established under the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972);
- ³[(10) “**bank**” means a bank company defined in section 5(o) of the Bank Companies Act, 1991 (Act No. 14 of 1991), and shall also include any institution established as a bank under any other Act or Ordinance;]
- (11) “**Judge**” means a Sessions Judge, Additional Sessions Judge or, as the case may be, a Judge of the Anti-terrorism Special Tribunal;
- ⁴ [(11A) “**foreigner**” means a ‘foreigner’ as defined in section 2(a) of the Foreigners Act, 1946 (Act No. XXXI of 1946);]
- (12) “**Special Tribunal**” means any Anti-terrorism Special Tribunal constituted under section 28;
- (13) “**explosive substance**” means-
- (a) gun powder, nitro-glycerin, dynamite, gun-cotton, blasting powder, fulminate mercury or any other metal, coloured fire and any other substances used or manufactured to create an explosive or firework effect whether or not similar to the substances mentioned above; and

¹Substituted by section 2 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

²Substituted by section 3 (a) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

³Substituted by section 2 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

⁴Substituted by section 3 (b) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

- (b) any material used to make explosives and any machine, equipment, machinery or thing including any part of similar machine, equipment or machinery used to create an explosion with the help of any explosive material, or with the intention of conversion or providing assistance to create an explosion, and shall also include fuse, rocket, percussion caps, detonator, cartridge and any other ammunition;

¹[(14) “**property**” means, whether in or outside the country, -

- (i) any type of funds or assets, corporeal or incorporeal, moveable or immovable, tangible or intangible, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets or funds and any interest, dividends or other income on or value accruing from or generated by such funds or assets;
- (ii) cash, any other type of financial assets or economic resources, whether movable or immovable, tangible or intangible, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets;

²[(14A) “**terrorist person**” means any natural person who commits an offence under section 6(1), 10, 11, 12 or 13;

(14B) “**terrorist entity**” means any entity mentioned in Schedule 2 or any entity that commits an offence under section 6(1), 10, 11, 12 or 13;

(14C) “**terrorist property**” means any property that –

- (i) has been or is being used, or is intended to be used, in the commission of a terrorist activity under this Act, or in a corresponding offence under a law of a foreign State;
- (ii) is the subject of a terrorist activity;
- (iii) is proceeds of terrorism i.e. the property is derived from or obtained, directly or indirectly, through the commission of such a terrorist activity;
- (iv) has been collected, by any means, directly or indirectly, with the intention that the property should be used for the purpose of a terrorist activity or for supporting a terrorist or a terrorist entity, group or organization;
- (v) is owned or controlled directly or indirectly by a terrorist, terrorist entity, group or organization and the property of persons and entities acting on behalf of, or at the direction of a terrorist, terrorist entity, group or organization, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities, groups or organizations;

¹Substituted by section 3 (c) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

²Substituted by section 3 (d) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

(14D) “**Cooperative Society**” means any institution authorized or registered under the Cooperative Societies Act, 2001 (Act No. XLVII of 2001);]

(15) “**Evidence Act**” means the Evidence Act, 1872 (Act No. I of 1872);

¹[(16) “**suspicious transaction**” means such transaction –

(i) which is different from usual transactions;

²[(ii) which invokes presumption that -

(a) it is the proceeds of an offence under this Act,

(b) it relates to financing of terrorist activities or a terrorist person or entity;]

(iii) which is any other transactions or an attempt for transactions delineated in the instructions issued by the Bangladesh Bank from time to time for the purposes of this Act;

(17) “**entity**” means any organization consisting of one or more persons, including any legal entity, statutory body, commercial or non-commercial enterprise, group, partnership business, cooperative society;

(18) “**financial institution**” means a financial institution defined in section 2(b) of the Financial Institution Act, 1993 (Act No. XXVII of 1993);

(19) “**insurer**” means an insurer defined in section 2(25) of the Insurance Act, 2010 (Act No. XIII of 2010);

(20) “**reporting agency**” means –

(a) bank;

(b) financial institution;

(c) insurer;

(d) money changer;

(e) any company or institution which remits or transfers money or money value;

(f) any other institution carrying out its business with the approval of the Bangladesh Bank;

(g) (i) stock dealer and stock broker;

(ii) portfolio manager and merchant banker;

(iii) security custodian;

(iv) asset manager;

(h) (i) non-profit organization;

(ii) non-government organization;

(iii) cooperative society;

¹Clauses (16) to (30) were inserted by section 2 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

²Substituted by section 3 (e) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

- (i) real estate developer;
 - (j) dealer in precious metals or stones;
 - (k) trust and company service provider;
 - (l) lawyer, notary, other legal professionals and accountants;
 - (m) any other institution declared as such by the Bangladesh Bank from time to time with the approval of the Government;
- (21) “**money changer**” means a person or organization approved by the Bangladesh Bank under section 3 of the Foreign Exchange Regulation Act, 1947 (Act No. VII of 1947) for dealing in foreign exchange transactions;
- (22) (a) “**stock dealer and stock broker**” means an institution defined respectively in rules 2(i) and 2(j) of the Securities and Exchange Commission (Stock Dealer, Stock Broker and Authorized Representative) Rules, 2000;
- (b) “**portfolio manager and merchant banker**” means an institution defined respectively in rules 2(f) and 2(j) of the Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996;
- (c) “**security custodian**” means an institution defined in the rule 2(j) of the Securities and Exchange Commission (Security Custodial Services) Rules, 2003;
- (d) “**asset manager**” means an institution defined in rule 2(s) of the Securities and Exchange Commission (Mutual Fund) Rules, 2001;
- (23) “**non-profit organization**” means an institution licensed under section 28 of the Company Act, 1994 (Act No. XVIII of 1994);
- (24) “**non-government organization**” means the institution authorized or registered under the Societies Registration Act, 1860 (Act No. XXI of 1860), Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (Ordinance No. XLVI of 1961), Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978), Foreign Contributions (Regulation) Ordinance, 1982 (Ordinance No. XXXI of 1982) ¹[***]and the Microcredit Regulatory Authority Act, 2006 (Act No. XXXII of 2006) which-
- (a) receives fund (loan, grant, deposit) from local sources or provide fund to others; and/or
 - (b) receives any kind of foreign donation or loan or grant;
- (25) “**Bangladesh Financial Intelligence Unit (BFIU)**” means the Bangladesh Financial Intelligence Unit established under section 24(1) of the Money Laundering Prevention Act, ²[2012];
- (26) “**material support**” means to provide money, service or any other property or any other assistance to any person or entity by any person or entity by which terrorist activities mentioned in this Act have been committed or may be committed;

¹Omitted by section 3 (f) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

²Substituted by section 3 (g) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

(27) “**High Court Division**” means the High Court Division of the Bangladesh Supreme Court;

(28) “**real estate developer**” means any real estate developer or their officers or staff or agents who are engaged in constructing and buying and selling of land, home or house, commercial building and flat etc. as defined in section 2(15) of the Real Estate Development and Management Act, 2010 (Act No. XLVIII of 2010);

(29) “**trust and company services provider**” means any person or business enterprise that is not defined in any other law and provides any of the following services to any third party:

(i) to act as an agent for formation of a legal entity;

(ii) to act as a director, secretary of any legal entity or to appoint someone or to act as a partner in a partnership business or to perform any other similar responsibilities;

(iii) to act as a registered agent for any legal entity;

(iv) to act as a trustee of an express trust to appoint someone;

(v) to act as a nominee shareholder or as a director on behalf of another person or to appoint someone;

(30) “**public security**” means to ensure security of the life and the property of any person or ¹[group of people].]

3. **Applicability of other words and expressions.** – (1) The words and expressions used but not defined in this Act, shall have the same meaning as provided in the Code of Criminal Procedure, ²[existing laws relating to prevention of money laundering,] or as the case may be, the Penal Code.

(2) The general provisions of the Penal Code relating to the punishment of offences and liabilities shall, in so far as practicable, apply to the offences under this Act, unless they are not in consistence with the other provisions of this Act.

4. **Act to override other laws.**– Notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, the provisions of this Act shall prevail.

³5. **Extra-territorial application.** – (1) If any person or entity commits an offence within Bangladesh from outside of Bangladesh which, if committed inside of Bangladesh by the same person or entity, would have been punishable under this Act, the said offence shall be deemed to have been committed in Bangladesh and the provisions of this Act shall apply to the said person or entity and the offence.

(2) If any person or entity from Bangladesh commits an offence outside of Bangladesh, which if committed within Bangladesh by the said person or entity would have been punishable under this Act, the offence shall be deemed to have been committed in Bangladesh and the provisions of this Act shall apply to the said person or entity and the offence.]

¹Substituted by section 3 (h) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

²Inserted by section 3 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

³Substituted by section 4 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

⁴[(3) If any person commits an offence in any foreign country and then take shelter in Bangladesh which, if committed in Bangladesh, would have been punishable under this Act, the said offence shall be deemed to have been committed in Bangladesh and the provisions of this Act shall apply to the said person if he cannot be extradited to a foreign State having jurisdiction over the said offence.]

Second Chapter

Offences and punishment

⁵[6. **Terrorist activities.**- (1) If any person, entity or foreigner-

- (a) for the purposes of threatening the unity, integration, public security or sovereignty of Bangladesh by creating panic among the public or a section of the public with a view to compelling the Government or any entity or any person to do any act or preventing them from doing any act,—
 - (i) kills, causes grievous hurt to, confines or kidnaps any person or attempts to do the same;
 - (ii) conspires, abets or instigates any person to kill, injure seriously, confine or kidnap any person; or
 - (iii) damages or tries to damage the property of any other person, entity or the Republic; or
 - (iv) conspires or abets or instigates to damage the property of any other person, entity or the Republic; or
 - (v) uses or keeps in possession any explosive substance, inflammable substance and arms for the purposes of sub-clauses (i), (ii), (iii) or (iv);
- (b) with an intent to disrupt security of or to cause damage to the property of any foreign State, commits or attempts to commit or instigates or conspires or abets to commit an offence similar to the offences mentioned in sub-clauses (i), (ii), (iii), (iv) or (v) of clause (a);
- (c) with a view to compelling any international organization to do any act or preventing it from doing any act, commits or attempts to commit or instigates or conspires or abets to commit an offence similar to the offences mentioned in sub-clauses (i), (ii), (iii), (iv) or (v) of clause (a);
- (d) knowingly uses or possesses any terrorist property;
- (e) abets, instigates, conspires to do or commits or attempts to commit an offence described in the United Nations conventions included in the Schedule 1 of this Act;
- (f) commits any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act;

⁴Inserted by section 4 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁵Substituted by section 5 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

the person, entity or foreigner shall be deemed to have committed the offence of “terrorist activities”;

(2) If any person or foreigner,-

- (a) commits an offence under sub-clause (i) of clause (a) of sub-section (1), the person shall be punished with death or imprisonment for life and in addition to that a fine may also be imposed;
- (b) commits an offence under sub-clause (ii) of clause (a) of sub-section (1), the person shall, if the offence is punishable with death, be punished with imprisonment for life or rigorous imprisonment for a term not exceeding 14 (fourteen) years but not less than 4(four) years, and with fine;
- (c) commits an offence under sub-clause (iii) of clause (a) of sub-section (1), the person shall be punished with imprisonment for life or rigorous imprisonment for a term not exceeding 14 (fourteen) years but not less than 4(four) years, and with fine;
- (d) commits an offence under sub-clause (iv) of clause (a) of sub-section (1), the person shall be punished with rigorous imprisonment for a term not exceeding 14 (fourteen) years but not less than 4(four) years, and with fine;
- (e) commits an offence under sub-clause (v) of clause (a) of sub-section (1), the person shall be punished with imprisonment for life or rigorous imprisonment for a term not exceeding 14 (fourteen) years but not less than 4(four) years, and with fine.

(3) If any person or foreigner commits an offence under clause (b), (c), (d), (e) or (f) of sub-section (1), the person shall be punished with imprisonment for life or rigorous imprisonment for a term not exceeding 14 (fourteen) years but not less than 4(four) years, and with fine.

(4) If any entity commits the offence of terrorist activities,-

- (a) steps may be taken against the entity in accordance with section 18 and in addition to that a fine equivalent to thrice the value of the property involved with the offence or of taka 50 (fifty) lac, whichever is greater, may be imposed; and
- (b) the head of that entity, whether he is designated as Chairman, Managing Director, Chief Executive or by whatever name called, shall be punished with rigorous imprisonment for a term not exceeding 20 (twenty) years but not less than 4 (four) years and, in addition to that, a fine equivalent to twice the value of the property involved with the offence or of taka 20 (twenty) lac, whichever is greater, may be imposed unless he is able to prove that the said offence was committed without his knowledge or he had tried his best to prevent the commission of the said offence.]

¹[7. **Offence of terrorist financing.**- (1) If any person or entity willfully provides, receives, collects or makes arrangements for money, service or any other property, whether from legitimate or illegitimate source, by any means, directly or indirectly, with the intention that, it would, in full or in part, be used-

- (a) to carry out terrorist activity;

¹Substituted by section 6 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

- (b) by a terrorist person or entity for any purpose, or is in the knowledge that it may be used by a terrorist person or entity;

the said person or entity shall be deemed to have committed the offence of terrorist financing.

- (2) Conviction for terrorist financing shall not depend on any requirement that the fund, service or any other property mentioned in sub-section (1) was actually used to carry out or direct or attempt to carry out a terrorist act or be linked to a specific terrorist act.

- (3) If any person is convicted of any of the offences mentioned in sub-section (1), the person shall be punished with rigorous imprisonment for a term not exceeding 20 (twenty) years but not less than 4 (four) years, and in addition to that, a fine equivalent to twice the value of the property involved with the offence or taka 10(ten) lac, whichever is greater, may be imposed.

- (4) If any entity is convicted of any of the offences mentioned in the sub-section (1) –

- (a) steps may be taken against the entity in accordance with section 18 and in addition to that a fine equivalent to thrice the value of the property involved with the offence or of taka 50 (fifty) lac, whichever is greater, may be imposed; and

- (b) the head of that entity, whether he is designated as Chairman, Managing Director, Chief Executive or by whatever name called, shall be punished with rigorous imprisonment for a term not exceeding 20 (twenty) years but not less than 4 (four) years and, in addition to that, a fine equivalent to twice the value of the property involved with the offence or of taka 20 (twenty) lac, whichever is greater, may be imposed unless he is able to prove that the said offence was committed without his knowledge or he had tried his best to prevent the commission of the said offence.]

8. **Membership of a proscribed ²[entity].**– If any person is or claims to be a member of a prohibited ³[entity] under section 18, he shall commit an offence and be punished with imprisonment for a term not exceeding 6 (six) months, or a fine, or with both.

9. **Supporting any proscribed ⁴[entity].**– (1) If any person requests or invites someone to support any ¹[entity] proscribed under section 18 or arranges, directs or assists to organize a meeting, or makes a speech in a meeting with intent to support that ²[entity], expedite or encourage its activities, he shall commit an offence.

- (2) If any person makes a speech in a meeting or disseminates any information through radio or television or any print or electronic media asking for supporting a proscribed ³[entity] or with intent to facilitating its activities, he shall commit an offence.

²Substituted by section 7 (a) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

³Substituted by section 7(b) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁴Substituted by section 8(a) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

(3) If any person is convicted of any of the offences under sub-sections (1) or (2), he shall be punished with imprisonment for a term not exceeding 7 (seven) years but not less than 2 (two) years, and in addition to that a fine may be imposed.

10. **Punishment for criminal conspiracy of committing an offence.**- If any person does criminal conspiracy for committing an offence under this Act, ⁴[he shall be deemed to have committed an offence and] be punished with imprisonment for a term not exceeding two thirds of the maximum punishment prescribed for that offence, or a fine, or with both; and if the offence is punishable with death, the punishment for the offence shall be imprisonment for life or imprisonment for a term not exceeding 14 (fourteen) years, but not less than ⁵[4 (four)] years.

⁶[11. **Punishment for attempt of committing an offence.**- If any person or entity attempts to commit an offence under this Act, the person or entity shall be deemed to have committed an offence, and the person or the head of the entity, whether he is designated as Chairman, Managing Director, Chief Executive or any other name, shall be punished with imprisonment for a term not exceeding two thirds of the maximum punishment prescribed for that offence, or a fine, or with both; and if the offence is punishable with death, the punishment for the offence shall be imprisonment for life or rigorous imprisonment for a term not exceeding 14 (fourteen) years, but not less than 4 (four) years; and in addition to that actions may be taken under section 18.]

⁷[12. **Punishment for aid and abetment of an offence.**- If any person or entity, to commit any offence punishable under this Act-

- (a) aids or abets; or
- (b) participates as an accomplice; or
- (c) organizes or directs others; or
- (d) contributes;

the person or entity shall be deemed to have committed an offence, and the person or the head of the entity, whether he is designated as Chairman, Managing Director, Chief Executive or any other name, shall be punished with imprisonment for a term not exceeding two-thirds of the maximum punishment prescribed for that offence, or a fine, or with both; and if the offence is punishable with death, the punishment for the offence shall be imprisonment for life or rigorous imprisonment for a term not exceeding 14 (fourteen) years, but not less than 4 (four) years; and in addition to that actions may be taken under section 18 against the relevant entity.]

¹Substituted by section 8(b) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

²Substituted by section 8(b) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

³Substituted by section 8(c) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁴Substituted by section 9 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁵Substituted by section 9 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁶Substituted by section 10 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁷Substituted by section 11 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

13. **Punishment for instigating terrorist activities.**— If any person, by his ¹[***] activities or participation, prepares or distributes any document, or by transmitting any information through any print or electronic ²[or any other] media, or through any apparatus, assistance or technology or training, assists any person or ³[entity] knowing that the said document, apparatus, assistance or technology or training shall be used in committing any offence under this Act or any such person or ⁴[entity] shall use the same for committing similar offences, he shall be deemed to have instigated terrorist activities; and he shall be punished with imprisonment for a term not exceeding two-thirds of the maximum punishment prescribed for that offence, or a fine, or with both; and if the offence is punishable with death, the punishment for the offence shall be imprisonment for life or imprisonment for a term not exceeding 14 (fourteen) years, but not less than ⁵[4 (four)] years.
14. ⁶[**Punishment for harbouring an offender**].- (1) If any person harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, he shall, –
- (a) if the offence is punishable with death, be punished with an imprisonment for a term not exceeding 5 (five) years, and in addition to that a fine may also be imposed; or
 - (b) if the offence is punishable with imprisonment for life or with imprisonment for any other term, be punished with imprisonment for a term not exceeding 3 (three) years, and in addition to that a fine may also be imposed.
- (2) The provisions of sub-section (1) shall not extend to any case in which the offence of harbour or concealment is committed by the husband, wife, son, daughter, father or mother of the offender.
- ⁷[(3) Where the offence of harbour or concealment is committed by any entity, the provisions of sub-section (1) shall apply to the person who is in the charge of the entity as the Chairman, Managing Director, Chief Executive or in any other designation unless he is able to prove that the said offence was committed without his knowledge or he had tried his best to prevent the commission of such offence.]

¹The words “on his own will” were omitted by section 7 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

²Inserted by section 7 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

³Substituted by section 12 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁴Substituted by section 12 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁵Substituted by section 12 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁶Substituted by section 13(a) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁷Inserted by section 13(b) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

Third Chapter

Powers of Bangladesh Bank

- ¹[15. **Powers of Bangladesh Bank.**– (1) Bangladesh Bank may take necessary steps to prevent and identify any transaction carried out by any reporting agency with intent to commit an offence under this Act and for this purpose it shall have the following powers and authority, namely:-
- (a) to call for a report relating to any suspicious transaction from any reporting agency, analyze or review the same and to collect additional information relating thereto for the purpose of analyzing or reviewing the same and maintain record or database of them and, as the case may be, provide with the said information or report to the police or other concerned law enforcement agencies for taking necessary actions;
 - (b) if there is reasonable ground to suspect that a transaction is connected to terrorist activities, to issue a written order to the respective reporting agency to suspend or freeze transactions of that relevant account for a period not exceeding 30 (thirty) days and, if it appears necessary to reveal correct information relating to transactions of the said account, such suspension or freezing order may be extended for an additional term not exceeding 6 (six) months by 30 (thirty) days at a time;
 - (c) to monitor and supervise the activities of the reporting agencies;
 - (d) to give directions to the reporting agencies to take preventive steps to prevent financing of terrorist activities and proliferation of weapons of mass destructions (WMD);
 - (e) to monitor the compliance of the reporting agencies and to carry out on-site inspection of the reporting agencies for carrying out any purpose of this Act; and
 - (f) to provide training to the officers and employees of the reporting agencies for the purpose of identification of suspicious transactions and prevention of financing of terrorist activities.
- (2) Bangladesh Bank, on identification of a reporting agency or any of its customers as being involved in a suspicious transaction connected to financing of terrorist activities, shall inform the same to the police or the appropriate law enforcement agency and provide all necessary cooperation to facilitate their inquiries and investigations into the matter.
- (3) If the offence is committed in another country or the trial of an offence is pending in another country, Bangladesh Bank shall take steps to seize the accounts of any person or entity upon request of the foreign State or pursuant to any international, regional or bilateral agreement, United Nations conventions ratified by the Government of Bangladesh or respective resolutions adopted by the United Nations Security Council.
- (4) The fund seized under sub-section (3) shall be subject to disposal by the concerned court or pursuant to the concerned agreements, conventions or resolutions adopted by the United Nations Security Council.
- (5) The power and responsibilities of Bangladesh Bank under the provisions of this Act shall be exercised by Bangladesh Financial Intelligence Unit (BFIU), and if Bangladesh Financial Intelligence Unit requests to provide with any information under this Act, all the governmental, semi-governmental or autonomous bodies, or any other relevant institutions or organizations shall, on such request or, as the case may be, spontaneously provide it with such information.

¹Substituted by section 14 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

- (6) Bangladesh Financial Intelligence Unit shall, on request or, as the cases may be, spontaneously provide the financial intelligence units of other countries or any other similar foreign counterparts with any information relating to terrorist activities or financing of terrorist activities.
- (7) For the interest of investigation relating to financing of terrorist activities, the law enforcement agencies shall have the right to access any document or file of any bank under the following conditions, namely:-
 - (a) according to an order passed by a competent court or special tribunal; or
 - (b) with the approval of the Bangladesh Bank.
- (8) If any reporting agency fails to comply with the directions issued by Bangladesh Bank under this section or knowingly provides any wrong or false information or statement, the said reporting agency shall be liable to pay a fine, determined and directed by Bangladesh Bank, not exceeding taka 25 (twenty five) lac, and Bangladesh Bank may suspend the registration or license with intent to stop operation of the said agency or any of its branches, service centers, booths or agents within Bangladesh or, as the case may be, shall inform the registering or licensing authority about the subject matter to take appropriate action against the agency.
- (9) If any reporting agency fails to pay or does not pay any fine imposed by Bangladesh Bank according to sub-section (8), Bangladesh Bank may recover the amount from the reporting agency by debiting its accounts maintained in any other bank or financial institution or in Bangladesh Bank and in case of any unrealized or unpaid amount, Bangladesh Bank may, if necessary, apply before the concerned court for recovery.]

¹[16. **Duties of reporting agency.**- (1) Every reporting agency shall take necessary measures, with appropriate caution and responsibility, to prevent and identify financial transactions through it which is connected to any offence under this Act and if any suspicious transaction is identified, the agency shall spontaneously report it to Bangladesh Bank without any delay.

(2) The Board of Directors, or in the absence of the Board of Directors, the Chief Executive, by whatever name called, of each reporting organization shall approve and issue directions regarding the duties of its officers, and shall ascertain whether the directions issued by Bangladesh Bank under section 15, which are applicable to the reporting agency, have been complied with or not.

²[(3) If any reporting agency fails to comply with the provision under sub-section (1), the said reporting agency shall be liable to pay a fine, determined and directed by Bangladesh Bank, not exceeding taka 25 (twenty five) lac and Bangladesh Bank may suspend the registration or license with intent to stop operation of the said agency or any of its branches, service centers, booths or agents within Bangladesh or, as the case may be, shall inform the registering or licensing authority about the subject matter to take appropriate action against the agency.

(4) If the Board of Directors, or in the absence of the Board of Directors, the Chief Executive Officer, by whatever name called, of any reporting organization fails to comply with the provision of sub-section (2), the Chairman of the Board of Directors, or the Chief Executive Officer, as the case may be, shall be liable to pay a fine, determined and directed by Bangladesh Bank, not exceeding taka 25 (twenty five) lac, and Bangladesh Bank may remove the said person from his

¹Substituted by section 9 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

²Substituted by section 15 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

office or, as the case may be, shall inform the competent authority about the subject matter to take appropriate action against the person.

- (5) If any reporting agency fails to pay or does not pay any fine imposed by Bangladesh Bank under sub-section (3), or if the Chairman of the Board of Directors, or the Chief Executive Officer, by whatever name called, fails to pay or does not pay any fine imposed by Bangladesh Bank under sub-section (4), Bangladesh Bank may recover the amount from the reporting agency or from the account of the concerned person by debiting any account maintained by him in any bank or financial institution or in Bangladesh Bank, and in case of any unrealized or unpaid amount, Bangladesh Bank may, if necessary, apply before the concerned court for recovery.]]

Fourth Chapter

¹[Proscription and Enlistment and Implementation of United Nations Security Council Resolution]

²[17. **Person or entity involved in terrorist activities.**- For the purposes of this Act, any person or entity shall be deemed to have been involved in terrorist activities, if he or it –

- (a) commits terrorist activities or takes part in such activities;
- (b) takes preparation for terrorist activities;
- (c) assists in or encourages committing terrorist activities;
- (d) supports and abets any organization involved in terrorist activities;
- (e) meets the following listing criteria for enlistment and proscription set out in the Resolutions No. 1373 of the United Nations Security Council (UNSCR 1373), namely:-
 - (i) any person or entity that commits or attempts to commit terrorist acts, or participates in or facilitates the commission of terrorist acts;
 - (ii) any entity owned or controlled, directly or indirectly, by any enlisted or proscribed person or entity;
 - (iii) any person or entity acting on behalf of, or at the direction of, any enlisted or proscribed person or entity;
- (f) harbours any terrorist person; or
- (g) is involved in terrorist activities in any other ways.]

³[18. **Proscription and enlistment.**– (1) For the purposes of this Act, the Government, on reasonable grounds that a person or an entity is involved in terrorist activities, may, by notification in the official Gazette, enlist the person in the Schedule or proscribe and enlist the entity in the Schedule.

(2) The Government may, by notification in the official Gazette, include in or exclude any person or entity from the Schedule or amend the Schedule in any other manner.]

¹Substituted by section 16 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

²Substituted by section 17 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

³Substituted by section 18 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

19. **Review.**- (1) Any ¹[person or entity] aggrieved by the notification issued by the Government under section 18 may, mentioning reasons thereof, make a written application to the Government for review within 30 (thirty) days from the date of issuance of such notification, and the Government, after hearing the applicant, shall, ²[in accordance with rules made under this Act], dispose of the application within 90 (ninety) days of receipt.
- (2) If the application for review under sub-section (1) is rejected, the aggrieved ³[person or entity] may, within 30 (thirty) days of such refusal, prefer an appeal before the High Court Division.
- (3) The Government shall, by notification in the official Gazette, constitute a Review Committee consisting of three members for disposal of the review applications filed under sub-section (1).
- ⁴20. **Actions against any enlisted person or proscribed entity.**- (1) If any person is enlisted or any entity is proscribed under section 18, the Government, in addition to the other steps mentioned in this Act, shall, where applicable,-
- (a) close the offices of the entity, if any;
 - (b) freeze his or its bank and other accounts, if any, and seize or impound all of his or its properties;
 - (c) restrict the departure of the members of the proscribed entity from the country;
 - (d) confiscate all types of pamphlets, posters, banners or other printed, electronic, digital or other materials; and
 - (e) proscribe the publication, printing or circulation of press statements, press conferences or speeches delivered in public by the proscribed entity, or in favour or support of it.
- (2) The proscribed organization shall submit the accounts of its income and expenditure and shall disclose the sources of all its income to the competent authority nominated by the Government in its behalf.
- (3) If it appears that the property of the listed person or proscribed entity have been earned by illegal means or used in committing offence under this Act, the said property shall be confiscated in favour of the State by the court.]

¹Substituted by section 19 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

²Inserted by section 11 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

³Substituted by section 19 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁴Substituted by section 20 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

¹[20A. **Actions to implement United Nations Security Council Resolutions.**- (1) For the purposes of implementing United Nations Security Council Resolution No. 1267 and its successor resolutions and United Nations Security Council Resolution No. 1373 and United Nations Security Council resolutions related to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing, the Government of Bangladesh shall, in addition to the power mentioned in other sections of this Act or in any other law for the time being in force, have power of taking measures-

- (a) to freeze, seize or attach, without delay and without issuing any prior notice, the property, funds or other financial assets or economic resources held by, including funds derived or generated from property owned or controlled directly or indirectly by the listed person or entity or by any undertaking owned or controlled by the listed person or entity, or on behalf of a natural person or an entity, if the name of the person or entity is included in the lists, maintained by the committee established under Resolution No. 1267 of the United Nations Security Council;
- (b) to freeze, seize or attach, without delay and without issuing any prior notice, the funds or other financial assets or economic resources of the person who commits, or attempts to commit terrorist acts or participates in or facilitates the commission of terrorist acts; or of entities owned or controlled directly or indirectly by such person; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such person and associated persons and entities listed by the United Nations Security Council or proscribed or listed under Resolution No. 1373 of the United Nations Security Council;
- (c) to prohibit any willful provision or collection, directly or indirectly, of funds by any person or entity, whether in or outside Bangladesh, with the intention to use such funds or having the knowledge that they shall be used to carry out any terrorist act;
- (d) to prohibit any person or entity from making any funds, financial assets or economic resources of financial or other related services available, directly or indirectly, for the benefit of the persons or entities listed by the United Nations Security Council or proscribed or listed under Resolution No. 1373 or of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;
- (e) to prevent the entry into or the transit through Bangladesh of the persons listed by the United Nations Security Council through effective border control and immigration measures;
- (f) to prevent any direct or indirect supply, sale and transfer, in or outside Bangladesh, of arms and ammunition and other related items, materials, equipment, goods and technologies to the persons or entities listed by the United Nations Security Council;
- (g) to deny permission for any aircraft to take off or land in their territory if it is owned, leased or operated by or on behalf of the persons or entities listed by the United Nations Security Council;

¹Substituted by section 21 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

- (h) to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery and related materials, including through inspection of cargo to and from the persons or entities listed by the United Nations Security Council;
 - (i) to prohibit and prevent any activity mentioned in the said Resolutions and related with the persons and entities listed by the United Nations Security Council;
 - (j) to issue directions, from time to time, to the reporting agencies by Bangladesh Financial Intelligence Unit for proper implementation of this section;
 - (k) to determine, by issuing order or notification, the appropriate authority to take required actions as per the power stated in clauses (a) to (i).
- (2) If any person or entity violates a freezing or attachment order issued under this section, the person or the concerned person of the entity shall be punished with imprisonment for a term not exceeding 04(four) years or with a fine equivalent to twice the value of the property subject to freeze or attachment, or with both.
- (3) If any person or entity does any act or fails to do an act in contravention of clauses (c) and (d) of sub-section (1), the said person or entity shall be deemed to have committed an offence of financing of terrorist activities and shall be punished according to the provisions of sub-section (3), (4)(a) or, as the case may be, (4)(b) of section 7.
- (4) If any person or entity does any act or fails to do an act in contravention of clauses (e) to (h) of sub-section (1), the person or entity shall be deemed to have committed an offence of terrorist activity and shall be punished according to the provisions of sub-section (2), (3)(a) or, as the case may be, (3)(b) of section 6.
- (5) If any reporting agency fails to comply with the directions issued by Bangladesh Financial Intelligence Unit under this section, or fails to take immediate freezing action required under this section, the said reporting agency shall be liable to pay a fine, determined and directed by Bangladesh Financial Intelligence Unit, not exceeding taka 25 (twenty five) lac but not less than 05 (five) lac or twice the value of the suspected fund, whichever is greater, and Bangladesh Bank may also suspend the registration or license with intent to stop operation of the said agency or any of its branches, service centers, booths or agents within Bangladesh or, as the case may be, shall inform the registering or licensing authority about the subject matter to take appropriate action against the agency.
- (6) If any charge of negligence in implementing the provisions of this section is proved against any public servant, an administrative actions shall follow in accordance with his respective service rules.

Fifth Chapter

Investigation of Offences

21. **Special provisions with regard to examination of witnesses by police.**- (1) If any police officer, while investigating any case under this Act, finds it necessary to examine any person acquainted with the facts and circumstances of the case and, if the police officer knows or has reasons to believe the said person to be capable of giving a description of the facts in writing, the police officer may, with consent of the person, take a written description of the facts from that person.
- (2) The said person shall make his statement or description of the facts in writing under his hand and shall sign the same.
- ¹[(3) Notwithstanding anything contained in the Evidence Act, any discussion and conversation through Face book, Skype, Twitter or any other internet site by the terrorist person or entity, or still picture or video involving their offence are produced by the police or law enforcement agency to any court for the purpose of investigation, the information produced by the police or law enforcement agency shall be admissible as evidence to a court.]
22. **Special provision with regard to recording of statement of a witness by a Magistrate.**- If any Metropolitan Magistrate, ²[Judicial Magistrate], or any Magistrate of the Second Class specially empowered in this behalf, has knowledge or reasonable grounds to believe that the person acquainted with the facts and circumstances of the case is capable of presenting his statement in writing, he may direct that person to give his statement by writing under his hand.

¹Inserted by section 22 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

²Substituted by section 13 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

¹[23. **Special provision regarding recording of confession of an accused person.**- At the time of recording a confessional statement of an accused person by any Metropolitan Magistrate, Chief Judicial Magistrate or Judicial Magistrate or any Magistrate specially empowered in this behalf, if the said person is capable and willing to present a written statement regarding the facts, the person shall be given permission to record his confessional statement by writing under his hand.

23A. **Special provision with regard to seizure or attachment of terrorist property during investigation.**- (1) If an officer investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted, is proceeds of terrorism, he shall, in writing, make a petition to the District Magistrate in which district such property is situated for prior approval to seize the property, and the District Magistrate, after verifying the petition of investigating officer, if satisfied, may allow to seize such property and, where it is not practicable to seize such property, shall, by issuing an order of attachment, direct that such property shall not be transferred or otherwise dealt with except with prior permission of the officer issuing such order.

(2) If the terrorist property have been mingled with the property acquired from legitimate sources, such property, up to the value of the mingled terrorist property, or where the value of the terrorist property cannot be determined, full value of the mingled property shall be liable to seizure or attachment by the investigation officer following the procedure delineated in this section.

(3) The investigation officer shall duly inform the Government within 48 (forty eight) hours about seizure or attachment of such property and the Government shall either confirm or revoke the order of seizure or attachment so issued within a period of 60 (sixty) working days from the date of such attachment or seizure order have been issued:

Provided that an opportunity of making a representation by person whose property is being seized or attached shall be given.

(4) The time limit of the attachment or seizure under sub-section (3) shall continue until the investigation report submitted to the court.]

24. **Time-limit for investigation.**- (1) Any police officer shall complete the investigation of any case under this Act within ²[60 (sixty) days] of the date on which information was received or recorded under section 154 of the Code of Criminal Procedure.

(2) If any police officer fails to complete investigation within the time-limit mentioned in sub-section (1), he may extend the time for investigation for a period not exceeding ³[30 (thirty) days], by recording the reasons in writing in the case diary.

(3) If the said police officer fails to complete the investigation within the time-limit mentioned in sub-section (2), the said investigation officer may, with the written authorization of the

¹Substituted by section 23 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

²Substituted by section 15(a) of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

³Substituted by section 15(b) of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

Superintendent of Police of the relevant district or, as the case may be, the relevant Deputy Police Commissioner of the Metropolitan area, may extend the time for a further period not exceeding 30 (thirty) days ¹: Provided that the time-limit mentioned in sub-sections (1) to (3) shall not be applicable, if the evidence is required to be collected from outside of Bangladesh for investigation purpose.]

(4) If the said police officer fails to complete the investigation within the time-limit mentioned in sub-section (3), he shall, without any delay, inform the matter with reasons, to the Superintendent of Police of the relevant district or, as the case may be, the relevant Deputy Police Commissioner of the Metropolitan area, and if the reasons given are not satisfactory, the said investigation officer shall be ²[accused of negligence in performing the duties assigned to him].

25. Extension of time-limit with regard to investigation of certain cases.– (1) If any police officer fails to complete investigations within the extended time-limit specified in sub-section (3) of ³[section 24] due to the identity of the offender mentioned in the first information report (FIR) not being discovered and the inability to identify the said offender, it shall not be deemed to be a bar to submit any police report or a new police report or an additional police report at any time following the extended time-limit mentioned in ⁴[section 24].

(2) If any police officer fails to complete investigation within the extended time-limit for providing offence related evidence or any report under sub-section (3) of ⁵[section 24] due to the inability of collecting a medical, forensic, fingerprint, chemical or other expert witness, over which the police officer has no control and without which no effective report of the case may be possible to prepare, it shall not be deemed to be a bar to submit the police report at any time following the said extended time-limit.

26. **Remand.**– (1) Where any person is arrested and detained for the purposes of investigation, the investigation officer may make an application to the competent Magistrate for remand of the accused in police custody.

(2) On consideration of the application made under sub-section (1), the Magistrate may remand the accused in police custody and the duration of such remand shall not exceed an aggregate or consecutive period of 10 (ten) days:

Provided that if the investigation officer is able to satisfactorily prove before the Magistrate that additional evidence may be gathered if the accused is remanded for an extended period, the Magistrate may extend the period of further remand for a term not exceeding 5 (five) days.

¹Inserted by section 15(c) of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

²Substituted by section 15(d) of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

³Substituted by section 16 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

⁴ibid.

⁵ibid.

Sixth Chapter

Trial by the Sessions Judge

27. **Provision relating to trial of offence by a Sessions Judge or Additional Sessions Judge.**– (1) Notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, until a Special Tribunal is constituted in this behalf, the offences under this Act shall be triable by a Sessions Judge or, where the case has been transferred to the Additional Sessions Judge by the Sessions Judge, by an Additional Sessions Judge.
- (2) The Sessions Judge or the Additional Sessions Judge while trying an offence under this Act shall follow the procedure mentioned in chapter 23 of the Code of Criminal Procedure applicable to trials before the Courts of Sessions.
- (3) For the purposes of this chapter, the offences under this Act shall be deemed to be offences to be triable by a Court of Sessions, and the proceedings in respect of such offences may be filed before the Sessions Judge having jurisdiction in the Sessions Division in which the said offence or any part thereof has been committed.

Seventh Chapter

Trial by the Special Tribunal

28. **Formation of Anti-terrorism Special Tribunal.**– (1) The Government may, by notification in the official Gazette, constitute one or more Anti-terrorism Special Tribunals for speedy and effective trial of the offences committed under this Act.
- (2) A Special Tribunal constituted under sub-section (1) shall consist of a Sessions Judge or an Additional Sessions Judge appointed by the Government in consultation with the Supreme Court; and a Judge so appointed shall be designated as the “Judge, Anti-terrorism Special Tribunal”.
- (3) A Special Tribunal constituted under this section may be assigned to the local jurisdiction over the whole of Bangladesh, or of one or more Sessions Divisions; and the said Tribunal shall only try the cases of offences under this Act, which are filed or transferred to the Tribunal.
- (4) On account of assigning to a Special Tribunal the jurisdiction for the whole of Bangladesh, or any part thereof consisting of one or more Sessions Divisions by the Government, a Sessions Judge or an Additional Sessions Judge of that territorial jurisdiction shall not cease to have jurisdiction in respect of trial of offences under this Act, and the cases of offences pending before the Court of Sessions under this Act, shall not be transferred to any Special Tribunal having territorial jurisdiction, unless the Government, by notification in the official Gazette, so directs.
- (5) There shall not be any bar for a Special Tribunal, unless it otherwise decides to recall or rehear any witness whose evidence has already been recorded or to reopen the proceedings already held under sub-section (4), but may act on the evidence already recorded or produced and continue the trial from the stage the case has reached.
- (6) A Special Tribunal may sit and conduct its proceedings at such times and places as the Government may, by order, specify.

29. **Procedure of Special Tribunal.**- (1) A Special Tribunal shall not take cognizance of any offence except on a report in writing made by a police officer not below the rank of Sub-Inspector.
- (2) The Special Tribunal trying an offence under this Act shall follow the procedure laid down in chapter 23 of the Code of Criminal Procedure for trial of offences before the Court of Sessions, subject to not being inconsistent with the special provisions of this Act.
- (3) A Special Tribunal, if it is not necessary in the interest of justice, and for reasons to be recorded in writing, may not adjourn any trial.
- (4) Where a Special Tribunal has reasons to believe that an accused has absconded or is concealing himself so that he may not be arrested and produced before it for trial and there is no immediate prospect of arresting him, it shall, by order published in at least two Bangla Daily newspapers having wide circulation, direct such person to appear before it within such time as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.
- (5) Where in case after the appearance of an accused person before the Special Tribunal, or his release on bail, the accused person absconds or fails to appear before it, the procedure as laid down in sub-section (4), shall not apply and the Tribunal shall, after recording its decision, try such person in his absence.
- (6) A Special Tribunal may, upon applications made to it, or of its own motion, direct a police officer to make '[further investigation]' in any case relating to an offence committed under this Act, and to report within such time as may be specified by it.
30. **Application of the Code to proceedings of Special Tribunals.**- (1) The provisions of the Code of Criminal Procedure, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings of Special Tribunals, and such Special Tribunals shall have all the powers of a Court of Sessions in exercising its original jurisdiction.
- (2) The person conducting cases on behalf of the Government before the Special Tribunal shall be deemed to be a public prosecutor.
31. **Appeal and approval of death sentence.**- (1) An Appeal from any order, judgment or sentence passed by a Special Tribunal may be preferred to the High Court Division within 30 (thirty) days from the date of passing thereof.
- (2) Where a death sentence is passed under this Act by a Special Tribunal, the proceedings shall be submitted forthwith to the High Court Division and the sentence shall not be executed unless it is approved by that Division.

¹Substituted by section 17 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

32. **Provision regarding bail.**- No person accused of an offence punishable under this Act shall be enlarged on bail by a Magistrate or a Judge, unless-
- (a) the public prosecutor is given the opportunity of being heard in respect of bail order; and
 - (b) the ¹[Magistrate or Judge] is satisfied that there are reasonable grounds to believe that the accused may not be found guilty of the offence at the trial and records in writing his reasons of the grounds for being so satisfied.
33. **Time-limit for disposal of cases by Special Tribunal.** - (1) A Judge of a Special Tribunal shall conclude the trial of a case within 6 (six) months from the date on which ²[the charge is framed] in respect of the case.
- (2) If the Judge fails to conclude the trial within the time-limit specified in sub-section (1), he may, for reasons to be recorded in writing, extend the time not exceeding 3 (three) months.
 - (3) If the Judge fails to conclude the trial within the time-limit specified in sub-section (2), he may, after informing the High Court Division and the Government in writing as to the reasons for such failure, further extend the time not exceeding 3 (three) months.

Eighth Chapter

Property derived from terrorist activities

- ³[34. ⁴**Possession of property obtained from terrorist activities**].- ⁵[(1) Any terrorist person or entity or any other person, shall not enjoy or possess any property derived from terrorist activities or money or property given by any terrorist person or terrorist entity or any other terrorist property.
- (2) Any terrorist property which remains in the possession of any terrorist person or entity or any other person, whether or not punished under this Act, shall be liable to be confiscated in favour of the State.]
 - (3) The property of any person or entity involved in any offence under this Act, shall be subject to seizure by the Government upon request of any foreign State or organization and shall be liable to be disposed of under mutual legal assistance with the relevant country, or as the case may be, by the Government.
 - (4) The property of any person or entity shall be subject to seizure in pursuant to any international, regional or bilateral agreements ratified by the Government or any convention of the United Nations or relevant resolutions adopted by the United Nations Security Council.]

¹Substituted by section 18 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

²Substituted by section 19 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

³Substituted by section 20 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

⁴Substituted by section 24(a) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2012).

⁵Substituted by section 24(b) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2012).

- ¹[35. ²**[Confiscation of assets obtained from terrorist activities and proceeds of terrorism].**– (1) Where the Judge is satisfied that any property is seized or attached on the ground that ³[the property derives from terrorist activities or constitutes from proceeds of terrorism], the Court may pass an order to confiscate the property.
- (2) If ⁴[any proceeds of terrorism or any property derived from terrorist activities] is confiscated under sub-section (1), the Government may take legal steps in accordance with sections (18) and (20) of this Act against the entity from which the said property shall be confiscated.
- (3) Property seized in accordance with sub-section (4) of section 34 of this Act shall be liable to be confiscated and disposed of by the concerned court in light of the concerned agreements, conventions or the resolutions adopted by the United Nations Security Council.
- (4) If any person or entity other than the convicted person or entity has title, interest or right to the confiscated property, the property may be returned by the concerned court.]
- 36. Issuance of a notice to show cause prior to confiscation of assets obtained from terrorist activities.**– (1) Before passing an order of confiscation of assets obtained from terrorist activities, ⁵[a show cause notice shall, in accordance with the provisions of the Code of Criminal Procedure] be served to the person who possesses or controls the said property and no order for confiscation of assets obtained from terrorist activities shall be passed without allowing the person to reply to the notice within the stipulated time of the notice, or without giving the person a reasonable opportunity of being heard.
- (2) No order of confiscation under sub-section (1) may be passed, if the person is able to prove that he was unaware of the fact that the said assets was obtained from terrorist activities and he purchased the same with an appropriate price.
- 37. Appeal.**– (1) Any person aggrieved by an order of confiscation passed under section 35, may prefer an appeal to the High Court Division within 1(one) month from the date of the receipt of such order.
- (2) Where an order under section 35 is modified or annulled by the High Court Division or a case is filed in contravention of the provisions of this Act, the property of the person against whom an order of confiscation has been made under section 35 shall, if he is acquitted, be returned to him, and if it is not possible for any reason to return the confiscated property, such person shall be paid a reasonable price thereof with reasonable interest accruing from the day of attachment or seizure of the property considering the property having been sold to the Government.

¹Substituted by section 21 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

²Substituted by section 25(a) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

³Substituted by section 25(b) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁴Substituted by section 25(b) of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

⁵Substituted by section 22 of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

Ninth Chapter

Mutual legal assistance

38. **Mutual legal assistance.**- (1) When a terrorist act is committed or abetted, attempted, conspired or financed to commit an offence in such a manner that the territory of a foreign State is involved, or the terrorist act is so committed, abetted, attempted, conspired or financed in Bangladesh from another sovereign State or from Bangladesh in another sovereign State, the Government of Bangladesh shall, upon satisfaction, provide all such necessary legal assistance ¹[in accordance with any agreement] on criminal investigation, trial or extradition as may be requested by the Government of that foreign State subject to the following provisions of this section.
- (2) The terms and conditions of mutual legal assistance shall be mutually agreed upon between the requesting and the requested States on the basis of reciprocity through signing of formal agreement or exchange of letters.
- (3) ²[In absence of mutual understanding between countries,] no Bangladeshi citizen shall be handed over to a foreign State for trial of offence under this Act
- ³[Provided that, the extradition of any Bangladeshi citizen shall not be executed if the person is under trial in any court in Bangladesh for the same offence.]
- (4) For the purposes of mutual legal assistance under this section, a Bangladeshi citizen may, subject to his consent, be handed over to a foreign State to provide assistance as a witness in a relevant criminal prosecution or in the process of investigation.
- (5) Bangladesh, being a requested country, may refuse to comply with a request for extradition or mutual legal assistance in a particular case, if the Government has substantial grounds to believe that the request for extradition of any offender for the purpose of prosecuting or punishing that person only on account of his race, religion, nationality, or political opinion.

¹Substituted by section 23(a) of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

²Substituted by section 23(b) of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

³Substituted by section 23(b) of the Anti-terrorism (Amendment) Act, 2012 (Act No. 6 of 2012).

Tenth Chapter

General provisions

39. **Offences to be cognizable and non-bailable.**- All offences under this Act shall be cognizable.
- (2) All offences under this Act shall be non-bailable.
40. **Inevitability of prior approval regarding investigation and trial.**- ¹[(1) If any offence is committed under this Act, the concerned police officer shall, immediately after notifying the District Magistrate, file a case and start investigation thereof.]
- (2) No court shall take cognizance of any offence under this Act without the prior sanction of the Government.
41. **Transfer of cases to and from Special Tribunal.**- The Government may, at any stage of trial before conclusion of evidence, transfer any case or cases involving any offence under this Act from a Court of Sessions to a Special Tribunal or from a Special Tribunal to a Court of Sessions on reasonable grounds.
42. **Power to amend the Schedule.** - The Government may, by an order notified in the official Gazette, amend the Schedule of this Act.
43. **Power to make rules.**- For the purposes of this Act, the Government may, by notification in the official Gazette, make rules.
44. **Original text and English text.**- The original text of this Act shall be in Bangla, and there shall be an authentic text of an authorized translation in English of this Act:
- Provided that in the event of conflict between the Bangla and the English text, the Bangla text shall prevail.
45. **Repeal and savings.**- (1) The Anti-Terrorism Ordinance, 2008 (Ordinance No. 28 of 2008) is hereby repealed.
- (2) Notwithstanding such repeal, all acts done or actions taken under the repealed Ordinance shall be deemed to have been done or taken under this Act.

¹Substituted by section 26 of the Anti-terrorism (Amendment) Act, 2013 (Act No. 22 of 2013).

Schedule-1

[See clause (3A) of section 2]

- (a) Convention for the suppression of unlawful seizure of Aircraft done at the Hague on 16th December, 1970;
- (b) Convention for the suppression of unlawful acts against the safety of Civil aviation, done at Montreal on 23rd September, 1971;
- (c) Convention on the prevention and punishment of Crimes against internationally protected person, including diplomatic agents, adopted by the General Assembly of the United Nations on 14th December, 1973;
- (d) International convention against the taking of hostages adopted by the General Assembly of the United Nations on 17th December, 1979;
- (e) Convention on the physical protection of nuclear material, adopted at Vienna on 3rd March, 1980;
- (f) Protocol for the suppression of unlawful acts of violence at airports serving International Civil Aviation, supplementary to the convention for the suppression of unlawful acts against the safety of Civil Aviation, done at Montreal on 24th February, 1988;
- (g) Convention for the suppression of unlawful acts against the safety of maritime navigation, done at Rome on 10th March, 1988;
- (h) Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf, done at Rome on 10th March, 1988;
- (i) International convention for the suppression of terrorist bombings, adopted by the General Assembly of the United Nations on 15th December, 1997.

Schedule-2

(See section 18)

1	2	3	4	5
Serial No.	Name of the entities	Address of the entities	Date of proscription	Remarks
01	Shahadat-e-Al Hikma party Bangladesh	House of Mizanur Rahman, Horogram natunpara bypass road, P.S. Rajpara, RMP, Rajshahi	09-02-2003	
02	Jagrata Muslim Janata Bangladesh (JMJB)	No specific address	23-02-2005	
03	Jamatul Mujahedin	No specific address	23-02-2005	
04	Harkatul Jihad Al Islami	No specific address	17-10-2005	
05	Hizbut Tahrir Bangladesh	H.M. Siddique Manson, 55/A, Purana Palton, Dhaka and 201/C, Palton Tower (3rd Floor), 27 Purana Palton Lane, Dhaka.	22-10-2009	

Schedule-3

(See section 18)

1	2	3	4	5
Serial No.	Name of the person	Address of the person	Date of Enlistment	Remarks

Government of the People's Republic of Bangladesh
Ministry of Home Affairs
Bangladesh Secretariat, Dhaka.

NOTIFICATION

Date: 13 October, 2013

S.R.O No. 325-Law/2013-In exercise of the power conferred by section 43 of the Anti Terrorism Act, 2009 (Act No. XVI of 2009) the Government is pleased to makes the following Rules, namely-

Part-I

Preliminary

1. **Short title, extent and commencement.**—(1) These rules may be called as the Anti Terrorism Rules, 2013.
 - (2) It extends to the whole of Bangladesh and it applies to all persons on ships and aircraft registered in Bangladesh, wherever they may be.
 - (3) It shall come into force immediately.
2. **Definitions**— In these rules, unless there is anything repugnant in the subject or context—
 - (a) ‘**Act**’ means the Anti Terrorism Act, 2009 (Act No. XVI of 2009);
 - (b) ‘**Bangladesh Financial Intelligence Unit**’ means the Bangladesh Financial Intelligence Unit (hereinafter referred to as BFIU) as defined in section 2(25) of the Act;
 - (c) ‘**False positive**’ means a situation whereby a suspension or freeze action is taken on the basis of available information but upon further inquiry and receipt of additional clarifying information, such suspension or freeze action is determined not to be the correct course of action;
 - (d) ‘**Freeze**’ means to prohibit the transfer, conversion, disposition or movement of any fund or other financial assets or economic resources that are owned or controlled by any individuals or entities;
 - (e) ‘**Listed individuals and entities**’ means the individuals, groups and entities who are enlisted under United Nations Security Council Resolutions;
 - (f) ‘**National Committee**’ means the National Committee on the Implementation of the United Nations Security Council Resolutions to Combat Terrorism and Financing of Terrorism formed by the Government under S.R.O No. 398-Law/2012 dated November 29, 2012;
 - (g) ‘**Resolutions**’ means the United Nations Security Council Resolutions 1267 (1999), 1333(2000), 1363 (2001), 1373(2001), 1390 (2002), 1452 (2002), 1455 (2003), 1540 (2004), 1526 (2004), 1617 (2005), 1718 (2006), 1730 (2006), 1735 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1822 (2008), 1874 (2009), 1904 (2009), 1929 (2010), 1988 (2011), 1989 (2011), 2082 (2012), 2083 (2012) and any successor resolutions to be adopted by the Security Council of the United Nations in the future, under Chapter VII of the Charter of the United Nations;

- (h) ‘UNSCR Committee’ means the respective sanction committee of the United Nations Security Council Resolutions;
- (i) ‘1267 Committee’ means United Nations Security Council committee pursuant to the United Nations Security Council Resolutions (herein after referred to as ‘UNSCR’) No.1267 of 1999 and 1989 of 2011; and
- (j) ‘1988 Committee’ means United Nations Security Council committee pursuant to the United Nations Security Council Resolutions No. 1988 of 2011.

Part-II

Freezing of account or suspension of transaction by BFIU

3. **Freezing of account or suspension of transaction etc.**- In exercise of power pursuant to section 15 (1) (b) of the Act relating to suspension of transaction and freezing of an account as maintained by a reporting agency, the BFIU shall follow the following procedure, namely-
- (a) Suspension or freezing order shall contain as much detail as possible about the account or transaction and customer;
 - (b) The BFIU may suspend debit, credit or both transaction or any transaction of an account;
 - (c) Every suspension or freeze order shall continue for a period of 30 (thirty) days only and the BFIU may issue additional 6(six) months orders on same ground against the same account or transaction as it deems fit and proper;
 - (d) The BFIU may issue different suspension or freeze order on different ground against the same account or transaction. Any gap between two suspension or freeze order of the BFIU shall not be an impediment for the applicability of the order;
 - (e) The reporting agency shall consult with the BFIU before any transaction in the account that was under suspension or freeze order to confirm about the expiration of suspension or freeze order or further instruction from the BFIU;
 - (f) Suspension order shall mean that no debit will be allowed except maintenance fees and excise duty deducted from that account, if not mentioned otherwise. Credit may be allowed with proper due diligence if it is not mentioned otherwise in the suspension order;
 - (g) During the continuance of the freeze order no debit or credit shall be allowed in the account without prior written instruction from the BFIU. Reporting agency shall after receiving the freeze order, immediately inform the BFIU as to the balance and linked accounts of the account already under freeze order;
 - (h) In case of false positive, the BFIU shall have the authority to withdraw the suspension or freeze order, if the order was issued on its own motion after reviewing the application and supporting documents submitted by the aggrieved person or entity;
 - (i) the BFIU shall consult with requesting Government agency before withdrawal of a suspension or freeze order based on a false positive, where the order was issued on the basis of a request made by other Government agency;

- (j) the first suspension or freeze order and withdrawal of suspension or freeze order shall be approved by the head of the BFIU, where the order is undertaken in its own motion; and
 - (k) in absence of head of the BFIU, suspension or freeze order shall be approved by the Deputy head of the BFIU, provided that the matter shall be presented before the head of the BFIU immediately on his availability in the office.
4. **Unfreezing.**-(1) Upon request made by any person or entity, the BFIU may allow to unfreeze or withdraw the funds and other financial assets or economic resources of individual or entity with the same or similar name as listed or suspected individual or entity (i.e. a false positive), provided that the BFIU determines that the individual or entity is not the actual listed or suspected individual or entity.
- (2) For false positive, burden of proof shall lie upon the person or entity concerned that they are not directly or indirectly involved in the commission of any criminal offence as alleged.
 - (3) To protect the right of a bonafide third party and to confirm the identity as to false positive, the BFIU shall have the authority to seek information or documents from the person or entity concerned, as may be required.
 - (4) To protect the right of a bonafide third party and to confirm the identity as to false positive, Criminal Investigation Department (hereinafter referred to as CID) of Bangladesh Police or other law enforcing agency shall provide information or documents upon request of the BFIU.
5. **Penalties imposed by the BFIU.**-(1) Penalties imposed by the BFIU under section 15(8) of the Act for non-compliance of the directions issued by Bangladesh Bank or for providing any wrong or false information or statement, shall be realized from the reporting agency or from the person or employee concerned, or from both who were involved in doing so.
- (2) Before imposing fine or penalties under section 15(8) of the Act, the BFIU shall call for an explanation to the reporting agency or the person involved as to the non-compliance of the directions of Bangladesh Bank or for providing any wrong or false information or statement.
 - (3) Fine realized under section 15(8) of the Act shall be deposited in the account of the BFIU maintained in Bangladesh Bank. Such realized amount may be utilized for the purpose of combating terrorist financing or prevention of money laundering and related offences.
 - (4) Any person or employee of a reporting agency or the reporting agency itself aggrieved by an order made under section 15(8) of the Act, may apply against such an order of the BFIU for reconsideration of the order only for a single time. In considering the application, the BFIU shall take reasonable measures to ascertain as to the bonafide statement of the applicant. The BFIU in exercising due diligence shall dispose of the application holding proper analysis or inspection, in appropriate cases, and may be communicated to the applicant in written form.
 - (5) While suspending the registration or license of a reporting agency by the BFIU with a view to stop operation of the said agency or any of its branch, service center, booth or agent within Bangladesh, the BFIU shall give a 15 (fifteen) days prior notice mentioning the reason for stopping operation of the agency.

- (6) Where a reporting agency not registered or licensed under Bangladesh Bank, fails to comply with the directions issued by Bangladesh Bank or knowingly provides any wrong or false information or statement, the BFIU shall inform in the form of a summary report about the matter to the registering or licensing authority of such reporting agency to take appropriate action against it.
- (7) Registering or licensing authority shall take appropriate measure in pursuance of a request made by the BFIU and inform the BFIU about the action taken, within 30 (thirty) days from the date of receiving the request from the BFIU.
6. **Access to Bank Information.**- (1) In absence of any order passed by a competent court or special tribunal constituted under the Act, the investigating officer of a concerned law enforcing agency shall have no right to access into the related document or file of any bank or financial institution for the purpose of investigating financing of terrorist activities, without prior approval of the BFIU.
 - (2) At the time of giving approval of any investigating agency to allow access to the information or documents maintained by a bank or financial institution, the BFIU may inform the matter to the concerned bank or financial institution in appropriate cases.
 - (3) In order to maintain co-ordinate relationship, the investigating officer of the law enforcing agency shall inform the BFIU as to the access to the related document or file of any bank or financial institution following an order passed by a competent court or a special tribunal for the purpose of investigating financing of terrorist activities or related offences.

Part-III

Proscription and enlistment

7. **Domestic proscription and enlistment.**- (1) Proscription of entity and enlistment of person in domestic level and review of proscription or enlistment order shall be done by a committee, to be known as 'Proscription and Enlistment Committee' headed by the secretary of the Ministry of Home Affairs (hereinafter referred to as MOHA), and head of the Political Wing and Head of the Legal Wing of the MOHA shall respectively be the members of that committee.
 - (2) While proscription and enlistment, the Proscription and Enlistment Committee shall decide on the basis of reasonable ground that the proposed person or entity meets the criteria set out in section 17 of the Act.
 - (3) The Proscription and Enlistment Committee shall take all reasonable efforts as soon as possible, informing designated individual and entities, as to their proscription and enlistment which among others shall contain:
 - (a) the designation and its implications, in order to prevent any unintentional breaches on the part of themselves or related third parties;
 - (b) the review procedure and information on the de-listing process, including a contact point within the Government to address any questions regarding the process;
 - (c) publicly-releasable information concerning the reasons for designation; and
 - (d) procedures to allow approved access to funds or other assets for basic and extraordinary expenses as soon as possible.

- (4) After publication of schedule-2 and schedule-3 of the Act, the Proscription and Enlistment Committee shall forward the schedule to Bangladesh Police and the BFIU for taking appropriate action in accordance with the provision of section 20 of the Act.
 - (5) The proscribed entity shall submit its income and expenditure statement as much detail as possible, to the Proscription and Enlistment Committee. Where the proscribed entity does not submit its income and expenditure statement, the Proscription and Enlistment Committee shall refer the matter to the CID of Bangladesh Police for taking appropriate legal action.
 - (6) Where the Proscription and Enlistment Committee believes on reasonable ground after analyzing the income and expenditure statement of the enlisted person or proscribed entity that the stated income or expenditure is the proceeds of crime under the Act, the Proscription and Enlistment Committee shall refer the matter to the CID of Bangladesh Police for taking appropriate legal action.
8. **Requesting other country to take reasonable measures.**-(1) Where the proscription or enlistment is done under the authority of UNSCR 1373 and the Proscription and Enlistment Committee finds reasonable ground to believe that proscribed entity or enlisted person is functioning or is involved in any foreign country, the Proscription and Enlistment Committee shall forthwith request the matter to the appropriate authority of the foreign country concerned, with prior information to the National Committee, complying with the procedure as laid down in the UNSCR 1373.
- (2) While requesting another country to give effect to the actions initiated under the freezing mechanisms that have been implemented pursuant to UNSCR 1373 of 2001, the Proscription and Enlistment Committee shall provide as much detail as possible on the proposed name, in particular, sufficient identifying information to allow for the accurate and positive identification of persons or entities; and specific information supporting a determination that the person or entity meets the relevant criteria for designation.
9. **Review of proscription or enlistment order.**-(1) The person or entity, aggrieved by the proscription or enlistment order, may apply, in writing, for review of the order with full details of rationale and supporting documents before the Proscription and Enlistment Committee.
- (2) After receiving a review application the Proscription and Enlistment Committee pursuant to rule-7(1) shall take necessary measure to dispose of the application considering the merit within 30(thirty) days and inform the decision to the applicant.
 - (3) The aggrieved person or entity may prefer an appeal before the High Court Division of the Supreme Court against the order made under sub-rule (2), within 30 (thirty) days.
10. **Proposing a name to the 1267 Committee of the United Nations Security Council.**-
- (1) Notwithstanding anything contained in any other rules or order for the time being in force, the National Committee may propose to the 1267 Committee of the United Nations Security Council, for designation of a person or entity that meets the specific criteria for designation as set out in UNSCR 1989 of 2011 and related resolutions, if the National Committee is satisfied that there are reasonable cause to believe that there are sufficient evidence in support of such designation.

(2) While proposing a name to the 1267 Committee for inclusion, pursuant to resolutions No. 1267 of 1999 and its successor resolutions, the National Committee shall-

- (a) Follow the procedures and standard forms for listing, as adopted by the 1267 Committee of the United Nations Security Council;
- (b) Provide as much relevant information as possible on the proposed name, in particular, sufficient identifying information to allow for the accurate and positive identification of individuals, groups, undertakings, and entities, and to the extent possible, the information required by Interpol to issue a Special Notice; and
- (c) Provide a statement of case, which contains as much detail as possible on the basis for the listing, including specific information supporting a determination that the person or entity meets the relevant criteria for designation, the nature of the information; supporting information or documents that can be provided; and details of any connection between the proposed designee and any currently designated person or entity.

11. Proposing a name to the 1988 Committee of the United Nations Security Council.-

Notwithstanding anything contained in any other rules or order for the time being in force, the National Committee may propose to the 1988 Committee of the United Nations Security Council, for designation of a person or entity that meets the specific criteria for designation as set out in UNSCR 1988 of 2011 and related Resolutions, if the National Committee is satisfied that there are reasonable cause to believe that there are sufficient evidence in support of such designation. While proposing a name for inclusion the National Committee shall follow the procedure for listing as adopted by the 1988 committee and the provisions of rule 10 (2) shall be applied.

Part-IV

Implementation of the provisions United Nations Security Council Resolutions

12. Appointment of focal points for implementing the United Nations Security Council Resolutions.- In exercising the power of section 20A(k) of the Act, the Government shall appoint the following focal points for implementing the United Nations Security Council Resolutions, namely-

- (a) The Focal Point from the Ministry of Foreign Affairs, (hereinafter referred to as MOFA) shall be the Director General (UN), Ministry of Foreign Affairs;
- (b) The Focal Point from the Ministry of Home Affairs, (hereinafter referred to as MOHA) shall be the Head of Political Wing or Joint Secretary (Political), Ministry of Home Affairs;
- (c) The Focal Point from the Ministry of Civil Aviation and Tourism shall be the Deputy Secretary, Ministry of Civil Aviation and Tourism;
- (d) The Focal Point from the Ministry of Shipping shall be the Deputy Secretary (Shipping), Ministry of Shipping;
- (e) The Focal Point from the Ministry of Commerce shall be the Director (WTO Cell), Ministry of Commerce;

- (d) The Focal Point from the NGO Affairs Bureau shall be the Director General, NGO Affairs Bureau, Prime Minister's Office;
 - (e) The Focal Point from the Bank and Financial Institution Division, Ministry of Finance shall be the Deputy Secretary (Regulations and Policy), Bank and Financial Institution Division, Ministry of Finance;
 - (f) The Focal Point from the National Board of Revenue (hereinafter referred to as NBR) shall be the First Secretary, Customs Policy and Budget, National Board of Revenue;
 - (g) The Focal Point from the Legislative and Parliamentary Affairs Division shall be the Deputy Secretary (Printing and publication); and
 - (h) The Focal Point from the Bangladesh Financial Intelligence Unit (BFIU) shall be the Operational Head and General Manager of BFIU.*
13. **Fixing of Primary Contact Point.-** (1) All the Ministries, Divisions and Organizations, as mentioned in rule-12 after appointing focal points shall fix a primary contact point in their respective implementing agency or law enforcing agency within the ambit of their jurisdictions, within 30 days after issuance of these Rules and inform the matter in details to the focal point of MOFA with a view to maintain co-ordinate relationship.
- (2) The Ministry, Division and Organization functioning as focal point as mentioned in rule-12 shall have the authority to change the primary contact point in consultation with the respective implementing or law enforcing agency.
 - (3) Focal points shall maintain a list and update means of communication with all primary contact point under their jurisdictions.
14. **Communication of the Rules.-** All the Ministries, Divisions and Organizations functioning as focal point as mentioned in rule-12, shall communicate and make aware as to the provisions of these Rules, to all Primary Contact Points of all implementing and law enforcing agencies under their jurisdictions such as, but not limited to Port Authority, Customs Houses, Bangladesh Police, Criminal Investigation Department (hereinafter referred to as CID) of Bangladesh Police, Special Branch (hereinafter referred to as SB) of Bangladesh Police, Rapid Action Battalion (hereinafter referred to as RAB), Border Guard of Bangladesh, Coast Guard, Department of Immigration and Passport, Director General of Forces Intelligence (hereinafter referred to as DGFI), National Security Intelligence (hereinafter referred to as NSI) and reporting agencies.
15. **Circulation of the list of individuals and entities.-**(1) Circulations mechanism of the list of individuals or entities shall be as follows-
- (a) The Focal Point of MOFA shall update the list of individuals and entities as and when the Sanction Lists are amended by the concerned UNSCR Committees. In case of any revision, MOFA shall make available the updated list to all Focal Points;
 - (b) The Focal Point of MOHA shall update the list of individuals and entities as enlisted in the schedule of the Act. In case of any revision in the schedule of the Act, MOHA shall make available the updated schedule to all Focal Points;

- (c) After receiving the list of individuals and entities from MOFA, as enlisted by the respective UNSCR Committee, or the list of individual entities as enlisted or proscribed under the Act, all the Ministries, Divisions and Organizations functioning as focal point as mentioned in rule-12, shall make available such list to all Primary Contact Points of all implementing and law enforcing agencies under their jurisdictions for necessary actions.
- (2) All focal points shall examine the website of United Nations sanction committee for having updated list.
- 16. Regarding funds, financial assets or economic resources or related services held in or through reporting agencies.-** As regards funds, financial assets or economic resources or related services of the individuals and entities held in or through the reporting agencies, the process shall be as follows-
- (a) The reporting agencies shall maintain and update the listed individuals and entities in electronic form and regularly run a check at the website of United Nations (<http://www.un.org/sc/committees/index.shtml>) for updated list. Reporting agency shall run regular check on the given parameters, including transactional review, to verify whether individuals or entities listed by the respective UNSCR Committee are holding any funds, financial assets or economic resources or related services or having any form of relationship with them;
- (b) Reporting agency shall run a check on the given parameters, including transactional review, to verify whether individuals or entities listed or scheduled under the Act, individuals or entities owned or controlled directly or indirectly by such persons or entities, as well as persons and entities acting on behalf of, or at the direction of, individuals or entities listed or scheduled under the Act are holding any funds, financial assets or economic resources or related services or having any form of relationship with them;
- (c) In case of a match as set out in clause (a) and (b), the reporting agency shall immediately stop payment or transaction of funds, financial assets or economic resources and report to the BFIU within the next working day with full particulars of the listed and/or the suspected individuals or entities or related or connected individual identities as well as the funds, financial assets or economic resources or related services held by such customer on their books;
- (d) BFIU will analyze the report and, if necessary, call for additional information, documents or inspect the Reporting agency and forward the case, if it is deemed appropriate, to the law enforcement agencies including CID of Bangladesh Police for further action and also keep the Focal Point of MOFA informed about suspected individuals or entities and the actions taken;
- (e) If BFIU is fully convinced after proper analysis that the details of the reported customer do not match with the details of individuals or entities listed by the concerned UNSCR Committee or in the schedule of the Act, BFIU shall immediately issue an order to withdraw the stop-payment;
- (f) In case, the match of any of the customers with the particulars of listed individuals or entities is beyond doubt, BFIU shall forward the details to CID of Bangladesh Police and MOFA and also instruct the reporting agency to maintain the stop payment until further instruction is given, in which case the provisions of section 15 of the Act shall not be apply;

- (g) On receipt of the particulars or documents referred to in clause (f) above, CID of Bangladesh Police shall cause a verification so as to ensure that the individuals or entities identified by the reporting agency and forwarded by the BFIU are the listed individuals or entities and the funds, financial assets or economic resources or related services, reported by reporting agency are held by the listed individuals or entities. This verification shall be completed within a period not exceeding five working days from the date of the receipt of such information;
- (h) If CID finds that the individuals or entities that are identified by the reporting agencies and forwarded by the BFIU are the listed individuals or entities, it shall identify or trace out any property owned by or are held for the benefit of the listed individuals or entities, and immediately take measures to freeze or attach the property. CID shall inform the result of the verification to BFIU and/or the particulars of the frozen property to MOHA;
- (i) In case, the results of the verification indicate that the properties are owned by or held for the benefit of the listed individuals or entities, an order to freeze these properties shall be issued by BFIU within one working day after receiving of such verification from CID and conveyed to the concerned reporting agency under intimation to CID of Bangladesh Police. The BFIU shall also forward a copy thereof to the Focal Point of MOFA, so that any individual or entity may be prohibited from making any funds, financial assets or economic resources or related services available for the benefit of the listed individuals or entities or any other person engaged in or suspected to be engaged in terrorism; and
- (j) The order shall take place without prior notice to the listed individuals or entities.

17. Regarding financial assets or economic resources held outside reporting agencies- (1) The Focal Point of MOHA shall forward the lists of suspected or listed individuals or entities to the Contact Point of all law enforcing agencies with the request to identify and trace out their existence in Bangladesh and any property held by them.

- (2) In case, it is found that any listed individual or entity is holding financial assets or economic resources in the nature of immovable property under its jurisdictions, the Contact Point shall communicate the complete particulars of such individuals or entities along with complete details of the financial assets or economic resources in the nature of immovable property to the Focal Point of MOHA, within the next working day.
- (3) The Contact Point of the respective law enforcing agency may cause such verification to be conducted to ensure that the particulars sent by the Sub-Registrar performing the work of registering immovable properties are indeed those of the listed individuals or entities. This verification shall be completed within a maximum of five working days and should be conveyed within the next working day of the verification, and if it matches with the particulars of the listed individuals or entities the law enforcing agencies shall immediately attach the property according to law and inform the particulars to the Focal Point of MOHA.
- (4) In case, the results of the verification indicate that the particulars match with those of the listed individuals or entities, the Focal Point of MOHA shall issue an attachment order within next working day to the concerned Sub-Registrar performing the work of registering immovable properties and convey the particulars to BFIU to check any transaction conducted.

- (5) Having been informed by BFIU, the reporting agency shall monitor the transactions and accounts of the listed individual or entity so as to prohibit any individuals or entities from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities engaged in or suspected to be engaged in terrorism. The reporting agency shall bring such matters to the notice of the BFIU.
 - (6) The contact point of law enforcing agency shall take reasonable measures to prohibit any individual or entities from making any funds, financial assets or economic resources or related services available for the benefit of the individual or entities engaged in or suspected to be engaged in terrorism. The contact point shall immediately bring such matters to the notice of the Focal Point of MOHA.
 - (7) Focal point of MOFA shall take responsible measure consulting with the National Committee to report it to the UN sanction committee.
 - (8) The order shall take place without prior notice to the listed individuals or entities.
18. **Implementation of requests received from foreign countries under United Nations Security Council Resolution 1373 of 2001.**- (1) To give effect to the requests of foreign countries under the UNSCR 1373 of 2001, Focal Point of MOFA shall examine the request made by a foreign country and inform the National Committee, and thereafter forward it with their comments to the Focal Point of the concerned Ministries, Division and organization for necessary action.
- (2) The Focal Point of MOHA shall cause the request to be examined, within five working days, so as to satisfy itself that on the basis of applicable legal principles, the requested designation is supported by reasonable grounds, to suspect or believe that the proposed designee is a terrorist one who finances for terrorism or a terrorist organization, and being satisfied, shall forward the request to the BFIU and the Contact Points of the relevant law enforcing agencies. The provisions of these Rules shall be applicable for the listed individuals and entities, as well as for the proposed designee.
 - (3) Upon receipt of the request from the Focal Point of MOHA, the Contact Points shall follow the procedures as mentioned under rule-16 and rule-17.
 - (4) The freezing orders shall take place without prior notice to the listed individuals or entities involved.
 - (5) If any match found, the chairman of the National Committee shall forthwith inform the matter to the requested party and actions taken thereof.
19. **Procedure for unfreezing of funds, financial assets or economic resources or related services of individuals or entities inadvertently affected by the freezing mechanism upon verification that the person or entity is not a listed individual or entity.**- (1) Any individual or entity, if they have evidence to prove that the freezing of funds, financial assets or economic resources or related services, owned or held by them has been inadvertently frozen, they shall move an application giving the requisite evidence in writing to the reporting agency or to the Contact Point of the law enforcing agency praying for unfreezing of such funds, financial assets or economic resources or related services.

- (2) The reporting agencies shall inform and forward a copy of that application together with full details of the frozen funds, financial assets or economic resources or related services to the BFIU.
 - (3) Upon receipt of application the contact point of the law enforcing agency shall forward a copy of that application to the focal point of MOHA together with full details of frozen funds, financial assets or economic resources or related services along with their details comment.
 - (4) BFIU shall forward the copy of the application together with full details of the fund, financial assets or economic resources or related resources to the Focal Point of MOHA. The Focal Point of MOHA shall cause such verification as may be required on the basis of the evidence furnished by the individual or entity and being satisfied shall pass an order, within 15 working days, for unfreezing the funds, financial assets or economic resources or related services, owned/held by such applicant, giving intimation to the concerned reporting agency or the Contact Points. If it is not possible for any reason to pass an order for unfreezing the assets within 15 working days, the Focal Point of MOHA shall inform the applicant about the same.
 - (5) If the Focal Point of MOHA is not convinced with the supporting documents or information, he will forward it to the National Committee. Where the National Committee is unable to decide about the application and the applicant wishes to continue his effort, the National Committee shall extend necessary support to settle the application through the respective UNSCR Committees.
20. **Regarding prevention of entry into or transit through Bangladesh.**- (1) As regards prevention of entry into or transit through Bangladesh of the listed individuals or entities, the Focal Point of MOHA, shall forward the lists to the Department of Immigration and Passport, Immigration Police and security agencies with a request to prevent their entry into or transit through Bangladesh. The order shall take place without prior notice to the listed individuals or entities.
- (2) The immigration authorities shall take appropriate boarder control measures to ensure strict compliance of the instruction of sub-rule (1) and also communicate to the Focal Point of MOHA within the next working day the details of entry or transit through Bangladesh of the listed individuals to prevent them.
 - (3) The Focal Point of MOFA shall forward the list to its Mission abroad. The Bangladesh Mission abroad shall not issue any kind of visa to the listed individuals to prevent their entry into Bangladesh.
21. **Regarding supply, sale or transfer of arms and ammunition.**- (1) To prevent any direct or indirect supply, sale and transfer in or outside Bangladesh, of arms and ammunition and other related items, materials, equipment, goods and technologies to the individuals or entities listed by the respective UNSCR Committee, respective customs authority shall take appropriate measures to identify, trace out and attach the items and handover the attached items to the concerned law enforcing agency immediately.
- (2) Contact Point of the respective customs authority shall immediately inform the matter with full details to the Focal Point of National Board of Revenue (NBR) regarding supply, sale and

transfer in or outside Bangladesh of arms and ammunition etc. as mentioned in sub-rule (1). Focal point of NBR shall forthwith forward full details of such descriptions to the focal point of MOHA and BFIU for further action to be taken.

- (3) If any match found focal point of MOHA or BFIU as the case may be, shall inform the matter to the focal point of MOFA.

22. Denial of permission for any aircraft to take off or land in the territory when owned, leased or operated by or on behalf of the individual or entities enlisted by the respective Committee of United Nations Security Council.- To deny permission for any aircraft to take off or land in the territory if it is owned, leased or operated by or on behalf of the individuals or entities listed by the respective UNSCR Committee the following measures shall be taken, namely-

- (a) In the airport, the contact point of Civil Aviation Authority of Bangladesh (hereinafter referred to as CAAB) shall check the list of UNSCR committee and shall take appropriate measure if any match found. Where any match found, CAAB shall immediately inform about the details of the aircraft to the traffic control authority of the airport;
- (b) If the aircraft has already been landed, traffic control authority of the concerned airport shall take appropriate measures to put embargo regarding taking off such aircraft; and
- (c) the Contact Point of CAAB shall inform the same to the concerned law enforcing agency as well as the Focal Point of Ministry of Civil Aviation and Tourism.

23. Prevention of illicit trafficking of nuclear, chemical or biological weapons, their means of delivery and related materials, including inspection of cargo to and from the individuals by entities enlisted by the respective United Nations Security Council Committee.- To prevent illicit trafficking of nuclear, chemical or biological weapons, their means of delivery and related materials, including inspection of cargo to and from the individuals by entities enlisted by the respective UNSCR Committee the following measures shall be taken, namely-

- (a) Respective customs authority shall indentify and trace out any kind of illicit trafficking of nuclear, chemical or biological weapons, their means of delivery and related materials, including inspection of cargo, and if any match found with individuals or entities listed by the respective UNSCR Committee, the authority shall immediately attach the above mentioned materials and inform the same to the concerned law enforcing agency;
- (b) The Contact Point of the respective customs authority shall immediately inform the matter with full details to the Focal Point of the NBR within next working day;
- (c) In appropriate cases, the CAAB shall indentify and trace out any kind of illicit trafficking of nuclear, chemical or biological weapons and related materials, including through inspection of luggage and if any match found with individuals or entities listed by the respective UNSCR Committee, the CAAB shall attach such material immediately and inform the same to the concerned law enforcing agency as well as to the Focal Point of the Ministry of Civil Aviation and Tourism;

- (d) Upon receipt of the details of the attached materials mentioned in clause (a), (b) and (c), the Focal Point of NBR and where appropriate the Focal Point of the Ministry of Civil Aviation and Tourism shall inform the matter to the focal point of BFIU and focal point of MOHA for further enquiry or investigation regarding the identified person or entities; and
- (e) Focal point of BFIU shall follow the procedure stipulated under rule-16 and Focal Point of MOHA shall follow the procedure stipulated under rule-17.
24. **Exemptions.**-(1) Freezing, seizing or attaching funds or other financial assets or economic resources held by or on behalf of the listed individuals or entities shall not apply to necessary funds and other financial assets or economic resources for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources as determined by the National Committee.
- (2) Exemptions given under sub-rule (1) shall be notified by the National Committee to the UNSCR Committee of its intention to authorize, where appropriate, access to such funds, assets or resources and in the absence of a negative decision by the UNSCR Committee within 48 hours in case of the individuals and entities under the UNSCR 1988 sanctions list and the UNSCR 1267 sanctions list; and five days in case of the individuals and entities listed by the Security Council Committee established pursuant to Resolution No. 1718.
- (3) Access may be allowed to the frozen funds, financial assets or economic resources for necessary extraordinary expenses, provided that such determination has been notified by the National Committee to the UNSCR Committee and has been approved by the UNSCR Committee.
- (4) The National Committee may receive requests from listed individuals and entities seeking for such exemptions and the National Committee shall transmit such requests to the UNSCR Committee for a decision. The National Committee shall notify the UNSCR Committee's decision to such individuals or entities seeking for exemptions.
25. **False positives.**-Upon request by any of the listed individuals and entities, the National Committee may allow the funds and other financial assets or economic resources of individuals or entities with the same or similar name as listed individuals or entities (i.e. a false positive or mistaken identity) to be unfrozen, provided that the National Committee is satisfied that the individual or entity is not the actual enlisted individuals or entities.
26. **Delisting procedures.**-The individuals and entities listed under UNSCR 1267 and UNSCR 1988 sanctions regimes may challenge their listing by submitting delisting petitions to the Office of the Ombudsperson. The URL of the Office of the Ombudsperson is <http://www.un.org/en/sc/ombudsperson/accessinfo.shtml>.
27. **Notification of listing and delisting.**- If the National Committee receives any notification about an individual or entity's listing in or delisting from the UNSCR 1267 Sanctions List and UNSCR 1988 Sanctions List, the National Committee shall notify listed individuals and entities of their

designation, describing the narrative summary of reasons for listing, a description of the effects of designation, procedures for considering delisting requests, and the provisions regarding available exemptions.

28. **Procedure for communication of compliance of action taken.**-The Focal Point of MOHA and BFIU shall furnish the details of funds, financial assets or economic resources or related services of listed individuals or entities along with details of the individuals whose funds or other financial assets are frozen by an order and whose entry into Bangladesh or transit through Bangladesh was prevented. The Focal Point of MOFA shall communicate the matter to the United Nations.
29. **Gateways for exchanging information.**-The Government, under arrangements entered into by the Government of Bangladesh with the Office of the Ombudsperson or any other country or such other arrangements, shall share all relevant information including operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups.

Part-V

Freeze, seize, attachment or confiscation of proceeds of terrorism

30. **Freeze, seize or attachment of terrorist property by District Magistrate.**- (1) While applying to District Magistrate under section 23A of the Act for seizure or attachment of terrorist property, the investigating officers shall mention as much detail as possible about the property, person or entity involved along with reasons for such suspicions; probable attempt to use the fund in the commission of terrorist activity or other offence under the Act or the possibility of disappearing of the property soon after commission of offence.
- (2) An application filed by an investigating officers under sub-rule (1), shall be examined by the District Magistrate to ascertain the reasonableness of the application to the effect that the proposed property may be used in the commission of offence under the Act.
- (3) The District Magistrate shall dispose of the application on merit filed by the investigating officer under sub-rule (1), and in an appropriate case pass an order as prayed for by the investigating officer.
- (4) An order passed by a District Magistrate under sub-rule (3) shall contain the duration of such an order and expiry date thereof.
- (5) Where the terrorist property have been mingled with the property acquired from legitimate sources or the value of the terrorist property cannot be determined, then full value of the mingled property shall be liable to be seized or attached by the investigating officer or by the District Magistrate in appropriate cases.
- (6) Where an offence is committed under the Act, but the terrorist property utilized for that purpose cannot be located or identified or trace out or is dissipated soon after the commission of the offence, the District Magistrate may pass on order of seizure or attachment of an equivalent

value of property or fund belonging to the suspected individual or entity accused to have committed the offence.

- (7) The aggrieved person or entity by the freeze, seize or attachment order of District Magistrate may file an application against such an order during the continuance of the order already passed by the District Magistrate. Such an application shall contain necessary information and documents in support of the contention.
32. **Appointment of a manager or caretaker for taking care of the frozen, attached or confiscated property.**– If any property is frozen, attached or confiscated under the Act, the court may, upon an application of the investigating agency or any person authorized by it, appoint any law enforcing agency as a manager or caretaker of the property to take control, manage, look after or, in any other manner, deal with the total property or any part thereof under such terms and conditions as may be directed by the Court.
33. **Procedure for disposal of confiscated property.**– (1) If any property is confiscated under the Act, the Government may, subject to the permission of the court, sell or in any other way dispose of such property other than the property which is required to be destroyed under any other law, by means of an open auction or by any other commercially profitable and lawful means.
- (2) The proceeds of the sale or disposal of the property in any other legal manner under sub-section (1) shall be deposited into the treasury of the State.
- (3) The confiscated property or the proceeds of the sale of the confiscated property may be utilized for the purposes of combating terrorism or terrorist financing.

Part-VI

Investigation and others

34. **Investigation of offences** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act No. V of 1898) while investigating an offence under the Act –
- (a) Where the accused person is arrested by police or is caught otherwise and is handed over to police, the investigation shall be completed preferably within the next 15 (fifteen) days but no later than 30 (thirty) days from the date of lodging First Information Report (FIR); or
- (b) Where the accused person is not arrested or remains absconding then the investigation shall be completed within the next 30 (thirty) days from the date of receiving information as to the commission of the offence or from the date of receiving the order of investigation from the officer in charge of the police station or by an officer empowered by him or by the Magistrate or by the Tribunal, as the case may be.
- (2) If the investigation is not reasonably possible to complete within the stipulated time as mentioned in sub-rule (1), the investigating officer shall complete the investigation within the next 30 (thirty) days recording reasons thereof and he shall inform the matter to his controlling officer in writing or as the case may be, to the Magistrate, or to the Tribunal who has passed the order of investigation.

- (3) If the investigation is not completed within the stipulated time in sub-rule (2), the investigating officer shall inform the matter within the next 24 (twenty four) hours as to the non completion of investigation to his controlling officer or as the case may be, to the Magistrate, or to the Tribunal who passed the order of investigation.
- (4) After being informed as to the non-completion of investigation within the stipulated time in sub-rule (3), the controlling officer or as the case may be, the Magistrate, or the Tribunal who passed the order of investigation, may delegate the power of investigation to any other officer and if any investigation of a case is so transferred, the authorized officer shall-
 - (a) complete the investigation within next 15 (fifteen) days from the date of receiving order of investigation, where the accused person remains under custody; or
 - (b) complete the investigation within next 30 (thirty) days from the date of receiving order of investigation, in other cases.
- (5) If the investigation is not completed within the time stipulated in sub-rule (4), investigating officer shall inform the matter within the next 24 (twenty four) hours as to the non completion of investigation to his controlling officer or as the case may be, to the Magistrate, or to the Tribunal who passed the order of investigation.
- (6) In the case of non-completion of investigation within stipulated time in sub-rule (2) or sub-rule (4), if the controlling officer or as the case may be, the Magistrate, or the Tribunal who passed the order of investigation, decides that the investigating officer is responsible for the non-completion of investigation within stipulated time analyzing the concerned report of his explanation , in such a case, it shall be treated as inefficiency and misconduct of that person which shall be recorded in his annual confidential report and in appropriate case, actions may be taken against him according to his service rules.
- (7) After submission of investigation report, if the Tribunal is satisfied by analyzing the contents of the investigation report that any of the accused persons requires to be made a witness for ends of justice, the Tribunal may pass an order directing an accused person to be treated as a witness instead of an accused.
- (8) If it appears to the Tribunal after taking evidence that an investigating officer under the Act has submitted the report to save a person from the charge of an offence, or has not collected or considered any material evidence due to negligence which ought to have been taken into consideration or the investigating officer has made a person as a witness, instead of making an accused or has not examined an important witness while submitting the report, in such a case, the investigating officer shall be held responsible for which he may be charged with inefficiency and misconduct, and in an appropriate case, the Tribunal may direct the controlling authority of the investigating officer to take proper legal action against him.
- (9) The Magistrate or the Tribunal on an application or on the basis on any information may pass an order directing the controlling authority of the investigating officer that the case shall be investigated by any other investigating officer other than the investigating officer already appointed.

35. **Taking cognizance, etc.**-(1) An offence punishable under the Act shall be cognizable. No Court shall take cognizance of any offence under the Act without prior sanction of the Government.
- (2) Having been informed by the informant or otherwise, the concerned officer in charge of a police station shall lodge First Information Report (FIR) and immediately communicate the matter to the District Magistrate in writing along with a copy of the FIR, before starting investigation in view of the provision of section 40(1) of the Act. He shall also share the matter with BFIU if necessary.
- (3) Before submitting the police report to the concern court of jurisdiction the investigation officer shall obtain necessary sanction from the Government through respective District Magistrate. The District Magistrate shall examine all relevant documents and information submitted to him and forward the same with his comment to the Government for obtaining sanction order.
- (4) Subject to the provision of sub-rule (5), for an offence punishable under the Act, any person who is directly involved in the commission of the offence or the principal offender, shall not be enlarged on bail, if-
- (a) the prosecution is not given adequate opportunity of being heard where the prosecution raised objection against enlarging the accused person on bail; and
- (b) the Tribunal is satisfied that there are reasonable cause to believe him to be guilty for the alleged offence.
- (5) If the accused person as mentioned in sub-rule (4), is a woman or child or physically sick or infirm, and the Tribunal is satisfied that there will be no miscarriage of justice if the accused person is enlarged on bail, the Tribunal may pass an order granting him bail.
- (6) Except the person as mentioned in sub-rule (4), any other person who is accused to have committed offence under the Act, the Tribunal may enlarge him on bail recording reasons thereof, if the Tribunal is satisfied that there is reasonable cause to grant him bail for ends of justice.

Part-VII

Trial Procedure

36. **Trial procedure.**-(1) An offence committed under the Act shall be tried by a Tribunal constituted under the Act.
- (2) Once commenced the trial, the Tribunal shall continue hearing of the case in every working day continuously without interruption until its completion.
- (3) The Tribunal shall conclude the trial within 180 (one hundred eight) days from the date of commencement of trial.
- (4) If the Tribunal fails to conclude the trial within stipulated time as mentioned in sub-rule (3), it may extend a further period of 90 (ninety) days recording reasons thereof.

- (5) If the judge of the Tribunal is transferred before the completion of the trial, the next judge posted in his place shall continue the trial from the stage where earlier judge has left the case and it shall not be necessary to re-call the witnesses already deposed:

Provided that if the Tribunal thinks it fit and proper to re-call the witness for ends of justice, it may re-call the witness to depose once again.

- (6) The Tribunal may conduct the trial in camera, in its own motion, or on an application of any person for holding the trial of an offence committed under the Act.

- (7) If any child is accused to have committed an offence under the Act, or if any child is brought as a witness for trial of an offence committed under the Act, in such a case the provisions of the Children Act, 2013 (Act No XXIV of 2013) shall be followed as far as practicable.

37. Trial in absentia.- (1) If the Tribunal has reason to believe that-

- (a) the accused person has absconded or concealed himself to avoid arrest or for not being produced for trial; and
(b) there is no possibility of arresting him immediately;

the Tribunal shall, by order publish in at least two national daily Bengali newspapers having wide circulation, direct such person to appear before it within such time as may be specified in the order, which shall not exceed 30 (thirty) days, and if such person fails to appear before it, the Tribunal may try such person in his absence.

- (2) Where in a case after the appearance or production of an accused before the Tribunal or having been released on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply, and the Tribunal shall, recording reasons thereof, try such person in his absence.

38. Power of the Magistrate for recording deposition in any place.- (1) If any police officer or any other person investigating any offence committed under the Act, or any police officer while arresting an accused at the place of occurrence, thinks that the deposition of a person, who has knowledge about the occurrence or has seen it in his own eyes, requires to be recorded without delay by a Magistrate for expeditious trial, he may, in writing or otherwise, request a First class Magistrate to record the deposition of that person.

- (2) The Magistrate as mentioned in sub-rule (1), shall record the deposition of the aforesaid person at the place of occurrence or at any other suitable place, and send it directly to the investigating officer or the person so deposed for the purpose of submitting it before the Tribunal attaching it with the investigation report.

- (3) If the trial of a person accused of an offence mentioned in sub-rule (1) begins in a Tribunal, and it appears to the Tribunal that the examination of the person whose deposition is recorded under sub-rule (2) is necessary for the ends of justice, but he is dead or is incapable of giving evidence or it is not possible to find out him or the attendance of such witness cannot be procured without

an amount of delay, expense or inconvenience, which under the circumstances of the case, would be unreasonable, then the Tribunal may admit the deposition as evidence of the case:

Provided that the Tribunal shall not punish the accused person solely on the basis of such deposition.

39. **The evidence of chemical examiner, serologist, etc.-** Where the evidence of any doctor, chemical examiner, assistant chemical examiner, serologist, handwriting expert, finger print expert or fire-arm expert appointed by Government after submission of report by examining any matter referred to him during the investigation of an offence under the Act is required in trial, but he is dead or is incapable of giving evidence or it is not possible to find out him or the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience, which under the circumstances of the case, would be unreasonable, then the examination report with his signature may be admitted as evidence in the trial conducted under the Act:

Provided that the Tribunal shall not punish the accused person solely on the basis of such report.

40. **Presence of witness.-** (1) For the purpose of serving the summons or warrant for holding trial under the Act, the summons or warrant shall be served upon the local police station of the last known address of the witness, and the burden of producing the witness before the Tribunal shall lie on the officer in charge of the said police station within whose jurisdiction the witness resides.

(2) Notwithstanding anything contained in sub-section-(1), one copy of the summons may be sent to the concerned witness and the District Police Superintendent or, as the case may be, to the Police Commissioner by registered post with acknowledgement.

(3) If the concerned police officer willingly neglects to serve the summons or warrant issued under this rule, the Tribunal may issue direction to the controlling authority of that police officer to take measures against him considering such negligence as inefficiency.

41. **Application of the Code of Criminal Procedure, 1898 etc.-** (1) Unless there is anything contained contrary in the Act, for filing a complaint, investigation, trial and disposal of case, the provisions of the Code of Criminal Procedure, 1898 (Act No. V of 1898) shall apply, and the Tribunal shall be deemed to be a Court of Session, and in this behalf, may exercise any or all powers of a Court of Session while trying any offence under the Act or any other similar offence.

(2) A person conducting case for the prosecution in a Tribunal shall be deemed to be a public prosecutor.

42. **Anti-terrorism Tribunal.-**(1) There shall be a Tribunal to be known as the Anti-terrorism Tribunal in every district for trial offences committed under the Act.

(2) The Tribunal shall be comprised of a single judge.

(3) The Government may appoint any District and Sessions Judge, or an Additional District and Sessions Judge, in addition to his own duty, as the judge of the Tribunal.

(4) Under sub-rule (3), the District and Sessions Judge includes the Additional District and Sessions Judge.

43. **Jurisdiction of the Tribunal.**- (1) The Tribunal shall not take cognizance of an offence without a written report made by a police officer not below the rank of a Sub-Inspector, or a person authorized in this behalf by an order, general or special, made by the Government.
- (2) If any complainant submits a complaint to the Tribunal with an affidavit in this regard that he has failed by making a request of taking the complaint of an offence to any Police officer or any person authorized under sub-rule (1), the Tribunal shall, by examining the complainant,-
- (a) if satisfied, pass an order to a Magistrate for submitting a report within 7 (seven) working days after inquiry of the complaint;
- (b) if not satisfied, outright reject the complaint.
- (3) If the Tribunal after receiving the report under sub-rule (2) is satisfied that-
- (a) the complainant has failed by making a request of taking an accusation of an offence to any Police officer or any person under sub-rule (1), and there is prima-facie evidence in support of that accusation, the Tribunal shall on the basis of that report and complaint, take cognizance of the offence;
- (b) it is not established that the complainant has failed by making a request of taking an accusation of an offence to any Police officer or any person under sub-rule (1), and there is no prima-facie evidence in support of that accusation, the Tribunal shall reject the complaint.
- (4) In spite of having no recommendation in the report submitted under sub-rule (1) and (2) as to the commission of the offence or for taking measures thereof, the Tribunal may, if it thinks fit and proper for the end of justice, take cognizance of the offence recording reasons thereof.
- (5) The report or complaint may be submitted to the Tribunal under whose jurisdiction the offence or any part thereof has been committed or where the offender is found, or in case of more than one offender, to the Tribunal under whose jurisdiction any one of the offenders is found, and such Tribunal shall try the offence.
- (6) If any other offence committed is so closely connected with any other law together with an offence under this Act that, for the end of justice, both the offences shall be tried together in a single trial in accordance with the provisions of this Act.
44. **Appeal.**- Any party aggrieved by the order, judgment or sentence passed by the Tribunal may prefer an appeal in the High Court Division of the Supreme Court within 60 (sixty) days from the date of the order, judgment or sentence.

By order of the President,

CQK MUSTAQ AHMED
Senior Secretary
Ministry of Home Affairs

EXTRADITION TREATIES

Treaty between the Kingdom of Thailand and the People's Republic of Bangladesh relating to Extradition

The Government of the Kingdom of Thailand and the Government of the People's Republic of Bangladesh, hereinafter referred to as the Contracting States;

Desiring to provide for more effective cooperation between the two States in the suppression of crimes;

Desiring also to conclude a 'treaty for the reciprocal extradition of offenders;

Have agreed as follows:

ARTICLE I

Obligation to Extradite

- (1) The Contracting States agree to extradite to each other, subject to the provisions of this Treaty, persons found in the territory of one of the Contracting States who have been proceeded against for, have been charged with, have been found guilty of, or are wanted for the enforcement of a judicially pronounced penalty for committing an extraditable offence, by the judicial authority of the other Contracting State. The term "judicial authority" shall include the police and public prosecution authority for the purpose of proceeding against or charging such persons in accordance with the laws of each Contracting State.
- (2) With respect to an extraditable offence committed outside the territory of the Requesting State, the Requested State shall grant extradition, subject to the provisions of this Treaty, if its laws would provide for the punishment of such an offence in comparable circumstances.

ARTICLE 2

Extraditable Offences

- (1) An offence shall be an extraditable offence for prosecution or for the imposition of a penalty or detention order only if it is punishable under the laws of both Contracting Parties by imprisonment or other form of detention for a period of more than one year or by any greater punishment. For the enforcement of a penalty or detention order for such an extraditable offence, extradition shall be granted if the duration of the penalty or detention order still to be served amounts to at least six months.
- (2) An offence shall be an extraditable offence if it consists of preparing or attempting to commit, aiding or abetting, assisting, counseling or procuring the commission of, or being an accessory before or after the fact of an offence described in paragraph (1) of this Article provided that such

offences are punishable under the laws of both Contracting States by imprisonment or other form of detention for a period of more than one year or by any greater punishment.

- (3) For the purposes of this Article, an offence shall be an extraditable offence, whether or not the laws of the Contracting States place the offence within the same category of offences or denominate the offence by the same terminology.
- (4) When extradition has been granted with respect to an extraditable offence, it may also be granted in respect of any other offence specified in the extradition request that meets all other requirements for extradition except for periods of penalty or detention order set forth in paragraph (1) of this Article.

ARTICLE 3

Political and Military Offences

- (1) Extradition shall not be granted when:
 - (a) the offence for which extradition is sought is a political offence; or
 - (b) it is established that extradition is requested for political purposes; or
 - (c) the offence for which extradition is sought is exclusively a military offence.
- (2) For the purpose of this Treaty, a murder or willful crime against the life or physical integrity of a Head of State of one of the Contracting States or of a member of that person's family, including attempts to commit such offences, shall not be deemed to be offences within the meaning of paragraph (1) of this Article.

ARTICLE 4

Dual Jurisdiction

The Requested State may refuse to extradite a person claimed for a crime which is regarded by its laws as having been committed in whole or in part in its territory or in a place treated as its territory, provided it shall proceed against the person for that crime according to its laws.

ARTICLE 5

Prior Jeopardy for the Same Offence

- (1) Extradition shall not be granted when the person sought has been tried and convicted or acquitted in the Requested State for the offence for which extradition is requested.
- (2) Extradition may be denied when the person sought is being or has been proceeded against in the Requested State for the offence for which extradition is requested.
- (3) Extradition may be granted even if the competent authorities of the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested.

ARTICLE 6

Lapse of Time

Extradition shall not be granted when the prosecution or the enforcement of the penalty for the offence for which extradition has been sought has become barred by lapse of time according to the laws of the Requesting State.

ARTICLE 7

Nationality

- (1) Neither Contracting State shall be bound to extradite its own nationals.
- (2) If extradition is not granted pursuant to paragraph (1) of this Article, the Requested State shall, at the request of the Requesting State, submit the case to its competent authority for prosecution. For this purpose, the Requesting State shall submit the files, information, and exhibits relating to the case to the Requested State. If the Requested State requires additional documents or evidence, such documents or evidence shall be submitted without charge to that State.
- (3) Notwithstanding paragraph (2) of this Article, the Requested State shall not be required to submit the case to its competent authority for prosecution if the Requested State has no jurisdiction over the offence.

ARTICLE 8

Extradition Procedures and Required Documents

- (1) The request for extradition shall be made through the diplomatic channels.
- (2) The request for extradition shall be accompanied by:
 - (a) documents, statements, or other evidence which describe the identity and probable location of the person sought;
 - (b) a statement of the facts of the case, including, if possible, the time and location of the crime;
 - (c) the provisions of the law describing the essential elements and the designation of the offence for which extradition is requested;
 - (d) the provisions of the law describing the punishment for the offence; and
 - (e) the provisions of the law describing any time limit on the prosecution or the execution of punishment for the offence.
- (3) A request for extradition relating to a person who is sought for prosecution also shall be accompanied by:
 - (a) a copy of the warrant of arrest issued by a judge or other competent authority of the Requesting State;

- (b) such evidence as, according to the law of the Requested State, would justify that person's arrest and committal for trial, including evidence establishing that the person sought is the person to whom the warrant of arrest refers.
- (4) When the request for extradition relates to a convicted person, in addition to the items required by paragraph (2) of this Article, it shall be accompanied by:
 - (a) a copy of the judgment of conviction by a court of the Requesting State; and
 - (b) evidence providing that the person sought is [he person to whom the conviction refers.

If the person has been convicted but not sentenced, the request for extradition shall also be accompanied by a statement to that effect. If the convicted person has been sentenced, the request for extradition shall also be accompanied by a copy of the sentence imposed and a statement showing to what extent the sentence has been carried out.
- (5) All documents submitted by the Requesting State shall be translated into the language of the Requested State.
- (6) Documents transmitted through [he diplomatic channels shall be admissible in extradition proceedings in the Requested State without further authentication, or other legalization.

ARTICLE 9

Provisional Arrest

- (1) In case of urgency, either Contracting State may request the provisional arrest of any accused or convicted person. The request for provisional arrest shall be made through the diplomatic channels or directly between the Ministry of Home Affairs in Bangladesh and the Ministry of Interior in Thailand, in which case the communication facilities of Interpol maybe used.
- (2) The request shall contain: a description of the person sought; the location of that person, if known; a brief statement of the facts of the case including, if possible, the time and location of the offence; a statement of the existence of a warrant of arrest or a judgment of conviction against that person, as referred to in Article 8; and a statement that a request for extradition of the person sought will follow.
- (3) The Requesting State shall be notified without delay of the result of its request.

ARTICLE 10

Decision and Surrender

- (1) The Requested State shall communicate without delay through the diplomatic channels to the Requesting State its decision on the request for extradition.
- (2) The Requested State shall provide reasons for any partial or complete rejection of the request for extradition.

- (3) If the extradition has been granted, surrender of the person sought shall take place within such time as may be prescribed by the laws of the Requested State. The competent authorities of the Contracting States shall agree on the time and place of the surrender of the person sought. If however, that person is not removed from the territory of the Requested State within the prescribed time that person may be set at liberty and the Requested State may subsequently refuse extradition for the same offence.

ARTICLE 11

Deferred Surrender

If the extradition request is granted in the case of a person who is being proceeded against or is serving a sentence in the territory of the Requested State for a different offence, the Requested State may defer the surrender of the person sought until the conclusion of the proceedings against that person, or the full execution of any punishment that may be or may have been imposed.

ARTICLE 12

Requests for Extradition Made by Several States

If the Requested State receives requests from the other Contracting State and from one or more third States for the extradition of the same person, either for the same offence or for different offences, it shall determine to which State it will extradite that person. In making its decision it shall consider all relevant factors, including but not limited to:

- (a) the State in which the offence was committed;
- (b) in cases involving different offences, the State seeking the individual for the offence which is punishable by the most severe penalty in accordance with the law of the Requested State;
- (c) in cases involving different offences that the Requested State considers of equal gravity, the order in which requests were received from the Requesting States;
- (d) the nationality of the offender; and
- (e) the possibility of re-extradition between the Requesting States.

ARTICLE 13

Rule of Specialty

- (1) A person extradited under this Treaty shall not be detained, tried, or punished in the territory of the Requesting State for an offence other than that for which extradition has been granted, nor be extradited by that State to a third State, unless:
- (a) that person has left the territory of the Requesting State after extradition and has voluntarily returned to it;

- (b) that person has not left the territory of the Requesting State within 45 days after being flee to do so; or
- (c) the Requested State has consented to detention, trial, or punishment of that person for an offence other than that for which extradition was granted, or to extradition to a third State. For this purpose, the Requested State may require the submission of any document or statement mentioned in Article 8, including any statement made by the extradited person with respect to the offence concerned.

These stipulations shall not apply to offences committed after extradition.

- (2) If the charge for which the person was extradited is legally altered in the course of proceedings by virtue of a new statute, or the charging, pleading, or finding of a lesser offence, that person may be prosecuted or sentenced accordingly, provided the altered charge is:
 - (a) based on the same set of facts contained in the extradition request and its supporting documents; and
 - (b) punishable by the same maximum penalty as, or a lesser maximum penalty than, the offence for which that person was extradited.

ARTICLE 14

Simplified Procedure

If the person sought irrevocably agrees in writing to extradition after personally being advised by the competent authority of his right to formal extradition proceedings and the protection afforded by them, the Requested State may grant extradition without formal extradition proceedings.

ARTICLE 15

Handing Over Of Property

- (1) The Requested State shall, insofar as its law permits and at the request of the Requesting State, seize and upon the granting of the extradition hand over property:
 - (a) which may be required as evidence; or
 - (b) which has been acquired as a result of the crime and which, at the time of the arrest, is found in the possession of the person claimed or is subsequently discovered.
- (2) The property mentioned in paragraph (1) of this Article shall be handed over even if extradition, having been granted, cannot be carried out due to the death, disappearance, or escape of the person claimed.
- (3) When the said property is liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it be returned.

- (4) Any right which the Requested State or any State or individual may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State at its request as soon as possible after the trial.

ARTICLE 16

Transit

- (1) Either Contracting Party may authorize transit through its territory of a person surrendered to the other by a third State. The Contracting State requesting transit shall provide the transit State, through diplomatic channels, with a request for transit which shall contain a description of the person being transited and a brief statement of the facts of the case. No such authorisation is required where air transportation is used and no landing is scheduled on the territory of the other Contracting State.
- (2) If an unscheduled landing on the territory of the other Contracting Party occurs, transit shall be subject to the provisions of paragraph (1) of this Article. That Contracting State may detain the person to be transited for a period up to 96 hours while awaiting the request for transit.

ARTICLE 17

Expenses and Assistance

- (1) Expenses incurred in the territory of the Requested State by reason of extradition, up to the moment of surrender of the person to be extradited, shall be borne by that State.
- (2) The Requested State shall appear on behalf of the Requesting State and conduct and carry out any proceedings arising out of a request for extradition.
- (3) No pecuniary claim arising out of the arrest, detention, examination, and surrender of persons sought under the terms of this Treaty shall be made by the Requested State against the Requesting State.

ARTICLE 18

Scope of Application

This Treaty shall apply to extraditable offences under this Treaty committed before as well as after the date this Treaty enters into force.

ARTICLE 19

Ratification and Entry into Force

- (1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Bangkok as soon as possible.
- (2) This Treaty shall enter into force upon the exchange of the instruments of ratification.

ARTICLE 20

Denunciation

Either Contracting State may terminate this Treaty at any time by giving written notice to the other Party and the termination shall be effective six months after the date of receipt of such notice. Such termination shall not prejudice any extradition proceedings commenced prior to the giving of such notice.

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

Done in duplicate at Dhaka on 9 July 1998 in the Thai, Bangla and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the
Kingdom of Thailand.

(MR. SUKHUMBHAND PARIBATRA)
DEPUTY MINISTER
OF FOREIGN AFFAIRS

For the Government of the
People's Republic of Bangladesh

(ABUL HASAN CHOWDHURY, M.P.)
MINISTER OF STATE FOR
FOREIGN AFFAIRS

INSTRUMENT OF RATIFICATION

WHEREAS the Treaty between the Kingdom of Thailand and the People's Republic of Bangladesh Relating to Extradition was signed at Dhaka on 9 July 1998 by the duly authorized Representatives of the Governments of the Kingdom of Thailand and of the People's Republic of Bangladesh; and

WHEREAS Article 19 of the Treaty provides that this Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Bangkok as soon as possible and this Treaty shall enter into force upon the exchange of the instruments of ratification;

THE GOVERNMENT OF THE KINGDOM OF THAILAND,

having considered the aforesaid Treaty, 'hereby confirms and ratifies the same and undertakes to faithfully perform and carry out all the stipulations contained therein.

IN WITNESS WHEREOF, this Instrument of Ratification is signed and sealed by the Minister of Foreign Affairs of the Kingdom of Thailand.

DONE at the Ministry Of Foreign Affairs, Bangkok, this 4th day of December in the Year Two thousand Five hundred and Forty-three of the Buddhist Era, corresponding to the Year Two thousand of the Christian Era.



(Surin Pitsuwan)

Minister of Foreign Affairs
of the Kingdom of Thailand

**PROCES - VERBAL OF THE EXCHANGE
OF
INSTRUMENTS OF RATIFICATION**

The undersigned have met today for the purpose of exchanging the Instruments of Ratification of the Treaty between the Kingdom of Thailand and the People's Republic of Bangladesh Relating to Extradition, signed at Dhaka on 9 July 1998.

According to Article 19 (2) of the above-mentioned Treaty, the Treaty shall enter into force upon the exchange of the instruments of ratification.

These Instruments, having been examined and found to be in due form, have been exchanged today.

IN WITNESS WHEREOF, the undersigned have signed the present Proces - Verbal.

DONE at Bangkok, in duplicate in English, this Nineteenth Day of March in the Year Two thousand Five hundred and Forty-four of the Buddhist Era, corresponding to the Year Two thousand and One of the Christian Era.

For the Government of the
Kingdom of Thailand.

(Surakiart Sathirathai)
Minister of Foreign Affairs

For the Government of the
People's Republic of Bangladesh

(SuIrab Hossain)
Ambassador Extraordinary and
Plenipotentiary

Treaty between the Republic of India and the People's Republic of Bangladesh relating to Extradition

The Government of the Republic of India and of the People's Republic of Bangladesh

Desiring to make more effective the cooperation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders;

Recognizing that concrete steps are necessary to combat terrorism;

Have agreed as follows:

Article 1

Obligation to Extradite

1. The Contracting States agree to extradite to each other, subject to the provisions of this Treaty, persons found in the territory of one of the Contracting States who have been proceeded against for or have been charged with or have been found guilty of, or are wanted for the enforcement of a judicially pronounced penalty for committing an extraditable offence, as described in Article 2, by the judicial authority of the other Contracting State.
2. With respect to an extraditable offence committed outside the territory of the Requesting State, the Requested State shall grant extradition, subject to the provisions of this Treaty, if its laws would provide for the punishment of such an offence in comparable circumstances.

Article 2

Extradition Offences

1. An extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one year.
2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.
3. In determining whether an offence is an offence punishable under the laws of both Contracting States, it shall not matter whether the law of both Contracting States place the act or omission constituting the offence within the same category of offence or denominate the offence by same terminology.
4. Extradition shall also be granted in respect of an attempt to commit or aiding, abetting, inciting or participating as an accomplice in the commission of an extraditable offence.

Article 3

Composite Offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under the law of that State this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting State.

Article 4

Central Authority

The Central Authority for the Republic of India shall be the Ministry of External Affairs and the Central Authority for the People's Republic of Bangladesh shall be the Ministry of Home Affairs. Each Contracting State shall inform the other Contracting State of any change of the Central Authority through diplomatic channels.

Article 5

Extradition of Nationals

Nothing in this Treaty shall preclude the extradition by the Requested State of its nationals either in respect of a territorial offence or in respect of an extraterritorial offence.

Article 6

The Political Offence Exception

1. Extradition may be refused if the offence of which it is requested is an offence of a political character.
2. For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:
 - (a) any acts or omissions which are punishable as a criminal offence according to the obligations under multilateral treaties to which both Contracting States are Party;
 - (b) murder;
 - (c) manslaughter or culpable homicide;
 - (d) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
 - (e) the causing of an explosion likely to endanger life or cause serious damage to property;
 - (f) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
 - (g) the possession of a firearm or ammunition by a person who intends either himself or through another person's to endanger life;

- (h) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
- (i) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
- (j) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
- (k) incitement to murder;
- (l) any other offence related to terrorism which at the time of the request is, under the law of the Requested party, not to be regarded as an offence of a political character;
- (m) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 7

Extradition and Prosecution

1. The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extradition offence in the courts of that State.
2. Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.
3. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 8

Grounds for Refusal of Extradition

1. A person may not be extradited if:
 - (a) he satisfies the Requested State that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason of:
 - (i) the trivial nature of the offence of which he is accused or was convicted; or
 - (ii) the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
 - (iii) the accusation against him not having been made in good faith in the interests of justice; or
 - (b) the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.

2. A person who has been convicted of an extradition offence may not be extradited therefor unless he was sentenced to imprisonment or other form of detention for a period of four months or more.
3. A person may not be extradited if he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction.

Article 9

Temporary Surrender

To the extent permitted by its law, where a person serving a sentence in the Requested State has been found extraditable, the Requested State may temporarily surrender the person sought for the purpose of prosecution to the Requesting State in accordance with conditions to be determined between the Contracting States. A person who is returned to the Requested State following a temporary surrender may be finally surrendered to the Requesting State to serve any sentence imposed, in accordance with the provisions of this Treaty and existing law of the requested country.

Article 10

Extradition Procedures

- (a) The request for extradition under this Treaty shall be made through the diplomatic channel.
- (b) The request shall be accompanied by:
 - (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence;
 - (b) a statement of the facts of the offence for which extradition is requested; and
 - (c) the text, if any, of the law: (i) defining that offence; and (ii) prescribing the maximum punishment for that offence.
- (c) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.
- (d) If the request relates to a person already convicted and sentenced, it shall also be accompanied :
 - (a) by a certificate of the conviction and sentence;
 - (b) by a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.
- (e) If the Requested State considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.

Article 11

Provisional Arrest

1. In case of urgency, one Contracting State may request the other Contracting State to provisionally arrest the person sought. Such request shall be made in writing and transmitted to the Central Authority of the Requested State through diplomatic channels.
2. The application for provisional arrest shall contain:
 - (a) an indication of intention to request the extradition of the person;
 - (b) a statement about the reason for urgency;
 - (c) information concerning identity, nationality and probable location and a description of the person;
 - (d) a brief description of the offence and the punishment prescribed there under;
 - (e) A brief statement of the facts of the case, including, if possible, the time and the location of the offence;
 - (f) a statement of the existence of a warrant of arrest or a judgment of conviction against the person; and
3. The Requesting State shall be notified without delay of the result of its request.
4. A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article 12

Rule of Specialty

1. Any person who is returned to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article, be dealt with in the territory of the Requesting State for or in respect of any offence committed before he was returned to that territory other than:
 - (a) the offence in respect of which he was returned;
 - (b) any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return, could not lawfully be made; or
 - (c) any other offence in respect of which the Requested Party may consent to his being dealt with other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made.

2. The period referred to in paragraph (1) of this Article is the period beginning with the day of his arrival in the territory of the Requesting State or his return under this Treaty and ending forty-five days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting State.
3. The provisions of paragraph (1) of this Article shall not apply to offences committed after the return of a person under this Treaty or matters arising in relation to such offences.
4. A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty days of his final discharge, or has returned to that territory after having left it.

Article 13

Evidence

1. The authorities of the Requested State shall admit as evidence, in any proceedings for extradition, any evidence taken on oath or by way of affirmation, any warrant and any certificate of, or judicial document stating the fact of, a conviction, if it is authenticated:
 1. (i) in the case of a warrant being signed, or in the case of any original document by being certified, by a judge, magistrate or other competent authority of the Requesting State; and
(ii) either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting State; or
 2. In such other manner as may be permitted by the law of the Requested State.
2. The evidence described in paragraph (1) shall be admissible in extradition proceedings in the Requested State whether sworn or affirmed in the Requesting State or in some third State.

Article 14

Competing Requests

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting State and a third State with which the Requested State has an extradition arrangement, the Requested State shall determine to which Contracting State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to:

- (a) whether the requests were made pursuant to a treaty;
- (b) the place where such offence was committed;
- (c) the respective interests of the Requesting States;
- (d) the gravity of the offences;
- (e) the nationality of the victim;
- (f) the possibility of further extradition between the Requesting States; and
- (g) the chronological order in which the requests were received from the Requesting State.

Article 15

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.

Article 16

Surrender

1. If extradition is granted, the person sought shall be sent by the authorities of the Requested State to such convenient point of departure from the territory of that State as the Requesting State shall indicate.
2. The Requesting State shall remove the person sought from the territory of the Requested State within one month or such longer period as may be permitted under the law of the Requested State. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.

Article 17

Surrender of Property

1. When a request for extradition is granted, the Requested State shall, upon request and so far as its law allows, hand over to the Requesting State articles (including sums of money) which may serve as proof or evidence of the offence.
2. If the articles in question are liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned.
3. These provisions shall not prejudice the rights of the Requested State or any person other than the person sought. When these rights exist the articles shall on request be returned to the Requested State without charge as soon as possible after the end of the proceedings.

Article 18

Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 19

Documents and Expenses

1. If in any particular case the Requested State so requires, the Requesting State shall supply a translation of any document submitted in accordance with the provisions of this Treaty.
2. Expenses incurred in the territory of the Requested State by reason of the request for extradition shall be borne by that State.
3. The Requested State shall make all the arrangements which shall be requisite with respect to the representation of the Requesting State in any proceedings arising out of the request.

Article 20

Obligations under International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Contracting States arising from International Conventions/Treaties to which they are parties.

Article 21

Final provisions

1. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
2. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification.
3. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof, the Undersigned being duly authorized thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Dhaka this the Twenty Eighth day of the month of January of the year Two Thousand and Thirteen, in Hindi, English and Bangla, all languages being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

On behalf of the Government
of the Republic of India

(Sushil Kumar Shinde)
Home Minister

On behalf of the Government
of the People's Republic of
Bangladesh

(Dr. Muhiuddin Khan Alamgir)
Home Minister

MUTUAL LEGAL ASSISTANCE TREATIES

Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh on Mutual Legal Assistance in Criminal Matters

The Government of the Republic of India and the Government of the People's Republic of Bangladesh (hereinafter referred to as Contracting Parties);

Guided by the traditional friendly relations between the two countries;

Recognizing the need to facilitate the widest measures of mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

Desiring to improve the effectiveness of both the countries in the investigation, prosecution and suppression of crime, including crime related to terrorism and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters:

Have agreed as follows:

Article 1

Scope of application

1. Under this Agreement, the Contracting Parties shall grant each other the widest measure of mutual assistance in criminal matters.
2. For the purpose of this Agreement mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a Court or some other authority.
3. This Agreement shall be without prejudice to other obligations between the Parties pursuant to other treaties or arrangements or otherwise, and shall not prevent the Parties or their law enforcement agencies from providing assistance to each other pursuant to other treaties or arrangements.
4. This Agreement shall also apply to any requests for mutual legal assistance relating to acts or omissions committed before its entry into force.

Article 2
Definitions

For the purpose of this Agreement:

1. (a) Criminal matters mean, investigations, inquiries, trials or other proceedings relating to an offence created by a law.
(b) Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments.
(c) Assistance shall include:
 - i. measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime;
 - ii. taking evidence and obtaining statements of persons;
 - iii. providing information, documents and other records, including criminal and judicial records;
 - iv. location of persons and object, including their identification;
 - v. search and seizure;
 - vi. delivery of property, including lending of exhibits;
 - vii. making detained persons and others available to give evidence or to assist investigations;
 - viii. service of documents, including documents seeking the attendance of persons; and
 - ix. other assistance consistent with the objects of this Agreement.
2. (a) “proceeds of crime” means any property that is derived or realized 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 movable or immovable, tangible or intangible property and includes any interest in such property;
(c) “confiscation” means any measure resulting in the deprivation of property;
(d) “instruments of crime” means any property which is or is intended to be used in connection with the commission of an offence; and
(e) “the restraint of property” means any measure for the prevention of dealing in or transfer or disposal of property.

Article 3

Central Authorities

1. Requests for assistance under this Agreement shall be made through the Central Authorities of the Contracting Parties.
2. In the Republic of India the Central Authority is the Ministry of Home Affairs. In the People's Republic of Bangladesh the Central Authority is the Ministry of Home Affairs.

Article 4

Contents of Requests

1. Requests for assistance under this Agreement shall be made in writing. However, in urgent circumstances, or where otherwise permitted by the requested party, requests may be made orally but shall be confirmed in writing thereafter.
2. Requests for assistance shall include a statement of:
 - (a) the name of the competent authority conducting the investigation or proceeding to which the request relates;
 - (b) the matters, including the relevant facts and laws, to which the investigation or proceedings relate;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (e) any time limit within which compliance with the request is desired;
 - (f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - (g) 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 Party;
 - (h) 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;
 - (i) 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;
 - (j) 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;

- (k) the need, if any, for confidentiality and the reasons therefor; and
 - (l) in case of requests for restraint or forfeiture of proceeds or instruments of crime, where possible:
 - i. a detailed description of the proceeds or instruments including their location;
 - ii. a statement describing the basis for belief that the monies or property are the proceeds or instruments of crime; and
 - iii. a statement describing the evidence that would be available for a proceeding in the Requested Party.
3. The Requested Party shall not refuse to execute the request solely because it does not include all of the information described under this article if it can otherwise be executed according to the law of the Requested Party.
 4. If the Requested Party considers that additional information is needed to enable the request to be dealt with, that Party may request such additional information.

Article 5

Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the Requested Party and may be executed in accordance with any requirements/manner specified in the request if not incompatible with the law of the Requested Party.
2. The Requested Party shall, upon request, inform the Requesting Party of any circumstances which are likely to cause a significant delay in execution of the request.
3. The Requested Party shall promptly inform the Requesting Party of a decision of the Requested Party not to comply in whole or in part with a request for assistance or to postpone execution and shall give reasons for that decision.

Article 6

Refusal of Assistance

1. The Requested Party may refuse the assistance if:
 - (a) the execution of the request would impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person;
 - (b) the execution of the request would be contrary to the domestic law of the Requested Party;
 - (c) if the request seeking restraint, forfeiture or confiscation of proceeds or instruments of activity which, had it occurred within the jurisdiction of the Requested Party, would not have been an activity in respect of which a confiscation order could have been made; and
 - (d) the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.

2. Before, refusing to grant a request for assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, it shall comply with them.

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, unless the Requesting Party expressly requests the originals.
2. 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.
3. Insofar as 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.

Article 8

Taking evidence in the Requested Party

1. A person, including a person in custody, requested to testify and produce documents, records or other articles in the Requested Party may be compelled by subpoena or order to appear and testify and produce such documents, records and other articles, in accordance with the law of the Requested Party.
2. Subject to the law of the Requested Party, commissioners, other officials of the Requesting Party and persons concerned in the proceedings in the Requesting Party shall be permitted to be present when evidence is taken in the Requested party and to participate in the taking of such evidence.
3. The right to participate in the taking of evidence includes the right of counsel present to pose questions. 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 9

Availability of persons to give evidence or assist in investigation in the Requesting Party

1. The Requesting Party may request that a person be made available to testify or to assist in an investigation.
2. The Requested Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

Article 10

Making detained Persons available to give evidence or assist in investigations

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 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 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 sentence imposed expires, or 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 person present in the Requesting Party pursuant to a request seeking that person's attendance.

Article 11

Safe conduct

1. A person present in the Requesting Party in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in the territory of 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 other than the proceedings to which the request relates.
2. A person, who is present in the Requesting Party by consent as a result of a request for the person's attendance to answer before a judicial authority 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 Party, 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 Party, has not left it within a period of 30 days after being officially notified that the 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 Party may not be subjected to any sanction or compulsory measure in the Requested Party.

Article 12

Proceeds and instruments of Crime

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

2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested Party by whatever means are appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting Party or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested Party.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds or instruments.
4. Proceeds or instruments forfeited or confiscated pursuant to this Agreement shall accrue to the Requested Party, unless otherwise agreed in a particular case.
5. Where action has been taken in the Requested Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in either of the Contracting Parties, as the case may be, by a person affected by the order, the relevant Party shall inform the other Party as soon as possible and shall also inform it promptly of the outcome of that representation.

Article 13

Confidentiality and Limitation of Use

1. The Requested Party may require, after consultation with the Requesting Party, 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 Party 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.
3. The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Requested Party.

Article 14

Authentication

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

Article 15

Language

Requests and supporting documents shall be accompanied by a translation into English.

Article 16

Costs

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 allowance or expenses payable to that person while in the Requesting Party pursuant to a request under Articles 9 or 10 of this Agreement; and
 - (b) the expenses and fees of experts either in the Requested Party or the Requesting Party.
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 17

Entry into Force

This Agreement is subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall come into force from the date of exchange of instruments of ratification.

Article 18

Termination

Either of the Contracting Parties may terminate this Agreement by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the Agreement shall cease to have any force or effect.

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

DONE at New Delhi this the 11th day of January, 2010 (Two Thousand and Ten) in two originals each, in Hindi, Bangla and English. All texts being equally authentic. However, in case of difference, the English text shall prevail.

**For the Government of
the Republic of India**

Signed

(Gopal K Pillai)

Secretary

Ministry of Home Affairs

Government of

the Republic of India

**For the Government of
the People's Republic of Bangladesh**

Signed

(Abdus Sobhan Sikder)

Secretary

Ministry of Home Affairs

Government of

the People's Republic of Bangladesh

TRANSFER OF OFFENDERS TREATIES

Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh on Transfer of Sentenced Persons

The Government of the Republic of India and the Government of the People's Republic of Bangladesh hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons in their own countries; and

Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own country;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this agreement:

- (a) 'judgment' means a decision or order of a court or tribunal imposing a sentence;
- (b) 'receiving State' means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (c) 'sentence' means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
- (d) 'sentenced person' means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
- (e) 'transferring State' means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2

General Principles

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he/she may express to transferring State or the receiving State his willingness to be transferred under this Agreement.

2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

ARTICLE 3

Conditions for transfer

1. A sentenced person may be transferred under this Agreement only on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) the death penalty has not been imposed on the sentenced person;
 - (c) the judgment is final;
 - (d) no inquiry or any other proceeding is pending against the sentenced person in the transferring State;
 - (e) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;
 - (f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
 - (g) the sentenced person has not been convicted for an offence under the military law;
 - (h) transfer or custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;
 - (i) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - (j) the transferring and receiving State agree to the transfer
2. In exceptional cases the transferring and receiving State may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 4

Obligation to furnish information

1. If sentenced person has expressed an interest to the sentencing State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:

- (a) the name, sex and nationality, date and place of birth of the sentenced person;
 - (b) his/her address, if any, in the receiving State;
 - (c) a statement of the facts including a brief description of the incident upon which the sentence was based;
 - (d) the nature, duration and date of commencement of the sentence;
 - (e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (g) any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - (h) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (i) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- (a) a statement or document indicating that the sentenced person is a national of the receiving State;
 - (b) a copy of the relevant law of the receiving State constituting the act or omissions, on account of which the sentence has been passed in the transferring State as if such act or omissions were an offence under the law of the receiving State or would constitute a criminal offence if committed on its territory;
 - (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this Agreement on his transfer;
 - (d) the willingness of the receiving State to accept the transfer of sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - (e) any other information or document which the transferring State may consider necessary.

ARTICLE 5

Request and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed through the central authority of the requesting State through diplomatic channels to the central authority of the requested State. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the Central authority shall be, in relation to India, the Ministry of Home Affairs, and in relation to Bangladesh, shall be the Ministry of Home Affairs.
3. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1 (i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

Effect of transfer for the receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.
2. Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State.

ARTICLE 8

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If, however, the sentence is by its nature or duration or both, incompatible with the law of the receiving State, or its law, so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law with the consent of the transferring State. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

ARTICLE 9

Effect on completion of sentence for the transferring State

When the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.

ARTICLE 10

Pardon, amnesty or commutation and review of judgment

1. The transferring State alone shall decide on any application for the review of the judgment.
2. Unless both the Contracting States otherwise agree, the transferring State alone may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.
3. The transferring State shall inform the receiving State of such decision without delay.

ARTICLE 11

Termination of enforcement of sentence

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 12

Information on enforcement of sentence

1. The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed; or
 - (b) If the prisoner escapes from custody before enforcement of the sentence has been completed. In such cases the receiving State shall make every effort to have the prisoner arrested so that the prisoner be prosecuted for committing an offence under the relevant law of the receiving State on escape of prisoner.
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 13

Transit

1. If either Contracting State enters into arrangement for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals.

2. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 14

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from any other source.

ARTICLE 15

Territorial application

1. This Agreement shall apply to the territory of the Republic of India and of the People's Republic of Bangladesh.
2. The application of this Agreement to any territory, in respect of which extension has been made in accordance with paragraph 1 of this Article, may be communicated to the other through the diplomatic channels.

ARTICLE 16

Language

Requests and supporting documents shall be accompanied by a translation into English.

ARTICLE 17

Scope of application

This Agreement shall be applicable of the enforcement of sentences imposed before or after the entry into force of this Agreement.

ARTICLE 18

Amendments

Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect when confirmed by an exchange of diplomatic notes.

ARTICLE 19

Final provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.
2. The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement

Done at New Delhi on the 11th day of January in the year 2010, in two originals each in Hindi, Bangla and English languages. All the texts being equally authentic, in case of any divergence of interpretation, the English text shall prevail.

**For the Government of the
Republic of India**

**For the Government of the
People's Republic of Bangladesh**

(Gopal K. Pillai)
Secretary
Ministry of Home Affairs

(Abdus Sobhan Sikder)
Secretary
Ministry of Home Affairs

COUNTER TERRORISM COOPERATION TREATIES

Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh on Combating International Terrorism, Organised Crime and Illicit Drug Trafficking

The Government of the Republic of India and the Government of the People's Republic of Bangladesh hereinafter referred to as "Parties".

Guided by the traditional friendly relations between the two countries and their endeavor to contribute to the further development of their bilateral relations;

Deeply concerned with the expansion of Organized Crime and International Terrorism;

Convinced of the need to enhance bilateral cooperation in combating international terrorism, transnational organized crime and illicit drug trafficking;

Recognizing the mutual advantages of such cooperation for both Parties in accordance with their national laws and regulations;

Taking into consideration the relevant international treaties to which both are Parties;

Desiring to improve the effectiveness of both countries in the prevention, investigation, prosecution, and suppression of crime including crime relating to terrorism and drug trafficking and to establish a framework for enhancing cooperation between the officials of intelligence and law-enforcement agencies of the Parties;

Have agreed on the following:

ARTICLE 1

The Parties shall, within the framework of this Agreement and subject to their domestic laws and regulations cooperate in combating international terrorism; illicit trafficking in narcotic drugs and psychotropic substances including their precursor chemicals and provide each other with the widest measure of the Mutual Legal Assistance in the investigation, prosecution and suppression of crime.

ARTICLE 2

The Parties have resolved to cooperate in their joint fight against terrorism in all its forms and to this end, shall:

- (a) exchange information and intelligence on the activities of any terrorist groups and their associates including those providing front or cover to individuals or groups engaged in the planning, promoting

or executing acts of terrorism against the Parties as well as those which may operate from or use territories of either Party;

- (b) identify and exchange information on any sources of financing of terrorism which may be located in the territory of either Party and take steps to seize and confiscate the sources of financing of terrorism;
- (c) coordinate approach to combating international terrorism;
- (d) cooperate and share experience in areas of hijack, termination, hostage rescue and negotiations and protection of VIPs and innocent victims;
- (e) facilitate cooperation in preventing access to arms, explosives, and other prohibited substances for terrorist activities;
- (f) enhance cooperation and intelligence sharing between the law enforcement agencies of the Parties;
- (g) provide mutual assistance including exchange of professional expertise and training of security and law enforcement personnel and organizing seminars and conferences etc.; and
- (h) address any other matter in this Agreement as mutually agreed upon.

ARTICLE 3

- (1) For the purpose of this Agreement, crime will include all offences so created by legislature of the respective Party.
- (2) The Parties shall provide each other the widest measure of mutual legal assistance in the investigation, prosecution, and suppression of crime including crimes related to terrorism.
- (3) The assistance shall include but not be limited to:
 - (a) Measures to locate, restrain, forfeiting or confiscating the means and resources of financing terrorism or the proceeds of crime;
 - (b) Taking of evidence or obtaining statements of persons;
 - (c) Providing information, documents and other records including criminal and judicial records;
 - (d) Communicating information available with each Party about criminal acts either committed or being planned to be committed within the territory of the other Party.
 - (e) Executing requests for search and seizure;
 - (f) Delivery or lending of exhibits;
 - (g) Serving of documents seeking attendance of persons;
 - (h) Exchanging the names of the persons criminally convicted in serious crimes;
 - (i) Locating and identifying persons and objects;

- (j) Any other assistance consistent with objectives of this Agreement.
- (4) For the purpose of Article 3(1) above,
- (a) “Proceeds of crime” means any property that is derived or realized directly or indirectly by any person from an offence or the value of any such property.
 - (b) “Property” includes - money of all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property.
 - (c) “Confiscation” means any measures resulting in the deprivation
- (5) The Parties shall
- (a) Exchange data on persons involved in organized crime, their linkages, the structure of the criminal group and their modalities; and
 - (b) Consider ways and means to facilitate mutual legal assistance in criminal matters, arrest and prosecution of individuals and their associates engaged in crime.

ARTICLE 4

For suppression of illicit trafficking in narcotic drugs, psychotropic substances and precursors, the Parties shall

- (a) Exchange and share information about persons involved in narcotic drug trafficking, their modus operandi as well as other relevant details of such crimes, insofar as these are necessary for the prevention or suppression of crimes;
- (b) Exchange the results of their criminal and criminological research on narcotic drug trafficking and abuse of narcotic drugs;
- (c) Share and exchange of samples of narcotic drugs and psychotropic substances of natural or synthetic origin usable for abuse; and
- (d) Subject to its domestic laws and international obligations, facilitate the controlled delivery of illicit narcotic drugs and psychotropic substances in order to render possible the arrest of the persons to whom it will be delivered as well as any persons involved in the trafficking.

ARTICLE 5

1. The Ministry of Home Affairs shall be the nodal agency on the Indian side responsible for the implementation of this Agreement.
2. The Ministry of Home Affairs shall be the nodal agency on the side of the Government of the People’s Republic of Bangladesh.
3. The Parties shall nominate such other law enforcement agencies for cooperation in various areas under this Agreement as deemed necessary.

4. In the absence of other Agreement, the English language be used or communication and exchange of information.

ARTICLE 6

The Parties shall set up a Coordination Committee including representatives of law enforcement agencies to promote and review the cooperation within the terms of this Agreement. The Committee shall meet at least once every year on mutually convenient dates and the venue of the meetings shall alternatively be in Bangladesh and India.

ARTICLE 7

The Coordination Committee shall lay down the detailed modalities and specify law enforcement agencies on either side to exchange operational intelligence in the field of terrorism and drug trafficking including their office address, contact telephone and fax numbers and other relevant details to facilitate contact on priority basis. Similarly, nodal authorities shall be specified for cooperation and mutual assistance in the field of crime.

ARTICLE 8

1. The Coordination Committee shall observe complete confidentiality in the conduct of its work.
2. Any confidential information provided by one Party pursuant to this Agreement shall not be passed on or disclosed to a third party without the expressed consent of the former Party.

ARTICLE 9

Either Party may deny a request for cooperation, in whole or in part, if that request affects its national sovereignty, endangers its security or violates its laws and regulations.

ARTICLE 10

Any dispute arising out of the application or interpretation of this Agreement shall be settled through negotiations between the Parties through diplomatic channels.

ARTICLE 11

The provisions of this Agreement shall not affect the obligations assumed by Parties pursuant to other bilateral or multi-lateral agreements to which they are Parties.

ARTICLE 12

This Agreement may be amended or revised, as deemed necessary, by mutual written consent of the Parties.

ARTICLE 13

1. This Agreement is subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall come into force from the date of exchange of instruments of ratification.
2. Either Party may at any time terminate this Agreement by giving six months advance written notice to the other Party indicating its intention to terminate this Agreement. The Agreement shall cease to have effect on the expiry of the six months period.

The undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at New Delhi on the 11th day of January in the year 2010, in two originals each in Hindi, English and Bangla languages. All the texts being authentic, in case of any divergence of interpretation, the English text shall prevail.

**For the Government of the
Republic of India**

(Gopal K. Pillai)
Secretary
Ministry of Home Affairs
Government of the
Republic of India

**For the Government of the
People's Republic of Bangladesh**

(Abdus Sobhan Sikder)
Secretary
Ministry of Home Affairs
Government of the
People's Republic of Bangladesh

BHUTAN

NATIONAL LAWS

The Constitution of the Kingdom of Bhutan, 2008

(Article 10 Section 25)

Article 10

Parliament

25. Except for existing International Conventions, Covenants, Treaties, Protocols and Agreements entered into by Bhutan, which shall continue in force subject to section 10 of Article 1, all International Conventions, Covenants, Treaties, Protocols and Agreements duly acceded to by the Government hereafter, shall be deemed to be the law of the Kingdom only upon ratification by Parliament unless it is inconsistent with this Constitution.

Extradition Act, 1989 (1991)

WHEREAS it is expedient to introduce national legislation for extradition of fugitive offenders;

NOW therefore, the National Assembly of Bhutan enacts this legislation.

I. Preliminary

- A.. This Act may be called the Extradition Act, 1989 (1991)
- B.. This Act shall come into force immediately.
- C.. This Act shall apply to the return of persons to, and to persons returned from a treaty state.
- D.. This Act may also apply to non-treaty state where the Royal Government of Bhutan considers it expedient to surrender the suspected fugitive offender to that state notwithstanding that there is no extradition treaty with that state, subject to modifications, exceptions, conditions and qualifications, if any, as may be made by the Royal Government of Bhutan.

II. Definitions:

In this act, unless there is anything repugnant in the subject or context:

- A.. “Court” means High Court of Bhutan unless it is specified otherwise.
- B.. “Extradition Offence” means an offence included in the Schedule to this Act constituting an offence against the law of Bhutan, or an offence specified in the extradition treaty or arrangement with the foreign state.
- C.. “Treaty State” means a foreign state with which an extradition treaty is in operation.
- D.. “Extradition Treaty” means a treaty or agreement between Bhutan and foreign state for the extradition to or from such state of a person accused or convicted of an extradition offence.
- E.. “Fugitive offender” means a person who, being accused or convicted of an extradition offence within the jurisdiction of a foreign state is, or is suspected to be, in Bhutan.
- F.. “Requesting state” means a treaty state which requests another treaty state for extradition of a fugitive offender.

III. Request for extradition or punishment :

- A.. Request for extradition or punishment of the fugitive offender who, after committing an offence, has absconded to the Kingdom of Bhutan may be made in writing through the diplomatic mission of the foreign country in Bhutan or through the Bhutanese diplomatic mission in that country. If such a request cannot be made through these channels, the foreign country may make the request directly to the Royal Government of Bhutan.

- B.. While making the request for extradition or punishment pursuant to sub-section 3.1 above, the requesting state shall provide all relevant evidence and information about the fugitive offender including those submitted by him and state the location of his stay in Bhutan.

IV.. Proceedings:

- A.. On receipt of the request for extradition or punishment of a fugitive offender, the Royal Government may, if it thinks fit, order the High Court to investigate the matter.
- B.. The Court, after receiving the Government order, shall issue a summon or warrant for arrest of the fugitive offender.
- C.. When the fugitive offender appears or is produced before the Court, the Court shall inquire into the case and take such evidence as if it were a similar case triable under its jurisdiction.
- D.. On completion of the inquiry, the Court shall submit a report to the Royal Government on the results of its inquiry and its recommendations. The report shall include all pertinent information and evidence received in connection with the inquiry including other submissions as may be requested by the fugitive offender.
- E.. Pending the decision of the Royal Government on the report, the fugitive offender shall remain under police custody for a period not exceeding thirty days from the day of the submission of the report by the Court to the Royal Government of Bhutan.

V.. Extradition of fugitive offender:

- A.. If the Royal Government decides to extradite any fugitive offender on the basis of the recommendations made by the Court, it shall inform the requesting state of its decision. The Royal Government shall also issue an order specifying the place where the fugitive offender is to be handed over and the name of the person who is to receive him.
- B.. While extraditing the fugitive offender pursuant to sub-section 5.1. above, the cash or kind seized from him shall also be handed over to the person who received the fugitive offender if such cash or kind is not claimed by any other person.
- C.. If a fugitive offender who has been detained for extradition under sub-section 5.1. above, has not been taken out of Bhutan within 60 days after issuing the order for extradition, the High Court upon receipt of petition submitted by the fugitive offender or on his behalf, may acquit him unless a reasonable case is made out on the contrary.

VI.. Restriction on extradition:

- A.. The Royal Government shall not extradite the fugitive offender for whom a request has been made for extradition on the following conditions:
- B.. If such fugitive offender is deemed to have committed a political offence on the basis of the evidence received from the requesting country or on the basis of evidence produced by the fugitive offender during the course of the investigation by the Court or if it is found that the fugitive offender is being demanded for punishment on political offence.

- C.. If it appears to the Royal Government that by reason of the trivial nature of the case or by reason of the request for surrender or return of a fugitive offender not being made in good faith or in the interest of justice or for any other reasons deemed important by the Royal Government, it is unjust or inexpedient to extradite the fugitive offender.
- D.. If the fugitive offender is undergoing a trial or punishment in Bhutan for offence committed within the kingdom till the trial or punishment is over.
- E.. If the prosecution for the offence in respect of which the surrender is sought, is according to the law of the requesting state, barred by time.

VII.. Punishment within Bhutan:

- A.. If the Royal Government finds it reasonable to punish than extradite any fugitive offender on the basis of the report submitted by the Court, it may order the Court to initiate the proceedings for punishment. In such a case, the Royal Government shall inform the requesting state of the intention to punish the fugitive offender in Bhutan.
- B.. Although an appeal under the prevailing law may lie against the decision made by the Court, the fugitive offender may plead for clemency to His Majesty the King of Bhutan.

VIII.. Special provision:

- A.. Notwithstanding the provisions of the law of Bhutan the evidence, proof and documents received from the requesting state in connection with the case whose proceedings have been initiated under this Act may be admitted as evidence by the Court.

IX.. Jurisdiction of the High Court for purposes of criminal proceedings:

- A.. If any person whether a citizen of Bhutan or not, commits in a treaty state any of the extradition offenses under this Act, such person shall be guilty in Bhutan of the offence constituted by commission of the act in Bhutan.

X.. Surrender of fugitive offender to Bhutan:

- A.. A requisition for the surrender to Bhutan of a person who being accused or convicted of an extradition offence, is or is suspected to be in a treaty state may be made by the Kingdom of Bhutan in the same manner as specified in Article 3 above.
- B.. Any person accused or convicted of an extradition offence who is surrendered or returned by a treaty state may be brought into Bhutan and delivered to the authority specified in the warrant of arrest or surrender issues by the treaty state for facing charges in accordance with the law of Bhutan.

- C.. A person surrendered or returned to Bhutan by a treaty state in pursuance of provision 9.1. of this Act shall not be tried in Bhutan for an offence committed prior to the surrender or return, other than the offence proved by the facts for which he has been surrendered.
- D.. The Royal Government may arrange for the person surrendered to Bhutan by the treaty state to be sent back at the cost of the Royal Government if the proceedings against him have not begun within ninety days from the date of his surrender or return to Bhutan and if he is acquitted or discharged after trial.

XI.. Power to frame rules:

- A.. The Royal Government may frame rules, as required, for implementing the provisions of this Act.
- B.. The Royal Government may amend this Act.

Schedule
(Alternative 1)

The following list of extradition offenses is to be construed according to the law in force in Bhutan on the date of the alleged offence:

1. Culpable homicide
2. Attempt to murder
3. Causing miscarriage and abandonment of child
4. Kidnapping, abduction, slavery and forced labour
5. Rape and unnatural offenses
6. Theft, extortion, robbery and dacoity
7. Criminal misappropriation and criminal breach of trust.
8. Cheating
9. Mischief
10. Forgery, using forged documents and other offenses relating to false documents
11. Offenses relating to coins and stamps
12. Sinking or destroying a vessel at sea or attempting or conspiring to do so.
13. Damaging or destroying an aircraft in the air or attempting or conspiring to do so.
14. Assault on board a vessel on the high seas or an aircraft in the air outside Bhutan or the Bhutanese air space with intent to destroy life or to do grievous bodily harm.
15. Revolt or conspiracy to revolt by two or more persons on board a vessel on the high seas or an aircraft in the air outside Bhutan or the Bhutanese air space against the authority of the master or the pilot in command.
16. Smuggling of gold, gold manufactures, diamonds and other precious stones or of any narcotic substance.
17. Immoral traffic in women and girls.
18. Any offence which is committed in Bhutan would be punishable under any other section of the law of Bhutan.

(Alternative 2)

Any offence which, in accordance with law of the Kingdom of Bhutan, is punishable with death or imprisonment for life or a term exceeding twelve months shall be treated by the Court as an extradition offence under this Act.

The Enabling Act for Suppression of Terrorism, 1991

WHEREAS the Kingdom of Bhutan is a party to the SAARC Regional Convention on suppression of Terrorism which came into force on 22 August 1988.

ANDWHEREAS it is necessary to make legal provisions to implement the aforesaid Convention.

NOW therefore, the National Assembly of Bhutan enacts this legislation:

Article I

This legislation may be called The Enabling Act for Suppression of Terrorism 1991, and shall come into force immediately upon enactment by the National Assembly of Bhutan.

Article II

Definition of Terms

1. Unless specified otherwise in this Act:
 - (a) “Convention” means the SAARC Regional Convention on Suppression of Terrorism.
 - (b) “Member States” means the members of the South Asian Association for Regional Cooperation as specified in Schedule A to this Act.
 - (c) The term “Treaty State” used in the Extradition Act, 1991 shall apply to the Member States for the purposes of the SAARC Regional Convention on Suppression of Terrorism.

Article III

Authority of the convention

1. Notwithstanding any provisions in the Extradition Act, 1991, an offence specified in Article I of the Convention and contained in Schedule B of this Act shall be deemed not to be an offence of a political character or an offence connected with a political offence, or an offence inspired by political motives, so far only as the request for the extradition of any person accused or convicted of any such offense is made by a Member State.
2. The offences enumerated in Article I of the Convention which are contained in Schedule B to this Act shall be treated as extraditable offences under the Extradition Act, 1991.

Article IV

Provision Regarding Extradition Arrangements

1. Where there is an extradition arrangement made by the Kingdom of Bhutan with any state specified in the Second Schedule to this Act, in force on the date on which this Act comes into operation, such arrangement shall be deemed, for the purposes of the Extradition Act 1991 to include provisions for extradition in respect of the offences specified in the Schedule B of this Act.
2. Where there is no extradition arrangement made by the Kingdom of Bhutan with a state specified in the Schedule A to this Act, in force on the date on which this Act comes into operation, the Royal Government may treat the Convention for the purposes of the Extradition Act 1991, as an extradition arrangement made, by the Kingdom of Bhutan with that state providing for extradition in respect of the offences specified in Schedule B.
3. Where a request is made to the Kingdom of Bhutan, by a Member State for the extradition of any person accused or convicted of an offence specified in Schedule B, the Kingdom of Bhutan, shall expeditiously inform the Government of the Requesting State of the actions which the Kingdom of Bhutan has taken, or proposed to take, for the extradition or prosecution that person for that offence.
 - (a) Where it is decided that no order should be made under the Convention for the extradition of a person accused or convicted of an offence specified in Schedule B, pursuant to an extradition request under the Convention by a Member State, the case shall be submitted to the relevant authorities, so that prosecution for the offence which such person is accused of, or other appropriate action, may be considered.
4. Member States shall not be obliged to extradite, if it appears to the Requested State that by reason of the trivial nature of the case or by reason of the request for the surrender or return of a Fugitive Offender not being made in good faith or in the interests of justice or for any other reason it is unjust or inexpedient to surrender or return the Fugitive Offender.
5. Member States shall, subject to their national laws, afford one another the greatest measure of mutual assistance in connection with proceedings brought in respect of the offences referred to in Article I of the Convention or agreed to in terms of Article II in the convention, including the supply of all evidence at their disposal necessary for the proceedings.
 - (a) Member States shall cooperate among themselves, to the extent permitted by their national laws, through consultations between appropriate agencies, exchange of information, intelligence and expertise and such other cooperative measures as may be appropriate, with view to preventing terroristic activities through precautionary measures.

Article V

Jurisdiction for purposes of Criminal Proceedings.

1. If any person, whether or not a citizen of Bhutan, does in a Member State any act, which if done in Bhutan, would have constituted an offence specified in Schedule B, such person shall be guilty in Bhutan, of the offence constituted by the commission of that act in Bhutan.
2. If a person who is a national of a Member State but not a citizen of Bhutan, does outside Bhutan and that Member State any act which had he been a citizen of Bhutan would have made him guilty of an offence specified in Schedule B to this Act, he shall be guilty of the offences aforesaid in Bhutan.
 - (a) If a citizen of Bhutan does outside Bhutan or any Member State any act which, if such act had been committed in Bhutan, would have made him guilty of an offence specified in Schedule B, he shall be guilty of the offence aforesaid in Bhutan.
3. The High court of Bhutan is hereby vested with jurisdiction to try the offences referred to in sections 5.1 and 5.2.

Article VI

Framing of Implementation Rules

1. The Royal Government may frame rules to implement the Convention which are in keeping with the Articles of the Convention.

SCHEDULE A

Peoples Republic of Bangladesh
Republic of India
Republic of Maldives
Kingdom of Nepal
Islamic Republic of Pakistan
Democratic Socialist Republic of Sri Lanka
Kingdom of Bhutan

SCHEDULE B

List of offences referred to in Article I of the SAARC Regional Convention on Suppression of Terrorism.

- (a) An offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on December 16, 1970;
- (b) An offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;
- (c) An offence within the scope of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, signed at New York on December 14, 1973;
- (d) An offence within the scope of any convention to which the SAARC member states concerned are parties and which obliges the parties to prosecute or grant extradition;
- (e) Murder, Manslaughter, assault causing bodily harm, kidnapping, hostage-taking and offences relating to firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property;
- (f) An attempt or conspiracy to commit an offence described in sub-paragraphs (a) to (e) above, aiding abetting or counselling the commission of such an offence or participating as an accomplice in the offences so described.

EXTRADITION TREATIES

Extradition Agreement between the Republic of India and the Kingdom of Bhutan

Preamble:

The Government of the Republic of India and the Government of the Kingdom of Bhutan, hereinafter called the Parties :

Being fully committed to safeguarding each other's security and stability;

Taking cognizance of the rising trend in terrorist, secessionist, criminal and other unlawful activities affecting peace and stability in their territories;

Desirous of cooperating effectively to prevent and suppress such terrorist, secessionist, criminal and other unlawful activities affecting their security and stability;

Have agreed, in keeping with the spirit of abiding friendship and close cooperation between them, to enter into a new extradition agreement with each other which is as follows:

Article 1

Duty to Extradite

Each Contracting Party agrees to extradite to the other, subject to the conditions of this Agreement, any person, who, being accused of, charged with or convicted of an extraditable offence in the territory of one Party, is found in the territory of the other Party, whether or not such offence was committed before or after the coming into force of this Agreement.

Article 2

Extraditable Offences

1. An offence shall be an extraditable offence if it is punishable under the laws in either Contracting State by deprivation of liberty, including imprisonment, for a period of more than one year or by a more severe penalty.
2. Extradition shall also be granted for acts committed outside the Requesting State and the Requested State which under the law of the Requesting State are deemed to be an offence liable for prosecution within that State.
3. An offence shall also be an extraditable offence if it consists of an attempt or a conspiracy to commit, aiding or abetting, counseling (sic) or procuring the commission of or being an accessory before or after the fact, to, any extraditable offence.

Article 3

Composite Offences

1. Extradition shall be available in respect of an extraditable offence whenever an act or conduct of a person occurred, wholly or in part, in the Requested State but the consequences of which as intended by the offender occurred within the Requesting State or, by the nature of the commission of which, the consequence resulting therefrom should occur within the Requesting State or it could be foreseen that the consequence would occur within the Requesting State, deeming that such offence is committed within the Requesting State.
2. Preparation or attempt to commit a composite offence as defined in paragraph 1 or the acts of a co-principal, a supporter or an instigator in the commission of such a composite offence shall be deemed to be extraditable offences liable for prosecution within the Requesting State.
3. Extradition shall also be available in respect of individuals belonging to an organisation engaging in activities declared to be unlawful by the law of the Requesting State and in respect of persons aiding, abetting or promoting such unlawful activities or objectives of the organisation or association.

Article 4

Mutual Assistance

1. The two Parties shall render the greatest measure of mutual assistance to each other through consultations between appropriate channels, exchange of information, intelligence and expertise and such other cooperative measures as may be appropriate with a view to prevent and suppress activities in each other's territories, affecting their security, by persons belonging to:
 - (a) the Requesting State but found in the territory of the Requested State;
 - (b) the Requested State; and
 - (c) third countries but found in the Requested State.
2. With a view to promote and facilitate cooperation on an ongoing basis in respect of matters referred to above in this Article, the Parties shall establish appropriate joint mechanism.

Article 5

Grounds for Refusal

Extradition shall not take place if the person whose extradition is sought by the Requesting State has already been tried and discharged or punished or is still under trial in the territory of the Requested State for the offence for which his extradition is requested.

Article 6

Extradition Procedure

A request for extradition and/or mutual assistance under this Agreement shall be available at the request of either party to the other party or by any officer(s) authorised by them respectively in this regard. The request for extradition shall be in writing and shall be processed in accordance with the law of the Requested State. For this purpose, a warrant of arrest issued by a court of law or any other agency authorised by the Requesting State shall be sufficient. The Parties thereby agree to dispense with the requirement of the prima facie case.

Article 7

Provisional Arrest

In case of urgency, either Contracting Party may apply for the provisional arrest of the person sought before the request for extradition has been submitted to the Requested State through diplomatic channel. The request for provisional arrest shall be made through diplomatic channels and shall be processed in accordance with the law of the Requested State.

Article 8

Surrender

If the extradition request has been granted, surrender of the persons sought shall take place within such time and at such place as may be mutually agreed between the Parties.

Article 9

Expenses

The expenses of any apprehension, detention or surrender made in pursuance of this Agreement shall be borne and defrayed by the Requested State.

Article 10

Ratification and Termination

This Agreement is subject to ratification and the instruments of ratification shall be exchanged at Thimphu/Delhi as soon as possible. It shall come into force upon the exchange of instruments of ratification.

Either of the Contracting Parties may terminate this Agreement by giving six months' notice thereof through diplomatic channels. Upon the expiry of such notice, the Agreement shall cease to have any force or effect.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at TashichhoDzong, Thimphu on the Twenty-eighth day of December, Nineteen Hundred and Ninety six, in the originals each in Hindi, Dzongkha and English languages, each text being equally authentic. However, in case of difference, the English text shall prevail.

For the Government of
the Republic of India

For the Government of
the Kingdom of Bhutan

(Dalip Mehta)
Ambassador of India, Thimphu

(Lyonpo Dago Tshering)
Minister of Home Affairs

INDIA

NATIONAL LAWS

THE EXTRADITION ACT, 1962 *

ACT NO. 34 OF 1962

[15th September 1962.]

An Act to consolidate and amend the law relating to the extradition of fugitive criminals 1*[and to provide for matters connected therewith or incidental thereto]

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.** (1) This Act may be called the Extradition Act, 1962.
(2) It extends to the whole of India.
(3) It shall come into force on such date 2* as the Central Government may, by notification in the Official Gazette, appoint.
2. **Definitions.** In this Act, unless the context otherwise requires,--
3. *[(a) “composite offence” means an act or conduct of a person occurred, wholly or in part, in a foreign State or in India but its effects or intended effects, taken as a whole, would constitute an extradition offence in India or in a foreign State, as the case may be;]

1. Added by Act 66 of 1993, s. 2 (w.e.f. 18-12-1993)

2. 5th January, 1963; vide Notification No. G.S.R. 55, dated 5-1-1963, Gazette of India, Extraordinary, Pt. II, Sec. 3(i) p. 7.

3. Subs. by Act 66 of 1993 s. 4, (w.e.f. 18-12-1993)

Extended to and brought into force in the State of Sikkim (w.e.f. 17.9.1975) vide Notifn. No. G.S.R. 495(E), dated 17.9.1975.

*The provisions of the Act, other than Chapter III, shall apply to Papua New Guinea w.e.f. 1-9-1978, vide Notifn. No. G.S.R. 433 (E), dated 17.8.1978, Gaz. of India, Exty., Pt. II, Sec. 3(i), p. 748.

(b) “conviction” and “convicted” do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term “person accused” includes a person so convicted for contumacy;

*The provisions of the Act, other than Chapter III, shall apply to Fiji w.e.f. 1-2-1979, vide Notifn. No. G.S.R. 38(E), dt. 22-1-1979, Gaz. Of India, Exty., Pt. II, Sec. 3(i), p. 58.

3 *(c) Extradition offence” means-

- (i) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;
- (ii) in relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence;]

*The provisions of The Act, other than Chapter III, shall apply to the Commonwealth of Australia w.e.f. 30.8.1971, vide Notifn. No. G.S.R. 1381, dt. 30.8.1971, Gaz. of India, Exty., Pt. II, Sec. 3(i), p-895.

(d) “extradition treaty” means a treaty 1*[agreement or arrangement] made by India with a foreign State relating to the extradition of fugitive criminals, and includes any treaty 1*[agreement or arrangement] relating to the extradition of fugitive criminals made before the 15th day of August, 1947, which extends to, and is binding on, India;

(e) “foreign State” means any State outside India 1*xxx, and includes every constituent part, colony or dependency of such State;

1*[(f) “fugitive criminal” means a person who is accused or convicted of an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India, conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in a foreign State.]

(g) “magistrate” means a magistrate of the first class or a presidency magistrate;

(h) “notified order” means an order notified in the Official Gazette;

(i) “prescribed” means prescribed by rules made under this Act; and

(j) “treaty State” means a foreign State with which an extradition treaty is in operation.

3. **Application of Act.** 2*[(1) The Central Government may, by notified order, direct that the provisions of this Act, other than Chapter III, shall apply to such foreign State or part thereof as may be specified in the order.]

(2) The Central Government may, by the same notified order as is referred to in subsection (1) or any subsequent notified order, restrict such application to fugitive criminals found, or suspected to be, in such part of India as may be specified in the order.

1. Subs. & omitted by Act 66 of 1993, s. 4 (w.e.f. 18-12-1993)

2. Subs. by s. 5 *ibid* (w.e.f. 18-12-1993)

(3) Where the notified order relates to a treaty State,-

- (a) it shall set out in full the extradition treaty with that State;
- (b) it shall not remain in force for any period longer than that treaty; and
- (c) the Central Government may, by the same or any subsequent notified order, render the application of this Act subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the treaty with that State.

1*[(4) Where there is no extradition treaty made by India with any foreign State, the Central Government may, by notified order, treat any Convention to which India and a foreign State are parties, as an extradition treaty made by India with that foreign State providing for extradition in respect of the offences specified in that Convention.]

CHAPTER II

EXTRADITION OF FUGITIVE CRIMINALS TO FOREIGN STATES 2*** TO WHICH CHAPTER III DOES NOT APPLY

4. **Requisition for surrender.** A requisition for the surrender of a fugitive criminal of a foreign State 3*** may be made to the Central Government—
 - (a) by a diplomatic representative of the foreign State 3*** at Delhi; or
 - (b) by the Government of that foreign State 3*** communicating with the Central Government through its diplomatic representative in that State 1***. and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of the foreign State 3*** the Government of India.
5. **Order for magisterial inquiry.** Where such requisition is made, the Central Government may, if it thinks fit, issue an order to any magistrate who would have had jurisdiction to inquire into the offence if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case.
6. **Issue of warrant for arrest.** On receipt of an order of the Central Government under section 5, the magistrate shall issue a warrant for the arrest of the fugitive criminal.
7. **Procedure before magistrate.** (1) When the fugitive criminal appears or is brought before the magistrate, the magistrate shall inquire into the case in the same manner and shall have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a court of session or High Court.
 - (2) Without prejudice to the generality of the foregoing provisions, the magistrate shall, in particular, take such evidence as may be produced in support of the requisition of the foreign State 1*** and on behalf of the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal is accused or has been convicted is an offence of political character or is not an extradition offence.
 - (3) If the magistrate is of opinion that a prima facie case is not made out in support of the requisition of the foreign State 1*xxx, he shall discharge the fugitive criminal.
 - (4) If the magistrate is of opinion that a prima facie case is made out in support of the requisition of the foreign State, 1***he may commit the fugitive criminal to prison to await the orders of the Central Government, and shall report the result of his inquiry to the Central Government, and shall forward together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Central Government.
8. **Surrender of fugitive criminal.** If, upon receipt of the report and statement under sub-section (4) of section 7, the Central Government is of opinion that the fugitive criminal ought to be surrendered

1. Ins. by Act 66 of 1993 s. 5 (w.e.f. 18-12-1993)

2. Omitted by s. 6, *ibid* (w.e.f. 18-12-1993)

3. Omitted by s. 3 *ibid*. (w.e.f. 18-12-1993)

to the foreign State 1***, it may issue a warrant for the custody and removal of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant.

9. **Power of magistrate to issue warrant of arrest in certain cases.** (1) Where it appears to any magistrate that a person within the local limits of his jurisdiction is a fugitive criminal of a foreign State 1*** he may, if he thinks fit, issue a warrant for the arrest of that person on such information and on such evidence as would, in his opinion, justify the issue of a warrant if the offence of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction.
- (2) The magistrate shall forthwith report the issue of a warrant under sub-section (1) to the Central Government and shall forward the information, and the evidence or certified copies thereof to that Government.
- (3) A person arrested on a warrant issued under sub-section (1) shall not be detained for more than three months unless within that period the magistrate receives from the Central Government an order made with reference to such person under section 5.

1. omitted by Act 66 of 1993, s. 3 (w.e.f 18-12-1993)

10. **Receipt in evidence of exhibits, depositions and other documents and authentication thereof.**

(1) In any proceedings against a fugitive criminal of a foreign State 1*xxx under this Chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof and official certificates of facts and judicial documents stating facts may, if duly authenticated, be received as evidence.

(2) Warrants, depositions or statements on oath, which purport to have been issued or taken by any court of justice outside India or copies thereof, certificates of, or judicial documents stating the facts of, conviction before any such court shall be deemed to be duly authenticated if—

- (a) the warrant purports to be signed by a judge, magistrate or officer of the State or country where the same was issued or acting in or for such State or country;
- (b) the depositions or statements or copies thereof purport to be certified, under the hand of a judge, magistrate or officer of the State or country where the same were taken, or acting in or for such State or country, to be the original depositions or statements or to be true copies thereof, as the case may require;
- (c) the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a judge, magistrate or officer of the State or country where the conviction took place or acting in or for such State;
- (d) the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State or country where the same were 2*xxx issued, taken or given.

11. **Chapter not to apply to foreign states countries to which Chapter III applies.** Nothing contained in this Chapter shall apply to fugitive criminals 1*** to which Chapter III applies.

1. Omitted by Act 66 of 1993, s. 3 (w.e.f. 18-9-1993).

2. Omitted by s. 7. *ibid* (w.e.f. 18-12-1993).

CHAPTER III
RETURN OF FUGITIVE CRIMINALS TO [FOREIGN STATES] 2* WITH EXTRADITION
ARRANGEMENTS

12. **Application of Chapter.** (1) This Chapter shall apply only to any such 3*[foreign state] to which, by reason of an extradition arrangement entered into with that 4*[State], it may seem expedient to the Central Government to apply the same.
- (2) Every such application shall be by notified order, and the Central Government may, by the same or any subsequent notified order, direct that this Chapter and Chapters I, IV and V shall, in relation to any such 3*[foreign state], apply subject to such modifications, exceptions, conditions and qualifications as it may think fit to specify in the order for the purpose of implementing the arrangement.
13. **Liability of fugitive criminals from foreign states to be apprehended and returned.** Where a fugitive criminal of any 3*[foreign state] to which this Chapter applies is found in India, he shall be liable to be apprehended and returned in the manner provided by this Chapter to that 3*[foreign state].
14. **Endorsed and provisional warrants.** A fugitive criminal may be apprehended in India under an endorsed warrant or a provisional warrant.
15. **Endorsed warrant for apprehension of fugitive criminal.** Where a warrant for the apprehension of a fugitive criminal has been issued in any 3*[foreign state] to which this Chapter applies and such fugitive criminal is, or is suspected to be, in India, the Central Government may, if satisfied that the warrant was issued by a person having lawful authority to issue the same, endorse such warrant in the manner prescribed, and the warrant so endorsed shall be sufficient authority to apprehend the person named in the warrant and to bring him before and magistrate in India.
16. **Provisional warrant for apprehension of fugitive criminal.** (1) Any magistrate may issue a provisional warrant for the apprehension of a fugitive criminal from any commonwealth country to which this Chapter applies who is, or is suspected to be, in or on his way to India, on such information and under such circumstances as would, in his opinion, justify the issue of a warrant, if the offence of which the fugitive criminal is accused or has been convicted had been committed within his jurisdiction and such warrant may be executed accordingly.
- (2) A magistrate issuing a provisional warrant shall forthwith send a report of the issue of the warrant together with the information or a certified copy thereof to the Central Government, and the Central Government may, if it thinks fit, discharge the person apprehended under such warrant.

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1. Omitted by Act 66 1993 s. 8 (w.e.f. 18-12-1993)
2. Subs. by s. 9. *ibid* (w.e.f 18-12-1993)
3. Subs by s. 3 *ibid*. (w.e.f. 18-12-1993)
4. Subs s. 10. w.e.f 18-12-1993)

(3) A fugitive criminal apprehended on a provisional warrant may, from time to time, be remanded for such reasonable time, not exceeding seven days at any one time, as under the circumstances seems requisite for the production of an endorsed warrant.

17. **Dealing with fugitive criminal when apprehended.** (1) If the magistrate, before whom a person apprehended under this Chapter is brought, is satisfied on inquiry that the endorsed warrant for the apprehension of the fugitive criminal is duly authenticated and that the offence of which the person is accused or has been convicted in an extradition offence, the magistrate shall commit the fugitive criminal to prison to await his return and shall forthwith send to the Central Government a certificate of the committal.

(2) If on such inquiry the magistrate is of opinion that the endorsed warrant is not duly authenticated or that the offence of which such person is accused or has been convicted is not an extradition offence, the magistrate may, pending the receipt of the orders of the Central Government, detain such person in custody or release him on bail.

(3) The magistrate shall report the result of his inquiry to the Central Government and shall forward together with such report any written statement which the fugitive criminal may desire to submit for the consideration of that Government.

18. **Return of fugitive criminal by warrant.** The Central Government may, at any time after a fugitive criminal has been committed to prison under this Chapter, issue a warrant for the custody and removal to the commonwealth country concerned of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant.

CHAPTER IV

SURRENDER OR RETURN OF ACCUSED OR CONVICTED PERSONS FROM FOREIGN STATES

19. **Mode of requisition of form of warrant for the surrender or return to India of accused or convicted person who is in a foreign State.** (1) A requisition for the surrender of a person accused or convicted of an extradition offence committed in India and who is, or is suspected to be, in any foreign State to which Chapter 111 does not apply, may be made by the Central Government-
- (a) to be a diplomatic representative of that State or country at Delhi; or
 - (b) to the Government of that State or country through the diplomatic representative of India in that State and if neither of these modes is convenient there requisition made by the Government of India with that State.
2. a warrant issued by a Magistrate in India for the apprehension of any person who is, or is suspected to be, in any [foreign State] to which Chapter III applies shall be in such form as may be prescribed.
20. **Conveyance of accused or convicted person surrendered or returned.** Any person accused or convicted of an extradition offence who is surrendered or returned by a foreign State or 2*** may, under the warrant of arrest for his surrender or return issued in such State or country, be brought into India and delivered to the proper authority to be dealt with according to law.
- 3*[21. **Accused or convicted person surrendered or returned by foreign State not to be tried for certain offences.** Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State, such person shall not, until he has been restored or has had an opportunity of returning to that State, be tried in India for an offence other than—
- (a) the extradition offence in relation to which he was surrendered or returned; or
 - (b) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or
 - (c) the offence in respect of which the foreign State has given its consent.]

1. Omitted by Act 66 of 1993 s. 11 (w.e.f 18-12-1993).

2. Omitted & Subs. by s. 3 *ibid.* (w.e.f. 18-12-1993).

3. Subs. by s. 12, *ibid* (w.e.f. 18-12-1993).

CHAPTER V
MISCELLANEOUS

22. **Liability of fugitive criminals to be arrested and surrendered or returned.** Every fugitive criminal of a foreign State 1*xxx shall, subject to the provisions of this Act, be liable to be arrested and surrendered or returned, whether the offence in respect of which the surrender or return is sought was committed before or after the commencement of this Act, and whether or not a court in India has jurisdiction to try that offence.
23. **Jurisdiction as to offences committed at sea or in air.** Where the offence in respect of which the surrender or return of a fugitive criminal is sought was committed on board any vessel on the high seas or any aircraft while in the air outside India or the Indian territorial waters which comes into any port or aerodrome of India, the Central Government and any magistrate having jurisdiction in such port or aerodrome may exercise the powers conferred by this Act.
24. **Discharge of person apprehended if not surrendered or returned within two months.** if a fugitive criminal who, in pursuance of this Act, has been committed to prison to await his surrender or return to any foreign State 1*xxx is not conveyed out of India within two months after such committal, the High Court, upon application made to it by or on behalf of the fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Central Government, may order such prisoner to be discharged unless sufficient cause is shown to the contrary.
25. **Release of persons arrested on bail.** In the case of a person who is a fugitive criminal arrested or detained under this Act, the provisions of the 2*[Code of Criminal Procedure, 1973] (2 of 1974) relating to bail shall apply in the same manner as they would apply if such person were accused of committing in India the offence of which he is accused or has been convicted, and in relation to such bail, the magistrate before whom the fugitive criminal is brought shall have, as far as may be, the same powers and jurisdiction as a court of session under that Code.
26. **Abetment of extradition offences.** A fugitive criminal who is accused or convicted of abetting 1*[conspiring, attempting to commit, inciting or participating as an accomplice in the commission of] any extradition offence shall be deemed for the purposes of this Act to be accused or convicted of having committed such offence and shall be liable to be arrested and surrendered accordingly.
27. **Lawfulness of, and re-taking on escape from, custody under warrants.** It shall be lawful for any person to whom a warrant is directed for the apprehension of a fugitive criminal to hold in custody and convey the person mentioned in the warrant to the place named in the warrant, and if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of India may be re-taken upon an escape.

1. Omitted by act 66 of 1993, s. 3 (w.e.f 18-12-1993).

2. Subs. by s. 13, *ibid* (w.e.f 18-12-1993)

28. **Property found on fugitive criminal.** Everything found in the possession of a fugitive criminal at the time of his arrest which may be material as evidence in proving the extradition offence may be delivered up with the fugitive criminal on his surrender or return, subject to the rights, if any, of third parties with respect thereto.
29. **Power of Central Government to discharge any fugitive criminal.** If it appears to the Central Government that by reason of the trivial nature of the case or by reason of the application for the surrender or return of a fugitive criminal not being made in good faith or in the interests of justice or for political reasons or otherwise, it is unjust or inexpedient to surrender or return the fugitive criminal, it may, by order, at any time stay any proceedings under this Act and direct any warrant issued or endorsed under this Act to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged.
30. **Simultaneous requisitions.** If requisitions for the surrender of a fugitive criminal are received from more than one foreign State 2***, the Central Government may, having regard to the circumstances of the case, surrender the fugitive criminal to such State or country as that Government thinks fit.
31. **Restrictions on surrender.** 3*[(1)] A fugitive criminal shall not be surrendered or returned to a foreign State 4***.
- (a) if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character;
- (b) if prosecution for the offence in respect of which his surrender is sought is according to the law of that State or country barred by time;
- 1*[(c) unless provision is made by that law of the foreign State or in the extradition treaty with the foreign State that the fugitive criminal shall not be determined or tried in that State for an offence other than—
- (i) the extradition offence in relation to which he is to be surrendered or returned;
- (ii) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or
- (iii) the offence in respect of which the Central Government has given its consent;]
- (d) if he has been accused of some offence in India, not being the offence for which his surrender or return is sought, or is undergoing sentence under any conviction in India until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise;

1. Ins. by s. Act of 66 of 1993 14 (w.e.f 18-12-1993).

2. Omitted by s. 15, *ibid* (w.e.f 18-12-1993)

3. Renumbered by s. 16 *ibid* (w.e.f. 18-12-1993).

4. Omitted by s. 3 *ibid*. (w.e.f. 18-12-1993).

- (e) until after the expiration of fifteen days from the date of his being committed to prison by the magistrate.
- 1*[(2) For the purposes of sub-section (1), the offence specified in the Schedule shall not be regarded as offences of a political character.
- (3) The Central Government having regard to the extradition treaty made by India with any foreign State may, by notified order, add or omit any offence from the list given in the Schedule.]
32. **Sections 29 and 31 to apply without any modification thereof.** Notwithstanding anything to the contrary contained in section 3 or section 12, the provisions of sections 9 and 31 shall apply without any modification to every foreign State 1*xxx.
33. **Act not to affect the Foreigners Act, 1946.** Nothing in this Act shall affect the provisions of the Foreigners Act, 1946, (31 of 1946), or any order made thereunder.
- 2*[34. **Extra territorial jurisdiction.** An extradition offence committed by any person in a foreign State shall be deemed to have been committed in India and such person shall be liable to be prosecuted in India for such offence.
- 34A. **Prosecution on refusal to extradition.** Where the Central Government is of the opinion that a fugitive criminal cannot be surrendered or returned pursuant to a request for extradition from a foreign State, it may, as it thinks fit, take steps to prosecute such fugitive criminal in India.
- 34B. **Provisional arrest.** (1) On receipt of an urgent request from a foreign State for the immediate arrest of a fugitive criminal, the Central Government may request the Magistrate having competent jurisdiction to issue a provisional warrant for the arrest of such fugitive criminal.
- (2) A fugitive criminal arrested under sub-section (1) shall be discharged upon the expiration of sixty days from the date of his arrest if no request for his surrender or return is received within the said period.
- 34C. **Provision of life imprisonment for death penalty.** Notwithstanding anything contained in any other law for the time being in force, where a fugitive criminal, who has committed an extradition offence punishable with death in India, is surrendered or returned by a foreign State on the request of the Central Government and the laws of that foreign State do not provide for a death penalty for such an offence, such fugitive criminal shall be liable for punishment of imprisonment for life only for that offence.”]
35. **Notified orders and notifications to be laid before Parliament.** Every notified order made or notification issued under this Act shall, as soon as may be after it is made or issued, be laid before each House of Parliament.
36. **Power to make rules.** (1) The central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

1. Subs. & Ins by Act 66 of 1993, s. 16 (w.e.f. 18-12-1993).

2. Subs. by s. 17. *ibid* (w.e.f. 18-12-1993).

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

- (a) the form in which a requisition for the surrender of a fugitive criminal may be made;
- (b) the form in which a warrant for the apprehension of any person in a [foreign state] 1* to which Chapter III applies may be made;
- (c) the manner in which any warrant may be endorsed or authenticated under this Act;
- (d) the removal of fugitive criminals accused or in custody under this Act and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them;
- (e) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies;
- (f) the form and manner in which or the channel through which a magistrate may be required to make his report to the Central Government under this Act;
- (g) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or 2*[in two or more successive sessions, and if, before the expiry of the session immediately following the session aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

37. Repeals and savings. (1) The Indian Extradition Act, 1903 (15 of 1903), and any law corresponding thereto in force at the commencement of this Act in the territories which, immediately before the 1st day of November, 1956, were comprised in Part B States and the North East Frontier Agency and Tuensang District (Extradition) Regulation, 1961 (3 of 1961), are hereby repealed.

(2) The Extradition Acts, 1870 to 1932 (33 and 34 Vict. c. 52; 36 and 37 Vict.c. 60; 6 Edw. 7, c. 15; 22 and 23 Geo. 5, c. 39. 44 and 45 Vict. c. 69.) and the Fugitive Offenders Act, 1881, in so far as they apply to and operate as part of the law of India, are hereby repealed.

1. Subs. by Act 66 of 1993, s. 3, (w.e.f 18-12-1993)

2. Subs. by Act 4 of 1986, s. 2 and sch. (w.e.f 15-5-1986).

THE SCHEDULE

[See Sec.31 (2)]

**Offences, which are not to be Regarded as Offences of a
Political Character**

The following list of offences is to be construed according to the law in force in India on the date of the alleged offence. Wherever the names of the relevant Acts are not given, the sections referred to are the sections of the Indian Penal Code (45 of 1860):-

1. Offences under the Anti-Hijacking Act, 1982 (65 of 1982).
2. Offences under the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982).
3. An offence within the scope of the Convention on the punishment of crimes against Internationally protected persons including diplomatic agents, opened for signature at New York on 14th December, 1973.
4. An offence within the scope of the International Convention against the taking of hostages opened for signature at New York on 18th December, 1979.
5. Culpable homicide, murder Sections 299 to 304).
6. Voluntarily causing hurt or grievous hurt by a dangerous weapon or means (Sections 321 to 333).
7. Offences under the Explosive Substances Act, 1908 (6 of 1908).
8. Possession of a fire-arm or ammunition with intention to endanger life [Sec.27 of the Arms Act, 1959 (54 of 1959)].
9. The use of a fire-arm with intention to resist or prevent the arrest or detention [Sec.28 of the Arms Act, 1959 (54 of 1959)].
10. Causing of loss or damage to property used for public utilities or otherwise with intention to endanger life (Sec.425 read with section 440).
11. Wrongful restraint and wrongful confinement (Secs. 339 to 348).
12. Kidnapping and abduction including taking of hostages (Secs.339 to 348).
13. Offences related to terrorism and terrorist acts [Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987).
14. Abetting, conspiring or attempting to commit, inciting, participating as an accomplice in the commission of any of the offences listed above.]

FOREIGN JURISDICTION ACT 1947
THE 1*[FOREIGN] JURISDICTION ACT, 1947,
ACT NO. 47 OF 1947

[24th December, 1947.]

An Act to provide for the exercise of certain 1*[foreign] jurisdiction of the Central Government. WHEREAS by treaty, agreement, grant, usage, sufferance and other lawful means, the Central Government has, and may hereafter acquire, jurisdiction in and in relation to areas outside 2*** India; It is hereby enacted as follows:--

1. **Short title.** This Act may be called the 1*[Foreign] Jurisdiction Act, 1947.
2. **Definitions.** In this Act,-- (a) “1*[foreign] jurisdiction” means any jurisdiction which by treaty, agreement, grant, usage, sufferance or other lawful means the Central Government has for the time being in or in relation to any area outside 3*[India];
(b) “jurisdiction” includes rights, power and authority.
3. **Exercise of jurisdiction.** (1) It shall be lawful for the Central Government to exercise 1*[foreign] jurisdiction in such manner as it thinks fit.
(2) The Central Government may 4*delegate any such jurisdiction as aforesaid to any officer or authority in such manner and to such extent as it thinks fit.
4. **Power to make orders.** (1) The Central Government may, by 5*notification in the Official Gazette, make such orders as may seem to it expedient for the effective exercise of any 1*[foreign] jurisdiction of the Central Government.
(2) Without prejudice to the generality of the powers conferred by sub-section (1), any order made under that sub-section may provide-
 - (a) for determining the law and procedure to be observed, whether by applying with or without modifications all or any of the provisions of any enactment in force in any State or otherwise;

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1. Subs. by the A. O. 1950 for “extra-provincial”.
 2. The words “the Provinces of” omitted by the A. O. 1950.
 3. Subs., *ibid.*, for “the Provinces”.
 4. For such delegation, see Gazette of India, 1948, Pt. I, pp. 358 and 431.
 5. For such notifications, see Gazette of India, 1948, Pt. I, pp. 44, 80, 201, 248, 281, 335, 336, 433, 454, 455, and *ibid.*, Extraordinary, p. 75. 110

- (b) for determining the persons who are to exercise jurisdiction, either generally or in particular cases or classes of cases, and the powers to be exercised by them;
 - (c) for determining the Courts, Judges, Magistrates and authorities by whom, and for regulating the manner in which, any jurisdiction auxiliary or incidental to or consequential on the jurisdiction exercised under this Act is to be exercised within any State; and
 - (d) for regulating the amount, collection and application of fees.
5. **Validity of acts done in pursuance of jurisdiction.** Every act and thing done, whether before or after the commencement of this Act, in pursuance of any 1*[foreign] jurisdiction of the Central Government in an area outside 2*[India] shall be as valid as if it had been done according to the local law then in force in that area.
6. **Evidence as to existence or extent of jurisdiction.** (1) If in any proceeding, civil or criminal, in a Court established in 2*[India] or by the authority of the Central Government outside 2*[India], any question arises as to the existence or extent of any 1*[foreign] jurisdiction of the Central Government, the Secretary to the Government of India in the appropriate department shall, on the application of the Court, send to the Court the decision of the Central Government on the question, and that decision shall for the purposes of the proceeding be final.
- (2) The Court shall send to the said Secretary, in a document under the seal of the Court or signed by a Judge of the Court, questions framed so as properly to raise the question, and sufficient answers to those questions shall be returned to the Court by the Secretary and those answers shall on production thereof be conclusive evidence of the matters therein contained.
7. **Repeal and saving.** (1) The Extra-Provincial Jurisdiction Ordinance, 1947 (15 of 1947), is hereby repealed.
- (2) Any order made, anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 27th day of August, 1947.

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- 1. Subs. By the A.O. 1950 for “extra-provincial”.
 - 2. Subs. *ibid.*, for “the Provinces”.

The Code of Criminal Procedure, 1973

Relevant Provisions

105A. CHAPTER II-A

¹ RECIPROCAL ARRANGEMENTS FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND FORFEITURE OF PROPERTY

1. Chapter VIIA (containing Sections 105A to 105L) Ins. by Act 40 of 1993, sec. 2 (w.e.f. 20-7-1994).

Definitions:- In this Chapter, unless the context otherwise requires,—

- (a) “contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;
- (b) “identifying” includes establishment of a proof that the property was derived from, or used in, the Commission of an offence;
- (c) “proceeds of crime,” means any property derived or obtained directly or indirectly by any person as a result of criminal activity (including crime involving currency, transfers) or the value of any such property;
- (d) “property” means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the Commission of an offence and includes property obtained through proceeds of crime;
- (e) “tracing” means determining the nature source, disposition, movement, title or ownership of property.

105B. Assistance in securing transfer of persons

- (1) Where a court in India, in relation to a criminal matter, desires that a warrant for arrest of any person to attend or produce a document or other thing issued by it shall be executed in any place in a contracting State, it shall send such warrant in duplicate in such form to such Court, Judge or Magistrate, through such authority, as the Central Government may, by notification, specify in this behalf and that court, Judge or Magistrate, as the case may be, shall cause the same to be executed.
- (2) Notwithstanding anything contained in this Code, if, in the course of an investigation or any inquiry into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that the attendance of a Person who is in any place in a contracting State is required in connection with such investigation or inquiry and the court is satisfied that such attendance is so required, it shall issue a summons or warrant, in duplicate, against the said person to such court, Judge or Magistrate, in such form as the Central Government by notification, specify in this behalf, to cause the same to be served or executed.

- (3) Where a court in India, in relation to a criminal matter, has received a warrant for arrest of any person requiring him to attend or attend and produce a document or other thing in that court or before any other investigating agency, issued by a court, Judge or Magistrate in a contracting State, the same shall be executed as if it is the warrant received by it from another court in India for execution within its local limits.
- (4) Where a person transferred to a contracting State pursuant to sub-section (3) is a prisoner in India, the court in India or the Central Government may impose such conditions as that court or Government deems fit.
- (5) Where the person transferred to India pursuant to sub-section (1), or sub-section (2) is a prisoner in a contracting State, the court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

105C. Assistance in relation to orders of attachment or forfeiture of property.

- (1) Where a court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence, it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J (both inclusive).
- (2) Where the Court has made an order for attachment or forfeiture of any property under sub-section (1), and such property is suspected to be in a contracting State, the court may issue a letter of request to a court or an authority in the contracting State for execution of such order.
- (3) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J (both inclusive) or, as the case may be, any other law for the time being in force.

105D. Identifying unlawfully acquired property.

- (1) The court shall, under subsection (1), or on receipt of a letter of request under sub-section (3) of section 105C, direct any police officer not below the rank of Sub-Inspector of Police to take all steps necessary for tracing and identifying such property.
- (2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property assets, documents, books of account in any bank or public financial institutions or any other relevant matters.
- (3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an offence mentioned in sub-section (1) in accordance with such directions issued by the said court in this behalf.

105E. Seizure or attachment of property

- (1) Where any officer conducting an inquiry or investigation under section 105D has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed, transferred or dealt with in any manner which will result in disposal of such property, he may make an order for seizing such property and where it is not practical to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.
- (2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the said court, within a period of thirty days of its being made.

105F. Management of properties seized or forfeited under this Chapter.

- (1) The court may appoint the District Magistrate of the area where the property is situated, or any other officer that may be nominated by the District Magistrate, to perform the functions of an administrator of such property.
- (2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which the order has been made under sub-section (1) of section 105E or under section 105H in such manner and subject to such conditions as may be specified by the Central Government.
- (3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property, which is forfeited to the Central Government.

105G. Notice of forfeiture of property.

- (1) If as a result of the inquiry, investigation or survey under section 105D, the court has reason to believe that all or any of such properties are proceeds of crime, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the source of income, earning or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be proceeds of crime and forfeited to the Central Government.
- (2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

105H. Forfeiture of property in certain cases

- (1) The court may, after considering the explanation, if any, to the show-cause notice issued under section 105G and the material available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are proceeds of crime:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the

court or represent his case before it within a period of thirty days specified in the show-cause notice, the court may proceed to record a finding under this sub-section *ex parte* on the basis of evidence available before it.

- (2) Where the court is satisfied that some of the properties referred to in the show cause notice are proceeds of crime but it is not possible to identify specifically such properties, then, it shall be lawful for the court to specify the properties which, to the best of its judgment, are proceeds of crime and record a finding accordingly under sub-section (1).
- (3) Where the court records a finding under this section to the effect that any property is proceeds of crime, such property shall stand forfeited to the Central Government free from all encumbrances.
- (4) Where any shares in a company stand forfeited to the Central Government under this section, then the company shall, notwithstanding any thing contained in the Companies Act, 1956 (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

105-I. Fine in lieu of forfeiture

- (1) Where the Court makes a declaration that any property stands forfeited to the Central Government under section 105H and it is a case where the source of only a part of such property has not been proved to the satisfaction of the Court, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.
- (2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.
- (3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the Court may, by order, revoke the declaration of forfeiture under section 105h and thereupon such property shall stand released.

105J. Certain transfers to be null and void.

Where after the making of an order under sub-section (1) of section 105E or the issue of a notice under section 105G, any property referred to in the said order or notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central government under section 160H, then the transfer of such property shall be deemed to be null and void.

105K. Procedure in respect of letter of request.

Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned court in India in such form and in such manner as the Central Government may, by notification, specify in this behalf.

105L. Application of this Chapter.

The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.]

166A. Letter of request to competent authority for investigation in a country or place outside India.

[166A. Letter of request to competent authority for investigation in a country or place outside India.

- (1) Notwithstanding anything contained in this Code, if, in the Course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue letter of request to a court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and Circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the court issuing such letter.
- (2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.
- (3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter.

166B. Letter of request from a country or place outside India to a court or an authority for investigation in India.

- (1) Upon receipt of a letter of request from a court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit-
 - (i) Forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced, or
 - (ii) Send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.
- (2) All the evidence taken or collected under sub-section (1), or authenticated copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be, to the Central Government for transmission to the court or the authority issuing the letter of request, in such manner as the Central Government may deem fit.

1. Ins. by Act 10 of 1990, sec. 2 (w.e.f. 19-2-1990).

EXTRADITION TREATIES

MINISTRY OF EXTERNAL AFFAIRS

(Legal & Treaties Division)

ORDER

New Delhi, the 28th July, 1989

G.S.R. 721(E)– Whereas the treaty between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and Her Majesty the Queen of the Netherland for the extradition of criminals, dated 26th day of September 1898 and ratifications exchanged at London, on December 14, 1898, provides as follows:-

“Article- I

The High Contracting parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party shall be found within the territory of the other party, under the circumstances and conditions stated in the present Treaty.

II. The crimes or offences for which the extradition is to be granted are the following:

1. Murder, including infanticide, or attempt, or conspiracy to murder, including such crimes when directed against the Sovereign, his heirs, or any other persons whosoever, provided that the crime is not of a political character.
2. Manslaughter, including the manslaughter of a child.
3. Assault occasioning actual bodily harm.
4. Maliciously wounding or inflicting grievous bodily harm.
5. Counterfeiting or altering money, or uttering counterfeit or altered money.
6. Forgery, counterfeiting or altering or uttering what is forged counterfeited, or altered.
7. Embezzlement; fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any company, made criminal by any law for the time being in force; or larceny.
8. Malicious injury to property if the offence be indictable.
9. Obtaining money, goods, or valuable securities by false pretences.
10. Crimes against bankruptcy law.
11. Perjury, or subornation of perjury.
12. Rape.

13. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.
14. Indecent assault.
15. Administering drugs, or using instruments with intent to procure the miscarriage of a woman.
16. Abduction.
17. Child stealing.
18. Kidnapping of minors and their false imprisonment.
19. Burglary or housebreaking.
20. Arson.
21. Robbery with violence.
22. Any malicious act done with intent to endanger the safety of a railway train.
23. Threats by letter or otherwise, with intent to extort.
24. Piracy by law of nations.
25. Sinking or destroying a vessel at sea, or attempting to do so.
26. Assaults on board a ship on the high seas, with intent to destroy life or do grievous bodily harm.
27. Revolt by two or more persons on board a ship on the high seas against the authority of the master.
28. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be an extradition crime by the laws of the State applied to.

In the foregoing cases extradition shall take place only when the crime, if committed within the jurisdiction of the country on which the claim for surrender is made, would constitute an extradition crime by the laws of that country.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

III. *Either Government may, in its absolute discretion, refuse to surrender its own subjects to the other Government.*

IV. *The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Netherland Government, has already been tried and discharged or punished, or is actually upon his trial, within the territory of the other of the two High Contracting Parties for the crime for which his extradition is demanded.*

If the person claimed on the part of the British Government, or if the person claimed on the part of the Netherland Government, should be under examination, or is undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence or otherwise.

V. *The extradition shall not take place, if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.*

VI. *A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded in one of a political character or if he proves that the requisition for his surrender has in fact, been made with a view to try or punish him for an offence of a political character.*

VII. *A person surrendered may in no case be kept in prison, or be brought to trial in the state to which the surrender has been made for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity during one month of returning to the State by which he has been surrendered.*

This stipulation does not apply to crimes committed after the extradition.

VIII. *The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.*

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed in contumaciam is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

IX. *If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.*

- X. Pending the presentation of the demand for extradition through the Diplomatic channel, a fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint and such evidence or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two contracting parties in which the Magistrate, Justice of the peace, or other competent authority exercises jurisdiction : Provided however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Magistrate. He shall in accordance with this Article, be discharged as well in the Netherland as in the United Kingdom, if within the term of twenty days a requisition for extradition shall not have been made by the Diplomatic Agent of the demanding country in accordance with the stipulation of this treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty and committed on the high seas on board any vessel of other country which may come into a port of the other.**
- XI. If the fugitive have been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.**

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence depositions or statements on oath or the affirmations of witnesses taken in the Netherland, or copies thereof, and likewise the warrants and sentences issued therein and certificates of or, judicial statements stating the fact of a conviction, provided the same are authenticated as follows:-

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Netherlands.
2. Depositions or affirmations, or the copies thereof must purport to be certified under the hand of a judge, Magistrate, or officer of the Netherlands, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.
3. A certificate of, or judicial document stating the fact of, a conviction must purport to be certified by a judge, Magistrate, or officer of the Netherlands.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State of the Netherlands; but any other mode of authentication for the time being permitted by the law in that part of the British dominations where the examination is taken may be substituted for the foregoing.

- XII. That if the fugitive have been arrested in the dominions of the Netherlands, the officer of justice shall prefer a requisition within three days after the arrest, or, if**

the arrest have not taken place, or if it have taken place prior to the application for extradition, then within three days after the receipt of authority for that purpose from the Netherland Government in order that the person claimed may be interrogated by the Court, and that it may express its opinion as to the grant or refusal of extradition.

Within fourteen days after the interrogatory the court shall forward its opinion and its decision, with the papers in the case, to the Minister of Justice.

The extradition shall only be granted on the production, either in original or in authenticated copy –

1. Of a conviction ; or
2. (a) Of a warrant of arrest (which, by the law of the British dominions, is the only document which is granted when it is adjudged upon evidence taken on oath that the accused ought to be taken into custody), issued in the form prescribed by British Law, and indicating the offence in question sufficiently to enable the Netherland Government to decide whether it constitutes, in contemplation of Netherland Law, a case provided for by the present Treaty, and
(b) Of the evidence.

In the examination which they have to make in accordance with the foregoing stipulations, the authorities of the Netherland dominions shall admit as valid evidence depositions or statements on oath, or the affirmations of witnesses taken in the British dominions or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:-

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the British dominions.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the British dominions to be the original depositions or affirmations or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating the fact of, a conviction, must purport to be certified by a Judge, Magistrate, or officer of the British dominions.
4. In every case, such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of one of the Principal Secretaries of State, or some other Minister of state of the British dominions; but any other mode of authentication for the time being permitted by law in that part of the dominions of the Netherlands where the examination is taken may be substituted for the foregoing.

XIII. The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, if the crime had been committed in the territory of the said

State, or to prove that the prisoner is the identical, person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such convictions, have been granted by the State applied to. The fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

XIV. If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

XV. All articles seized which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the state applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

XVI. The respective Governments mutually renounce all claim for the repayment of expenses incurred by them in the arrest and maintenance and transport of the person to be surrendered, and all other expenses which may be incurred within the limits of their respective territories until the person to be surrendered is placed on board ship, together with the expenses of giving up and returning all seized articles and of sending and returning the papers containing proof of the crime or other document and they reciprocally agree to bear all such expenses themselves.

The above stipulations, however, shall not apply to extradition to and from Canada, as regards which Colony all expenses shall be borne by the demanding State.

The person to be extradited shall be sent to the port which the Diplomatic or Consular Agent of the demanding State shall indicate.

XVII. If in any criminal matter pending in any court or Tribunal of one of the two countries it is thought desirable to take the evidence of any witness in the other, such evidence may be taken by the judicial authorities in accordance with the laws in force on this subject in the country where the witness may be; and any expenses incurred in taking such evidence shall be defrayed by the country in which it is taken.

XVIII. The stipulations of the present Treaty shall apply to the colonies and foreign possessions of the two High Contracting Parties, but being based upon the legislation of the mother country, shall only be observed on either side so far as they may be compatible with the laws in force in those colonies or possession.

The demand for the extradition of an offender who has taken refuge in a colony or foreign possession of either contracting party may also be made directly to the Governor or principal functionary of that colony or possession by the Governor or principal functionary of a colony or possession of the other contracting party when the two colonies or foreign possessions are situated in Asia, Australia (including New Zealand and Tasmania), the Pacific and Indian Oceans, or South or East Africa.

The same rule shall be followed if the two colonies or foreign possession are situated in America including the West India Island. The said Governor or principal functionaries shall have the power either of granting the extradition or of referring the question to their Government.

In all other cases, the demand for extradition shall be made through the diplomatic channel.

The period of provisional arrest provided in Article X shall for the purposes of this Article be extended to sixty days.

XIX. From the day when the present Treaty shall come into force the Treaty of Extradition between the two countries of the 19th June, 1874 shall cease to have effect; but the present Treaty shall apply to all crimes within the Treaty whether committed before or after the day when it comes into force.

XX. The present Treaty shall be ratified and the ratifications shall be exchanged as soon as possible.

The Treaty shall come into force three months after the exchange of the ratifications. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months notice of its intention to do so.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done in duplicate at London, this 26th day of September, 1898

Now, therefore, in exercise of the powers conferred by Sub Section (1) of the Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to Netherlands on and from the date of publication of this order.

[No. L/413/13/88]

DR. P. SREENIVASA RAO, Director (L&T)

Extradition Treaty between India and Switzerland

G.S.R. 462(E), dated 9th October, 1996—Whereas the Extradition Treaty between the United Kingdom of Great Britain and Ireland, and the Swiss Federal Council was concluded and signed at Berne on the 26th November, 1880, as amended by the Convention dated the 29th June, 1904, are considered to be in force between India and Switzerland:

And whereas the Central Government in exercise of the powers conferred by sub-section (1) of Sec. 3 of the Extradition Act, 1962 (34 of 1962), had directed by an order number G.S.R. 56, dated the 5th January, 1963 that the provisions of the said Act, other than Chapter III shall apply to Switzerland;

Now, therefore, in exercise of the powers conferred by sub-section (3) of Sec. 3 of the said Act, the Central Government hereby sets out the aforesaid Treaty as under—

ARTICLE I

Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland engages to deliver up, under the circumstances and on the conditions stipulated in the present Treaty, all persons, and the Swiss Federal Council engages to deliver up, under the like circumstances and conditions, all persons, excepting Swiss citizens, who, having been charged with, or convicted by the Tribunals of one of the two High Contracting Parties of the crimes or offences enumerated in Art. II, committed in the territory of the one party, shall be found within the territory of the other.

In the event of the Federal Council being unable, by reason of his Swiss nationality, to grant the extradition of an individual, who, after having committed in the United Kingdom one of the crimes or offences enumerated in Art. II, should have taken refuge in Switzerland, the Federal Council engages to give legal effect to and prosecute the charge against him according to the laws of the Canton of his origin; and the Government of the United Kingdom engages to communicate to the Federal Council all documents, depositions, and proofs relating to the case, and to cause the commissions of examination directed by the Swiss Judge, and transmitted through the proper Diplomatic channel, to be executed gratuitously.

ARTICLE II

The crimes for which the extradition is to be granted are the following:—

1. Murder (including infanticide) and attempt to murder.
2. Manslaughter.
3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money
4. Forgery, or counterfeiting, or altering, or uttering what is forged, or counterfeited, or altered; comprehending the crimes designated in the Penal Codes of both States as counterfeiting or

falsification of paper money, bank notes, or other securities, forgery, or falsification of other public or private documents, likewise the uttering or bringing into circulation, or willfully using such counterfeited, forged or falsified papers,

5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences.
7. Crimes against bankruptcy law.
8. Fraud committed by a bailee, banker, agent, factor, trustee, or director, or member of public officer of any Company made criminal by any law for the time being in force.
9. Rape.
10. Abduction of minors.
11. Child stealing or kidnapping.
12. Burglary, or house breaking, with criminal intent
13. Arson.
14. Robbery with violence
15. Threats by letter or otherwise with intent to extort.
16. Perjury or subornation or perjury.
17. Malicious injury to property, if the offence be indictable.

The extradition is also to take place for participation in any of the aforesaid crimes, as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III

A fugitive criminal may be apprehended in either country under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction: provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London.

Requisitions for provisional arrest may be addressed by post or by telegraph, provided they purport to be sent by some judicial or other competent authority. Such requisitions must contain a description in general terms of the crime or offence, and a statement that a warrant has been granted for the arrest of the criminal, and that his extradition will be demanded.

He shall in accordance with this Article be discharged, as well in the United Kingdom as in Switzerland, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic Agent of the country claiming his surrender in accordance with the stipulations of this Treaty.

ARTICLE IV

The requisition for extradition must always be made by the way of diplomacy, and to wit, in Switzerland by the British Minister to the President of Confederation, and in the United Kingdom to the Secretary of State for Foreign Affairs by the Swiss Counsel-General in London, who, for the purposes of this Treaty, is hereby recognised by Her Majesty as a Diplomatic Representative of Switzerland.

ARTICLE V

In Switzerland the manner of proceeding shall be as follows:—

The requisition for the extradition of an accused person must be accompanied by an authentic copy of the warrant of arrest, issued by a competent official or Magistrate, clearly setting forth the crime or offence of which he is accused, together with a properly legalized information setting forth the facts and evidence upon which the warrant was granted.

If the requisition relates to a person already convicted must be accompanied by an authentic copy of the sentence/conviction, setting forth the crime or offence of which he has been convicted.

The requisition must be accompanied by a description of the person claimed, and, if it be possible, by other information and particulars which may serve to identify him.

After having examined these documents, the Swiss Federal Council shall communicate them to the Cantonal Government in whose territory the person charged is found, in order that he may be examined by a judicial or police officer on the subject of their contents.

The Cantonal Government will transmit the proces-verbal of the examination, together with all the documents, accompanied, if there be one, by a more detailed report to the Federal Council, who, after having examined them, and there be no opposition on either side, will grant the extradition, and will communicate its decision both to the British Legation and to the Cantonal Government in question, to the latter in order that it may send the person to be surrendered to such place on the frontier, and deliver him to such foreign police authority as the British Legation may name in each special case.

Should the documents furnished with a view of proving the facts, or a establishing the identity of the accused, or the particulars collected by the Swiss authorities appear insufficient, notice shall be immediately given to the Diplomatic Representative of Great Britain, in order that he may furnish further evidence if such further evidence be not furnished within fifteen days the person arrested shall be set at liberty.

In the event of the application of this Treaty being contested, the Swiss Federal Council will transmit the documents (“dossier”) to the Swiss Federal Tribunal, whose duty it is to decide definitely the question whether extradition should be granted or refused.

The Federal Council will communicate the judgment of the Federal Tribunal to the British Legation. If this Judgment grants the extradition the Federal Council will order its execution, as in the case when the Federal Council itself grants the extradition. If, on the other hand, the Federal Tribunal refuses the extradition, the Federal Council will immediately order the person accused to be set at liberty.

ARTICLE VI

In the dominions of Her Britannic Majesty, other than the Colonies or foreign possessions of Her Majesty, the manner of proceeding shall be as follows :—

(a) **In the case of a person accused.**—The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Diplomatic Representative of the Swiss confederation. The said demand shall be accompanied by a warrant of arrest, or other equivalent judicial document, issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against the accused in Switzerland, and duly authenticated depositions or statements taken on oath, or solemnly declared to be true, before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Principal Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended, he shall be brought before the Magistrate who issue the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in the United Kingdom, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be sent to such seaport-town as shall, in each, special case, be selected for his delivery to the Swiss Government.

(b) **In the case of a person convicted.**—The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Diplomatic Representative of Switzerland in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the place and date of his conviction.

The evidence to be produced shall consist of the penal sentence passed against the convicted person by the competent Court of the State claiming his extradition.

(c) Person convicted by judgment in default or *arrdt do contumace* shall be, in the matter of extradition, considered as persons accused, and may, as such, be surrendered.

(d) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person, shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case, the Court may at once order his delivery to the person authorized to receive him, without waiting for the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE VII

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the depositions or statements of witnesses, either sworn or solemnly declared to be true, taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, provided such documents purport to be signed or copies thereof, provided such documents purport to signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the official seal of a British Secretary of State, or of the Chancellor of the Swiss Confederation being affixed thereto.

The personal attendance of witnesses can be required only to establish the identity of the person who is being proceeded against with that of the person arrested.

ARTICLE VIII

If proof sufficient to warrant the extradition be not furnished within two months from the day of the apprehension, the person arrested shall be discharged from custody.

ARTICLE IX

In cases where it may be necessary, the Swiss Government shall be represented at the English Courts by the Law Officer of the Crown, and the English Government in the Swiss Courts by the competent Swiss authorities.

The respective Government will give the necessary assistance within their territories to the Representatives of the other State who claim their, intervention for the custody and security of the persons subject to extradition.

No claim for the repayment of expenses for the assistance mentioned in this Article shall be made by either of the Contracting parties.

ARTICLE X

The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition other than the crime for which his surrender has been granted.

ARTICLE XI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proved that the requisition for his surrender has, in fact, been made with a view to try and punish him for an offence of political character.

ARTICLE XII

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired according to the laws of the State applied to.

ARTICLE XIII

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Swiss Government, has already been tried and discharged or punished, or is still under trial, in one of the Swiss Cantons or in the United Kingdom respectively, for the crime for which his extradition is demanded.

ARTICLE XIV

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Swiss Government, should be under examination, or have been condemned for any other crime, in one of the Swiss Cantons or in the United Kingdom respectively, his extradition may be deferred until he shall have been set at liberty in due course of law.

In case such individual should be proceeded against in the country in which he has taken refuge, on account of obligations contracted towards private individuals, his extradition shall, nevertheless, take place, the injured party retaining his right to prosecute his claims before the competent authority.

ARTICLE XV

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XVI

All articles, seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied for the extradition has ordered the delivery thereof, be given up when the extradition takes places, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

This delivery shall take place even when the extradition, after having been granted, cannot be carried out by reason of the escape or death of the individual claimed, unless the claims of third parties with regard to the above-mentioned articles render such delivery inexpedient.

ARTICLE XVII

The Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance to the frontiers of the State to which the requisition is made; they reciprocally agree to bear such expenses themselves.

ARTICLE XVIII

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possession of her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or to the supreme authority of such colony or possession through the Swiss Consul residing there, or in case there should be no Swiss Consul through the recognized Consular Agent of another state charged with the Swiss interests in the Colony or possession in question.

The Governor or supreme authority above-mentioned shall decide with regard to such requisitions as nearly as possible in accordance with the provisions of the present Treaty. He will, however, be at liberty either to consent to the extradition or report the case to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of such individuals as shall have committed in Switzerland any of the crimes hereinbefore mentioned, who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XIX

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties.

After the Treaty shall have come into force, the Treaty concluded between the High Contracting Parties on the 31st of March. 1874, shall be considered as cancelled, except as to any proceedings that may have been already taken or commenced in virtue thereof.

It may be terminated by either of the High Contracting Parties, on giving to the other party six months notice of its intention to terminate the same, but no such notice shall exceed the period of one year.

The Treaty shall be ratified, and the ratifications shall be exchanged at Berne as soon as possible.

In witness where of the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Berne, the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and eighty.”(sic)

The Convention dated 29th June, 1904 provides as follows :

The Federal Council of the Swiss Confederation and the Government of His Majesty the King of the United Kingdom of Great Britain and Ireland, having deemed, it necessary to extend, so far as regards the relations of Switzerland with the British Colonies and foreign possessions, the periods of thirty days and two months respectively fixed by Art. III paragraph 8, and Art. VIII, of the Treaty concluded on the 26th November. 1880, between the Swiss Federal Council and Her late Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, & c., respecting the extradition of persons accused or condemned, the Undersigned, duly authorized to that effect by their respective Governments, have agreed as follows :—

The following stipulation is added to the first paragraph of Art. XVIII of the Treaty of Extradition:

“Nevertheless, so far as regards the relations of Switzerland with these Colonies and foreign possessions, the period of time fixed by Art. III, paragraph 8, within which the requisition for extradition is to be made through the diplomatic channel, shall be six weeks; and that provided by Art. VIII for the production of proof sufficient to warrant the extradition shall be three calendar months.”

The present Convention shall come into force from the date when the ratifications shall be exchanged. It shall have the same force and duration, as the Treaty of Extradition of the 26th November, 1880, to which it relates.

It shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the Undersigned have signed the present Convention, and have affixed their seals thereto.

Done at London, in duplicate, the 29th day of June, 1904.

MINISTRY OF EXTERNAL AFFAIRS

ORDER

New Delhi, the 22nd February, 1963

G.S.R. 325.—Whereas the Treaty of Extradition between the Government of India and the Government of Nepal 1953 provides as follows:

Article 1

The two Governments hereby engage on a basis of strict reciprocity to deliver up to each other those persons, who, being accused, or convicted, of a crime committed in the territory of one Government shall be found within the territory of the other Government, under the circumstances and conditions stated in the present Treaty.

Article 2

Neither Government shall be bound in any case to surrender any person who is not a national of the country by the Government of which the requisition has been made, except where such person is accused of having committed the offence specified in clause (10) of Article 3.

Article 3

The offences for which extradition is to be granted in accordance with this Treaty are the following, namely:—

- (1) Murder or attempt or conspiracy to murder;
- (2) Culpable homicide not amounting to murder;
- (3) Grievous hurt;
- (4) Rape;
- (5) Dacoity;
- (6) Highway robbery;
- (7) Robbery with violence;
- (8) Burglary or house breaking;
- (9) Arson;
- (10) Desertion from Armed Forces;
- (11) Offences against the laws prohibiting the export and import of goods;
- (12) Embezzlement by public officers;

- (13) Serious theft, that is to say, cases of theft where violence has been used or where the value of the property stolen exceeds Rs. 500 and cattle stealing;
- (14) Abduction or kidnapping;
- (15) Forgery and the use of what is known to be forged, counterfeiting or altering money; uttering or bringing into circulation counterfeited or altered money;
- (16) Receiving of illegal gratification by a public servant;
- (17) Escaping from custody while undergoing punishment after conviction for any of the offences specified in clauses (1) to (16).

Article 4

In no case shall either Government be bound to surrender any person accused of an offence except upon a requisition duly made by or under the authority of the Government in whose territories the offence is alleged to have been committed and also upon such evidence of criminality as according to the laws of the country in which the accused person shall be found, would justify the apprehension and sustain the charge if the offence had been there committed.

Article 5

Neither Government shall be bound to surrender any person if the offence in respect of which the surrender is demanded be of a political character or if he proves that the requisition for his surrender has in fact been made with a view to trying or punishing him for an offence of a political character.

Article 6

Extradition shall not take place if the person whose extradition is claimed by one of the Governments has already been tried and discharged or punished or is still under trial in the territory of the other Government for the crime for which extradition is demanded.

Article 7

If the person whose extradition is claimed by one Government is under trial for any crime in the territory of the other, his extradition may be deferred until the conclusion of the trial.

Article 8

A person surrendered shall in no case be detained or tried in the territory of the Government to which the surrender has been made for any other, crime or on account of any matter other than those for which extradition has taken place until he has been restored, or had an opportunity of returning to the territory of the Government from which he was surrendered.

Article 9

If evidence sufficient to justify the extradition is not produced within two months from the date of apprehension of the fugitive or within such further period as may be allowed by the Government to which the requisition for extradition has been made or by the Court before which the evidence is to be produced, the fugitive shall be set at liberty.

Article 10

The expenses of any apprehension, detention or surrender made in pursuance of this Treaty shall be borne and defrayed by the Government making the requisition.

Article 11

This treaty supersedes and cancels all previous Treaties, Agreements and Engagements on the subject.

Article 12

This treaty shall come into force without ratification, one month after the date of signature by both parties and may be terminated by either party by giving one year's notice.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Extradition Act, 1962 (34 of 1962). the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to Nepal with effect from the 22nd day of February, 1963.

(No.FL/442(6)/62)

Dr. K. KRISHNA RAO

Director

MINISTRY OF EXTERNAL AFFAIRS
(Legal and Treaties Division)
ORDER

New Delhi, the 25th July, 1983

G.S.R. 585(E).- Whereas the treaty between Great Britain and Belgium for the Mutual Extradition of Fugitive Criminals on 29 October, 1901 as amended by the Conventions dated 5 March, 1907 and 3 March, 1911 and by Exchange of Letters dated 30th May, 1958 and 30th December, 1958 on the subject between the two countries are considered to be in force between the two countries are considered to be in force between India and Belgium by the Exchange of Letters dated 3 August, 1954 and 6 November, 1954 and the said treaty provides as follows :-

“ART. I. It is agreed that His Britannic Majesty and His Majesty the King of the Belgians shall, on requisition made in their name by their respective Diplomatic Agents, deliver on to each other reciprocally, under the circumstances and conditions stated in the present treaty, any persons who, being accused or convicted, as principals or accessories, of any of the crimes hereinafter specified, committed within the territories of the requiring Party, shall be found within the territories of the other Party:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt, or conspiracy to murder, in cases jointly provided for by the laws of the two countries;
2. Administering drugs or using instruments with intent to procure the miscarriage of women;
3. Manslaughter;
4. Bigamy;
5. (a) Counterfeiting or altering money, or uttering counterfeit or altered money;
(b) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm;
6. Abandoning children, exposing or unlawfully detaining them;
7. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered;
8. Any malicious act done with intent to endanger persons in a railway train;
9. Embezzlement or larceny;
10. Receiving any chattel, money, valuable security, or other property, knowing the same to have been embezzled, stolen, or feloniously obtained;
11. Obtaining money, goods, or valuable securities by false pretences;
12. Crimes by bankrupts against bankruptcy law;
13. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company made criminal by any law for the time being in force;

14. Rape;

Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age so far as such acts are punishable by the law of the State upon which the demand is made;

Indecent assault. Indecent assault without violence upon children of either sex under 13 years of age;

15. Abduction;

16. Child stealing

17. Kidnapping or false imprisonment;

18. Burglary or housebreaking;

19. Arson;

20. Robbery with violence (including intimidation);

21. Threats by letter or otherwise, with intent to extort;

22. Piracy by law of nations;

23. Sinking or destroying a vessel at sea, or attempting or conspiring to do so;

24. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm;

25. Revolt or conspiracy to revolt, by two or more persons, on board a ship on the high seas against the authority of the master;

26. Perjury and subornation of perjury;

27. Malicious injury to property, if the offence be indictable;

28. Assault occasioning actual bodily harm. Malicious wounding, or inflicting grievous bodily harm;

29. Offences in connection with the Slave Trade punishable by the laws of both States;

30. Illicit traffic in harmful drugs, such as is provided for in Article 2 of the International Convention for the repression of illicit traffic in harmful drugs, signed at Geneva on the 26th of June, 1936:

Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive person accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed, and in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.

In no case can the surrender be made unless the crime shall be punishable according to the laws in force in both countries with regard to extradition.

In no case, nor on any consideration whatever, shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalization.

II. In the dominions of His Britannic Majesty, other than the Colonies or foreign possessions of His Majesty, the manner of proceeding shall be as follows :

In the case of a person accused—

The requisition for the surrender shall be made to His Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Minister or other Diplomatic Agent of His Majesty the King of the Belgians, accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against the accused in Belgium, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Secretary of State shall transmit such documents to His Britannic Majesty's Principal Secretary of State for the Home Department, who shall then by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended, he shall be brought before a competent Magistrate. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in England, the Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorised to receive him on the part of the Government of His Majesty the King of the Belgians.

2. In the case of a person convicted—

The course of proceeding shall be the same as in the case of person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

After the Magistrate shall have committed the accused or convicted person to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of habeas corpus; if he should so apply his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse the applicant.

III. In the dominions of His Majesty the King of the Belgians, other than the Colonies or foreign possessions of His said Majesty, the manner of proceeding shall be as follows :

1. In the case of a person accused—

The requisition for the surrender shall be made to the Minister for Foreign Affairs of His Majesty the King of the Belgians by the Minister or other Diplomatic Agent, of His Britannic Majesty, accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against the accused in Great Britain, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any other particulars which may serve to identify him.

The Minister for Foreign Affairs shall transmit the warrant of arrest, with the documents thereto annexed, to the Minister of Justice, who shall forward the same to the proper judicial authority, in order that the warrant of arrest may be put in course of execution by the Chamber of the Council (Chambre du Conseil) of the Court of First Instance of the place of residence of the accused, or of the place where he may be found.

The foreigner may claim to be provisionally set at liberty in any case in which a Belgian enjoys that right, and under the same conditions.

The application shall be submitted to the Chamber of the Council (Chambre du conseil).

The Government will take the opinion of the Chamber of Indictments or Investigation (Chambre des Mises en Accusation) of the Court of Appeal within whose jurisdiction the foreigner shall have been arrested.

The hearing of the case shall be public, unless the foreigner should demand that it should be with closed doors.

The public authorities and the foreigner shall be heard. The latter may obtain the assistance of counsel.

Within a fortnight from the receipt of the documents they shall be returned, with a reasoned opinion, to the Minister of Justice, who shall decide and may order that the accused be delivered to the person duly authorized on the part of the Government of His Britannic Majesty.

2. In case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the conviction or sentence of condemnation issued in original or in an authenticated copy, to be transmitted by the Minister or other Diplomatic Agent in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced shall be such as would, according to the Belgian laws, prove that the prisoner was convicted of the crime charged.

IV. A fugitive criminal may, however, be apprehended under a warrant signed by any Police Magistrate, Justice of the Peace, or other competent authority, in either country, on such information or

complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed, or the prisoner convicted in that, part of the dominions of the two Contracting Parties in which he exercises jurisdiction : Provided, however, that, in the United Kingdom. the accused shall in such case be sent as speedily as possible before a competent Magistrate. He shall be discharged, as well in the United Kingdom as in Belgium, if within fourteen days a requisition shall not have been made for his surrender by the Diplomatic Agent of the requiring State in the manner directed by Articles II and III of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

V. If within two months, counting from the date of arrest, sufficient evidence for the extradition shall not have been presented, the person arrested shall be set at liberty. He shall likewise be sent at liberty if, within two months of the day on which he was placed at the disposal of the Diplomatic Agent, he shall not have been sent off to the reclaiming country.

VI. When a person shall have been extradited by one of the High Contracting Parties, that person, until he has returned to the country from which he had been extradited, or until he has had an opportunity of returning to it, shall not be detained or brought to justice in the State to which he has been handed over for any crime or on any other charge whatever prior to the extradition, except those in respect of which the extradition has been accorded.

Neither shall that person, until he has had an opportunity of returning to the country from which he has been extradited, be handed over to a third State.

VII. No accused or convicted person shall be surrendered if the offence in respect of which his surrender is demanded shall be deemed by the party upon which it is made to be a political offence, or to be an act connected with (“connexe a”) such an offence, or if he proves to the satisfaction of the Magistrate, or of the Court before which he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character.

VIII. Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in ,the dominions of- the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country, where they were issued or taken.

Provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath or solemn affirmation of some witness, or by being sealed with the official seal of the Ministry of Justice, or some other Minister of State.

IX. The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time according to the laws of the country where the accused shall have taken refuge.

X. If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes committed upon their respective territories, his surrender shall be granted to that State whose demand is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes commuted, or for any other reasons.

XI. If the individual claimed should be under process, or condemned by the Courts of the country where he has taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country on account of obligations contracted towards private individuals, his surrender shall nevertheless, take place, the injured party retaining his right to prosecute his claims before the competent authority.

XII. Every article found in possession of the individual claimed at the time of his arrest shall, if the competent authority so decide, be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

The rights of third parties with regard to the said property or articles are, nevertheless, reserved.

XIII. Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Treaty.

XIV. The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign possession of either Party shall be made to the Governor or Chief authority of such Colony or possession by the chief Consular officer of the other in such Colony or possession; or, if the fugitive has escaped from a Colony or foreign possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to their Government.

His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Belgian criminals who may there take refuge, on the basis, as nearly as may be, of the provisions of the present Treaty.

XV. The present Treaty shall come into operation ten days after its publication, in conformity with the laws of the respective countries.

From the day when the present Treaty shall come into force, the Treaty of Extradition between the two countries of the 20th May, 1876; the Declaration between the British and Belgian Government,

dated 23rd July, 1877, extending the Treaty of the 20th May, 1876, to certain additional crimes; the further Declaration of the 21st April, 1887, amending Article 1 of the Treaty of the 20th May, 1876; and the Convention of the 27th August, 1896, further amending the Treaty of the 20th May, 1876, shall all cease to have effect; but the present Treaty shall apply to all crimes within the Treaty, whether committed before or after the day when it comes into force.

Either Party may at any time terminate the Treaty on giving to the other six months' notice of its intention.

XVI. The present Treaty shall be ratified, and the ratifications shall be exchanged at Brussels as soon as may be within six weeks from the date of signature.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed there to the seals of their arms.

Done at Brussels, the 29th day of October in the year of our Lord 1901.”

Now, therefore, in exercise of the powers conferred by section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to Belgium on and from the date of publication of this order.

[F. No. L\413\3\83]

Dr. R. K. DIXIT, Director

(L&T)

MINISTRY OF EXTERNAL AFFAIRS
(Legal & Treaties Division)
New Delhi, the 7th May, 1987
ORDER

G.S.R. 689 (E).—Whereas the Extradition Treaty between the Government of India and the Government of Canada provides as follows:—

Extradition Treaty between India and Canada

The Government of India and the Government of Canada, desiring to make more effective the cooperation of the two countries in the suppression of crime by making provision for the reciprocal extradition of offenders, and recognizing that concrete steps are necessary to combat terrorism agree as follows:

Article 1: Duty to Extradite

1. Each contracting State agree to extradite to the other, subject to the conditions of this Treaty any person who being accused or convicted of an extradition offence as described in Article 3, committed within the territory of the one State, is found in the territory of the other State, whether or not such offence was committed before or after the coming into force of this Treaty.
2. For the purposes of this Treaty, the territory of a contracting State includes all the land, airspace and waters within its jurisdiction.
3. There is no duty to extradite a person where the request for extradition is made for the purpose of discriminating against that person on account of his race, religion, colour or ethnic origin.
4. There is no duty to extradite a person who has been convicted (sic) and sentenced in respect of an extradition offence, if the sentence imposed or remaining to be served is imprisonment for 6 months or less.

Article 2: Extraterritorial offences

Extradition shall also be granted in respect of an extradition offence as described in Article 3, committed outside the territory but within the jurisdiction as asserted by the requesting State if the requested State would, in corresponding circumstances, have jurisdiction over such offence.

Article 3: Extradition offences

- (a) An extradition offence is committed when the conduct of the person whose extradition is sought constitutes an offence punishable by the laws of both contracting States by a term of imprisonment for a period of more than one year.

- (b) When extradition is ordered in respect of an extradition offence, it may also be ordered in respect of any other offence related to the commission of the extradition offence if it is specified in the request for extradition and meets all requirements for extradition except the term of imprisonment referred to in paragraph 1.
- (c) Extradition shall be ordered for an extradition offence notwithstanding that it may be an offence relating to taxation or revenue or is one of a purely fiscal character.

Article 4: Extradition and Prosecution

- 1. The request for extradition may be refused by the requested State if the person whose extradition is sought may be tried for the extradition offence in one of its own courts.
- 2. In deciding whether or not to refuse a request for extradition for the reason set out in paragraph 1, the requested State shall consider, which contracting State has felt or will feel the effects or consequences of the offence more gravely or immediately.
- 3. Where the requested State refuses a request for extradition for the reason set-out in paragraph I, it shall submit the case to its competent authority so that prosecution may be considered. In such case, the requesting State shall, upon request, provide all available assistance that may be required by such competent authority in respect of the prosecution
- 4. Where extradition is granted under this Treaty, the requesting State shall ensure that the person extradited is brought to trial within 6 months of the extradition.
- 5. Where trial has not commenced within 6 months, the requesting State shall bring the person extradited before its appropriate courts for bail to be considered pending trial and to set a trial date for the charges for which extradition was granted.

Article 5: Exceptions to Extradition

- 1. Extradition may be refused if :—
 - (a) the offence in respect of which it is requested is considered by the requested State to be a political offence or an offence of a political character;
 - (b) it appears to the requested State that the request was not made in good faith or in the interests of justice or was made for political reasons or that it would otherwise be unjust having regard to all the circumstances including the trivial nature of the offence.
- 2. Extradition shall be refused if:—
 - (a) the offence in respect of which it is requested is considered by the requested State to be a purely military offence;
 - (b) the person sought is being proceeded against or has been tried and acquitted or discharged or convicted and punished, by the requested State or by a third state for the offence in respect of which extradition is requested.

3. For the purposes of this Treaty conduct constituting the following offences according to the law of the requested State shall not be regarded as political offences or offences of a political character.
 - (a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970.
 - (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971.
 - (c) an offence within the scope of the Convention On the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic agents, signed at New York on December 14, 1973.
 - (d) an offence within the scope of any convention to which both contracting states are party and which obligates the parties to prosecute or grant extradition;
 - (e) an offence related to terrorism;
 - (f) murder, manslaughter, assault causing bodily harm, kidnapping, hostage-taking, offence involving serious damage to property or disruption of public facilities and offences relating to firearms, weapons, explosives, or dangerous substances;
 - (g) an attempt or conspiracy to commit an offence described in subparagraphs (a) through (f) or counselling the commission of such an offence or participation as an accomplice in the offences so described.

Article 6: Capital Punishment

Extradition may be refused when the offence for which extradition is requested is punishable by death under the laws of the requesting State and the laws of the requested State do not provide such punishment for the conduct constituting the offence, unless the requesting State gives such assurances as the requested State considers sufficient that the death penalty shall if imposed, not be executed.

Article 7: Postponement of Surrender

When the person sought is being proceeded against or is serving a sentence in the requested State for an offence other than that for which extradition is requested, the requested State may surrender the person sought or postpone his surrender until the conclusion of the proceedings or the service of any sentence that may have been imposed.

Article 8: Extradition Procedures

1. The request for extradition shall be made through diplomatic channels and shall be supported by the following:
 - (a) information concerning the identity, description, and location of the person sought;
 - (b) a statement of the facts of the case, and

- (c) a statement of the laws of the requesting State describing the offence and the punishment therefor.
- 2. Where the request for extradition is for a person accused of an extradition offence it shall also be supported by:
 - (a) a copy of the warrant of arrest, and
 - (b) such evidence as, according to the laws of the requested State, would justify his arrest and committal for trial if the offence had been committed within its jurisdiction including evidence showing that the person sought is the person to whom the warrant of arrest refers.
- 3. Where the request for extradition is for a person convicted of an extradition offence it shall be supported by :
 - (a) a copy of the certificate of conviction or a copy of the judgement or order of conviction ; and
 - (b) evidence that the person sought is the person to whom the conviction refers;and, if such person was sentenced, by :
 - (a) a copy of the judgement or order of sentence; and
 - (b) a statement showing what portion of the sentence remains to be served.

Article 9: Extradition Evidence

- 1. The evidence submitted in support of a request for extradition shall be admitted in extradition proceedings in the requested state if it purports to be under the stamp or seal of a department, ministry or minister of the requesting State, without proof of the official character of the stamp or seal.
- 2. The evidence referred to in paragraph 1 may include originals or copies of statements, depositions or other evidence purporting to have been taken on oath or affirmation whether taken for the purpose of supporting the request for extradition or for some other purpose.
- 3. The evidence described in paragraph 2 shall be admissible in extradition proceedings in the requested State, whether sworn or affirmed to in the requesting State or in some third state.

Article 10: Additional Evidence

- 1. If the requested State considers the evidence submitted (sic) in support of the request for extradition to be insufficient, it may request the submission of additional evidence and may set a time limit for the submission of that evidence, (jut upon the request of the requesting State may grant a reasonable extension of the time limit set.
- 2. If the additional evidence is considered insufficient or is not received within the time specified by the requested State the person sought may be discharged or set at liberty.

3. Notwithstanding paragraph 2, extradition proceedings may be recommenced for the same or other extradition offence, upon a new request for extradition being made by the requesting State, and on the basis of the evidence already submitted and any other evidence.

Article 11: Provisional Arrest

1. In cases of urgency a contracting State may request the Provisional arrest of the person sought.
2. The request for provisional arrest may be made through diplomatic channels, directly between the Department of Justice of Canada and the Ministry of Home Affairs of India, through the International Criminal Police Organisation (INTERPOL), or by any other means acceptable to the requested State.
3. The request for provisional arrest shall be supported by:
 - (a) Information concerning the identity, description and location of the person sought,
 - (b) a brief statement of the facts of the case,
 - (c) an indication that the requesting State will request the extradition of the person sought,
 - (d) a statement of the existence of a warrant for the arrest or order of conviction against the person sought, and
 - (e) such further information, if any, to justify the issuance of a warrant of arrest had the extradition offence been committed or the person sought been convicted, in or within the jurisdiction of the requested State.
4. On receipt of a request for provisional arrest the requested State shall take appropriate steps to arrest the person sought and to promptly notify the requesting State of the results of its efforts.
5. The person sought shall be discharged and set at liberty if the requested State has not received a request for extradition within 30 days and the supporting documents and evidence within 90 days from the date of arrest.
6. Notwithstanding paragraph 5 the person sought may be re-arrested for the same or other extradition offence if request for extradition is subsequently received by the requested State.

Article 12: Surrender

1. The requested State shall notify the requesting State as soon as possible of its decision with regard to the request for extradition.
2. If extradition is granted the requested State shall make the person sought available to the persons authorized by the requesting State to receive him at the time and place agreed to by both contracting States.
3. Where the person sought has not been conveyed out of the requested State within two months after the final decision on extradition has been made he shall be discharged from custody and the requested State may thereafter refuse to extradite him for the same offence.

Article 13: Surrender of Property

1. Upon the arrest of the person sought the requested State shall, to the extent permitted by its laws, search for and seize any property used in or obtained by the commission of the extradition offence or any proceeds thereof, or any property that will afford evidence of the commission of that offence.
2. If extradition is ordered, the requested State upon the surrender of the person sought, to the extent permitted by its laws and subject to any conditions relating to the rights of third parties, shall, subject to the provisions of paragraph 3 below, also surrender the property or any proceeds thereof, without any specific request from the requesting State. Such property or proceeds shall be surrendered even if the person sought cannot be extradited due to his death, escape or disappearance.
3. The requested State may refuse to surrender any property or any proceeds thereof unless the requesting State provides satisfactory assurances that they will, if required be returned to the requested State as soon as possible and all conditions relating to the rights of third parties observed.

Article 14: Rule of Speciality

1. A person extradited under this Treaty shall not be detained, tried or punished in the requesting State for an offence committed prior to his surrender other than that for which he was extradited unless:
 - (a) he has left the requesting State and voluntarily returned thereto
 - or
 - (b) he has not left the requesting State within 60 days after being free to do so.
2. A person extradited under this Treaty shall not be extradited by the requesting State to a third State for an offence committed prior to his extradition unless the requested State consents or the requirements of sub-paragraphs (a) or (b) of paragraph 1 above have been met.
3. Paragraphs 1 and 2 do not apply to an offence the commission of which is included in the commission of the offence for which the person sought; was surrendered and the proof of which is based on the evidence that was submitted in support of the request for extradition.

Article 15: Mutual Legal Assistance in Extradition

The requested State agrees upon request, to the extent permitted by its law, to gather evidence within its own territory for the requesting State relating to the offence for which extradition has been requested.

Article 16: Waiver of Extradition

1. A person whose extradition is sought and who has been arrested pursuant to this Treaty may consent in writing to return to the requesting State and to be held in custody pending such return without formal extradition. When such consent has been given the requesting State shall without delay, take all such steps as are necessary to receive the person sought.

2. The consent referred to in paragraph 1 shall be deemed not to have been given unless the person sought was personally advised by a judge or competent magistrate of the right and protections conferred under this Treaty, and that such consent constitutes a waiver of those rights and protections, including the protection conferred under Article 14.

Article 17: Conflicting Requests

If extradition of the same person whether for the same offence or for different offences is requested by the contracting State and a third State with which the requested State has an extradition arrangement, the requested State shall determine to which State the person shall be extradited, and shall not be obliged to give preference to the contracting State.

Article 18: Translation of Documents

The request for extradition and the evidence submitted in support thereof shall be provided in or translated into one of the official languages of the requested State and where translated the accuracy of such translation shall be verified by the evidence of the translator. The translator's evidence shall also be in one of the official languages, of the requested State and shall comply with Article 5 of this Treaty,

Article 19: Expenses

1. In any proceeding arising out of a request for extradition, the requested State shall make all necessary arrangements for and bear the cost of representation for the requesting State by its own legal offices or otherwise.
2. The requesting State shall bear the expenses of transporting any person extradited or otherwise returned pursuant to this Treaty, including any internal transportation within the requested State and any expenses incurred in respect of transit.
3. All other expenses incurred in the requested State in connection with extradition pursuant to this Treaty shall unless otherwise agreed to, be borne by the requested State.
4. No pecuniary claim arising out of the arrest, detention, examination and surrender of any person pursuant to the provisions of this Treaty shall be made by the requested State against the requesting State.

Article 20: Applicable Law

Except where otherwise provided by this Treaty, the procedures with regard to arrest and extradition shall be governed by the laws of the requested State.

Article 21: Ratification

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged at New Delhi as soon as possible. It shall come into force upon the exchange of instrument of ratification.
2. Either of the contracting States may terminate this Treaty by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the Treaty shall cease to have any force or effect.

In witness where of the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in duplicate in the English, Hindi and French language, each language version being equally authentic at New Delhi, this Sixth day of February, 1987.

Now, therefore, in exercise of the powers conferred by subsection (1) of section 3 of the Extradition Act, 1962 (34 of 3 962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to Canada with effect from the date of this notification.

Notification issued under G.S.R. No. 463(E) bearing serial No. 237 on 8-5-87 is cancelled for technical reasons.

[No. L/413/2/87]

S.N. SINHA, Under Secy.

MINISTRY OF EXTERNAL AFFAIRS
ORDER

New Delhi, the 30th December, 1993

G.S.R. 790(E).—Whereas the Extradition Treaty between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland was signed on 22nd September, 1992 and the instruments of ratification exchanged at New Delhi on 15th November, 1993 and which Treaty provides as follows:

**Extradition Treaty between the Government of the Republic of India and
the Government of the United Kingdom of Great Britain and
Northern Ireland**

The Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to make more effective the cooperation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders;

Recognizing that concrete steps are necessary to combat terrorism;

Have agreed as follows:

Article 1: Duty to Extradite

- (1) Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one State, is found within the territory of the other State, whether such offence was committed before or after the entry into force of this Treaty.
- (2) Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which; if has jurisdiction if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested State shall have regard to all the circumstances of the case including the seriousness of the offence.
- (3) In addition, extradition shall be available for an extradition offence as described in Article 2:
 - (a) If it is committed in a third State by a national of a Requesting State and the Requesting State bases its jurisdiction on the nationality of the offender; and
 - (b) If it occurred in the Requested State, it would be an offence under the law of that State punishable with imprisonment for a term of at least one year.

Article 2: Extradition Offences

- (1) An extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one year.
- (2) An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

Article 3: Composite Offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under the law of the State his conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting State.

Article 4: Extradition of Nationals

Nothing in this Treaty shall preclude the extradition by the Requested State of its nationals either in respect of a territorial offence or in respect of an extraterritorial offence.

Article 5: The Political Offence Exception

- (1) Extradition may be refused if the offence of which it is requested is an offence of a political character.
- (2) For the purposes of this Treaty the following offences shall not be regarded as offences of a political character:
 - (a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December 1970;
 - (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971;
 - (c) an offence within the scope of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December 1973;
 - (d) an offence within the scope of the International Convention against the Taking of Hostages, opened for signature at New York on 18 December 1979;
 - (e) murder;
 - (f) manslaughter or culpable homicide;
 - (g) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;

- (h) the causing of an explosion likely to endanger life or cause serious damage to property;
- (i) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
- (j) the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
- (k) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
- (l) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
- (m) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
- (n) incitement to murder;
- (o) any other offence related to terrorism which at the time of the request is, under the law of the Requested Party, not to be regarded as an offence of a political character;
- (p) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts commit such an offence.

Article 6: Extension of Extraterritorial Jurisdiction

- (1) The Government of the United Kingdom Undertakes to make it an offence under the law if the United Kingdom to commit in India any of the following offences :
 - (a) an offence under any of the Conventions specified in article 5 of this Treaty;
 - (b) murder, manslaughter or culpable homicide, kidnapping, abduction, false imprisonment or unlawful detention including the taking of a hostage;
 - (c) an offence relating to the causing of an explosion, the making or possession of explosives, the possession or use of a firearm or the possession of ammunition as specified in Article 5 of this Treaty;
 - (d) an attempt to commit or participation as an accomplice in any of the foregoing offences;
- (2) The Government of India undertakes to establish corresponding jurisdiction over offences committed in the United Kingdom

Article 7: Offences of Conspiracy, Incitement and Attempt

- (1) It shall also be an offence under the law of the United Kingdom for any person in the United Kingdom.
 - (a) to attempt to commit in India, or incite, or participate as an accomplice in, the commission in India of any of the following offences:
 - (i) an offence under any of the Conventions specified in Article 5 of this Treaty;

- (ii) murder, manslaughter or culpable homicide, kidnapping, abduction, false imprisonment or unlawful detention including the taking of a hostage;
 - (iii) an offence relating to the causing of an explosion, the making or possession of explosives, the possession or use of a firearm or the possession of ammunitions as specified in Article 5;
- (b) to conspire to commit in India any offence mentioned in sub-paragraph (i) to (iii) above.
- (2) It shall be an offence under the law of India for any person in India,
- (a) to attempt to commit in the United Kingdom, or incite, or participate as an accomplice in, the commission in the United Kingdom of any of the following offences :
 - (i) an offence under any of the conventions specified in Article 5 of this Treaty;
 - (ii) murder, manslaughter or culpable homicide, kidnapping, abduction, false imprisonment or unlawful detention including the taking of a hostage;
 - (iii) an offence relating to the causing of an explosion, the making or possession of explosives, the possession or use of a firearm or the possession of ammunition as specified in Article 5;
 - (b) to conspire to commit in the United Kingdom any offence mentioned in sub-paragraphs (i) to (iii) above.
- (3) For the purposes of paragraph (1)(b) and (2)(b) above, it shall be an offence to conspire as aforesaid only where it would be an offence under the law of the country in which the conspiracy is alleged to take place for a person to conspire in that country in the commission in that country of an offence.

Article 8: Extradition and Prosecution

- (1) The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extradition offence in the courts of that State.
- (2) Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of an offence of a serious nature under the law of that State.
- (3) If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 9: Grounds for Refusal of Extradition

- (1) A person may not be extradited if:
 - (a) he satisfies the Requested State that the request for his extradition (though purporting to be made on account of an extradition offence) has in fact been made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

- (b) he satisfies the Requested State that he might, if extradited, be prejudiced at his trial or be punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions;
 - (c) he satisfies the Requested State that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason of :
 - (i) the trivial nature of the offence of which he is accused or was convicted; or
 - (ii) the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
 - (iii) the accusation against him not having been made in good faith in the interests of justice; or
 - (d) the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.
- (2) A person who has been convicted of an extradition offence may not be extradited therefore unless he was sentenced to imprisonment or other form of detention for a period of four months or more or, subject to Article 16, to the death penalty.
- (3) A person may not be extradited if he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be enticed to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction.

ARTICLE 10: Postponement of Surrender

- (1) If criminal proceedings against the person sought are instituted in the territory of the Requested State, or he is lawfully detained in consequence of criminal proceedings, the decision whether or not to, extradite him may be postponed until the criminal proceedings have been completed or he is no longer detained;
- (2) A person sought may not be extradited until
- (a) it has been decided in accordance with the law of the Required State that he is liable to be extradited ; and
 - (b) the expiration of any further period which may be required by the law of that State.

ARTICLE 11: Extradition Procedures

- (1) Subject to the provisions of Article 22 of this Treaty, the request for extradition shall be made through the diplomatic channel.
- (2) The request shall be accompanied by:
- (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality, and residence ;
 - (b) a statement of the facts of the offence for which extradition is requested; and

- (c) the text, if any, of the law :
 - (i) defining that offence; and
 - (ii) prescribing the maximum punishment for that offence.
- (3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as, according to law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.
- (4) If the request relates to a person already convicted and sentenced, it shall also be accompanied:
 - (a) by a certificate of the conviction and sentence;
 - (b) by a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.
- (5) In relation to a convicted person who was not present at his trial, the person shall be treated for the purposes of paragraph (4) of this Article as if he had been accused of the offence of which he was convicted.
- (6) If the Requested State considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.

ARTICLE 12: Provisional Arrest

- (1) In urgent cases the person sought may, in accordance with the law of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of intention to request the extradition of that person and a statement of the existence of a warrant of a arrest or a conviction against him, and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been Convicted, in the territory of the Requested State.
- (2) A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

ARTICLE 13: Rule of Speciality

- (1) Any person who is returned to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article, be dealt with in the territory of the Requesting State for or in respect of any offence committed before he was returned to that territory other than:
 - (a) the offence in respect of which he was returned;

- (b) any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made; or
 - (c) any other offence in respect of which the Requested Party may consent to his being dealt with other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made.
- (2) The period referred to in paragraph (1) of this Article is the period beginning with the day of his arrival in the territory of the Requesting State or his return under this Treaty and ending forty-five days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting State.
- (3) The provisions of paragraph (1) of this Article shall not apply to offences committed after the return of a person under this Treaty or matters arising in relation to such offences.
- (4) A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty days of his final discharge, or has returned to that territory after having left it.

ARTICLE 14: Evidence

- (1) The authorities of the Requested State shall admit as evidence, in any proceedings for extradition, any evidence taken on oath or by way of affirmation, any warrant and any certificate of or judicial document stating the fact of, a conviction, if it is authenticated:
- (a) (i) in the case of a warrant being signed, or in the case of any original document by being certified, by a judge, magistrate or other competent authority of the Requesting State; and
 - (ii) either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting State;
- (2) The evidence described in paragraph (1) shall be admissible in extradition proceedings in the Requested State whether sworn or affirmed in the Requesting State or in some third State.

ARTICLE 15: Competing Requests

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting State and a third State with which the Requested State has an extradition arrangement, the Requested State shall determine to which State the person shall be extradited, and shall not be obliged to give preference to the Contracting State.

ARTICLE 16: Capital Punishment

If under the law of the Requesting State the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested State does not provide for the death penalty in a similar case, extradition may be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death penalty will not be carried out.

ARTICLE 17: Surrender

- (1) If extradition is granted, the person sought shall be sent by the authorities of the Requested State to such convenient point of departure from the territory of that State as the Requesting State shall indicate.
- (2) The Requesting State shall remove the person sought from the territory of the Requested State within one month or such longer period as may be permitted under the law of the Requested State. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.

ARTICLE 18: Surrender of Property

- (1) When a request for extradition is granted, the Requested State shall, upon request and so far as its law allows, hand over to the Requesting State articles (including sums of money) which may serve as proof or evidence of the offence.
- (2) If the articles in question are liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned.
- (3) These provisions shall not prejudice the rights of the Requested State or any person other than the person sought. When these rights exist the articles shall on request be returned to the Requested State without charge as soon as possible after the end of the proceedings.

ARTICLE 19: Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

ARTICLE 20: Documents and Expenses

- (1) If in any particular case the Requested State so requires, the Requesting State shall supply a translation of any document submitted in accordance with the provisions of this Treaty.
- (2) Expenses incurred in the territory of the Requested State by reason of the request for extradition shall be borne by that State.
- (3) The Requested State shall make all the arrangements which shall be requisite with respect to the representation of the Requesting State in all proceedings arising out of the request.

ARTICLE 21: Territorial Application

- (1) This Treaty shall apply;
 - (a) in relation to the United Kingdom :
 - (i) To Great Britain and Northern Ireland; and

- (ii) To any territory for whose international relations the United Kingdom is responsible and to which this Treaty shall have been extended by agreement between the Contracting States in an Exchange of Notes; and
- (b) to the Republic of India;
- and references to the territory of a Contracting State shall be construed accordingly.
- (2) The application of this Treaty to any territory, in respect of which extension has been made in accordance with paragraph (1) of this Article, may be terminated by either Contracting State giving six months' notice to the other through the diplomatic channel.
- (3) Until the application of the Treaty shall have been extended to a territory in accordance with paragraph (1) of this Article, the extradition arrangements between the Republic of India and that territory subsisting prior to the entry into force of this Treaty shall continue to apply.

ARTICLE 22: Dependent Territories

A request on the part of the Republic of India for the extradition of an offender who is found in any of the territories to which this Treaty has been extended in accordance with paragraph (1) of Article 21 of this Treaty may be made to the Governor or other competent authority of that territory, who may take the decision himself or refer the matter to Her Majesty's Government in the United Kingdom for their decision.

ARTICLE 23: Ratification and Termination

- (1) This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at New Delhi as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification.
- (2) Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in duplicate at London this the twenty second day of September, 1992 in the Hindi and English languages. In case of any doubt, the English text shall prevail.

Now therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Extradition Act, 1962 (34 of 1962) and in supersession of the notification G.S.R. No. 34(E) dated 20th January 1972, the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to United Kingdom of Great Britain and Northern Ireland with effect from the date of publication of this notification.

[No. L-413|12|93]

Dr. P. S. RAO, Jt. Secy.
and Legal Adviser

MINISTRY OF EXTERNAL AFFAIRS

ORDER

New Delhi, the 20th April, 1999

G. S. R. 274(E).—Having considered and accepted the proposal of the Government of the United Kingdom of Great Britain and Northern Ireland, in terms of Article 21(1)(a)(ii) of the Indo-UK Extradition Treaty, signed on 22nd September, 1992 and in exercise of the powers conferred by Sub-section (1) of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the Isle of Man, with effect from the date of publication of this notification.

[No. T.413/61/96]

S. R. TAYAL, Jt. Secy. (CPV)

MINISTRY OF EXTERNAL AFFAIRS
ORDER

New Delhi, the 21st May, 1997

G.S.R. 268 (E).—Whereas the new Extradition Agreement between the Republic of India and the Kingdom of Bhutan was signed in Thimpu on 28th December, 1996 and the instruments of ratification exchanged at New Delhi on 20th May, 1997 and which Treaty provides as follows :

**Extradition Agreement between the Republic of
India and the Kingdom of Bhutan**

“Preamble:

The Government of the Republic of India and the Government of the Kingdom of Bhutan, hereinafter called the Parties:

Being fully committed to safeguarding each other’s security and stability;

Taking cognizance of the rising trend in terrorist, secessionist, criminal and other unlawful activities affecting peace and stability in their territories;

Desirous of cooperating effectively to prevent and suppress such terrorist, secessionist, criminal and other unlawful activities affecting their security and stability;

Have agreed, in keeping with the spirit of abiding friendship and close cooperation between them, to enter into a new extradition agreement with each other which is as follows:

Article 1

Duty to Extradite

Each Contracting Party agrees to extradite to the other, subject to the conditions of this Agreement, any person, who, being accused of, charged with or convicted of an extraditable offence in the territory of one Party, is found in the territory of the other Party, whether or not such offence was committed before or after the coming into force of this Agreement.

Article 2

Extraditable Offences

1. An offence shall be an extraditable offence if it is punishable under the laws in either Contracting State by deprivation of liberty, including imprisonment, for a period of more than one year or by a more severe penalty.
2. Extradition shall also be granted for acts committed outside the Requesting State and the Requested State which under the law of the Requesting State are deemed to be an offence liable for prosecution within that State.

3. An offence shall also be an extraditable offence if it consists of an attempt or a conspiracy to commit, aiding or abetting, counselling or procuring the commission of or being an accessory before or after the fact, to, any extraditable offence.

Article 3

Composite Offences

1. Extradition shall be available in respect of an extraditable offence whenever an act or conduct of a person occurred, wholly or in part, in the Requested State but the consequences of which as intended by the offender occurred within the Requesting State or, by the nature of the commission of which, the consequence resulting therefrom should occur within the Requesting State or it could be foreseen that the consequence would occur within the Requesting State, deeming that such offence is committed within the Requesting State.
2. Preparation or attempt to commit a composite offence as defined in paragraph 1 or the acts of a co-principal, a supporter or an instigator in the commission of such a composite offence shall be deemed to be extraditable offences liable for prosecution within the Requesting State.
3. Extradition shall also be available in respect of individuals belonging to an organisation engaging in activities declared to be unlawful by the law of the Requesting State and in respect of persons aiding, abetting or promoting such unlawful activities or objectives of the organisation or association.

Article 4

Mutual Assistance

1. The two Parties shall render the greatest measure of mutual assistance to each other through consultations between appropriate channels, exchange of information, intelligence and expertise and such other cooperative measures as may be appropriate with a view to prevent and suppress activities in each other's territories, affecting their security, by persons belonging to:
 - (a) the Requesting State but found in the territory of the Requested State;
 - (b) the Requested State; and
 - (c) third countries but found in the Requested State.
2. With a view to promote and facilitate cooperation on an ongoing basis in respect of matters referred to above in this Article, the Parties shall establish appropriate joint mechanism.

Article 5

Grounds for Refusal

Extradition shall not take place if the person whose extradition is sought by the Requesting State has already been tried and discharged or punished or is still under trial in the territory of the Requested State for the offence for which his extradition is requested.

Article 6

Extradition Procedure

A request for extradition and/or mutual assistance under this Agreement shall be available at the request of either party to the other party or by any officer(s) authorised by them respectively in this regard. The request for extradition shall be in writing and shall be processed in accordance with the law of the Requested State. For this purpose, a warrant of arrest issued by a court of law or any other agency authorised by the Requesting State shall be sufficient. The Parties thereby agree to dispense with the requirement of the prima facie case.

Article 7

Provisional Arrest

In case of urgency, either Contracting Party may apply for the provisional arrest of the person sought before the request for extradition has been submitted to the Requested State through diplomatic channel. The request for provisional arrest shall be made through diplomatic channels and shall be processed in accordance with the law of the Requested State.

Article 8

Surrender

If the extradition request has been granted, surrender of the persons sought shall take place within such time and at such place as may be mutually agreed between the Parties.

Article 9

Expenses

The expenses of any apprehension, detention or surrender made in pursuance of this Agreement shall be borne and defrayed by the Requested State.

Article 10

Ratification and Termination

This Agreement is subject to ratification and the instruments of ratification shall be exchanged at Thimpu/Delhi as soon as possible. It shall come into force upon the exchange of instruments of ratification.

Either of the Contracting Parties may terminate this Agreement by giving six months' notice thereof through diplomatic channels. Upon the expiry of such notice, the Agreement shall cease to have any force or effect.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Tashichho Dzong, Thimpu on the Twenty-eighth day of December, Nineteen Hundred and Ninety six, in the originals each in Hindi, Dzongkha and English languages, each text being equally authentic. However, in case of difference, the English text shall prevail.”

Now therefore, in exercise of the powers conferred by sub-section (2) of Section 12 of the Extradition Act, 1962 (34 of 1962) and in supersession of the notification of the Government of India in the Ministry of External Affairs number G.S.R. 2093 dated the 26th August, 1969, the Central Government hereby directs that the provisions of the said Act, other than Chapter II, shall apply to the Kingdom of Bhutan with effect from the date of publication of this notification.

[No. T-413/01/97]

SHRI K.C. SINGH, Jt. Secy.

MINISTRY OF EXTERNAL AFFAIRS ORDER

New Delhi, the 14th September, 1999

Extradition Treaty between the Government of Republic of India and the Government of the United States of America

G.S.R. 633(E). — Whereas the Extradition Treaty between the Government of the Republic of India and the Government of the United States of America was signed at Washington D,C, on 25th June, 1997 and in accordance with Article 23 of the Treaty- instruments of ratification were exchanged at New Delhi on 21st July, 1999 and which treaty provides as follows:

Article 1

The Contracting States agree to extradite to each other, pursuant to the provisions of this Treaty, person who, by the authorities in the Requesting State are formally accused of, charged with or convicted of an extraditable offence, whether such offence was committed before or after the entry into force of the Treaty,

Article 2

Extraditable Offenses

1. An offense shall be an extraditable offense if it is punishable under the laws in both Contracting States by deprivation of liberty, including imprisonment, for a period of more than one year or by a more severe penalty.
2. An offense shall also be an extraditable offense if it consists of an attempt or a conspiracy to commit, aiding or abetting, counselling or procuring the commission of or being an accessory before or after the fact to, any offense described in paragraph 1.
3. For the purposes of this Article, an offense shall be an extraditable offense:
 - (a) whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology;
 - (b) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court; or
 - (c) whether or not it relates to taxation or revenue or is one of a purely fiscal character.
4. Extradition shall be granted for an extraditable offense regardless of where the act or acts constituting the offense were committed.

5. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request, even if the latter offense is punishable by less than one year's deprivation of liberty, provided that all other requirements for extradition are met.

Article 3

Nationality

Extradition shall not be refused on the ground that the person sought is a national of the Requested State.

Article 4

Political Offenses

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.
2. For the purposes of this Treaty, the following offenses shall not be considered to be political offenses:
 - (a) a murder or other willful crime against the person of a Head of State or Head of Government of one of the Contracting States, or of a member of the Head of State's or Head of Government's family;
 - (b) aircraft hijacking offenses, as described in The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on December 16, 1970;
 - (c) acts of aviation sabotage, as described in the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on September 23, 1971;
 - (d) crimes against internationally protected persons, including diplomats, as described in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, done at New York on December 14, 1973;
 - (e) hostage taking, as described in the International Convention against the Taking of Hostages, done at New York on December 17, 1979;
 - (f) offenses related to illegal drugs, as described in the Single Convention on Narcotic Drugs, 1961, done at New York on March 30, 1961, the Protocol Amending the Single Convention on Narcotic Drugs, 1961, done at Geneva on March 25, 1972, and the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, done at Vienna on December 20, 1988;
 - (g) any other offense for which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; and
 - (h) a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.

Article 5

Military Offenses and Other Basis for Denial of Extradition

1. The executive authority of the Requested State may refuse extradition for offenses under military law which are not offenses under ordinary criminal law.
2. Extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

Article 6

Prior Prosecution

1. Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested.
2. Extradition shall not be precluded by the fact that the authorities in the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested, or to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

Article 7

Lapse of Time

Extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws of the Requesting State.

Article 8

Capital Punishment

1. When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may refuse extradition unless:
 - (a) the offense constitutes murder under the laws in the Requested State; or
 - (b) the Requesting State provides assurances that the death penalty, if imposed, will not be carried out.
2. In instances in which a Requesting State provides an assurance in accordance with paragraph (1) (b) of this Article, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

Article 9

Extradition Procedures and Required Documents

1. All requests for extradition shall be submitted through the diplomatic channel.
2. All requests for extradition shall be supported by:
 - (a) documents, statements, or other types of information which describe the identity and probable location of the person sought;

- (b) information describing the facts of the offense and the procedural history of the case;
 - (c) a statement of the provisions of the law describing the essential elements of the offense for which extradition is requested;
 - (d) a statement of the provisions of the law describing the punishment for the offense; and
 - (e) the documents, statements, or other types of information specified in paragraph 3 or paragraph 4 of this Article, as applicable.
3. A request for extradition of a person who is sought for prosecution shall also be supported by:
- (a) a copy of the warrant or order of arrest, issued by a judge or other competent authority;
 - (b) a copy of the charging document, if any; and
 - (c) such information as would justify the committal for trial of the person if the offense had been committed in the Requested State.
4. A request for extradition relating to a person who has been convicted of the offense for which extradition is sought shall also be supported by:
- (a) a copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person has been convicted;
 - (b) information establishing that the person sought is the person to whom the conviction refers;
 - (c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out; and
 - (d) in the case of a person who has been convicted in absentia, the documents required in paragraph 3.

Article 10

Admissibility of Documents

The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:

- (a) in the case of a request from the United States, they are certified by the principal diplomatic or principal consular officer of the Republic of India resident in the United States;
- (b) in the case of a request from the Republic of India, they are certified by the principal diplomatic or principal consular officer of the United States resident in the Republic of India, as provided by the extradition laws of the United States; or
- (c) they are certified or authenticated in any other manner accepted by the laws in the Requested State.

Article 11

Translation

All documents submitted by the Requesting State shall be in English.

Article 12

Provisional Arrest

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel. The facilities of the International Criminal Police Organization (Interpol) may be used to transmit such a request.
2. The application for provisional arrest shall contain:
 - (a) a description of the person sought;
 - (b) the location of the person sought, if known;
 - (c) a brief statement of the facts of the case, including, if possible, the time and location of the offense;
 - (d) a description of the laws violated;
 - (e) a statement of the existence of a warrant of arrest or a finding of guilt or judgment of conviction against the person sought; and
 - (f) a statement that a request for extradition for the person sought will follow.
3. The Requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.
4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 9.
5. The fact that the person sought has been discharged from custody pursuant to paragraph (4) of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

Article 13

Decision and Surrender

1. The Requested State shall promptly notify the Requesting State through the diplomatic channel of its decision on the request for extradition.
2. If the request is denied in whole or in part, the Requested State shall provide the reasons for the denial. The Requested State shall provide copies of pertinent judicial decisions upon request.

3. If the request for extradition is granted, the authorities of the Contracting States shall agree on the time and place for the surrender of the person sought.
4. If the person sought is not removed from the territory of the Requested State within the time prescribed by the laws in that State, that person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offense.

Article 14

Temporary and Deferred Surrender

1. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the Requested State, the Requested State, subject to its laws, may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by agreement of the Contracting States.
2. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

Article 15

Requests for Extradition Made by More than One State

If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person, either for the same offense or for different offenses, the executive authority of the Requested State shall determine to which State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to:

- (a) whether the requests were made pursuant to treaty;
- (b) the place where each offense was committed;
- (c) the respective interests of the Requesting States;
- (d) the gravity of the offenses;
- (e) the nationality of the victim;
- (f) the possibility of further extradition between the Requesting States; and
- (g) the chronological order in which the requests were received from the Requesting States.

Article 16

Seizure and Surrender of Property

1. To the extent permitted under its laws, the Requested State may seize and surrender to the Requesting State all articles, documents, and evidence connected with the offense in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when the extradition cannot be effected due to the death, disappearance, or escape of the person sought.
2. The Requested State may condition the surrender of the property upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such property if it is needed as evidence in the Requested State.
3. The rights of third parties in such property shall be duly respected.

Article 17

Rule of Speciality

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:
 - (a) the offense for which extradition has been granted or a differently denominated offense based on the same facts on which extradition was granted, provided such offense is extraditable or is a lesser included offense;
 - (b) an offense committed after the extradition of the person; or
 - (c) an offense for which the executive authority of the Requested State consents to the person's detention, trial, or punishment. For the purpose of this subparagraph:
 - (i) the Requested State may require the submission of the documents called for in Article 9; and
 - (ii) the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorize, while the request is being processed.
2. A person extradited under this Treaty may not be extradited to a third State for an offense committed prior to his surrender unless the surrendering State consents.
3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:
 - (a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or
 - (b) that person does not leave the territory of the Requesting State within 15 days of the day on which that person is free to leave.

Article 18

Waiver of Extradition

If the person sought consents to surrender to the Requesting State, the Requested State may, subject to its laws, surrender the person as expeditiously as possible without further proceedings.

Article 19

Transit

1. Either Contracting State may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall be made through the diplomatic channel. The facilities of Interpol may be used to transmit such a request. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.
2. No authorization is required where air transportation is used and no landing is scheduled on the territory of the Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, the other Contracting State may require the request for transit as provided in paragraph 1. That Contracting State shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

Article 20

Representation and Expenses

1. The Requested State shall advise, assist, appear in court on behalf of the Requesting State, and represent the Interests of the Requesting State, in any proceeding arising out of a request for extradition.
2. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.
3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons sought under this Treaty.

Article 21

Consultation

The competent authorities of the United States and the Republic of India may consult with each other directly or through the facilities of Interpol in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

Article 22

Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with an offense for which extradition has been requested.

Article 23

Ratification and Entry Into Force

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force upon the exchange of the instruments of ratification.
3. Upon the entry into force of this Treaty, the Treaty for the Mutual Extradition of Criminals between the United States of America and Great Britain, signed at London December 22, 1931, shall cease to have any effect between the Government of the Republic of India and the Government of the United States of America. Nevertheless, the prior Treaty shall apply to any extradition proceedings in which the extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force, except that Article 17 of this Treaty shall be applicable to such proceedings.

Article 24

Termination

Either Contracting State may terminate this Treaty at any time by giving written notice to the other Contracting State, any the termination shall be effective six months after the date of such notice.

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

DONE at Washington, D.C., in duplicate, this twenty-fifth day of June, 1997, in the English and Hindi languages, both texts being equally authentic.

Now, therefore, in exercise of the power conferred by Sub. Section (1) of Section 3 of the Extradition Act, 1962 (34 of 1962), in suppression of the notification G.S.R. No:-493 dated 1st April, 1966, the Central Government hereby directs that the provisions of the said Act, other than chapter III, shall apply to the United States of America with effect from the date of Publication of this notification

[No. T. 413/15/95]

S. R. TAYAL, Jt. Secy. (CPV)

MINISTRY OF EXTERNAL AFFAIRS

ORDER

New Delhi, the 5th September, 2000

**Extradition Treaty between the Government of
Republic of India and the Russian Federation**

GSR 709 (E).—Whereas the Extradition Treaty between the Government of Republic of India and the Russian Federation was signed at New Delhi, India on 21-12-98; and the instruments of ratification exchanged at Moscow, Russia on 10th May, 2000 and which Treaty provides as follows:

Article 1

Obligation to extradite

1. Each Contracting Party undertakes to extradite to the other Contracting Party, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2 of this Treaty, committed within the territory of the Requesting Party, is found within the territory of the Requested Party, whether such offence was committed before or after the entry into force of this Treaty.
2. Extradition shall also be available in respect of an extradition offence as described in Article 2 of this Treaty committed outside the territory of the Requesting Party but in respect of which it has jurisdiction, if the Requested Party would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested Party shall have regard to all the circumstances of the case including the seriousness of the offence.
3. Extradition shall also be available for an extradition offence as described in Article 2 of this Treaty, if it is committed in a third State by a citizen of the Requesting Part) and it bases its jurisdiction on the citizenship of the offender, subject to the provisions under Article 15 of this Treaty.

Article 2

Extradition offences

1. An extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting Party is punishable by a term of imprisonment for a period of at least one year.
2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

Article 3

Composite offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested Party, if this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence under the laws of both the Contracting Parties.

Article 4

Offences of conspiracy, incitement and attempt, and extra-territorial jurisdiction

1. It shall be an offence under the laws of both the Contracting Parties for any person to abet, conspire or attempt to commit, or incite or participate as an accomplice in the commission of, any extradition offence.
2. It shall also be an offence under the laws of both the Contracting Parties, for any citizen of a Contracting Party to commit any offence in any place beyond its territory.

Article 5

Grounds for refusal of extradition

1. A person may not be extradited if:
 - 1.1 he is a citizen of the Requested Party; or
 - 1.2 he satisfies the Requested Party that he might, if extradited, be prejudiced at his trial or be punished, by reason of his race, religion, nationality or political opinions; or
 - 1.3 he satisfies the Requested Party that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason of:
 - 1.3.1 the expiry of the limitation-period for initiating the criminal proceedings under the legislation of the Requested Party or for execution of a sentence, or on other legal grounds;
 - 1.3.2. the accusation against him having not been made in the interests of justice; or
 - 1.4 the extradition is not permitted according to the laws of the Requested Party;
 - 1.5 the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.
2. A person shall also not be extradited if in respect of the offence for which his extradition is requested, he has been previously proceeded against in the Requested Party, and convicted or acquitted.
3. The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for the extradition offence in the courts of that Party.

Article 6

Obligation to prosecute

1. Where the Requested Party refuses a request for extradition for the reason set out in paragraph 3 of Article 5 of this Treaty, it shall submit the case to its competent authorities for prosecution
2. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 7

Consequences of non-extradition of own citizens

If according to paragraph 1.1 of Article 5 of this Treaty, extradition is refused, the Requested Party, shall initiate criminal prosecution against such person for the same offence according to its laws. For this the Requesting Party shall transfer to the Requested Party- the relevant documents and evidence.

Article 8

Postponement of extradition and temporary extradition

1. If the person to be extradited is being prosecuted or serving sentence for another crime in the territory of the Requested Party, the extradition may be postponed till the end of the proceedings of the case, end of sentence or release, which shall be advised to the Requesting Party.
2. If the postponement of extradition can cause the expiration of the limitation or impede the investigation, the person can be extradited temporarily under a special request of the Requesting Party
3. The temporarily extradited person must be returned to the Requested Party immediately after the end of the proceedings of the case.

Article 9

Extradition procedures

1. The request for extradition shall be made through diplomatic channels.
2. The request shall be accompanied by:
 - 2.1 the name and surname (petronym) of the person whose extradition is requested, information on his citizenship, place of residence or whereabouts and other pertaining data, as well as, if possible, the description of the person's appearance, his photographs and fingerprints.
 - 2.2 a statement of the facts of the offence for which extradition is requested; and
 - 2.3 the text, of the corresponding law;
 - 2.3.1 defining that offence; and
 - 2.3.2 prescribing the punishment for that offence.

3. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the warrant of arrest issued by a competent court or authority of the Requesting Party.
4. If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certified copy of the judgement and a statement that the person is no longer entitled to question the conviction or sentence and showing how much of sentence has not been carried out;
5. If the Requested Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within a reasonable time.

Article 10

Provisional arrest

1. In urgent cases a person may be provisionally arrested by the Requested Party. In accordance with its law, on the request of the competent authorities of the Requesting Party, made either through Diplomatic Channels or the National Central Bureau of International Criminal Police Organisation—INTERPOL, before the receiving of the request for extradition. The request shall contain an indication of intention to request the extradition of that person and a statement of existence of a warrant of arrest or a conviction against him; and, if available, the data specified in paragraphs 2.1 and 2.3 of Article 9 of this Treaty and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person been convicted, in the territory of the Requested Party.
2. A person arrested upon such a request shall be set at liberty upon the expiration of 60 days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request for extradition is subsequently received.

Article 11

Rule of speciality

1. The extradited person may not without consent of the Requested Party, be prosecuted or punished in the Requesting Party for the offence other than that for which extradition has been granted and any lesser offence disclosed by the facts proved for the purposes of securing his extradition, nor may such a person, without consent of the Requested Party, be extradited to a third State.
2. The consent of the Requested Party is not required if:
 - 2.1 the extradited person has not left, though had the opportunity, the territory of the Requesting Party within 30 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the Requesting Party for reasons beyond his control;

- 2.2 if the extradited person, once having left the territory of the Requesting Party, voluntarily returns there.
3. The provisions of paragraph 1 of this Article shall not apply to offences committed after the return of person to the Requesting Party or matters arising in relation to such offences.

Article 12

Recognition of documents and evidence

1. Documents issued or certified and statements recorded by competent Courts or other authorities in the prescribed form in the territory of one Contracting Party as per its laws shall not require any form of authentication in the territory of the other Contracting Party.
2. Documents considered as public in the territory of one of the Contracting Parties shall have the evidential force of public documents also in the territory of the other Contracting Party.

Article 13

Competing requests

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting Party and a third State with which the Requested Party has an extradition arrangement, the Requested Party shall determine the State to which the person shall be extradited, and shall not be obliged to give preference to the Contracting Party.

Article 14

Capital punishment

If under the law of the Requesting Party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested Party does not provide for the death penalty for the same offence, extradition may be refused, unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be carried out.

Article 15

Transfer

1. The modalities of transfer of the person to be extradited shall be agreed upon by the competent authorities of both the Contracting Parties as mutually convenient.
2. The Requesting Party shall take the person sought from the territory of the Requested Party within one month of the consent of Requested Party to extradite or such longer period as may be permitted under the law of the Requested Party. If the person is not removed within that period, the Requested Party may refuse to extradite him for the same offence.

Article 16

Transfer of articles connected with crime

1. The Requested Party shall, within the limits of its legislation, transfer by the request of the Requesting Party the articles used for committing crime by the person being extradited, articles bearing crime traces or crime proceeds.
2. The above articles shall be transferred also in cases when the extradition cannot be effected if the person died, fled or due to other reasons.
3. The Requested Party may temporarily postpone the transfer of the articles referred to in paragraph 1 of this Article if they are required for proceedings instituted in connection with another criminal case till the end of such proceedings.
4. The rights of third persons to the articles transferred to the Requesting Party shall remain in force. Upon termination of the proceedings the Requesting Party shall return these articles to their owners in its territory. If the owners are in the territory of the Requested Party the articles are to be returned to it for the transfer to them. If the owners are in the territory of a third country the articles shall be returned to them by the Requesting Party without charge.
5. The transfer of the articles and of money shall be effected within the limits provided for by the legislation of the Requested Party

Article 17

Mutual legal assistance in extradition

Each Contracting Party shall, to the extent permitted by its law, afford the other the widest possible measure of mutual legal assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 18

Expenses on extradition

All expenses related to the extradition shall be borne by the Contracting Party in whose territory the same occurred. The expenses caused by transit transportation of the extradited person by one of the Contracting Parties from a third State through the territory of the other Contracting Party shall be borne by the Contracting Party effecting the transit.

Article 19

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.

Article 20

International Conventions/Treaties

The present Treaty shall not affect the right and obligations of the Contracting Parties arising from other International Conventions/Treaties to which the Contracting Parties are signatories.

Article 21

Ratification and termination

1. This Treaty shall be subject to ratification and it shall enter into force on the date of exchange of the instruments of ratification.
2. Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorised thereto by their respective Authorities, have signed this Treaty.

Done in duplicate at New Delhi this 21st December, 1998 in Hindi, Russian and English languages, each version being equally authentic. In case of any interpretational difference, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 12 of the Extradition Act, 1962 (34 of 1962), and in suppression of the notification of the Government of India, If any existing relating to extradition treaty or arrangement applicable in respect of the Russian Federation, the Central Government hereby directs that the provisions of the said Act, other than Chapter II, shall apply to the Russian Federation with effect from the date of the publication of this notification.

[No. T. 413/45/90]

S. R. TAYAL, Jt. Secy. (CPV)

MINISTRY OF EXTERNAL AFFAIRS
ORDER

New Delhi, the 20th July, 2000

**Extradition Treaty between the Government of
Republic of India and the United Arab Emirates**

G.S.R. 653(E),— whereas the Extradition Treaty between the Government of the Republic of India and the United Arab Emirates was signed at New Delhi, India on 25th October, 1999; and the instruments of ratification exchanged at Abu Dhabi, the United Arab Emirates on 29th May, 2000 and which Treaty provides as follows:

ARTICLE 1

The Contracting States shall extradite any person found in their respective territories who is accused or convicted of an extraditable offence in the territory of the other contracting State, in accordance with the rules and stipulations contained in the subsequent Articles, whether such offence was committed before or after the entry into force of this Treaty.

ARTICLE 2

The following persons shall be extradited:

- a) Persons accused of an offence punishable under the laws of both the contracting States by imprisonment for a period of at least one year or more.
- b) Persons sentenced by the Courts of the requesting State with imprisonment for at least six months in respect of an extraditable offence.

ARTICLE 3

1. For offences in connection with taxes, fiscal charges and customs duties extradition shall be effected in accordance with the provisions of this Treaty only if the said offence corresponds to an offence of a similar nature under the law of the requested State.
2. An attempt or conspiracy to commit or incite or participate in the commission of an extraditable offence shall also be regarded as an extraditable offence.

ARTICLE 4

1. Extradition shall be granted in respect of an extraditable offence committed outside its territory but within the jurisdiction as asserted by the requesting State if the requested State would, in corresponding circumstances, have jurisdiction over such an offence. In such cases, the requested State shall have regard to all the circumstances of the case including the seriousness of the offence.

2. Extradition shall be available for an extraditable offence if committed in a third State by a national of the requesting State who is present in the requested State and provided that it would be an extraditable offence under the laws of the requested State had the offence been committed in the requested State.
3. Extradition shall also be available for an extraditable offence notwithstanding the conduct of the person sought occurred wholly or partly in the requested State, if under the law of that State his conduct and its effects or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable offence in the territory of the requesting State.

ARTICLE 5

The nationals of the Contracting States shall not be extradited to the other Contracting State provided that the requested State shall submit the case to its competent authorities for prosecution if the act committed is considered as an offence under the laws of both Contracting States.

ARTICLE 6

Extradition may be refused:

1. If the offence for which the extradition is requested is a political offence In the application of this Treaty, the following shall not be regarded as political offences:
 - a) Assault against the President or the Vice President of either Contracting State, or any member of their families, or the members of the Supreme Council of the United Arab Emirates, or any of their families and the members of the Council of Ministers of the two countries or any member of their families;
 - b) Murder, culpable homicide not amounting to murder or robbery;
 - c) Offences relating to terrorism, including murder, culpable homicide not amounting to murder, assault causing bodily harm, kidnapping, hostage-taking, offences involving serious damage to property or disruption of public facilities, and offences relating to firearms or other weapons, or explosives, or dangerous substances;
 - d) Any offence within the scope of an international Convention to which both Contracting States are parties and which obligates the parties to prosecute or grant extradition;
 - e) An attempt or conspiracy to commit or incite or participate in the commission of any of the above offences.
2. Extradition may also be refused:
 - a) if the persons sought to be extradited was previously tried for the same offence for which extradition is requested and was acquitted or was convicted and had completed the sentence or is undergoing it;
 - b) if the criminal proceedings had expired or the sentence lapsed by time, in pursuance of the law of the requesting State, when the request for extradition was received;

- c) if the offence was committed outside the territory of the requesting State, by an alien, and if it is not an offence under the law of the requested State;
- d) if the offence for which extradition is requested was committed in the requested State, provided the requested State prosecutes the person;
- e) if a person whose extradition is sought is being investigated or tried in the requested State- for the same offence for which his extradition is requested.

ARTICLE 7

Where the requested State refuses a request for extradition for the reasons set out under this Treaty it shall submit the case to its competent authorities for prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a similar nature under the law of that State.

ARTICLE 8

The request for extradition shall be made in writing and despatched through the diplomatic channels with the undermentioned documents and particulars appended;

- a) If the request relates to a person already convicted and sentenced, an official copy of the sentence passed against the person to be extradited;
- b) The warrant of arrest, or remand or any document having the same effect, by a competent authority, if the person to be extradited is under investigation;
- c) Particulars as to identity, description and a photograph of the person to be extradited, if possible;
- d) The date, the place of the commission of the acts for which extradition is requested, the legal characterisation of those offences, and a certified copy of the applicable legal provisions, and a statement by the prosecuting authorities as to evidence against the person to be extradited;
- e) in case of persons not yet sentenced, such other evidence, as according to the laws of the requested State, would justify his arrest and committal for trial had the offence been committed within the jurisdiction of the requested State;

All documents referred to above shall be translated into English and authenticated by the requesting State.

ARTICLE 9

1. In case of urgency, a person to be extradited may be provisionally arrested and remanded in custody until the request for extradition, together with the documents referred to in the preceding Article are received.
2. The request for provisional arrest and remand shall be communicated in writing to the competent authority of the requested State, either directly or through the international Criminal Police Organisation (INTERPOL) channels.

3. The same request shall be confirmed through the diplomatic channels, and shall contain a reference to the existence of any of the documents, enumerated in the preceding Article, and intimating the intention of the requesting State to transmit a request for extradition, a statement of the offence for which extradition is requested, the sentence specified for that offence or the sentence imposed, the time and place of the commission of the offence and a detailed description of the person to be extradited, as far as possible. The requesting State shall forthwith be notified of any action taken in respect of the request.
4. The provisional arrest and remand shall be made in accordance with the legal procedures of the requested State.

ARTICLE 10

1. The competent authority in the requested State may, if the documents required under this Treaty are not delivered within forty five days from the date of the arrest of the person to be extradited, release that person.
2. The period of the provisional detention shall not, in any case, exceed sixty days from the date of its commencement.
3. The person to be extradited, may at any time be released on bail, if the requested State takes all necessary measures to prevent his escape. The release, of such person shall not prevent his re-arrest and extradition, if the request for extradition is completed afterwards.

ARTICLE 11

If the requested State needs additional clarifications to ensure the compliance with the conditions embodied in this Treaty it shall notify the requesting State through diplomatic channels, before rejecting the request, and may fix a date for receiving such clarifications.

ARTICLE 12

If numerous requests from Contracting States for extradition are made for the same offence, priority shall be given to the State whose security or interest or its nationals or their interests are affected by the offence, and then to the State on whose territory the offence is committed, and lastly to the State of which the person to be extradited is a national.

If the circumstances are identical then the State which made the first request shall have preference. If the requests for extradition are for several offences, then preponderance is accorded to the circumstances of the offence and its gravity.

ARTICLE 13

Without prejudice, to the right of others acting in good faith, and to the laws in force in the requested State everything found in possession of the person to be extradited, at the time of his arrest or remand or at a later stage, whether being the proceeds of the offence or used in the commission of, or connected with it, or relevant as evidence, shall be attached and may be handed over to the requesting State, even if the offender is not extradited due to his death or his absconding.

ARTICLE 14

1. The competent authorities in each Contracting State shall determine the request for extradition in accordance with the law in force at the time of the request.
2. In the event of accepting the extradition request, the requesting State shall be notified of the date and place of the extradition.
3. In case the request is rejected, the requested State shall communicate to the requesting State, through diplomatic channels, the decision taken giving reasons.
4. The requesting State shall, within thirty days from the date of its notification of the extradition, receive the person to be extradited, otherwise the requested State may discharge him, and in such event no second request for extradition may be accepted for the same offence.
5. If exceptional circumstances prevent a Contracting State from surrendering or taking delivery of the person sought in good time, it shall notify the other Contracting State prior to the expiration of the time limit. In such a case, the competent authorities of the Contracting States may agree upon a new date for the surrender.

ARTICLE 15

1. If the person to be extradited is under investigation or standing trial or is convicted in the requested State for an offence other than that for which his extradition is requested, then the requested State shall decide on the request and communicate the decision made, to the requesting State.
2. If the request for extradition is accepted, then the surrender of the person concerned, shall be postponed until his trial in the requested State is completed and the punishment passed is executed.
3. The provisions of this Article shall not preclude the possibility of the provisional surrender of the person concerned to appear before the judicial authorities of the requesting State, provided that the requesting State expressly undertakes to return him to the other contracting State, after the completion of the judicial proceedings pertaining thereto, subject to the law of the requested State.

ARTICLE 16

1. The competent authorities of the requested State shall admit as evidence, in any proceedings for extradition, any statement taken on oath or by way of affirmation, any warrant or any certificate or judicial document stating the fact of conviction, if it is authenticated :
 - a) In the case of a warrant being signed, or in the case of any original document being certified by a judge, magistrate or other competent authority of the requesting State; and
 - b) In the case of depositions or statements either by oath of some witness or by being sealed with the official seal of the appropriate authority of the requesting State; or
 - c) In such other manner as may be permitted by the law of the requested State.
2. The evidence described in paragraph (1) shall be admissible in extradition proceedings in the requested State whether sworn or affirmed in the requesting State or in some third State.

ARTICLE 17

1. The person to be extradited shall not be tried or punished in the requesting State except for the offence for which his extradition is sought or for offences connected therewith, or offences committed after his extradition, if the characterisation of the offence is modified during the proceedings taken against the person extradited, he shall not be charged or tried, unless the ingredients of the offence in its new characterisation, permit extradition in conformity with the provisions of this Agreement.
2. If the person extradited had the liberty and means to leave the territory of the State to which he was extradited, and he did not leave within thirty days subsequent to his final release or left during that period, but voluntarily returned, he may be tried for the other offences.

ARTICLE 18

1. The Contracting State to which the person is extradited shall not extradite him to a third State, without the consent of the other Contracting State.
2. The person may be extradited to a third State if the conditions under Article 17 (2) exist.

ARTICLE 19

The term of provisional remand shall be remitted from any sentence passed in the requesting State against the person to be extradited.

ARTICLE 20

1. Transit of a person who is the subject of extradition from a third State through the territory of a Contracting State to the territory of the other Contracting State shall be granted on submission of a request, provided that the offence concerned is an extraditable offence under Article 2, and that the Contracting State requested to grant transit does not consider the offence to be one covered by Article 3 or 4.
2. Transit of a national of the requested State may be refused if, in the opinion of that State, it is inadmissible under its law.
3. The request for transit must be accompanied by documents as mentioned in this Treaty.
4. The documents mentioned in para 3 above, shall be delivered to the Requested State within forty five days.

ARTICLE 21

1. Each Contracting State shall reciprocally bear all the expenses necessitated by the extradition of the person concerned, except transportation expenses which shall be borne by the requesting State.
2. The requesting State shall pay the expenses of the return of the extradition person to the place, he was in at the time of his extradition if his commission of the offence or complicity is not proved.

ARTICLE 22

Each Contracting State shall in accordance with national laws and bilateral agreements afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

ARTICLE 23

This Treaty shall be ratified in accordance with the constitutional procedures in force in each of the Contracting States.

ARTICLE 24

Either of the contracting Parties may terminate this Agreement by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the agreement shall cease to have any force or effect.

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

Done at New Delhi on this the Twenty-Fifth day of October month of One Thousand and Nine Hundred Ninety Nine in two originals each in the Hindi, Arabic and English languages, all the texts being equally authentic. In the event of any differences the English text shall prevail.

Now, therefore, in exercise of the powers conferred by Sub- Section (1) of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to United Arab Emirates with effect from the date of the publication of this notification.

[No. T. 413/3/96]

S.R. TAYAL. Jt. Secy. (CPV)

MINISTRY OF EXTERNAL AFFAIRS
ORDER

New Delhi, the 19th August. 2004

**Extradition Treaty between the Government of the Republic of India and the
Government of the Republic of Tunisia**

G.S.R. 534(E).—Whereas the Extradition between the Government of the Republic of India and the Government of the Republic of Tunisia was signed at Tunis, Tunisia on 4th April, 2000; and the instruments of ratification exchanged at New Delhi on 28th July, 2004 and which Treaty provides as follows :

The Government of the Republic of India and the Government of the Republic of Tunisia

Desiring to make more effective the cooperation of the two countries in the suppression of crime and, specifically, to regulate and promote the relations between them in matters of extradition;

Recognising that concrete steps are necessary to combat terrorism;

Have agreed as follows :

Article 1

Obligation to Extradite

- (1) Each Contracting State undertakes to extradite to the other, in circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one State, is found within the territory of the other State, whether such offence was committed before or after the entry into force of this Treaty.
- (2) If the Requesting State asserts jurisdiction in respect of an offence committed outside its territory the Requested State shall grant extradition where in a similar case it would have jurisdiction.
- (3) Extradition shall be granted if the offence is committed in a third State by a national of the Requesting State.
- (4) Extradition shall also be granted for an extradition Offence, if occurred in the Requested State provided it is an offence under the law of that State punishable with imprisonment for a term of at least one year.

Article 2

Extraditable Offences

- (1) An offence shall be an extraditable offence only if it is punishable under the laws of both Contracting States by imprisonment for a period of at least one year.

- (2) If request for extradition relates to a person wanted for enforcement of a sentence, extradition shall be granted only if a period of at least six months remains to be served.
- (3) In determining whether an offence is punishable under the laws of both Contracting States, it shall not matter whether:
 - a —The laws of both States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - b —Under the laws of the States, the constituent elements of the offence differ; it is the totality of the acts or omissions that shall be taken into account.
- (4)
 - a —An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.
 - b —Where extradition is sought for an offence against a law relating to taxation, customs, duties or other revenue matters, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty.
- (5) If the request for extradition includes several separate offences each of which is punishable under the laws of both States, but some of which do not fulfil other conditions set out in paragraphs 1 and 2 of this article, the Requested State may grant extradition for the latter offences provided the person is to be extradited for at least one extraditable offence.
- (6) An offence shall also be an extraditable offence if it consists of an attempt or a conspiracy to commit, aiding or abetting, counselling or procuring the commission of, or being an accessory before or after the fact, to any offence described in paragraph 1 of this article.

Article 3

Extradition of Nationals

Neither of the Contracting States shall be bound to extradite the claimed person if that person is its own national at the time of the commission of the offence.

Article 4

The political offence exception

- (1) Extradition shall not be granted if the offence in respect of which it is Requested is considered by the Requested State as a political offence.
- (2) The following offences shall not be regarded as offences of a political character:
 - (A) Offences within the scope of International Conventions and Treaties to which both the Contracting states are parties;
 - (B) The taking or attempted taking of the life of a Head of State or members of his family or of a member of the Council of Ministers of either Contracting State;

(C) Crimes affecting human life, body, person and. property notably :

- a—murder;
- b—manslaughter or culpable homicide;
- c—assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
- d—the causing of an explosion likely to endanger life or cause serious damage to property;
- e—the making or possession of an explosive substance by a person, who intends either himself or through another person, to endanger life or cause serious damage to property;
- f—the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
- g— the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
- h—damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
- i—kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
- j—incitement to murder;
- k—any other offence related to terrorism which at the time of the request is, under the law of the Requested Party, not to be regarded as an offence of a political character.

Article 5

Extradition and prosecution

If a request for extradition is refused only on one of the grounds mentioned in Article 3 and Article 6 (a, b), the Requested State shall, if asked to do so by the Requesting State, take all possible measures in accordance with its own law to prosecute the person claimed. For this purpose, the files, documents and exhibits relating to the offence shall be transmitted to that State. The Requesting State shall be informed of the result of the prosecution.

Article 6

Grounds for refusal of extradition

Extradition shall not be granted in any of the following circumstances:

- a—When there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for, the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinions or that the person's position may be prejudiced for any of these reasons;

- b— If the Requested State asserts jurisdiction in respect of the offence for which extradition is requested;
- c—If, according to the Law of the Requesting State, that State has no jurisdiction in respect of the offence for which extradition is requested;
- d—If, according to the law of either State, the person claimed has become immune by reason of lapse of time from prosecution or punishment;
- e—If an amnesty has been granted in either State before the extradition request has been made in respect of the offence or offences for which the extradition is sought;
- f—If the person claimed, has already been tried and finally acquitted or convicted in respect of the offence or offences for which extradition is sought;
- g—If the person claimed is the subject of proceedings in the Requested State in respect of the offence for which extradition is Requested;
- h—If extradition would be incompatible with humanitarian considerations in view of age or health;
- i— when the offence for which extradition is requested is a military offence, which is riot also an offence under the ordinary criminal law of the Contracting States.

Article 7

Rule of speciality

- (1) A person extradited under this Treaty shall not be proceeded against, sentenced, detained, or subjected to any other restriction of personal liberty in the territory of the Requesting State for any offence committed before surrender other than;
 - a— an offence for which extradition was granted;
 - b—Any other offence in respect of which the Requested State consents.
 - c—Any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made.
- (2) A request for the consent of the Requested State under this Article shall be accompanied by the documents mentioned in paragraph 3 or 4 of Article 11 and a legal record of any statement made by the extradited person with respect to the offence.
- (3) Paragraph 1 of this Article shall not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the Requesting State after leaving it.

Article 8

Re-extradition

- (1) The Contracting State to which a person has been extradited under this treaty shall not re-extradite him to a third State without the consent of the Contracting State that extradited him.
- (2) The request for consent to re-extradition shall be accompanied by original or certified copied of the extradition documents of the third State.
- (3) Such consent is not required under the conditions set out in paragraph 3 of Article 7.

Article 9

Concurrent requests

- (1) If requests are received from the Requesting State and from one or more other States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting State of its decision.
- (2) In determining to which State a person is to be extradited, the Requested State shall have regard to all the circumstances and, in particular to :
 - a— If the requests relate to different offences the relative seriousness of the offences;
 - b— The time and place of commission of each offence;
 - c—the respective dates of the requests;
 - d—the nationality of the person.

Article 10

Notification of decision

- (1) The Requested State shall inform as soon as possible the Requesting State through the diplomatic channels of its decision with regard to the request for extradition.
- (2) Reasons shall be given for any complete or partial rejection.

Article 11

Channel of communication and required documents

- (1) The request for extradition shall be made in writing and transmitted through the diplomatic channel.
- (2) The request shall be accompanied in all cases by:
 - a— as accurate a description as possible of the person sought, and any other information which will help to establish that person's identity, nationality, and location;
 - b—a Statement of the pertinent facts of the case including the date and place of commission of the offence;

c—the legal description of the offence and a statement of the maximum penalties therefor and the text of all provisions of the law of the Requesting State applicable to the offence

(3) If the request relates to a person charged with an offence, it must also be accompanied by :

a— the original or a certified copy of the warrant for arrest or the equivalent order issued by a competent authority of the Requesting State for producing that person before the court;

b—such evidence as, according to the law of the Requested State, would justify the arrest and the committal for trial of the claimed person if the offence had been committed in the territory of the Requested State.

(4) When the request relates to a convicted person, it shall also be supported :

a— by the original or a certified copy of the judgment of conviction; and

b—if a sentence has been imposed, by the original or a certified copy of the sentence and a statement of the extent to which it has been carried out and that it is immediately enforceable.

Article 12

Form of evidence

(1) A document that, in accordance with Article 11, accompanies a request for extradition shall be admitted in evidence in any extradition proceedings, if duly authenticated, in the territory of the Requesting State.

(2) A document is duly authenticated for the purposes of this Treaty if :

a—in the case of a warrant: it is signed, and in any other case its authenticity is certified, by a Judge, Magistrate or other competent authority in the Requesting State; and

b—it is sealed with the official seal of an appropriate Minister of the Requesting State.

(3) The evidence mentioned in paragraph 1 shall be admissible in extradition proceedings in the Requested State if it is established in accordance with the law of the Requesting State or any third State.

Article 13

Additional information

If the Requested State considers that the evidence or information provided in a request of extradition is not sufficient to enable it to decide on the request, additional evidence or information shall be submitted to it within such reasonable time as the Requested State shall specify.

Article 14

Waiver of extradition proceedings

If the person claimed consents to surrender to the Requesting State, the Requested State may subject to its laws, surrender the person as expeditiously as possible without further proceedings.

Article 15

Mutual legal assistance in extradition

Each Contracting State shall, to the extent permitted by its law afford the other widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 16

Surrender of the person

- (1) If extradition is granted, the Contracting States will decide the place and date of surrender and the Requesting state shall be informed of length of time for which the person claimed was detained with a view to surrender.
- (2) Subject to the provisions of paragraph 3 of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 40 days and the Requested State may refuse to extradite him for the same offence.
- (3) If circumstances beyond its control prevent a Contracting State from surrendering or taking over the person to be extradited within the time stipulated in paragraph 2, it shall notify the other Contracting State. The two States shall agree on a new date for surrender and the provisions of paragraph 2 of this Article shall apply.

Article 17

Postponement of surrender

The Requested State may postpone the surrender of a person claimed if that person is being proceeded against, or is serving a sentence imposed for an offence other than that for which extradition is sought and shall so inform the Requesting State.

Article 18

Surrender of property

- (1) If extradition is granted, all articles including property of any kind and money found in the possession of the person claimed that may be required as evidence or that have been acquired as a result of the offence shall, to the extent permitted by the law of the Requested State, be surrendered by the Requested State.
- (2) The property mentioned in paragraph 1 of this Article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
- (3) When the said property is liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it be returned.

- (4) Any right which the Requested State or any other State or party may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State as soon as possible after the trial.

Article 19

Provisional arrest

- (1) In case of urgency, a Contracting State may request the provisional arrest of a person sought.
- (2) The request for provisional arrest shall be made through the diplomatic channel or through INTERPOL. The request may be transmitted by post or telegraph or by any other means affording evidence in writing.
- (3) The request shall contain :
 - a—A description of the person sought;
 - b—A statement of the nature of the offence and of the time at which and the place where it is alleged to have been committed;
 - c—A statement of the existence of one of the documents referred to in paragraph 3 (a) or 4 of Article 11; and
 - d—A statement that it is intended to send a request for extradition.
- (4) On receipt of such a request, the Requested State shall take the appropriate steps to secure the arrest of the person claimed. The Requesting State shall be promptly notified of the result of its request.
- (5) The person arrested shall be set at liberty upon the expiration of 60 days from the date of his arrest if a request for his extradition supported by the relevant documents shall not have been received.
- (6) This provision shall not prevent re-arrest and institution of the extradition proceedings if the request is subsequently received.

Article 20

Transit

- (1) Where a person is to be extradited to a Contracting State from a third State through the territory of the other Contracting State, the State to which the person is to be extradited shall request the other State to permit transit through its territory.
- (2) The request of transit shall be transmitted through diplomatic channels and be accompanied by the documents mentioned in paragraph 3 (a) or 4 of Article 11 and the description of the person being transported and a brief statement of the facts of the case.
- (3) The Requested State shall grant such a request expeditiously unless its sovereignty, security or public order would be prejudiced thereby.
- (4) The State of transit shall ensure legal provisions enabling the person to be held in custody during transit,

- (5) If an air transportation, that doesn't plan a landing in the territory of the Requested State, is going to be used, it's not necessary to send a request of transit.
- (6) Nevertheless, in that case, a notice shall be given to the State the territory of which will be flown over, about the existence of the documents mentioned in the paragraph 2 of this Article. This notice will have the effect of a request of provisional arrest in the event of an unscheduled landing pending receipt of the transit request.

Article 21

Language

Documents submitted under this Treaty shall be accompanied by a translation in English

Article 22

Expenses

Expenses incurred in the territory of the Requested State shall be borne by that State. However, the Requesting State shall bear the Expenses incurred in respect of conveying the person claimed to the Requesting State and any expenses incurred in respect of transit.

Article 23

Obligation under International Conventions and Treaties

The present Treaty shall not affect the rights and the obligations of the Contracting States, arising from International Conventions and Treaties to which they are parties.

Article 24

Applicable Laws

Except where this Treaty otherwise provides, proceedings with regard to provisional arrest, extradition and transit shall be governed by the law of the Requested State and the International Conventions and Treaties to which both Contracting States are parties.

Article 25

Ratification, Entry into Force and Termination

- (1) This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification.
- (2) Either Contracting State may terminate this Treaty at any time by giving notice in writing to the other State through the diplomatic channel, and the termination shall become effective six months after the receipt of the notice.

In witness whereof the undersigned being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Tunis this fourth day of April, 2000 in Hindi, Arabic and English languages. In case of any interpretational difference, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government directs that the provisions of the said Act, other than Chapter III, shall apply to the Republic of Tunisia with effect from the date of publication of this notification.

[F. No. T-413/83/96-97]

DR. A.K. AMROHI, Jt. Secy. (CPV)

MINISTRY OF EXTERNAL AFFAIRS ORDER

New Delhi, the 15th July, 2002

**Extradition Treaty between the Government of the Republic of
India and the Republic of Uzbekistan**

G.S.R. 505(E).—Whereas the Extradition Treaty between the Government of the Republic of India and the Republic of Uzbekistan was signed at New Delhi, India on 2nd May, 2000 and in pursuance of Article 23(1) of the Treaty instruments of ratification were exchanged at Tashkent, Uzbekistan on 22nd May, 2002 and which Treaty provides as follows :—

Article 1

Obligation to extradite

1. Each Contracting Party undertakes to extradite to the other Contracting Party in the circumstances and subject to the conditions specified in this Treaty, a person who, being accused or convicted of an extradition offence as described in Article 2 of this Treaty, committed within the territory of the Requesting Party, is found within the territory of the Requested Party, whether such offence was committed before or after the entry into force of this Treaty.
2. Extradition shall also be available in respect of an extradition offence, as described in Article 2 of this Treaty, committed outside the territory of the Requesting Party but in respect of which it has jurisdiction, if the Requested Party would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested Party shall have regard to all the circumstances of the case including the seriousness of the offence.
3. Extradition shall also be available for an extradition offence, as described in Article 2 of this Treaty, if it is committed in a third State by a citizen of the Requesting Party and the Requesting Party bases its jurisdiction on the citizenship of the offender, or if it occurred in the territory of the Requested Party and is an extradition offence under the law of that Party.

Article 2

Extradition offences

1. An extradition offence, for the purpose of this Treaty, is constituted by conduct which under the laws of each Contracting Party is punishable by a term of imprisonment for a period of at least one year.
2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

Article 3

Composite offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested Party, if this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence under the laws of both the Contracting Parties.

Article 4

Offences of conspiracy, incitement and attempt, and extra-territorial jurisdiction

1. It shall be an offence under the laws of both the Contracting Parties for any person to abet, conspire or attempt to commit, or incite or participate as an accomplice in the commission of, any extradition offence.
2. It shall also be an offence under the laws of both the Contracting Parties, for any citizen of a Contracting Party to commit any offence in any place beyond its territory.

Article 5

Grounds for refusal of extradition

1. A person may not be extradited if;
 - 1.1. he is a citizen of the Requested Party at the time of the commission of the offence; or
 - 1.2. he satisfies the Requested Party that he might if extradited, be prejudiced at his trial or be punished, by reason of his race, religion, nationality or political opinions; or
 - 1.3. he satisfies the Requested Party that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reasons of:
 - 1.3.1. the expiry of the limitation-period for initiating the criminal proceedings under the legislation of the Requested Party or for execution of a sentence, or on other legal grounds;
 - 1.3.2. the accusation against him having not been made in the interests of justice; or
 - 1.4. the extradition is not permitted according to the laws of the Requested Party;
 - 1.5. the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.
2. A person shall also not be extradited if in respect of the offence for which his extradition is requested, he has been previously proceeded against in the Requested Party and convicted or acquitted.
3. The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for the extradition offence in the courts of that Party.
4. A person who has been convicted of an extradition offence may not be extradited thereof unless he was sentenced to imprisonment or other form of detention for a period of at least six months.

Article 6

The political offence exception

1. Extradition may be refused if the offence of which it is requested is an offence of a political character.
2. For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:
 - (a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December, 1970;
 - (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971;
 - (c) an offence within the scope of the Convention of the Prevention and Punishment of Crimes against internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December 1973;
 - (d) an offence within the scope of the International Convention against the Taking Of Hostages, opened for signature at New York on 17 December 1979;
 - (e) murder;
 - (f) manslaughter or culpable homicide;
 - (g) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
 - (h) the causing of an explosion likely to endanger life or cause serious damage to property;
 - (i) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
 - (j) the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
 - (k) the use of a firearm by a person with intent to resist or prevent the arrest, or detention of himself or another person;
 - (l) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
 - (m) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
 - (n) incitement to murder;
 - (o) any other offence related to terrorism which at the time of the request is, under the law of the Requested Party, not to be regarded as an offence of a political character; and
 - (p) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 7

Obligation to prosecute

1. Where the Requested Party refuses a request for extradition for the reason set out in paragraphs 1.1 and 3 of Article 5 of this Treaty, it shall accept and submit, the case to its competent authorities for prosecution.
2. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 8

Postponement of extradition and temporary extradition

1. If the person to be extradited is being prosecuted or serving sentence for another crime in the territory of the Requested Party, the extradition may be postponed till the end of the proceedings of the case, end of sentence or release, which shall be advised to the Requesting Party.
2. If the postponement of extradition can cause the expiration of the limitation or impede the investigation, the person can be extradited temporarily under a special request of the Requesting Party.
3. The temporarily extradited person must be returned to the Requested Party immediately after the end of the proceedings of the case.

Article 9

Extradition procedures

1. The request of extradition shall be made through diplomatic channels.
2. The request shall be accompanied by:
 - 2.1. the name and surname (petronym) of the person whose extradition is requested, information on his citizenship, place of residence or whereabouts and other relevant data, as well as, if possible, the description of the person's appearance, his photographs and fingerprints;
 - 2.2. a statement of the facts of the offence for which extradition is requested; and
 - 2.3. the text, of the corresponding law;
 - 2.3.1. defining that offence; and
 - 2.3.2. prescribing the punishment for that offence.
3. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the warrant of arrest issued by a court or a competent authority of the Requesting Party on the subject matter.
4. If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certified copy of the judgement and a statement that the person is no longer entitled to question the conviction or sentence and showing how much of sentence has not been carried out.

5. If the Requested Party considers that the information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional information shall be submitted within a reasonable time.

Article 10

Provisional arrest

1. In urgent cases a person may be provisionally arrested by the Requested Party, in accordance with its law, on the request of the competent authorities of the Requesting Party, made either through Diplomatic Channels or the National Central Bureau of International Criminal Police Organization -INTERPOL, before the receiving of the request for extradition. The request shall contain an indication of intention to request the extradition of that person and a statement of existence of a warrant of arrest and, if the person sought is already convicted, the conviction order against him; and, if available, the data specified in paragraphs 2.1 and 2.3 of Article 9 of this Treaty and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person been convicted, in the territory of the Requested Party.
2. A person arrested upon such a request shall be set at liberty upon the expiration of 60 days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request for extradition is subsequently received.

Article 11

Rule of speciality

1. The extradited person may not, without prior consent of the Requested Party, be prosecuted or punished by the Requesting Party for the offence other than that for which extradition has been granted and any lesser offence disclosed by the facts proved for the purposes of securing his extradition, nor may such a person, without prior consent of the Requested Party, be extradited to a third State.
2. The consent of the Requested Party is not required if:
 - 2.1 the extradited person has not left, though had the opportunity to leave, the territory of the Requesting Party within 30 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the Requesting Party, for reasons beyond his control; and
 - 2.2 if, the extradited person, once having left the territory of the Requesting Party, voluntarily returns there.
3. The provisions of paragraph 1 of this Article shall not apply to offences committed after the return of person to the Requesting Party or matters arising in relation to such offences.

Article 12

Recognition of documents and evidence

1. Documents issued or certified and statements recorded by competent courts or other authorities in the prescribed form in the territory of one Contracting Party as per its laws shall not require any form of authentication in the territory of the other Contracting Party.
2. Documents considered as public in the territory of one of the Contracting Parties shall have the evidential force of public documents also in the territory of the other Contracting Party.

Article 13

Competing requests

1. If numerous requests from Contracting Parties for extradition are made for the same offence, priority shall be given to the Party whose security or interest or its nationals or their interests are affected by the offence, and then to the Party on whose territory the offence is committed, and lastly to the Party of which the person to be extradited is a national.
2. If the circumstances are identical then the Contracting Party which made the first request shall have preference. If the requests for extradition are for several offences, then preponderance is accorded to the circumstances of the offence and its gravity.

Article 14

Capital punishment

If under the law of the Requesting Party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested Party does not provide for the death penalty for the same offence, extradition may be refused, unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be carried out.

Article 15

Surrender of the person

1. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought and the Requested Party shall inform the Requesting Party of the length of time for which the person sought was detained with a view to surrender.
2. The person shall be removed from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if the person is not removed within that period, the Requested Party may release the person and may refuse to extradite that person for the same offence.
3. If circumstances beyond its control prevent a party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of this article shall apply.

Article 16

Transit

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited shall request the other Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other Party is scheduled. A request for transit shall be made through the diplomatic channel.
2. Upon receipt of such a request, which shall contain relevant information, the Requested Party shall deal with this request pursuant to procedures provided by its own law. The Requested Party shall grant the request expeditiously unless its essential interests would be prejudiced thereby.
3. The State of transit shall ensure that legal provisions exist enabling the person to be held in custody during transit.
4. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for 48 hours, pending receipt of the transit request to be made in accordance with paragraph I of this article.

Article 17

Transfer of articles connected with crime

1. The Requested Party shall, within the limits of its legislation, transfer on the request of the Requesting Party the articles used for committing crime by the person being extradited, articles bearing crime traces or crime proceeds.
2. The above articles shall be transferred also in cases when the extradition cannot be effected if person died, fled or due to other reasons.
3. The Requested party may temporarily postpone the transfer of the articles referred to in paragraph 1 of this Article if they are required for proceedings instituted by that Party in connection with any other criminal case till the end of such proceedings.
4. The rights of third persons to the articles transferred to the Requesting Party, shall not be prejudiced against. Upon termination of the proceedings, the Requesting Party shall return these articles to their owners in its territory. If the owners are in the territory of the Requested Party the articles are to be returned to it for transfer to them. If the owners are in the territory of a third country the articles shall be returned to them by the Requesting Party without charge.
5. The transfer of the articles and of money shall be effected within the limits provided for by the legislation of the Requested Party.

Article 18

Mutual legal assistance in extradition

Each Contracting Party shall, to the extent permitted by its law, afford the other the widest possible measure of mutual legal assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 19

Expenses on extradition

All expenses related to the extradition shall be borne by the Contracting Party in whose territory the same occurred. The expenses caused by transit transportation of the extradited person by one of the Contracting Parties from a third Party through territory of the other Contracting Party shall be borne by the Contracting Party effecting the transit.

Article 20

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English languages.

Article 21

International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from other international Conventions/ Treaties to which the Contracting Parties are signatories.

Article 22

Consultations

The Contracting Parties shall consult promptly, at the request of either Contracting Party, concerning the interpretation and the application of this Treaty, either generally or in relation to a particular request.

Article 23

Ratification and termination

1. This Treaty shall be subject to ratification and it shall enter into force on the date of exchange of the instruments of ratification.
2. Either of the Contracting Party may terminate this Treaty at any time by giving notice to the other contracting Party through the diplomatic channel and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

Done at New Delhi on 2nd May, 2000, in two originals in Hindi, Uzbek and English languages, all texts being equally authentic. In case of divergence of interpretation of the provisions of this Treaty, the English text shall prevail.

Now therefore, in exercise of the powers conferred by Sub- Section (2) of Section 12 of the Extradition Act, 1962 (34 of 1862), the Central Government hereby directs that the provisions of the said Act, other than chapter II, shall apply to the Republic of Uzbekistan with effect from the date of the publication of this notification.

[F No T-413/60/99]

S R. TAYAL, Jt. Secy.- (CPV)

MINISTRY OF EXTERNAL AFFAIRS

ORDER

New Delhi, the 7th July, 2004

Extradition Treaty between the Republic of India and Mongolia

G.S.R 524(E). — Whereas the Extradition Treaty between the Government of the Republic of India and Mongolia was signed at New Delhi, India on 3rd January, 2001; and the instruments of ratification exchanged at New Delhi on 15th January, 2004 and which Treaty provides as follows:

The Republic of India and Mongolia, hereinafter referred to as the “Contracting Parties”.

Desiring to make more effective the cooperation of the two Parties in the suppression of crime by making further provision for the reciprocal extradition of offenders:

Recognising that concrete steps are necessary to combat terrorism;

Have agreed as follows :

Article 1

Obligation to extradite

1. Each Contracting Party undertakes to extradite to the other Contracting Party, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2 of this Treaty, committed within the territory of the Requesting Party, is found within the territory of the Requested Party, whether such offence was committed before or after the entry into force of this Treaty.
2. Extradition shall also be available in respect of an extradition offence as described in Article 2 of this Treaty committed outside the territory of the Requesting Party but in respect of which it has jurisdiction, if the Requested Party would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested Party shall have regard to all the circumstances of the case including the seriousness of the offence.
3. Extradition shall also be available for an extradition offence as described in Article 2 of this Treaty, if it is committed in a third State by a citizen of the Requesting Party and it bases its jurisdiction on the citizenship of the offender, subject to the provisions under Article 15 of this Treaty.

Article 2

Extradition offences

1. An extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting Party is punishable by a term of imprisonment for a period of at least one year.
2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

Article 3

Composite Offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested Party, if this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence under the laws of both the Contracting Parties.

Article 4

Offences of conspiracy, incitement and attempt, and extra-territorial jurisdiction

1. It shall be an offence under the laws of both the Contracting Parties for any person to abet, conspire or attempt to commit, or incite or participate as an accomplice in the commission of, any extradition offence.
2. It shall also be an offence under the laws of both the Contracting Parties, for any citizen of a Contracting Party to commit any offence in any place beyond its territory.

Article 5

Grounds for refusal of extradition

1. A person may not be extradited if:
 - 1.1 he is a citizen of the Requested Party; or
 - 1.2 he satisfies the Requested Party that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason of:
 - 1.2.1 the expiry of the limitation-period for initiating the criminal proceedings under the legislation of the Requested Party or for execution of a sentence, or on other legal grounds;
 - 1.2.2 the accusation against him having not been made in the interests of the justice; or
 - 1.3 the extradition is not permitted according to the laws of the Requested Party;
 - 1.4 the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.
2. A person shall also not be extradited if in respect of the offence for which his extradition is requested, he has been previously proceeded against in the Requested Party, and convicted or acquitted.
3. The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for the extradition offence in the courts of that Party.

Article 6

Procedure

The procedure with regard to Extradition and provisional arrest shall be governed by the laws of the Requested State.

Article 7

Obligation to Prosecute

1. Where the Requested Party refuses a request for extradition for the reason set out in paragraph 3 of Article 5 of this Treaty, it shall submit the case to its competent authorities for prosecution.
2. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 8

Consequences of non-extradition of own citizens

If according to paragraph 1.1 of Article 5 of this Treaty, extradition is refused, the Requested Party, shall initiate criminal prosecution against such person for the same offence according to its laws. For this the Requesting Party shall transfer to the Requested Party the relevant documents and evidence.

Article 9

Postponement of extradition and temporary extradition

1. If the person to be extradited is being prosecuted or serving sentence for another crime in the territory of the Requested Party, the extradition may be postponed till the end of the proceedings of the case, end of sentence or release, which shall be advised to the Requesting Party.
2. If the postponement of extradition can cause the expiration of the limitation or impede the investigation, the person can be extradited temporarily under a special request of the Requesting Party.
3. The temporarily extradited person must be returned to the Requested Party immediately after the end of the proceedings of the case.

Article 10

Extradition procedures

1. The request for extradition shall be made through diplomatic channels.
2. The request shall be accompanied by:
 - 2.1. the name and surname (petronym) of the person whose extradition is requested, information on his citizenship, place of residence or whereabouts and other pertaining data, as well as, if possible, the description of the person's appearance, his photographs and fingerprints;

- 2.2. a statement of the facts of the offence for which extradition is requested; and
- 2.3. the text of the corresponding law;
 - 2.3.1 defining that offence; and
 - 2.3.2 prescribing the punishment for that offence.
3. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the warrant of arrest issued by a competent court or authority of the Requesting Party.
4. If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certified copy of the judgement and a statement that the person is no longer entitled to question the conviction or sentence and showing how much of sentence has not been carried out;
5. If the Requested Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within a reasonable time.

Article 11

Provisional arrest

1. In urgent cases a person may be provisionally arrested by the Requested Party, in accordance with its law, on the request of the competent authorities of the Requesting Party, made either through Diplomatic Channels or the National Central Bureau of International Criminal Police Organization - INTERPOL, before the receiving of the request for extradition. The request shall contain an indication of intention to request the extradition of that person and a statement of existence of a warrant of arrest or a conviction against him; and, if available, the data specified in paragraphs 2.1 and 2.3 of Article 10 of this Treaty and such further information, if any, as would be necessary to justify the issue of a warrant or arrest had the offence been committed, or the person been convicted, in the territory of the Requested Party.
2. A person arrested upon such a request shall be set at liberty upon the expiration of 60 days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request for extradition is subsequently received.

Article 12

Rule of speciality

1. The extradited person may not without consent of the Requested Party, be prosecuted or punished in the Requesting Party for the offence other than that for which extradition has been granted and any lesser offence disclosed by the facts proved for the purposes of securing his extradition, nor may such a person, without consent of the Requested Party, be extradited to a third State.

2. The consent of the Requested Party is not required if;
 - 2.1 the extradited person has not left, though had the opportunity, the territory of the Requesting Party within 30 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the Requesting Party for reasons beyond his control;
 - 2.2 if the extradited person, once having left the territory of the Requesting Party, voluntarily returns there.
3. The provisions of paragraph 1 of this Article shall not apply to offences committed after the return of person to the Requesting Party or matters arising in relation to such offences.

Article 13

Recognition of documents and evidence

1. Documents issued or certified and statements recorded by competent Courts or other authorities in the prescribed form in the territory of one Contracting Party as per its laws shall not require any form of authentication in the territory of the other Contracting Party.
2. Documents considered as public in the territory of one of the Contracting Parties shall have the evidential force of public documents also in the territory of the other Contracting Party.

Article 14

Competing requests

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting Party and a third State with which the Requested Party has an extradition arrangement, the Requested Party shall determine the State to which the person shall be extradited, and shall not be obliged to give preference to the Contracting Party.

Article 15

Capital punishment

If under the law of the Requesting Party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested Party does not provide for the death penalty for the same offence, extradition may be refused, unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be carried out.

Article 16

Transfer

1. The modalities of transfer of the person to be extradited shall be agreed upon by the competent authorities of both the Contracting Parties as mutually convenient.
2. The Requesting Party shall take the person sought from the territory of the Requested Party within one month of the consent of Requested Party to extradite or such longer period as may be permitted under the law of the Requested Party. If the person is not removed within that period, the Requested Party may refuse to extradite him for the same offence.
3. The General Prosecutor's Office of Mongolia and the Ministry of External Affairs of India shall communicate through diplomatic channels with one another on the request of extradition and transit for offences.

Article 17

Transfer of articles connected with crime

1. The Requested Party, shall within the limits of its legislation, transfer by the request of the Requesting Party the articles used for committing crime by the person being extradited, articles bearing crime traces or crime proceeds.
2. The above article shall be transferred also in cases when the extradition cannot be effected if the person died, fled or due to other reasons.
3. The Requested Party may temporarily postpone the transfer of the article referred to in paragraph 1 of this Article if they are required for proceedings instituted in connection with another criminal case till the end of such proceedings.
4. The rights of third persons to the articles transferred to the Requesting Party shall remain in force. Upon termination of the proceedings the Requesting Party shall return these articles to their owners in its territory. If the owners are in the territory of the Requested Party the articles are to be returned to it for the transfer to them. If the owners are in the territory of a third country the articles shall be returned to them by the Requesting Party without charges.
5. The transfer of the articles and of money shall be effected within the limits provided for by the legislation of the Requested Party.

Article 18

Mutual legal assistance in extradition

Each Contracting Party shall, to the extent permitted by its law, afford the other the widest possible measure of mutual legal assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 19

Expenses on extradition

All expenses related to the extradition shall be borne by the Contracting Party in whose territory the same occurred. The expenses caused by transit transportation of the extradited person by one of the Contracting Parties from a third State through the territory of the other Contracting Party shall be borne by the Contracting Party effecting the transit.

Article 20

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.

Article 21

International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from other International Conventions/Treaties to which the Contracting Parties are signatories.

Article 22

Ratification and termination

1. This Treaty shall be subject to ratification and it shall enter into force on the 30 day after the exchange of the instruments of ratification.
2. This Treaty shall remain in force until either of the Contracting Parties terminates it by sending a note to that effect to the other Contracting Party and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorized thereto by their respective Authorities, have signed this Treaty.

Done in duplicate at New Delhi this 3rd day of January 2001 in Hindi, Mongolian and English languages, each version being equally authentic. In case of any interpretational difference, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 12 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter II, shall apply to Mongolia with effect from the date of the publication of this notification.

[F. No. T. 413/9/99]

Dr. A.K. AMROHI, Jt. Secy. (CPV)

MINISTRY OF EXTERNAL AFFAIRS

ORDER

New Delhi, the 28th May, 2004

**Treaty between the Republic of India and the Federal Republic of
Germany on Extradition**

G.S.R. 346(E).— Whereas the Treaty between the Republic of India and the Federal Republic of Germany on Extradition was signed at Berlin, Federal Republic of Germany on 27th June, 2001; and the instruments of ratification exchanged at New Delhi on 28th April, 2004 and which treaty provides as follows :

The Republic of India and the Federal Republic of Germany,
desiring to provide for more effective co-operation between the two States
in the suppression of crime and, specifically, to facilitate extradition,
have agreed as follows :

Article 1

Obligation to extradite

- (1) The Contracting States shall extradite to each other subject to the provisions Described in this Treaty any person found in the territory of one of the Contracting States who is wanted by a competent authority of the Requesting State for, or has been convicted of, an extraditable offence:
- (2) When the offence has been committed outside the territory of the Requesting State, the Requested State shall grant extradition subject to the provisions described in this Treaty if
 - a) its laws would provide for the punishment for such an offence committed in similar circumstances,
or
 - b) the person whose extradition is requested is a national of the Requesting State.

Article 2

Extraditable Offences

- (1) Extraditable offences under this Treaty are offences which are punishable under the laws of both Contracting States. In this connection it shall not matter whether or not the laws of the Contracting States place the offence within the same category of offences or denominate an offence by the same terminology.
- (2) For offences in connection with taxes, fiscal charges and customs duties, extradition shall be granted in accordance with the provisions of this Treaty only if the said offence corresponds to an offence of a similar nature under the law of the requested Contracting State.

- (3) Extradition shall be granted in respect of offences which, under the laws of both Contracting States, are punishable by a maximum term of imprisonment or other form of deprivation of liberty of at least one year. Where extradition is requested for the purpose of enforcing a term of imprisonment or another form of deprivation of liberty, the duration of the remainder of the prison sentence or other deprivation of liberty which is to be enforced must total at least six months.
- (4) Subject to the conditions set out in paragraph 1, extradition shall also be granted in respect of an attempt or conspiracy to commit, or aiding, abetting, inciting or participating as an accomplice in the commission of, an extraditable offence.
- (5) Where extradition is granted in respect of an extraditable offence, it shall also be granted in respect of any other extraditable offence which, taken alone, would not be extraditable in terms of paragraph 3.

Article 3

Political Offences

- (1) Extradition shall not be granted if the offence in respect of which it is requested is regarded by the Requested State as a political offence, an offence of a political character, or as an offence connected with such an offence.
- (2) Extradition shall also not be granted if the Requested State substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his or her race, religion, nationality or political opinion, or that the position of the person sought may be prejudiced for any of these reasons.
- (3) For the purpose of this Treaty the following offences shall not be deemed to be offences within the meaning of paragraph 1:
 - a) an offence within the scope of the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft;
 - b) an offence within the scope of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
 - c) an offence within the scope of the 1973 New York Convention on the Prevention and Punishment of Crimes against internationally Protected Persons, including Diplomatic Agents;
 - d) an offence within the scope of the 1979 New York Convention against the Taking of Hostages;
 - e) any other offence in respect of which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought, or to submit his or her case to their competent authorities for a decision as to prosecution;
 - f) murder, manslaughter or culpable homicide, maliciously wounding or inflicting grievous bodily harm;
 - g) kidnapping, abduction, or any comparable form of unlawful detention, including the taking of hostages;

- h) placing or using an explosive, detonating device, destructive device, firearm or ammunition, capable of endangering life, or of causing grievous bodily harm, or of causing substantial property damage;
- i) any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as a political offence;
- j) an attempt or conspiracy to commit, or aiding, abetting, inciting or participating in the commission of, any of the foregoing offences.

Article 4

Military Offences

Extradition shall not be granted if the offence in respect of which it is requested is a military offence which is not an offence under ordinary criminal law.

Article 5

Grounds for Discretionary Refusal

Extradition may be refused if the Requested State considers that, having regard to all the circumstances, including the trivial nature of the offence, or in the interest of justice, it would be unjust or inexpedient to extradite the person.

Article 6

Extradition of Own Nationals

- (1) Neither of the Contracting States shall be bound to extradite its own nationals.
- (2) The Requested State shall take all legally permissible measures in order to suspend naturalisation proceedings in respect of the person sought until a decision has been taken concerning the request for his or her extradition and, where the extradition request is granted, until his or her surrender.
- (3) If the Requested State does not extradite its own nationals, it shall, at the behest of the Requesting State, submit the case to its competent authorities so that criminal prosecution may be effected if considered appropriate. If the Requested State seeks additional files, papers and property, these shall be provided free of charge. The Requesting State shall be informed of the result of its request.

Article 7

Lapse of Time

Extradition shall not be granted if the criminal prosecution or the enforcement of the prison sentence or other form of deprivation of liberty has become statute-barred under the law of the Requesting State.

Article 8

Avoidance of Double Jeopardy

Extradition shall not be granted if the competent authorities of the Requested State have, with full and binding effect, previously tried and acquitted or convicted the person sought in relation to the criminal offence in respect of which extradition is requested, or if the criminal proceedings against him or her have been irreversibly discontinued by the competent authorities of the Requested State in accordance with its own law.

Article 9

Jurisdiction of the Requested State

Extradition may be refused if the person sought is proceeded against in the Requested State for the same offence in respect of which extradition is requested.

Article 10

Complaint and Authorisation

If a complaint by or on behalf of the victim of an offence or an authorisation to prosecute is required by the law of the Requested State, the absence of such a complaint or authorization shall not affect the obligation to extradite.

Article 11

Capital Punishment

When the offence in respect of which extradition is requested is punishable by death under the laws of the Requesting State and the laws of the Requested State do not permit such punishment for that offence, extradition may be refused unless the Requesting State furnishes such assurances as the Requested State considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be enforced.

Article 12

Channel of Communication: Extradition Documents

- (1) A request for the extradition of a person sought shall be made in writing and shall be transmitted through diplomatic channels.
- (2) The request shall be accompanied by:
 - a) all available information concerning the identity and nationality of the person sought; and
 - b) a copy of the applicable statutory provisions, if any, creating the offence, or a statement of the applicable law, and in either case a statement of the punishment that can be imposed.

- (3) A request for the extradition of a person sought for the purpose of prosecution shall be accompanied, in addition to the documents provided for in paragraph 2, by the original or a certified copy of the arrest warrant issued in respect of the person sought, a description of each offence in respect of which the person is being sought and, where such information is not contained in the other documentation, a statement of the acts or omissions alleged against the person sought in respect of each such offence,
- (4) A request for the extradition of a person sought, lodged for the purpose of enforcing a sentence, shall be accompanied, in addition to the documents provided for in paragraph 2, by the original or a certified copy of the enforceable judgment, a summary statement of the facts of the case, where such information is not contained in the other documentation, such documents as provide proof of the final and binding conviction and a statement that the sentence is immediately enforceable and of the extent to which that sentence has not been enforced.
- (5) The accompanying documents listed in paragraphs 2 to 4 shall be signed by a judge or a competent official and authenticated by the official seal of the competent ministry.
- (6) If the extradition of a person sought to the Requesting State is not obviously precluded by the laws of the Requested State, and provided that the person sought consents for the record before a judge or a competent official to this extradition after personally being advised of his or her rights to formal extradition proceedings, the Requested State may grant his or her extradition without formal extradition proceedings having taken place.

Article 13

Additional Documentation

- (1) If the Requested State considers that the documentation furnished in support of the request for the extradition of a person sought is not sufficient to fulfill (sic) the requirements of this Treaty, that State shall request the submission of necessary additional documentation; it may fix a time limit and upon the Requesting State's application, for which reasons shall be given, may grant a reasonable extension of the time limit.
- (2) If the person sought is being held in custody and the additional documentation or information submitted as aforesaid is not sufficient, or if it is not received within the period specified by the Requested State, the person sought shall be released from custody. However, such release shall not bar a subsequent request in respect of the same offence. In this connection, it shall be sufficient for reference to be made in the subsequent request to supporting documents which have already been submitted, provided that these documents will be available in the extradition proceedings carried out on the basis of this subsequent request.

Article 14

Provisional Detention While Awaiting Extradition

- (1) In urgent cases, either Contracting State may apply for the provisional arrest of the person sought until the request for extradition has been submitted to the Requested State through diplomatic channels. The request for provisional arrest may be made either through diplomatic channels or directly between the Federal Ministry of Justice of the Federal Republic of Germany and the Ministry of External Affairs of the Republic of India, or through the German and the Indian national Central Bureau of the International Criminal Police Organisation.
- (2) The request for provisional arrest shall state that a warrant of arrest or a judgment as mentioned in Article 12 exists, and that it is intended to make a request for extradition. It shall also state the offences in respect of which extradition will be requested, and when and where such offences were committed, as well as providing all available information concerning the description and nationality of the person sought.
- (3) On receipt of a request for provisional arrest, the Requested State shall take the necessary steps to secure the arrest of the person sought. The Requesting State shall be informed without delay of the extent to which its request has been complied with.
- (4) Provisional detention shall be terminated if, within a period of 60 days after the apprehension of the person sought, the Requested State has not received the request for extradition and the documents specified in Article 12.
- (5) The termination of the provisional detention pursuant to paragraph 4 shall not prejudice the rearrest and the extradition of the person sought if the request for extradition and the supporting documents specified in Article 12, insofar as they were not submitted in a timely manner, are received at a later date. Reference may be made to the request for extradition and the documents which have already been transmitted to the Requested State.

Article 15

Requests for Extradition Made by Several States

- (1) A Contracting State which has received concurrent requests for extradition of the same person, either in respect of the same offence or of different offences, from the other Contracting State and from a third State, shall make its decision having regard to all the circumstances, including the relative seriousness and the places of commission of the offence, the nationality of the person sought and the provisions of any extradition agreements between the Requested State and the Requesting States as well as, in particular, the possibility of subsequent re-extradition to another Requesting State.
- (2) If the Requested State reaches a decision, at the same time, on extradition to one of the Requesting States and on re-extradition to another Requesting State, it shall communicate that decision on re-extradition to each of the Requesting States.

Article 16

Decision

- (1) The Requested State shall promptly communicate to the Requesting State its decision on the request for extradition.
- (2) The Requested State shall, as far as possible, give reasons for any complete or partial refusal of the request for extradition.

Article 17

Deferred Surrender

The Requested State may, after a decision on the request has been rendered by a competent court, defer the decision on the surrender of the person sought if that person is being proceeded against, or is serving a sentence or a measure of correction and security in the Requested State in respect of a different offence from the one for which extradition was requested, until the conclusion of the proceedings and the full execution of any punishment which may be, or may have been, imposed on him or her. In this case the Requested State shall notify the Requesting State.

Article 18

Surrender of the Person Sought

- (1) If the extradition has been granted, surrender of the person sought shall take place within such time as may be provided for by the laws of the Requested State. If no time period for surrender is provided for by the laws of the Requested State, surrender shall take place within 30 days from the date on which the Requesting State has been notified that the extradition has been granted. The time period may be extended by 20 days at the request of the Requesting State. The competent authorities of the Contracting States shall agree on the time and place of the surrender of the person sought.
- (2) If the person sought is not removed from the territory of the Requested State within the time required under paragraph 1, he may be released. The Requested State may subsequently refuse to extradite the person sought for the same offence.
- (3) If exceptional circumstances prevent a Contracting State from surrendering or taking delivery of the person sought in good time, it shall notify the other Contracting State accordingly prior to the expiration of the time limit. In such a case, the competent authorities of the Contracting States may agree upon a new date for the surrender.
- (4) The Requested State shall inform the Requesting State as to how long the person sought has been detained awaiting extradition and of the date of his apprehension.

Article 19

Rule of Speciality

- (1) Without prejudice to paragraph 3 below, a person extradited under this Treaty shall not:
 1. in the Requesting State be detained or tried, or be subjected to any other restriction of his personal liberty for any offence committed before his extradition, other than in respect of:
 - a) an offence in respect of which he was extradited, or another offence in respect of which he could be convicted based on the proven facts used to support the request for his extradition; or
 - b) another extraditable offence in respect of which the Requested State has consented to his or her being so detained or tried, or subjected to any other restriction of his or her personal liberty; or
 2. be detained in the Requesting State for the purpose of his or her extradition to a third State, or be re-extradited to such a State, unless the Requested State consents to this.
- (2) A request for the consent of the Requested State under this Article shall be accompanied by all the relevant documents specified in Article 12 and by a court record of statements made by the person extradited. Paragraph 1 of Article 13 shall apply *mutatis mutandis*.
- (3) Paragraph 1 shall not apply if the person extradited, although having had an opportunity to leave the territory of the Requesting State, has not done so within 45 days of his or her final release, or has returned to that territory after leaving it. Release on parole or probation without an order restricting the freedom of movement of the extradited person shall be deemed equivalent to final release.

Article 20

Notification of the Outcome of the Criminal Proceedings

The Requesting State shall notify the Requested State, upon demand by the latter, of the outcome of the criminal proceedings being conducted in respect of the extradited person and shall send a copy of the final and binding decision to the Requested State.

Article 21

Surrender of Property

- (1) To the extent permitted under the laws of the Requested State, all articles which may serve as evidence, or which have been acquired as a result of an offence, or which have been obtained as consideration for such articles, and which at the time of arrest are found in the possession of the person sought or are discovered subsequently, shall be surrendered if extradition is granted. Surrender of such articles shall be possible even without any special request and, if possible, at the same time that the person sought is surrendered.
- (2) Subject to the conditions specified in paragraph 1, the articles mentioned therein shall be surrendered even if the person sought cannot be surrendered owing to his or her death or escape.

- (3) Insofar as rights of the Requested State or of third parties to the articles are to be respected, the Requested State may refuse surrender or make surrender conditional upon a satisfactory assurance from the Requesting State that the articles will be returned to the Requested State, as soon as possible.

Article 22

Mutual Legal Assistance in Connection with Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest possible measure of mutual legal assistance in criminal matters in connection with the offence in respect of which extradition has been requested.

Article 23

Transit

- (1) Transit of a person who is the subject of extradition from a third State through the territory of a Contracting State to the territory of the other Contracting State shall be granted upon submission of a request, provided that the offence concerned is an extraditable offence under Article 2, and that the Contracting State requested to grant transit does not consider the offence to be one covered by Article 3 or 4.
- (2) Transit of a national of the Requested State may be refused if, in the opinion of that State, it is inadmissible under its law.
- (3) The request for transit must be accompanied by the documents mentioned in Article 12.
- (4) Article 11 shall apply *mutatis mutandis*.

Article 24

Personal Data

- (1) Personal data, hereinafter referred to as “data”, shall be understood to be particulars on the personal or factual situation of an identified or identifiable natural person.
- (2) Data transmitted on the basis of this Treaty shall only be used for the purposes for which the data were transmitted and on the conditions determined by the transmitting Contracting State in each individual case. In addition such data may be used for the following purposes:
- a) for the prosecution of offences,
 - b) for the prevention of offences of considerable importance,
 - c) for non criminal court proceedings and administrative proceedings which are related to the use for which the data were transmitted pursuant to the first sentence or related to the use outlined in Sub-paragraphs a) and b),

- d) to ward off a substantial danger to public security.

Use of the data for other purposes shall require the prior consent of the Contracting State transmitting the data concerned.

- (3) Subject to the domestic legal provisions of each Contracting State, the following provisions shall apply to the transmission and use of data:

- a) Upon request, the Contracting State which has received the data shall inform the transmitting State of the data received, of the use made of the data and of the results achieved therefrom.
- b) The Contracting States shall carefully handle data transmitted under this Treaty and pay particular attention to the accuracy and completeness of such data. Only data that relate to the request shall be transmitted. If it appears that incorrect data have been transmitted or that data that should not have been transmitted were transmitted, the Contracting State that has received the data shall be notified without delay. The Contracting State that has received the data shall rectify or correct any errors or erase the data.
- c) The Contracting States shall keep records in an appropriate form concerning the transmission and receipt of data.
- d) The Contracting States shall afford effective protection of the data transmitted against unauthorised access, unauthorised alteration and unauthorised publication.
- e) Upon request, the person concerned shall be informed about existing data relating to him as well as about the purpose for which they are to be used and the purpose of their storage. There shall be no obligation to give information where, on a weighing of interests, the public interest in not giving information is found to outweigh the interest of the person concerned in being informed. In all other respects the right of the person concerned to be informed of existing data relating to him shall be governed by the domestic law of the Contracting State in whose territory the information is requested.
- f) If as a result of transmissions in the context of data exchange under this Treaty a person suffers unlawful damage, the receiving State shall be liable to him therefor according to its domestic law. The receiving State cannot, vis-a-vis the aggrieved person, invoke the fact that the damage was caused by the transmitting State as a defence. If the receiving State pays compensation for damage that was caused by using incorrect data received from the transmitting State, the transmitting State shall reimburse the receiving State in respect of such compensation in accordance with the relevant provisions of its domestic law.

Article 25

Applicable Law

Except where this Treaty provides otherwise, the law of the Requested State shall be applicable to proceedings relating to provisional detention while awaiting extradition, to extradition and to transit.

Article 26

Language to be Used

The documents transmitted in application of this Treaty shall be in the language of the Requesting State. German requests shall be accompanied by a translation into English, Indian requests by a translation into German.

Article 27

Expenses

Expenses arising from the transportation of a person sought to the Requesting State shall be borne by that State. Other expenses arising from an extradition or a transit request shall not be claimed by the Requested State from the Requesting State. The competent legal officials or the State in which the extradition proceedings take place shall, by all legal means within their power, assist the Requesting State before the competent judges and officials.

Article 28

Scope of Application

This Treaty shall apply to offences encompassed by Article 2 committed before as well as after the date on which this Treaty enters into force. Extradition shall not be granted, however, in respect of an offence committed before this Treaty enters into force which was not an offence under the laws of both Contracting States at the time of its commission.

Article 29

Registration

Registration of this Treaty with the Secretariat of the United Nations, in accordance with Article 102 of the Charter of the United Nations, shall be initiated by the Federal Republic of Germany immediately, following its entry into force. The other Contracting State shall be informed of registration, and of the UN registration number, as soon as this has been confirmed by the Secretariat of the United Nations.

Article 30

Ratification; Entry into Force; Denunciation

- (1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged in New Delhi as soon as possible.
- (2) This Treaty shall enter into force 30 days after the exchange of the instruments of ratification.
- (3) This Treaty shall continue in force until the expiration of one year from the date on which written notice is given by one Contracting State. The date of receipt of such notice by the other Contracting State shall be definitive for determining the deadline.

Done at Berlin on the 27th June, 2001 in duplicate in the Hindi, German and English languages, all three texts being authentic. In case of divergent interpretation of the Hindi and the German texts, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 12 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter II, shall apply to the Federal Republic of Germany with effect from the date of the publication of this notification.

[F. No. T-413/3/97]

Dr. A.K. AMROHI, Jt. Secy. (CPV)

MINISTRY OF EXTERNAL AFFAIRS

ORDER

New Delhi, the 27th February, 2004

Extradition Agreement between the Government of the Republic of India and the Government of the Republic of Turkey

G.S.R. 174(E).— whereas the Extradition Agreement between the Government of the Republic of India and the Government of the Republic of Turkey was signed at Ankara, Turkey on 29th June, 2001; and the instruments of ratification were also exchanged at Ankara, Turkey on 18th September, 2003 and which Agreement provides as follows :

The Government of the Republic of India and the Government of the Republic of Turkey (hereinafter to be referred to as the “Contracting States”),

Desiring to make more effective the co-operation between the two countries in the suppression of crime by concluding an agreement on extradition,

Have agreed as follows :

Article 1

Duty to Extradite

1. Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Agreement, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one State, is found within the territory of the other State, whether such offence was committed before or after the entry into force of this Agreement.
2. Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it has jurisdiction if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence, in such circumstances the Requested State shall have regard to all the circumstances of the case including the seriousness of the offence.
3. When the offence has been committed outside the territory of the Requesting State, the Requested State shall grant extradition subject to the provisions described in this Agreement if either:
 - (a) the laws of the Requested State provide for the punishment of such an offence committed in similar circumstances; or
 - (b) the offence has been committed by a national of the Requesting State, and that State has jurisdiction, according to laws, to try that person.

Article 2

Extradition Offences

1. Extradition shall be granted in respect of offences punishable under the laws of the Requesting State and of the Requested State by deprivation of liberty for a period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred in the territory of the Requesting State, the punishment awarded must have been for a period of at least six months.
2. If the request for extradition includes several separate offences each of which is punishable under the laws of the Requesting State and the Requested State by deprivation of liberty, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the Requested State shall also have the right to grant extradition for the latter offences.

Article 3

Extradition and Prosecution

1. The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extradition offence in the courts of that State.
2. Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.
3. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Agreement.

Article 4

Grounds for Refusal of Extradition

A person may not be extradited if:

1. he has been convicted of an extradition offence, unless he was sentenced to imprisonment or other form of detention for a period of six months or more;
2. he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction;
3. he has been previously convicted or acquitted in the territory of a third State in respect of the offence for which extradition is requested.

Article 5

Political Offences

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the Requested Party as a political offence.
2. For the purpose of this Agreement the following offences shall not be regarded as political offence:
 - (a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December, 1970;
 - (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971;
 - (c) an offence within, the scope of the Convention on the Prevention and Punishment of Crimes against internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 Dec 1973;
 - (d) an offence within the scope of the International Convention against the Taking of Hostages, opened for signature at New York on 18 December 1979;
 - (e) murder
 - (f) The taking or attempt to take the life of the Head of State or the Head of Government or a member of their families;
 - (g) manslaughter or culpable homicide;
 - (h) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
 - (i) the causing of an explosion likely to endanger life or cause serious damage to property;
 - (j) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
 - (k) the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
 - (l) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
 - (m) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
 - (n) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
 - (o) incitement to murder;
 - (p) any other offence related to terrorism which at the time of the request is, under the Law of the Requested State, not to be regarded as an offence of a political character;
 - (q) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

3. This Article shall not affect any obligations which the Contracting States may have undertaken or may undertake under any other international convention of a multilateral character.

Article 6

Military Offences

Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Agreement.

Article 7

Fiscal Offences

Extradition shall be granted in accordance with the provisions of this Agreement for offences of a fiscal character including taxes, duties, customs and foreign exchange.

Article 8

Extradition of Nationals

1. The nationals of a Contracting State shall not be extradited to the other Contracting State provided that the Requested State shall submit the case to its competent authorities for prosecution if the act committed is also considered as an offence under the laws of the Requested State.
2. If the Requested State does not extradite its national, it shall at the request of the Requesting State submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 14. The Requesting State shall be informed of the result of its request.

Article 9

Place of Commission

When the offence for which extradition is requested has been committed outside the territory of the Requesting State, extradition may only be refused if the law of the Requested State does not allow prosecution for the same category of offence when committed outside the latter State's territory or does not allow extradition for the offence concerned, under the terms of this Agreement.

Article 10

Pending Proceedings for the Same Offences

The Requested State may refuse to extradite the person claimed if the competent authorities of that State are already proceeding against him in respect of the offence or offences for which extradition is requested.

Article 11

Non bis in idem

Extradition shall not be granted if final judgement has been passed by the competent authorities of the requested State upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the Requested State have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

Article 12

Lapse of Time

Extradition shall not be granted when the person claimed has, according to the law of the Requesting State, become immune by reason of lapse of time from prosecution or punishment.

Article 13

Capital Punishment

If the offence for which extradition is requested is punishable by death under the law of the Requesting State, and if in respect of such offence the death-penalty is not provided for by the law of the Requested State or is not normally carried out, extradition may be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death-penalty will not be carried out.

Article 14

The Request and Supporting Documents

1. The request for extradition under this Agreement shall be made through the diplomatic channel. Other means of communication may also be used after mutual consultation between the two States.
2. The request shall be supported by :
 - (a) the original or an authenticated copy of the order of conviction and sentence or the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the Requesting State;
 - (b) a statement of the offence(s) for which extradition is requested, the time and place of their commission, their legal description and a reference to the relevant legal provisions;
 - (c) a copy of the relevant legal provisions applied to the offence(s);
 - (d) as accurate a description as possible of the person claimed, together with any other available information such as his photograph, fingerprints, passport details, etc., which will help to establish his identity and nationality.
3. If the information communicated by the Requesting State is found to be insufficient to allow the Requested State to make a decision the Requested State may request for the necessary supplementary information, which shall be supplied by the Requesting State within one month. This time limit may by mutual consent, be extended for valid reasons.

Article 15

Evidence

1. The authorities of the Requested State shall admit as evidence in any proceedings for extradition, any evidence taken on oath or by way of affirmation any warrant and any certificate of, or judicial document stating the fact of, a conviction if it is authenticated :
 - (a) (i) in the case of a warrant being signed, or in the case of any original document by being certified, by a judge, magistrate or other competent authority of the Requesting State; and
 - (ii) either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting State; or
 - (b) In such other manner as may be permitted by the law of the Requested State.
2. The evidence described in paragraph (1) shall be admissible in extradition proceedings in the Requested State whether sworn or affirmed in the Requesting State or in some third State.

Article 16

Rule of Speciality

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases;
 - (a) When the State which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 14 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Agreement;
 - (b) when that person, having had an opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
 - (c) any lesser extradition offence disclosed by the facts proved for the purposes of securing his extradition.
2. When the description of the offence charged is altered in the course of trial proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 17

Re-extradition to a Third State

Except as provided for in Article 16, paragraph 1 (b), the Requesting State shall not, without the consent of the Requested State, surrender to a third State a person surrendered to the Requesting State and sought by the said third State in respect of offences committed before his surrender. The Requested State may request the production of the documents mentioned in Article 14.

Article 18

Provisional Arrest

1. In case of urgency the competent authorities of the Requesting State may request the provisional arrest of the person sought. The competent authorities of the Requested State shall decide the matter in accordance with its law.
2. The request for provisional arrest shall state that one of the documents mentioned in paragraph 2(a) Article 14, exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.
3. A request for provisional arrest shall be sent to the competent authorities of the Requested State either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing or accepted by the Contracting States.
4. The requesting authority shall be informed without delay of the result of its request.
5. Provisional arrest may be terminated if within a period of 60 days after arrest, the Requested State has not received the request for extradition and the documents mentioned in Article 14. It shall not, in any event, exceed 90 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested State shall take any measures which it considers necessary to prevent the escape of the person sought.
6. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

Article 19

Conflicting Requests

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the Requested State shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

Article 20

Surrender

1. The Requested State shall inform the Requesting State by the means mentioned in Article 14, paragraph 1, of its decision with regard to the extradition.
2. Reasons shall be given for any complete or partial rejection.
3. If the request is agreed to, the Requesting State shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
4. Subject to the provisions of paragraph 5 of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 30 days. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.
5. If circumstances beyond its control prevent a State from surrendering or taking over the person to be extradited, it shall notify the other State. The two States shall agree to a new date for surrender and the provisions of paragraph 4 of this Article shall apply.

Article 21

Postponed or Conditional Surrender

1. The Requested State may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that State or, if he has already been convicted, in order that he may serve his sentence in the territory of that State for an offence other than that for which extradition is requested.
2. The Requested State may, instead of postponing surrender, temporarily surrender the person claimed to the Requesting State in accordance with conditions to be determined by mutual agreement between the States.

Article 22

Handing Over of Property

1. The Requested State shall, in so far as its law permits and at the request of the Requesting State, seize and hand over property: (a) which may be required as evidence, or (b) which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.
2. The property mentioned in paragraph 1 of this Article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
3. When the said property is liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.

4. Any rights which the Requested State or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State as soon as possible after the trial

Article 23

Transit

1. Transit through the territory of one of the Contracting States shall be granted on submission of a request by the means mentioned in Article 14, provided that the offence concerned, is not considered by the State requested to grant transit as an offence of a political or purely military character having regard to provisions of this Agreement.
2. Transit of a national, within the meaning of Article 8, of a country requested to grant-transit may be refused.
3. Subject to the provisions of paragraph 4 of this Article, it shall be necessary to produce the documents mentioned in Article 14.
4. If air transport is used, the following provisions shall apply:
 - (a) when it is not intended to land, the requesting State shall notify the State over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 14, exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 18, and the requesting State shall submit a formal request for transit;
 - (b) when it is intended to land, the Requesting State shall submit a formal request for transit.

Article 24

Applicable Laws

The procedure with regard to extradition and provisional arrest shall be governed solely by the laws of the Requested State.

Article 25

Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent, permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 26

Language

While complying with the present Agreement, the Contracting States shall use their national language(s), attaching therewith authenticated translated version of the documents into English language.

Article 27

Expenses

1. Expenses incurred in the territory of the Requested State by reason of extradition shall be borne by that State.
2. Expenses incurred by reason of transit through the territory of a State requested to grant transit shall be borne by the Requesting State.

Article 28

International Obligations

The present Agreement shall not affect the rights and obligations of the Contracting States arising from International Conventions/Treaties to which they are parties.

Article 29

Ratification and Entry into Force

1. This Agreement shall be subject to ratification and shall enter into force 30 days after the exchange of instruments of ratification.
2. Either of the Contracting States may terminate this Agreement at any time by giving notice to the other through the diplomatic channel; and if such notice is given the Agreement shall cease to have effect six months after the receipt of the notice.
3. In witness whereof, the respective plenipotentiaries of the Contracting States have signed this Agreement and have affixed hereto their seals.

Done at Ankara on this 29th day of June 2001 in triplicate, in Hindi, Turkish and English languages, all three texts having the same force. In case of divergence in interpretation, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by Sub-Section (2) of Section 12 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter II, would apply to the Republic of Turkey with effect from the date of publication of this notification.

[F. No. T. 413/57/99]

B. A. ROY, Jt. Secy. (CPV)

MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION

New Delhi, the 18th November, 2003

Extradition Treaty between the Republic of India and the Kingdom of Spain

G.S.R. 930(E) — whereas the Extradition Treaty between the Government of the Republic of India and the Kingdom of Spain was signed at Madrid on 20th June 2002 and the Instruments of Ratification exchanged at Madrid on February 25, 2003 and which Treaty provides as follows:

The Republic of India and the Kingdom of Spain hereinafter referred to as Contracting States;

Desiring to make more effective the co-operation of the two countries in the prevention and suppression of crime, especially with regard to Organized Crime and Terrorism, by making provision for the reciprocal extradition of offenders;

Have agreed as follows:

Article 1

Duty to Extradite

1. Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one State, is found within the territory of the other State.
2. Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it has jurisdiction if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested State shall have regard to all the circumstances of the case including the seriousness of the offence.

Article 2

Extradition Offences

1. Extradition shall be granted in respect of offences punishable under the laws of the Requesting State and of the Requested State by deprivation of liberty for a period of at least one year or by a more severe penalty. Where a conviction and prison sentence occur in the territory of the Requesting State, the punishment awarded must have been for a period of at least six months.
2. If the request for extradition includes several separate offences each of which is punishable under the laws of the Requesting State and the Requested State by deprivation of liberty, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the Requested State shall also have the right to grant extradition for the latter offences.

Article 3

Political Offences

1. Extradition may be refused if the offence for which it is requested is an offence of a political character.
2. For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:
 - a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December, 1970;
 - b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September, 1971;
 - c) an offence within the scope of the Convention on the Prevention and Punishment of Crimes against internationally Protected Persons, including Diplomatic Agents, opened for Signature at New York on 14 December, 1973;
 - d) an offence within the scope of the International Convention against the Taking of Hostages, opened for signature at New York on 18 December, 1979;
 - e) murder;
 - f) manslaughter or culpable homicide;
 - g) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
 - h) the causing of an explosion likely to endanger life or cause serious damage to property;
 - i) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
 - j) the possession of a firearm or ammunition by a person who intends either himself or through another persons to endanger life;
 - k) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
 - l) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
 - m) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
 - n) incitement to murder;
 - o) any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character;
 - p) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

3. The taking or attempted taking of the life of a Head of State, Head of Government or a member of his or her family shall not be deemed to be a political offence for the purposes of this Treaty.
4. This Article shall not affect any obligations, which the Contracting States may have undertaken or may undertake under any other international convention of a multilateral character.

Article 4

Military Offences

Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Treaty.

Article 5

Fiscal Offences

Extradition shall be granted in accordance with the provisions of this Treaty for offences of a fiscal character including duties, customs and exchange.

Article 6

Extradition of Nationals

1. The nationals of a Contracting State may be extradited to the other Contracting State. In the event that extradition is not granted, on the request of the Requesting State, the Requested State shall submit the case to its competent authorities for prosecution if the act committed is also considered an extradition offence under the law of the Requested State. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The Requesting State shall be informed of the result of its request.
2. For the purpose of this Treaty, nationality shall be determined as at the time of the commission of the offence.

Article 7

Place of Commission

1. The Requested State may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.
2. Extradition may be granted in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under the laws of that State this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting State.

Article 8

Pending proceedings for the same offences

The Requested State may refuse to extradite the person claimed if the competent authorities of such State are proceeding against him in respect of the offence or offences for which extradition is requested.

Article 9

Non bis in idem

Extradition shall not be granted if final judgment has been passed by the competent authorities of the Requested State upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the Requested State have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

Article 10

Period of Limitations

Extradition shall not be granted when the person claimed has, according to the law of either the Requesting or the Requested State, become immune by reason of period of limitations from prosecution or punishment.

Article 11

Capital Punishment

If the offence for which extradition is requested is Punishable by death under the law of the Requesting State, and if in respect of such offence the death-penalty is not provided for by the law of the Requested State or is not normally carried out, extradition shall be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death-penalty will not be carried out.

Article 12

The request and supporting documents

1. The request for extradition under this Treaty shall be made through the diplomatic channels. Other means of communication may also be used after consultation between the two States.
2. The request shall be accompanied by :
 - a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence;
 - b) a statement of the facts of the offence or offences for which extradition is requested, and

- c) the text, of the applicable law or laws:
 - i. defining the offence or offences;
 - ii. prescribing the maximum punishment for the offence or offences; and
 - iii. regulating the period of limitations of the offence or offences and their punishments.
- 3. If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State.
- 4. If the request relates to a person already convicted and sentenced, it shall also be accompanied:
 - i. by a certificate of the conviction and sentence;
 - ii. by a statement that the person is not entitled to appeal against the conviction;
 - iii. by a statement indicating how much of the sentence has not been carried out.

Article 13

Supplementary Information

If the information communicated by the Requesting State is found to be insufficient to allow the Requested State to make a decision in pursuance of this Treaty, the latter State shall request the necessary supplementary information and may fix a reasonable time limit for the receipt thereof in consultation with the Requesting State.

Article 14

Authentication of Documents

The warrants, the certificates of conviction and any other judicial document on which the extradition is based, shall be authenticated:

- a) (i) in the case of a warrant by being signed, or in the case of any original document by being certified, by a judge, magistrate or other competent authority of the Requesting State; and
(ii) by being sealed with the official seal of the Competent Ministry or Competent Authority of the Requesting State; or
- b) In such other manner as may be permitted by the law of the Requested State.

Article 15

Rule of Speciality

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:
 - (a) When the State which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Agreement;
 - (b) when that person, having had an opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
2. When the description or the punishment of the offence charged is altered in the course of trial proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 16

Re-extradition to a Third State

Except as provided for in Article 15, paragraph 1 (b), the Requesting State shall not, without the consent of the Requested State, surrender to another Party or to a third State a person surrendered to the Requesting State and sought by the said other Party or third State in respect of offences committed before his surrender. The Requested State may request the production of the documents mentioned in Article 12, paragraph 2.

Article 17

Provisional Arrest

1. In case of urgency the competent authorities of the Requesting State may request the provisional arrest of the person sought. The competent authorities of the Requested State shall decide the matter in accordance with its law.
2. The request for provisional arrest shall state that one of the documents mentioned in Article 12 exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.
3. A request for provisional arrest shall be sent to the competent authorities of the Requested State either through the diplomatic channel or through the International Criminal Police Organization (Interpol) or by any means affording evidence in writing or accepted by the Contracting States.

4. The requesting authority shall be informed without delay of the result of its request.
5. Provisional arrest may be terminated if, within a period of 60 days after the arrest, the Requested State has not received the request for extradition and the documents mentioned in Article 12. In exceptional circumstances, this time limit may be extended to 90 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the Requested State shall take any measures which it considers necessary to prevent the escape of the person sought.
6. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

Article 18

Conflicting Requests

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the Requested State shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

Article 19

Surrender

1. The Requested State shall inform the Requesting State by the means mentioned in Article 12, paragraph 1, of its decision with regard to the extradition.
2. Reasons shall be given for any complete or partial rejection.
3. If the request is agreed to, the Requesting State shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
4. Subject to the provisions of paragraph 5 of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 30 days. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.
5. If circumstances beyond its control prevent a State from surrendering or taking over the person to be extradited, it shall notify the other State. The two States shall agree a new date for surrender and the provisions of paragraph 4 of this Article shall apply.

Article 20

Postponed or Conditional Surrender

1. The Requested State may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that State or, if he has already been convicted, in order that he may serve his sentence in the territory of that State for an offence other than that for which extradition is requested.

2. The Requested State may, instead of postponing surrender, temporarily surrender the person claimed to the Requesting State in accordance with conditions to be determined by mutual agreement between the States.

Article 21

Handing over of Property

1. The Requested State shall, in so far as its law permits and at the request of the Requesting State, seize and hand over property:
 - (a) which may be required as evidence, or
 - (b) which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.
2. The property mentioned in paragraph 1 of this Article shall be handed even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
3. When the said property is liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.
4. Any rights which the Requested State or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State as soon as possible after the trial.

Article 22

Transit

1. Transit, through the territory of one of the Contracting States shall be granted on submission of a request by the means mentioned in Article 12, para 1, provided that the offence concerned is not considered by the State requested to grant transit as an offence of a political or purely military character having regard to provisions of this Treaty.
2. Transit of a national, within the meaning of Article 6, of a country requested to grant transit may be refused.
3. Subject to the provisions of paragraph 4 of this Article, it shall be necessary to produce the documents mentioned in Article 12.
4. If air transport is used, the following provisions shall apply:
 - a) when it is not intended to land, the Requesting State shall notify the State over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 12 exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 17, and the Requesting State shall submit a formal request for transit;
 - b) when it is intended to land, the Requesting State shall submit a formal request for transit.

Article 23

Applicable Laws

The procedure with regard to extradition and provisional arrest shall be governed solely by the law of the Requested State.

Article 24

Language

While complying with the present Treaty, the Contracting States shall use their national language attaching the translation in the national language of the other Contracting State or in the English language.

Article 25

Expenses

1. Expenses incurred in the territory of the Requested State by reason of extradition shall be borne by that State.
2. Expenses incurred by reason of transit through the territory of a State requested to grant transit shall be borne by the Requesting State.

Article 26

International Obligations

The present Treaty shall not affect the rights and obligations of the Contracting States arising from International Conventions/Treaties to which they are parties.

Article 27

Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 28

Entry into Force and Termination

1. This Treaty shall enter into force on the last day of the month following that of the latest communication through diplomatic channels between the parties indicating fulfillment of the respective internal legal requirements for its entry into force.
2. The provisions of the this Treaty shall be applicable to the extradition requests presented after the entry into force of the Treaty, irrespective of the date of commission of the offence or offences.

3. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channels, and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof, the undersigned being duly authorized thereto by their respective governments, have signed this Treaty.

Done at Madrid this the 20th day of June 2002 (Two Thousand and Two) in two originals each, in Spanish, Hindi and English, all texts being equally authentic. However, in case of difference, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section(2) of section 12 of the Extradition Act, 1962 (34 of 1962), and in suppression of notification of the Government of India, if any existing, relating to extradition treaty or arrangement applicable in respect of the Kingdom of Spain, the Central Government hereby directs that the provisions of the said Act, other than Chapter II, shall apply to the Kingdom of Spain with effect from the date of the publication of this notification.

[No. T. 413/35/98]

B. A. ROY, Jt. Secy. (CPV)

MINISTRY OF EXTERNAL AFFAIRS

NOTIFICATION

New Delhi, the 16th May, 2008

Extradition Treaty between the Republic of India and Ukraine

G.S.R. 381 (E).—Whereas the Extradition Treaty between the Republic of India and Ukraine was signed at New Delhi on 30th October, 2002; and the exchange of the Instruments of Ratification of the Treaty took place at New Delhi on 19th December, 2006 and has entered into force from 19th January, 2007 in terms of Article 22, and which Treaty provides as follows:—

The Republic of India and Ukraine hereinafter referred to as Contracting Parties,

Desirous of making more effective the corporation of the two countries in the suppression of crime in general and organized crime in particular by making provision for the reciprocal extradition offenders;

Have agreed as follows:

ARTICLE 1

Duty to Extradite

The Contracting Parties agree to extradite to each other, pursuant to the provisions of this Treaty, any person, who is accused or charged with or convicted of an extraditable offence, by the competent authorities of the requesting Contracting Party, whether such offence was committed before or after the entry into force of this Treaty, as well as if it is committed in a third State by a national of the requesting Contracting Party and the requesting Contracting Party bases its jurisdiction on the nationality of the offender.

ARTICLE 2

Extradition Offences

1. An extradition offence for the purposes of this Treaty is constituted by conduct, which under the laws of each Contracting Party is punishable by a term of imprisonment for a period of at least one year.
2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenues or is one of a purely fiscal character.
3. While arriving at a decision of what constitutes an extradition offence, due regard shall be paid to the substantive aspects of the offence, rather than the terminology used.

ARTICLE 3

Composite Offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the territory of the requested Contracting Party, if this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence under the laws of both the Contracting Parties

ARTICLE 4

Refusal of Extradition of Nationals

The nationals of one of the Contracting Parties shall not be extradited to the other Contracting Party. The requested Contracting Party shall submit the material and evidence to its competent authorities for prosecution if the act committed is considered as an offence under the laws of both the Contracting Parties.

ARTICLE 5

The Political Offence Exception

1. The requested Contracting Party may refuse extradition, if the offence, for which it is requested, is considered as offence of a political character.
2. For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:
 - (a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December, 1970;
 - (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971;
 - (c) an offence within the scope of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December , 1973;
 - (d) an offence within the scope of the International Convention against the Taking of Hostages, opened for signature at New York on 18 December, 1979;
 - (e) an offence within the scope of the Convention for the Suppression of Terrorist Bombings, opened for signature at New York on 12 January, 1998;
 - (f) any other offence provided in an international treaty/convention to which both countries are parties;
 - (g) murder or incitement to murder;
 - (h) culpable homicide;

- (i) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
- (j) the cause of an explosion likely to endanger life or cause serious damage to property;
- (k) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
- (l) the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
- (m) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
- (n) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
- (o) kidnapping, abduction, unlawful deprivation of liberty including unlawful confinement or hostage taking;
- (p) a conspiracy or an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence; and
- (q) any other offence related to terrorism.

ARTICLE 6

Offence of conspiracy, incitement and attempt, and Extra-territorial jurisdiction

1. It shall be an offence under the laws of both the Contracting Parties for any person to abet, conspire or attempt to commit, or incite or participate as an accomplice in the commission of, any extradition offence.
2. It shall also be an offence under the laws of both the Contracting Parties, for any citizen of a Contracting Party to commit any offence in any place beyond its territory.

ARTICLE 7

Extradition and Prosecution

1. The requested Contracting Party may refuse to extradite the person sought if the competent authorities of such Contracting Party are proceeding against him in respect of the offence or offences for which extradition is requested.
2. Where the Requested Contracting Party refuses a request for extradition for the reasons as provided in paragraph 1 of this Article, it shall submit the case to its competent authorities for prosecution. Those authorities shall take their decision in the same manner as in the case of any serious offence of a similar nature under the law of that Contracting Party.

3. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

ARTICLE 8

Grounds for Refusal of Extradition

Extradition shall not be granted if:

- (a) the person is a citizen of the requested Contracting Party; or
- (b) on the date when the request is received, the offence or the sentence has become barred by lapse of time under the laws of the requested Contracting Party; or
- (c) the offence for which he is accused or convicted is a military offence which is not also an offence under the general criminal law; or
- (d) a person who has been convicted of an extradition offence was sentenced to imprisonment or other form of detention for a period of four months or less; or
- (e) a person is proceeded against in the territory of the requested Contracting Party for the offence for which his extradition is requested, be entitled to be discharged under the laws of the requested Contracting Party relating to previous acquittal or conviction.

ARTICLE 9

Postponement of Surrender and Temporary Surrender

1. If criminal proceedings against the person sought are instituted in the territory of the requested Contracting Party, or he is lawfully detained in consequence of criminal proceedings, the decision whether or not to extradite him may be postponed until the criminal proceedings have been completed or he is no longer detained, for an offence other than that for which extradition is requested.
2. A person sought may not be extradited until it has been decided in accordance with the law of the requested Contracting Party that he is liable to be extradited.
3. The requested Contracting Party may, instead of postponing surrender, temporarily surrender the person sought to the requesting Contracting Party in accordance with conditions to be determined by mutual agreement between the Contracting Parties.

ARTICLE 10

Channels of Communications and Central Authorities

1. The request for extradition under this Treaty shall be made through the diplomatic channels.
2. For the purposes of this Treaty the Contracting Parties shall communicate through their Central Authorities. The Central Authority for the Republic of India shall be the Ministry of External Affairs. The Central Authority for Ukraine shall be the General prosecutor's Office (concerning cases at the stage of pretrial investigation) and the Ministry of Justice (concerning cases at the trial stage and at the stage the sentence is carried out).

ARTICLE 11

Extradition Procedures

1. The request shall be made in writing and shall be accompanied by the following:
 - (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence;
 - (b) a statement of the facts of the offence for which extradition is requested; and
 - (c) the text, if any, of the law;
 - (i) defining that offence; and
 - (ii) prescribing the maximum punishment for that offence.
2. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the warrant of arrest/decision on the detention or taking into custody issued by a competent court or authority of the requesting Contracting Party, as well as by a statement of evidence on which the extradition request is based.
3. If the request relates to a person, already convicted and sentenced, it shall also be accompanied by a certified copy of the judgement and a statement that the person is no longer entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.
4. If the requested Contracting Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within a reasonable time.

ARTICLE 12

Provisional Arrest

1. In urgent cases the person sought may, in accordance with the law of the requested Contracting Party, be provisionally arrested on the application of the competent authorities of the requesting Contracting Party. The application shall contain an indication of intention to request the extradition of that person and statement of the existence of a warrant of arrest/decision on the detention or taking into custody or a conviction against him, and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest/decision on detention or taking into custody had the offence been committed, or the person sought been convicted, in the territory of the requested Contracting Party.
2. A person arrested upon such an application shall be set at liberty upon the expiration of 40 days from the date of his arrest if a request for his extradition shall not have been received. This period will be extended by a further period of 20 days upon the request of the requesting Contracting Party. This provision shall not prevent the re-arrest of the person sought for the extradition if a request is subsequently received.

3. A request for provisional arrest shall be sent to the competent authorities of the requested Contracting Party either through the diplomatic channels or directly by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Contracting Party. The requesting authority shall be informed without delay of the result of its request.

ARTICLE 13

Rule of Speciality

1. The extradited person may not without consent of the requested Contracting Party, be prosecuted or punished in the requesting Contracting Party for an offence other than that for which extradition has been granted and any lesser offence disclosed by the facts proved for the purposes of securing his extradition, nor may such a person, without consent of the requested Contracting Party, be extradited to a third State.
2. The consent of the requested Contracting Party is not required if:
 - (a) the extradited person has not left, though he had the opportunity, the territory of the requesting Contracting Party within 45 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the requesting Contracting Party for reasons beyond his control;
 - (b) if the extradited person, once having left the territory of the requesting Contracting Party, voluntarily returns there.
3. The provisions of paragraph 1 of this Article shall not apply to offences committed after the return of the person to the requesting Contracting Party or matters arising in relation to such offences.
4. A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty days of his final discharge, or has returned to that territory after having left it.

ARTICLE 14

Recognition of Documents and Evidence

1. Documents issued or certified and statements recorded by competent courts or other authorities in the prescribed form in the territory of one Contracting Party as per its laws shall not require any form of authentication in the territory of the other Contracting Party.
2. Documents considered as public in the territory of one of the Contracting Parties shall have the evidential force of public documents also in the territory of the other Contracting Party.

ARTICLE 15

Competing Requests

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested Contracting Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person sought and the possibility of subsequent extradition to another State.

ARTICLE 16

Capital Punishment

If under the law of the requesting Contracting Party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the requested Contracting Party does not provide for the death penalty in a similar case, extradition may be refused unless the requesting Contracting Party gives such assurance as the requested Contracting Party considers sufficient that the death penalty will not be carried out.

ARTICLE 17

Surrender of Persons

1. The requested Contracting Party shall inform the requesting Contracting Party of its decision with regard to the extradition.
2. If extradition is granted, the person sought shall be sent by the authorities of the requested Contracting Party to such convenient point of departure from its territory as the requesting Contracting Party shall indicate.
3. The requesting Contracting Party shall remove the person sought from the territory of the requested Contracting Party within one month or such longer period as may be permitted under the law of the requested Contracting Party. If he is not removed within that period, the requested Contracting Party may refuse to extradite him for the same offence.
4. If circumstances beyond its control prevent a Contracting Party from surrendering or taking over the person to be extradited, it shall notify the other Contracting Party. The two Contracting Parties shall agree on a new date for surrender.

ARTICLE 18

Surrender of Articles

1. When a request for extradition is granted, the requested Contracting Party shall, upon request and so far as its law allows, hand over to the requesting Contracting Party articles (including sums of money) which may serve as proof or evidence of the offence.
2. If the articles in question are liable to seizure or confiscation in the territory of the requested Contracting Party, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned.

3. These provisions shall not prejudice the rights of the requested, Contracting Party or any person other than the person sought. When these rights exist the articles shall on request be returned to the requested Contracting Party without charge as soon as possible after the end of the proceedings.

ARTICLE 19

Mutual Legal Assistance in Extradition

Each Contracting Party shall, to the extent permitted by its law, afforded the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

ARTICLE 20

Language of Documents

The request, supporting documents and the other communications to be produced according to this Treaty, shall be accompanied by a translation in English.

ARTICLE 21

Expense

Expenses incurred in the territory of the requested Contracting Party in connection with extradition shall be born by that Party.

ARTICLE 22

Final Provisions

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible at a place and on a date mutually agreed by the Contracting Parties. It shall enter into force thirty (30) days after the date of the exchange of instruments of ratification.
2. Either of the Contracting Parties may terminate this Treaty at any time by given a written notice to the other Contracting Party through the diplomatic channels; and if such notice is given the Treaty shall cease to have effect six months after the receipt of such notice by the other Contracting Party.

Done at New Delhi this Thirty Day of October 2002 in two originals, each in Hindi, Ukrainian and English, all text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section 1 of the Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to Ukraine from the dated of the publication of this notification.

[No. T-413/24/1995]

P. M. MEENA, Jt. Secy. (Consular)

MINISTRY OF EXTERNAL AFFAIRS ORDER

New Delhi, the 31st May, 2007

Extradition Agreement between the Government of the Republic of India and the Government of the French Republic

C.S.R. 409(E).—Whereas the Extradition Agreement Treaty between the Republic of India and the French Republic was signed at Paris on 24th of January, 2003; and the Agreement has entered into force with effect from 1st August, 2005 and which Agreement provides as follows;

THE GOVERNMENT OF THE REPUBLIC OF INDIA

AND

THE GOVERNMENT OF THE FRENCH REPUBLIC

Hereinafter designated as the Contracting States., desiring to provide for effective cooperation between the two States.

In the suppression of crime and, specifically, to facilitate extradition have agreed as follows:

ARTICLE 1

OBLIGATION TO EXTRADITE

1. The Contracting States undertake to surrender to each other, subject to the provisions and conditions laid down in this Agreement, all persons against whom the competent authorities of the Requesting State are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence of imprisonment.

ARTICLE 2

EXTRADITABLE OFFENCES

1. Extradition shall be granted in respect of offences punishable, under the laws of the two Contracting States, by imprisonment of at least two years.
2. Where on conviction a prison sentence has been awarded on account of an extraditable offence in the territory of the requesting State, the duration of the penalty remaining to be served must amount at least to nine months.
3. Even regarding offences related to fiscal matters, customs duties or currency exchange, extradition shall be granted in accordance, with the provisions of this Agreement,
4. If the request for extradition includes several separate offences each of which is punishable under the laws of the two Contracting States by a sentence of imprisonment, but some of which do not fulfill the condition with regard to the duration of the sentence which may be awarded, the Requested State shall also have the right to grant extradition for the latter offences

ARTICLE 3
POLITICAL OFFENCES

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the Requested State as a political offence, or as an offence connected with such an offence.

The Requested State may decide not to regard as a political offence or as an offence connected with political offence or as an offence inspired by political motives serious offence involving an act of violence against the life, physical integrity or liberty of a person(s) or a serious offence involving an act against property if the act created a collective danger for a person(s).

The same shall apply to an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

When evaluating the character of the offence, the Requested Party shall consider any particularly serious aspect of the offence, including :

- (a) whether it created a danger to the life, physical integrity or liberty of a person(s); or
 - (b) whether it affected persons not connected to the motives behind it; or
 - (c) whether cruel or vicious means were used in the commission of the offence.
2. This article shall not affect any obligations which the Contracting States may have undertaken or may- undertake under any other international convention of a multilateral character.
 3. Extradition shall also not be granted if the Requested State has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his or her race, religion, nationality or political opinion, or that the position of the person sought may be prejudiced for any of these reasons.

ARTICLE 4
MILITARY OFFENCES

Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Agreement.

ARTICLE 5
EXTRADITION OF NATIONALS

1. Neither of the Contracting States shall extradite its own nationals. Nationality shall be determined as at the time of the commission of the offence for which extradition is requested.
2. If, pursuant to paragraph 1, the Requested State does not surrender the person claimed for the sole reason of nationality, it shall, in accordance with its laws and at the request of the Requesting State, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. If the Requested State requires additional documents, such documents shall be provided free of charge. The Requesting State shall be informed of the result of its request through the channels provided for in Article 9.

ARTICLE 6

OTHER COMPULSORY REFUSALS OF EXTRADITION

Extradition shall not be granted if:

1. final judgment has been passed by the competent authorities of the Requested State upon the person claimed in respect of the offence or offences for which extradition is requested;
2. the person claimed has become immune, by reason of lapse of time, from prosecution or punishment, according to the law of either State;
3. pardon has been granted either in the territory of the Requesting State or in the territory of the Requested State, provided, in the latter case, that the Requested State was competent to prosecute according to its domestic law.

ARTICLE 7

OPTIONAL REFUSALS

Extradition may be refused :

1. when the offence for which extradition is requested is regarded by the law of the Requested State as having been committed in whole or in part in its territory or in a place treated as its territory;
2. when the offence for which extradition is requested has been committed outside the territory of the Requesting State and the law of the Requested State does not allow prosecution for the same category of offence when committed outside its territory.
3. if the person claimed is being prosecuted by the Requested State in respect of the offence or offences for which extradition is requested, or if the judicial authorities of the Requested State- have discontinued, in accordance with the law of that State, the criminal proceedings for the offence for which extradition is requested;
4. when the person claimed has been tried and finally acquitted or convicted in a third State in respect of the offence or offences for which extradition is requested;
5. if the surrender is likely to have dire consequences for the person claimed, namely on the grounds of his age or health.

ARTICLE 8

CAPITAL PUNISHMENT

If the offence for which extradition is requested is punishable by death under the law of the Requesting State, and if in respect of such offence the death penalty is not provided for by the law of the Requested State or is not normally carried out, extradition may be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death penalty will not be awarded or, if awarded, shall not be carried out.

ARTICLE 9

TRANSMISSION OF REQUESTS AND SUPPORTING DOCUMENTS

1. The request for extradition shall be in writing and shall be transmitted through the diplomatic channel.
2. The request shall be supported by :
 - (a) the original or a true certified copy of the conviction and sentence, or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the Requesting State;
 - (b) a statement of the offences for which extradition is requested, the time and place of their commission, their legal description and a reference to the relevant legal provisions, including those pertaining to lapse of time, as well as a copy of those provisions;
 - (c) particulars of the remaining duration of the sentence to be carried out when the person is claimed for the purpose of serving a sentence of imprisonment;
 - (d) as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and, if possible, his location.

ARTICLE 10

ADDITIONAL EVIDENCE

If the information communicated by the Requesting State is found to be insufficient to enable the Requested State to make a decision in pursuance of the present Agreement, the latter State shall request the necessary supplementary information and may fix a time limit for the receipt thereof. This time limit may be extended by the Requested State upon a duly reasoned request being made by the Requesting State.

ARTICLE 11

PROVISIONAL ARREST

1. In case of urgency, the competent authorities of the Requesting State may apply for the provisional arrest of the person sought; the competent authorities of the Requested State shall take a decision on it in accordance with their law.
2. The request for provisional arrest shall include a brief statement of the facts of the case; it shall also state that one of the documents mentioned in Article 9, paragraph 2 (a), exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.
3. A request for provisional arrest shall be sent to the competent authorities of the Requested State either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing-or

accepted by the Requested State. The requesting authority shall be informed without delay of the result of its request.

4. Provisional arrest may be terminated if, within a period of 60 days after arrest, the Requested State has not received the request for extradition and the documents mentioned in Article 9. The possibility of provisional release at any time is not excluded, but the Requested State shall take any measures which it considers necessary to prevent the escape of the person sought.
5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

ARTICLE 12

REQUEST FOR EXTRADITION BY SEVERAL STATES

1. If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the Requested State shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the request, the nationality of the person claimed and the possibility of subsequent extradition to another State.
2. If the Requested State reaches a decision at the same time on extradition to one of the Requesting States, and on re-extradition to another Requesting State, it shall communicate that decision on re-extradition to each of the Requesting States.

ARTICLE 13

DECISION

1. The Requested State shall promptly communicate to the Requesting State through diplomatic channels its decision on the request for extradition.
2. The Requested State shall convey to the Requesting State the reason for any complete or partial refusal of the request for extradition.

ARTICLE 14

POSTPONED OR CONDITIONAL SURRENDER

1. The Requested State may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that State or if he has already been convicted, in order that he may serve his sentence in the territory of that State for an offence other than that for which extradition is requested.
2. The Requested State may instead of postponing surrender, temporarily surrender the person claimed to the Requesting State in accordance with conditions to be determined by mutual agreement between both States.

ARTICLE 15

SURRENDER OF THE PERSON SOUGHT

1. If extradition is agreed to, the Requesting State shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
2. Subject to the provisions of paragraph 3 of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days, The Requested State may refuse to extradite him for the same offence.
3. If circumstances beyond its control prevent one of the Contracting States from surrendering or taking over the person to be extradited, it shall notify the other State. The two States shall agree upon a new date for surrender and the provisions of paragraph 2 of this Article shall apply.

ARTICLE 16

RULE OF SPECIALITY

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases :
 - (a) when the State which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 9 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Agreement;
 - (b) When that person, having had an opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
2. The Requesting State may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of, lapse of time.
3. When the legal description of the offence for which a person has been extradited is altered this person shall only be proceeded against or sentenced if the offence under its new description:
 - (a) can give rise to extradition pursuant to this Agreement;
 - (b) relates to the same facts on which extradition was granted.
4. When the modification of the legal description of the offence for which a person has been extradited may result in a lessening of the sentence to be awarded, the provisions of paragraph 3 of this Article shall apply.

ARTICLE 17

RE-EXTRADITION TO A THIRD STATE

Except as provided for in Article 16, paragraph 1 (b), the Requesting State shall not, without the consent of the Requested State-, surrender to a third State a person surrendered to it and sought by the said third State in respect of offences committed before his surrender. The Requested State may request the production of the documents mentioned in Article 9 as well as a legal record in which the person claimed states that he accepts or refuses re-extradition.

ARTICLE 18

INFORMATION ON THE RESULT OF THE CRIMINAL PROCEEDINGS

The Requesting State shall inform the Requested State, upon demand by the latter, of the outcome of the criminal proceedings being conducted in respect of the extradited person and send a copy of the final and binding decision.

ARTICLE 19

SURRENDER OF PROPERTY

1. Upon the request of the Requesting State and to the extent permitted under the laws of the Requested State, all articles which may serve as evidence or which have been acquired as a result of an offence and which at the time of apprehension are found in the possession of the person sought shall be surrendered if extradition of the person sought is granted. Surrender of such articles shall be possible even without any special request and, if possible, at the same time as the person sought is surrendered.
2. The property specified in paragraph 1 of this Article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
3. Insofar as the rights of the Requested State or of third parties to the articles are to be respected, the Requested State may refuse surrender or condition surrender upon a satisfactory assurance from the Requesting State that the articles will be returned to the Requested State as soon as possible.

ARTICLE 20

TRANSIT

1. Transit through the territory of either of the Contracting States shall be granted upon request transmitted through the diplomatic channel, provided that the offence concerned is an extraditable offence under this Agreement.
2. The State requested to grant transit may refuse to comply when the person concerned is its national.
3. Subject to the provisions of paragraph 4 of this article, it shall be necessary to produce the documents mentioned in article 9, paragraph 2.

4. If air transport is used, the following provisions shall apply :
 - (a) When no landing is scheduled, the Requesting State shall notify the State over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 9, paragraph 2(a) exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 11 and the Requesting State shall submit a formal request for transit;
 - (b) When a landing is scheduled, the Requesting State shall submit a formal request for transit.

ARTICLE 21

PROCEDURE

Except where this Agreement otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the Requested State,

ARTICLE 22

LANGUAGES TO BE USED

The documents transmitted in application of this Agreement shall be in the language of the Requesting State and be accompanied by a translation in the language of the Requested State.

ARTICLE 23

EXPENSES

1. Expenses incurred in the territory of the Requested State until the surrender of the person claimed are borne by that State.
2. Expenses incurred on the transit of a person claimed through the territory of the State requested to allow the transit, are borne by the Requesting State.

ARTICLE 24

RATIFICATION; ENTRY INTO FORCE; DENUNCIATION

1. Each of the States shall notify the other of the fulfillment of the procedures required by its constitution for the entry into force of the present Agreement.
2. The present Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.
3. Either State may terminate the present Agreement at any time by giving to the other written notice of termination through diplomatic channels; in that case, termination shall take effect six months from the date of receipt of that notice.

Done at Paris on 24th of January 2003 in triplicate in Hindi, French and English languages, all three texts being equally authentic.

Now, therefore, in exercise of the powers conferred by Sub-section (2) of Section 12 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter 11, shall apply to the French Republic with effect from the date of the publication of this notification.

[F.No. T. 413/79/96-97]

P. M. MEENA Jt Secy. (Consular)

MINISTRY OF EXTERNAL AFFAIRS NOTIFICATION

New Delhi, the 16th May, 2008

Extradition Treaty between the Republic of India and the Republic of Poland

G.S.R.382(E).— Whereas the Extradition Treaty between the Republic of India and the Republic of Poland was signed at New Delhi, on 17th February, 2003; and the instruments of Ratification were exchanged at Warsaw (Poland) on 4th April, 2005, and which treaty provides as follows :

The Republic of India and the Republic of Poland hereinafter referred to as Contracting States

Desiring to make more effective the cooperation between the two States in the suppression of crime, including terrorism, by concluding a treaty for the extradition of offenders,

Have agreed as follows:

ARTICLE 1

Obligation to extradite

1. Each Contracting State undertakes to extradite to the other Contracting State, in the circumstances and subject to the conditions specified in this Treaty, any person who is wanted prosecution for, or is convicted of art extraditable offence, as specified in Article 2, committed within the territory of the Requesting State, and is found within the territory of the Requested State.
2. Extradition shall also be granted in respect of an extraditable offence, as specified in Article 2, committed outside the territory of the Requesting State but in respect of which the requesting State has jurisdiction, if the laws of the Requested State provide for the punishment for such an offence committed outside its territory in similar circumstances.
3. Extradition may also be granted in respect of an extraditable Offence, as specified in Article 2, committed wholly or partly in the territory of the Requested State, over which the Requesting State has jurisdiction.
4. Extradition shall be granted in accordance with the provisions of this Treaty, irrespective of when the offence in relation to which extradition is sought was committed, provided that:
 - a) it was an offence under the laws of both the Contracting States at the time of the acts or omissions constituting the offence; and
 - b) it was an offence under the laws of both the Contracting States at the time the request for extradition was made.

ARTICLE 2

Extradition Offences

1. An extradition offence for the purposes of this Treaty is constituted by act which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one year.
2. An offence shall also be an extradition offence if it consists of an attempt to commit, abetment or participation in the commission of an offence specified in paragraph 1. Conspiracy to commit an offence specified in paragraph 1, as provided by the laws of the Republic of India and participation in an association or an organized group to commit offences specified in paragraph 1, as provided by the laws of the Republic of Poland, shall also be extradition offences.
3. An offence shall be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character. Where extradition is sought for an offence against laws relating to taxation, customs duties, foreign exchange or other revenue matter, extradition may not be refused only on the ground that the laws of the Requested State do not impose the same kind of tax or duty or do not contain a tax, duty, customs, or exchange regulation of the same kind as the laws of the Requesting State.

ARTICLE 3

Application

This Treaty shall apply to offences committed before as well as after the date it enters into force.

ARTICLE 4

Grounds for Refusal of Extradition

1. A person shall not be extradited if:
 - a) he is a citizen of the Requested State;
 - b) the person claimed has, according to the laws of either the Requesting or the Requested State, become immune, by reason of lapse of time, from prosecution or the execution of punishment;
 - c) extradition is inadmissible under the laws of the Requested State; or
 - d) the offence in respect of which he is wanted for prosecution or is convicted is a military offence which is not an offence under ordinary criminal law.
2. A person shall also not be extradited if in respect of the offence for which his extradition is requested, he has been previously proceeded against in the Requested State and convicted or acquitted with final effect.
3. Where it appears to the Requested State that extradition would be totally incompatible with humanitarian considerations, in particular the state of health or old age of the person sought, the Contracting States shall consult to mutually determine whether the extradition request should continue.

ARTICLE 5

Political Offences

1. Extradition shall not be granted if the offence for which extradition is requested is an offence of a political character.
2. For the purposes of this Treaty, the following offences shall not be considered to be of a political character:
 - a) murder or any other offence against the person of the Head of State, the Head of Government of either of the Contracting States or members of their families;
 - b) an offence for which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;
 - c) murder, manslaughter, malicious wounding, or inflicting grievous bodily harm or other grievous injury to health;
 - d) an offence involving kidnapping, abduction or any form of unlawful detention, including the taking of a hostage;
 - e) placing or using an explosive, incendiary or destructive device capable of endangering life, of causing substantial bodily harm or of causing substantial property damage; and
 - f) an attempt to commit, or participation in the commission of any of the foregoing offences as well as conspiracy to commit these offences, as provided by the laws of the Republic of India and participation in an association or an organized group to commit these offences, as provided by the laws of the Republic of Poland.

ARTICLE 6

Consequences of Refusal of Extradition

- a) If an extradition request is refused under paragraph 1 subparagraph (a) of Article 4, the Requested State shall transmit the case to its competent authorities in order to initiate criminal proceedings in accordance with the laws of the Requested State. For this the Requesting State shall transfer to the Requested State the relevant documents and evidence.
- b) The provision of paragraph 1 shall apply in other cases also where a request for extradition is refused, if the initiation of criminal proceeding is not excluded under the laws of the Requested State.
- c) In case the extradition is refused on the ground of existence of jurisdiction (Article I paragraph 3) and according to the decision of the investigating authority the trial is not found feasible in the Requested State, the request for extradition may be resubmitted.

ARTICLE 7

Postponement of Extradition and Temporary Extradition

1. If the person to be extradited is being prosecuted or serving sentence for another crime in the territory of the Requested State, the extradition may be postponed till the end of the criminal proceedings of the case, or completion of sentence, which shall be advised to the Requesting State.
2. If the postponement of extradition can result in immunity by the reason of lapse of time or impede the investigation, the person can be extradited temporarily under a special request of the Requesting State.
3. The temporarily extradited person must be returned to the Requested State immediately after the end of the proceedings of the case.

ARTICLE 8

Extradition Procedures

1. The request for extradition shall be made through diplomatic channels.
2. The request shall be accompanied by:
 - a) the name and surname of the person whose extradition is requested, information on his citizenship, place of residence or whereabouts and other pertaining data, as well as, if possible, the description of the person's appearance, his photographs and fingerprints;
 - b) a statement of the facts of the offence for which extradition is requested; and
 - c) the text of the laws:
 1. defining the offence and
 2. prescribing punishment for that offence.
3. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the original or a certified copy of the warrant of arrest issued by a competent court of the Requesting State and such information or statements as would justify the committal for trial of the person had the offence been committed in the Requested State.
4. If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certified copy of the judgment and a statement that the judgment is final and enforceable and showing how much of sentence still remains to be undergone.
5. If the Requested State considers that the material or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, it shall request the necessary supplementary material or information and may fix a reasonable time limit for the receipt thereof.

ARTICLE 9

Provisional arrest

1. In urgent cases the person sought may, in accordance with the laws of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of intention to request the extradition of that person and a statement of existence of a warrant of arrest or a conviction against him, such information as may be necessary to identify him and such other information as would be necessary for the issue of a warrant of arrest in the Requested State. The application shall also state for what offence extradition will be requested.
2. A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent institution of further proceedings for the extradition of the person sought if a request is subsequently received.

ARTICLE 10

Rule of Speciality

1. A person extradited under this Treaty may not be detained, prosecuted, sentenced or punished in the Requesting State for offences except for:
 - a) an offence for which extradition has been granted or a differently denominated offence based on the same facts on which extradition was granted, provided such an offence is extraditable or is a lesser form of such offence;
 - b) an offence committed after the extradition of the person; or
 - c) an offence for which the competent authority of the Requested State has consented to the person's detention, prosecution, sentencing, or punishment.

For the purpose of this subparagraph:

- (i) the Requested State may require the submission of the documents specified in Article 8; and
 - (ii) unless the Requested State objects in writing, the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorise, while the request is being processed.
2. A person extradited under this Treaty may not be extradited to a third State for an offence committed prior to the surrender unless the surrendering State consents.
3. Paragraph 1 and 2 of this Article shall not prevent the detention, prosecution, sentencing or punishment of an extradited person, or the extradition of that person to a third State if:
 - a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or

- b) that person does not leave the territory of the Requesting State within 30 days of the day on which that person is free to leave.

ARTICLE 11

Admissibility of Documents

The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:

- a) in the case of a request from the Republic of India, they are certified by the proper diplomatic or consular representative of the Republic of Poland in the Republic of India;
- b) in the case of a request from the Republic of Poland, they are certified by the principal diplomatic or consular officer of the Republic of India resident in the Republic of Poland; or
- c) they are certified or authenticated in any other manner accepted by the laws of the Requested State.

ARTICLE 12

Competing Requests

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting State and a third State, the Requested State shall determine the State to which the person shall be extradited. In making its decision, the Requested State shall take into consideration factors including: existence or non-existence of extradition treaty with the states requesting extradition, place of the commission of offences, gravity of offences, nationality of the offender and chronological order of the requests received.

ARTICLE 13

Death Sentence

If under the laws of the Requesting State the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested State does not provide for death penalty in a similar case, extradition may be refused, unless the Requesting State gives such assurances as the Requested State considers sufficient that the death sentence will not be carried out.

ARTICLE 14

Transfer

1. The modalities of transfer of the person to be extradited, including the time and the place, shall be agreed upon by the competent authorities of both the Contracting States.
2. The Requesting State shall take delivery of the person sought from the territory of the Requested State within 30 days of the date on which the Requesting State was notified of the extradition decision. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.

3. If circumstances beyond its control prevent a Contracting State from timely surrendering or taking delivery of the person to be extradited, it shall notify the other Contracting State before the expiration of the time limit. In such a case the competent authorities of the Contracting States may agree upon a new date for the surrender and for taking delivery.

ARTICLE 15

Seizure and Surrender of Property

1. To the extent permitted under its laws, the Requested State may seize and surrender to the Requesting State all articles, documents and evidence connected with the offence in respect of which extradition is granted. The items mentioned in this Article may be surrendered, to the extent permitted under the laws of the Requested State, even when extradition cannot be effected due to the death, disappearance, or escape of the person sought.
2. The Requested State may condition the surrender of the property upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such property if it is needed as evidence in the Requested State.
3. The rights of third parties in such property shall be duly respected.

ARTICLE 16

Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its laws, afford the other Contracting State the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

ARTICLE 17

Extradition expenses

The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.

ARTICLE 18

Languages

While complying with the present Treaty, the Contracting States shall use their national language attaching the translation in the national language of the other Contracting State or in the English language.

ARTICLE 19

Obligations under International Treaties

The present Treaty shall not affect the rights and obligations of the Contracting States arising from other international Treaties to which the Contracting States are parties.

ARTICLE 20

Ratification and Termination

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged New Delhi or Warsaw. It shall enter into force on the date of exchange of instruments of ratification.
2. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channel; in such a case, the Treaty shall cease to have effect six months after receipt of the notice.

In witness whereof the undersigned being duly authorised thereto by their respective Governments, have signed this Treaty.

Done at New Delhi this day of 17 February 2003 in duplicate in Hindi, Polish and English languages, all texts being equally authentic. In case of any interpretational difference the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Extradition Act, 1962 (34 of 1962), and in suppression of notification of Government of India, if any existing, relating to an extradition treaty or arrangement applicable in respect of the Republic of Poland, the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the Republic of Poland with effect from the date of the publication of this notification.

[F.No.T.413/81/96-97]

P. M. MEENA, Jt. Secy. (Consular)

Treaty on Extradition between the Republic of India and the Republic of Bulgaria

The Republic of India and the Republic of Bulgaria hereinafter referred to as the Contracting Parties, desiring to develop the legal co-operation in the field of extradition have agreed as follows:

Article 1

Duty to Extradite

1. Each Contracting Party when duly requested and subject to the provisions and conditions specified in this Treaty, undertakes to surrender to the other Party, persons within its territory, other than its own nationals, who are accused or convicted of any extraditable offence.
2. The Requested Party shall invoke all legally permissible measures in order to suspend naturalisation proceedings in respect of the person sought for extradition by the Requesting Party until a decision has been taken concerning the request for his or her extradition and, where the extradition request is granted, until his or her surrender.
3. Irrespective of the place or places of commission of the extraditable offence the Requested Party shall grant extradition:
 1. When the person whose extradition is requested is a national of the Requesting Party;
 2. When the person sought is not a national of either Contracting Party, provided that the acts and omissions of the person sought amount to an offence affecting the interests of the Requesting Party or any of its nationals under the law of the Requested Party and the latter does not claim jurisdiction to prosecute for the same.

Article 2

Extraditable Offences

1. Extradition shall be granted in respect of offences, which under the law of both Contracting Parties are punishable by a minimum term of imprisonment or other forms of deprivation of liberty for a minimum period of at least one year. In case extradition is requested for the purpose of serving one or more of punishments, extradition shall be granted if the aggregate term of the sentences, which remain to be served for one or more extraditable offences, is not less than six months.
2. If the request for extradition includes several separate offences, some of which do not fulfil the condition of para 1 with regard to the amount of punishment which may be awarded, extradition shall be granted for the offence, which meets the above specified conditions. This rule shall apply only to offences that meet the other conditions of this Treaty.
3. Subject to the conditions set out in para 1 extradition shall also be granted in respect of an attempt or conspiracy to commit, or aiding, abetting, inciting or participating as an accomplice in the commission of an extraditable offence.

Article 3

Refusal to Extradite

1. Extradition shall not be granted in cases when:
 - a. criminal proceedings have been instituted or a judgement has been passed by the judicial authorities of the Requested Party upon the person sought in respect of the offence or offences for which extradition is requested;
 - b. by the date of receipt of the request for extradition, the criminal prosecution or the execution of the punishment has been barred by lapse of time that constitutes a limitation under the law of either of the Contracting parties.
2. Extradition shall not be granted if the offence, in respect of which it is requested, is regarded by the Requested Party as a political offence, an offence of political character, or as an offence connected with such an offence.
3. For the purpose of this Treaty the following offences shall not deemed to be offences within the meaning of para 2:
 - a. any offence in respect of which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought, or to submit his or her case to their competent authorities for a decision as to prosecution;
 - b. murder, manslaughter or culpable homicide, maliciously wounding or inflicting grievous bodily harm;
 - c. kidnapping, abduction, or any comparable form of unlawful detention, including the taking of hostages;
 - d. placing or using an explosive, detonating device, destructive device, firearm or ammunition, capable of endangering life, or of causing grievous bodily harm, or of causing substantial property damage;
 - e. any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as a political offence;
 - f. an attempt or conspiracy to commit, or aiding, abetting, inciting or participating in the commission of, any of the foregoing offences.
4. Extradition shall not be granted if the Requested Party has substantial reasons to believe that the request for extradition has been made for the purpose of prosecuting or punishing the person on account of his or her race, religion, nationality, ethnic origin, political opinions, sex or status, or that person's position may be prejudiced for any of those reasons; or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights.

Article 4

Optional Ground to Refuse Extradition

Extradition may be refused if the offence for which extradition is requested has been committed outside the territory of either Contracting Party and the law of the Requested Party does not apply to such offence when committed outside its own territory.

Article 5

Capital Punishment

If the offence for which extradition is requested is punishable by death under the law of the Requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the Requested Party or is not normally carried out, extradition may be refused unless the Requesting Party gives such assurance as the Requested Party considers sufficient that the death penalty will not be imposed, or if imposed will not be carried out.

Article 6

Institution of Criminal Proceedings in the Requested Party

1. If extradition is refused on any of the grounds under Article 1(l), Article 3(1a) and Article 3(4), the Requested Party shall submit the case to its competent authorities for institution of criminal proceedings. For this purpose the Requesting Party shall submit the procedural documents and all available information necessary for the proceedings.
2. The Requested Party shall immediately inform the other Contracting Party on the outcome of the instituted criminal proceedings.

Article 7

Rule of Speciality

1. A person who has been extradited shall not be subjected to any measures of coercion or restriction in his or her personal freedom for any offence committed prior to submission of the extradition request other than that for which he was extradited.
2. A person extradited under this Treaty shall not be detained or tried or be subjected to any other restriction of his personal liberty in the Requesting Party for any offence committed before his extradition, other than:
 - a. an offence in respect of which he was extradited, or another offence in respect of which he could be convicted based on the proven facts used to support the request for his extradition, or
 - b. another extraditable offence in respect of which the Requested Party has consented to his or her being so detained or tried, or subjected to any other restriction of his or her personal liberty.
3. The extradited person shall not, without the consent of the Requested Party, be surrendered to a third State in respect of offences committed before his or her surrender to the Requesting Party.

4. In the case under para 3 the Requesting Party shall transmit a request, the documents mentioned in Article 8 (1) (b) and (c), and if necessary – the documents mentioned in Article 8 (1) (a) or in the case of extradition to a third state, the request of the latter for extradition and the documents submitted by the third State. The request shall be accompanied by declarations given by the extradited person before a Judicial Authority of the Requesting Party with a view to extending the scope of the extradition or giving consent to his or her extradition to a third Party.
5. The provisions of the preceding paragraphs shall not apply in case when having had the opportunity to leave the territory of the Party to which the extradited person has been surrendered, he or she has not done so within 45 days of his or her final discharge or has voluntarily returned to that territory after having left it.

Article 8

Request and Accompanying Documents

1. The request shall be accompanied by:
 1. the original or an authenticated copy of the warrant of arrest, or if the request has been made in view of serving a sentence, an original or an authenticated copy of the final conviction and sentence, together with a document specifying the part of the punishment which has already been served and the part which remains to be served;
 2. a description of the offences for which extradition is requested indicating the time and place of their commission and the applicable legal provisions;
 3. the text of the relevant legal provisions, including limitations;
 4. as accurate a description as possible of the person sought, together with any other information, which will help establish his or her identity and nationality.
2. If the information is found to be insufficient, the Requested Party shall require the Requesting Party to give the necessary supplementary information about the circumstances mentioned under para 1 and may fix a time limit for the receipt thereof. This time limit may be extended upon a request giving the reasons thereof.
3. Additional requests for legal assistance in connection with the extradition already granted shall be examined in the context of the information already furnished on the case.

Article 9

Provisional Arrest

1. If one of the Parties applies for provisional arrest of a person, whose extradition it intends to request, the other Party may, in accordance with its law, arrest that person or impose any other measure of compulsion prior to the receipt of the request for extradition.
2. The request for provisional arrest shall contain a statement of the existence of a warrant of arrest or a final conviction against him, a declaration of intention to request the extradition of that person;

a description of the offence for which extradition is requested indicating the time and place of its commission; legal provisions, applicable to the offence and the prescribed punishment, and if necessary, information about what part of the sentence remains to be served, as well as the information necessary for the identification of the person.

3. The Requested Party shall inform without delay the other Party of the progress of its request and of the date of arrest or imposition of another measure of coercion.
4. The arrest of the person or the other measures of coercion shall be terminated if the Requested Party has not received a request and the documents mentioned in Article 8 upon the expiration of 90 days from the date of the arrest or the date of the execution of the other measures of coercion. This provision shall not prevent re-arrest or imposition of other measures of coercion if the request for extradition is received after the expiration of the above time limit.

Article 10

Surrender

1. If extradition is granted, the person sought shall be sent by the authorities of the Requested Party to such a convenient point of departure from the territory of that Party as the Requesting Party shall indicate.
2. The Requesting Party shall take over the person sought from the territory of the Requested State within one month or such longer period as may be permitted under the law of the Requesting Party. If the person is not taken over within that period, the Requested State may refuse to extradite him or her for the same offence.

Article 11

Temporary Extradition or Postponement of Surrender

1. The decision whether or not to extradite shall be taken and immediately communicated to the Requesting Party, regardless of whether criminal proceedings against the person sought have been instituted in the territory of the Requested Party, or whether he or she is serving a sentence on the territory of the Requested Party in respect of an offence other than that for which extradition is requested.
2. The Requested Party may, after having granted extradition, postpone the surrender until the criminal proceedings or the sentence referred to in para 1 are completed. The Requested Party may instead of postponing surrender, temporarily extradite the person sought to the Requesting Party in accordance with conditions to be determined by mutual agreement between the Parties. The extradited person shall be detained during his or her stay in the territory of the Requesting Party and shall be transferred back to the Requested Party within the agreed period, which shall not exceed three months.

Article 12

Handing over of Property

1. When a request for extradition is granted, the Requested Party shall, upon request and in so far as its law allows, hand over to the Requesting Party the articles (including sums of money) which may serve as evidence, including real evidence of the offence.
2. If the articles in question are liable to seizure in the territory of the Requested Party, the latter may, in connection with pending judicial proceedings, temporarily retain them. When the articles are liable to confiscation the Requested Party may retain them or hand them over on condition that they are returned.
3. These provisions shall not affect the rights of the Requested Party or the rights of any person other than the person sought. When such rights exist, the articles shall be returned upon request from the Requested Party without imposing any charges, within the shortest time after the termination of criminal proceedings.

Article 13

Competing Requests

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the Requested Party shall make its decision having regard to all circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person sought and the possibility of subsequent extradition to another State.

Article 14

Information on the Result of Criminal Proceedings

The Contracting Party, whose extradition request has been granted for the purpose of carrying out criminal proceedings, shall communicate to the other Party the rendered verdict.

Article 15

Transit

1. Each Contracting Party, on submission of a request from the other Contracting Party, shall allow transit through its territory of a person extradited from a third State to that other Party.
2. The provisions of Article 8 shall apply to transit requests. Transit may be refused on the same grounds on which extradition may be refused under this Treaty.
3. If air-transport without landing is used, the permission of the Party over whose territory the flight is made, shall not be necessary. The other Party shall, however, notify in due time the transit passing and shall provide the information necessary to identify the person, and relating to the offence committed, its legal provisions applicable to the offence committed and to the term of the sentence,

if possible, and shall certify that either warrant of arrest or final imprisonment sentence exist. In case of a landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 9.

Article 16

Communications

1. The requests for extradition shall be formalised in accordance with the national legislation of the Requesting Party.
2. For the purposes of this Treaty communications shall be carried out through a diplomatic channel. The request for provisional arrest may also be transmitted through the International Organisation of Criminal Police (INTERPOL).
3. Requests for extradition, documentation and all legal and other accompanying documents shall be sent in the language of the Requesting Party and shall be accompanied by a certified translation into English or in the language of the Requested Party.

Articles 17

Mutual Legal Assistance in Extradition

Each Contracting Party shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence in respect of which extradition has been requested.

Article 18

Obligations under International Conventions or Treaties

The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from international conventions or treaties to which they are parties.

Article 19

Expenses

Extradition expenses shall be borne by the Party on whose territory they have been incurred and airfares and transit expenses incurred in relation to the extradition of the person shall be borne by the Requesting Party.

Article 20

Final Provisions

1. This Treaty shall be subject to ratification.
2. This Treaty shall enter into force on the first day of the second month following the month of the exchange of instruments of ratification, which shall take place as soon as possible after signing of the Treaty.

3. This Treaty is concluded for an unlimited period. Either of the Contracting Parties may denounce this Treaty at any time. Denunciation shall take effect on the date of expiration of a six month period following the date of the receipt of the notification by the other Party.

Done in duplicate at Sofia on 23rd day of October, 2003 in Hindi, Bulgarian and English languages, the three texts being equally authentic. In case of any difference in the interpretation, the English text shall prevail.

FOR THE REPUBLIC
OF INDIA

FOR THE REPUBLIC
OF BULGARIA

NAME: MR. ARUN SHOURIE

NAME: MR. ANTON STANKOV

DESIGNATION: MINISTER OF DISINVESTMENT
AND COMMUNICATIONS AND
INFORMATION TECHNOLOGY

DESIGNATION: MINISTER OF JUSTICE

MINISTRY OF EXTERNAL AFFAIRS

ORDER

New Delhi, the 8th June, 2007

Treaty on Extradition between the Government of the Republic of India and the Government of the Republic of South Africa

G.S.R. 441(E).—Whether the Extradition Treaty between the Republic of India and Republic of South Africa was signed at New Delhi, on 16th October, 2003, and the instruments of ratification were exchanged at Pretoria on 23rd November, 2005 in accordance with article 23 of the Treaty and which treaty provides as follows :

The Government of the Republic of India and the Government of the Republic of South Africa, hereby referred to as “the Contracting States,”

Desiring to make more effective their co-operation in the prevention and suppression of crime by concluding a Treaty on Extradition;

Affirming their respect for each other’s legal systems and judicial institutions;

Have agreed as follows:

Article 1

OBLIGATION TO EXTRADITE

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this treaty, persons who are wanted for trial/prosecution or the imposition or enforcement of a sentence in the Requesting State for an extradition offence.

Article 2

EXTRADITABLE OFFENCES

1. For the purpose of this Treaty, extradition shall be granted for conduct, which constitutes an offence under the laws of both Contracting State, punishable by deprivation of liberty for at least one year or by a more severe penalty.
2. Where the request for extradition relate to a person sentenced to deprivation of liberty by & court of the Requesting State for an extraditable offence, extradition shall be granted if a period of at least six months of the sentence remains to be serviced.
3. For the purpose of this Article, in determining whether conduct is an offence against the law of Requested State—
 - (a) it shall not matter whether the laws of the Contacting States place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology;

- (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contacting States the constituent elements of the offence differ.
4. An offence of a fiscal character, including an offence against a law relating to taxation, customs duties, foreign exchange control or any other revenue matter, is an extraditable offence. Provided that the conduct for which extradition is sought is an offence in the Requested State, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting State.
 5. An offence is extraditable whether or not the conduct on which the Requesting State bases its request occurred in the territory over which it has jurisdiction. However, where the law of the Requested State does not provide for jurisdiction over an offence in similar circumstances, the Requested State may, in its discretion, refuse extradition on this basis.
 6. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that —
 - (a) it was an offence in the Requesting State at the time of the commission of the offence; and
 - (b) the offence alleged, if it had taken place in the Requested State at the time of the making of the request for extradition, would have constituted an offence against the law of the Requested State.
 7. If the request for extradition relates to a sentence of both imprisonment and a pecuniary sanction, the Requested State may grant extradition for the enforcement of both the imprisonment and the pecuniary sanction.
 8. If the request for extradition related to more than # one offence, each of which is punishable under the laws of both States, but some of which do not meet the other requirements of paragraphs 1 and 2, the Requested State may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

Article 3

MANDATORY REFUSAL OF EXTRADITION

Extradition shall be refused in any of the following circumstances:

- (b) Where the offence for which extradition is requested is considered by the Requested State to be a political offence. For the purpose of this paragraph, the following conduct does not constitute a political offence :
 - (a) Conduct that constitutes an offence mentioned in a multilateral convention or agreement to which both Contracting States are parties and are obliged to extradite the person or submit the matter to appropriate authorities for prosecution;
 - (b) murder;

- (c) a murder of or other violent crime against a Head of State or a Head of Government or Deputy Head of State or Deputy Head of Government of the Requesting or Requested State, or a member of such person's family;
 - (d) inflicting serious bodily harm;
 - (e) Sexual assault;
 - (f) kidnapping, abduction, hostage-taking or extortion;
 - (g) using explosives, incendiaries, devices or substances in circumstances in which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused; and
 - (h) an attempt or conspiracy to engage in, counselling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of paragraphs (a) to (g).
- (c) Where there are substantial grounds for believing that the request for extradition is made for the purpose of prosecuting or punishing the person by reason of that person's race, religion, nationality, ethnic origin, or sex.
 - (d) Where the prosecution for the offence for which extradition is requested would be barred by lapse of time under the law of the Requesting State.
 - (e) Where the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law.
 - (f) Where the person sought has been finally acquitted or convicted in the Requested State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforce or is no longer enforceable.

Article 4

DISCRETIONARY REFUSAL OF EXTRADITION

Extradition may be refused in any of the following circumstances:

1. Where the offence for which extradition is requested is subject to the jurisdiction of the Requested State and that State will prosecute that offence.
2. Where the person sought is being prosecuted by the Requested State for the offence for which extradition is requested.
3. Whether the offence carried the death penalty under the law of the Requesting State, unless that State undertakes that the death penalty will not be sought, or if a sentence of death is imposed, it will not be carried out.
4. Where, in exceptional cases, the Requested State while also taking into account the seriousness of the offence and the interests of the Requesting State considers that because of the personal

circumstances, such as age, mental or physical ability to stand trial, of the person sought, the extradition would be incompatible with humanitarian considerations.

5. Where the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

Article 5

NATIONALITY

Extradition shall not be refused on the ground of the nationality of the person sought.

Article 6

PRESENTATION OF REQUESTS

1. A request for extradition shall be submitted—
 - (a) in the case of the Republic of India, to the Minister of External Affairs;
 - (b) in the case of the Republic of South Africa, to the Minister for Justice and Constitutional Development.
2. The request for extradition shall be routed through the diplomatic channels.

Article 7

DOCUMENTS TO BE SUBMITTED

The following documents shall be submitted in support of a request for extradition:

- (a) in all cases, whether the person is sought for prosecution or the imposition or enforcement of sentence —
 - (i) information about the description, identity, location and nationality of the person sought;
 - (ii) a Statement describing briefly the conduct constituting the offence for which the extradition is requested, indicating the place and the date of the commission of the offence and which provides a description or a copy of the text of the legal provisions describing the offence and the applicable penalty. This statement shall also indicate —
 - (aa) that these legal provisions were in force both at the time of the Commission of the offence and at the time of the extradition request;
 - (bb) whether or not the prosecution of the offence, the imposition or the enforcement of any applicable penalty is barred by reason of lapse of time;
 - (cc) where the offence occurred outside the territory of the Requesting State, the legal provisions establishing its jurisdiction; and

- (b) in the case of a person sought for prosecution for an offence
 - (i) the original or a certified true copy of the warrant of arrest or of any document having the same force and effect, issued by a competent authority in the Requesting State;
 - (ii) a copy of the indictment, charge sheet or other charging document; and
 - (iii) evidence that would be sufficient to justify the committal for trial of the person sought, if the conduct had occurred in the Requested State. The record may include any report, statement or other relevant documentation.
- (c) in the case of a person sought for the imposition or enforcement of a sentence—
 - (i) a certified statement by the competent authority describing the conduct for which she person was convicted and attaching a copy of the document that records the conviction and, where applicable, sentence of the person; and
 - (ii) If a portion of the sentence has already been served, a statement by the competent authority specifying the duration of the sentence which remains to be served.

Article 8

AUTHENTICATION OF SUPPORTING DOCUMENTS

Where the law of the Requested State requires authentication, documents shall be authenticated by a statement by the Minister making the request or a person designated by here or him under the seal of that Minister identifying the person who has signed the document, including that person's position or title.

Article 9

LANGUAGE

All documents submitted in accordance with this Treaty shall be in the English language.

Article 10

ADDITIONAL INFORMATION

If the Requested State considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that State may request that additional information be furnished within such time as it specifies.

Article 11

WAIVER

Extradition of a person may be granted on request pursuant to the provisions of this Treaty, notwithstanding that the requirements of Article 7 have not been complied with, provided that the person sought consents to being extradited.

Article 12

PROVISIONAL ARREST

1. In case of urgency, the competent authorities of the Requesting State may apply by any means [including through the International Police Organisation (INTERPOL)] which allows for a written record for the provisional arrest of the person sought.
2. An application for provisional arrest shall include the following:
 - (a) information about the description, identity, location and nationality of the person sought;
 - (b) a statement that a request for extradition will follow;
 - (c) a description of the nature of the offence and applicable penalty, with a brief summary of the facts of the case, including date and place of the offence;
 - (d) a statement attesting to the existence of a warrant of arrest or a conviction to which this Treaty applies and details thereof; and
 - (e) any other information which would justify provisional arrest in the Requested State.
3. The Requested State shall promptly inform the Requesting State of the Measures taken pursuant to the application for provisional arrest.
4. Provisional arrest shall be terminated if the Requested State has not received the request within sixty (60) days of the arrest. The competent authorities of the Requested State, insofar as is permitted by the law of that State, may extend that delay with regard to the submission of the documents referred to in Article 7. However, the person sought may be granted bail at any time, subject to the conditions deemed necessary to ensure that the person does not leave the country.
5. The expiry of the sixty (60) day period does not preclude subsequent arrest and extradition if a request for extradition is subsequently received.

Article 13

COMPETING REQUESTS

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested State shall determine to which of those states the person is to be extradited and shall notify those states of its decision.
2. In determining to which State a person is to be extradited, the Requested State shall have regard to all the relevant circumstances, and, in particular, to—
 - (a) the relative seriousness of those offences, if the requests relate to different offences;
 - (b) the time and place of commission of each offence;
 - (c) the respective dates of the requests;
 - (d) the nationality of the person sought;

- (e) the ordinary place of residence of the person;
- (f) whether the requests were made pursuant to an extradition treaty;
- (g) the interests of the respective States; and
- (h) the nationality of the victim.

Article 14

SURRENDER

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State. Reasons shall be given for any complete or partial refusal of an extradition request.
2. Where extradition is granted, the Requested State shall surrender the person in accordance with arrangements agreed to between the competent authorities of the contracting States.
3. The Requesting State shall receive the person within such reasonable period as the Requested State specifies and, if the person is not removed within that period, the Requested State may refuse to extradite that person for the same offence.
4. If circumstances beyond its control present a contracting State from surrendering or removing the person to be extradited it shall notify the other contracting State. The contracting States shall decide upon a new date of surrender and the provisions of paragraph 3 of this article shall apply.

Article 15

POSTPONED OR TEMPORARY SURRENDER

1. Where the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested State shall inform the Requesting State of any postponement.
2. To the extent permitted by its law, where a person referred to in paragraph 1 of this Article has been found extraditable, the Requested State may temporarily surrender the person sought for the purposes of prosecution to the Requesting State in accordance with conditions to be determined between the Contracting States. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person. A person who is returned to the Requested State following a temporary surrender shall be finally surrendered to the Requesting State to serve any sentence imposed, in accordance with the provisions of this Treaty.

Article 16

SURRENDER OF PROPERTY

1. The Requested States shall, in so far as its law permits and at the request of the Requesting State, seize and surrender property that may be used in the prosecution of the offence and which, at the time of the arrest, is found in the possession of the person sought or is discovered subsequently.
2. The property mentioned in paragraph 1 of this Article shall be surrendered even if extradition having been granted, cannot be carried out owing to the death or escape of the person sought,
3. Where the property referred to in paragraphs 1 and 2 of this Article is required in the Requested State in connection with civil or criminal proceedings, the Requested State may temporarily retain or surrender it on condition that it be returned.
4. Any rights that the Requested State or third parties may have acquired in the property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State as soon as possible after the trial.

Article 17

RULE OF SPECIALITY

1. A person who has been extradited shall not be prosecuted, sentenced or detained for any offence committed prior to the surrender other than that for which that person was extradited, nor shall the person's liberty be restricted for any other reason, except in the following cases:
 - (a) where the Requested State consents;
 - (b) where the person, having had an opportunity to leave the Requesting state, has not done so within thirty (30). days of final discharge, or has voluntarily returned to that State after having left it: or
 - (c) where the person extradited consents before a judicial authority in the Requesting State.
2. A request for the consent of the Requested State under paragraph 1 of this Article shall, if required by the Requested State, be accompanied by the relevant documents required by Article 7 and a record of any statement made by the extradited person in respect of the offence concerned.
3. If the charge for which the person was extradited is subsequently changed, that person may be prosecuted or sentenced provided the offence under its revised description is :
 - (a) based on substantially the same facts contained in the extradition request and is supporting documents;
 - (b) punishable by the same maximum penalty as, or a lesser penalty than, the offence for which the person was extradited; and
 - (c) substantially the same in nature to the original offence.

Article 18

RE-EXTRADITION TO A THIRD STATE

1. Where a person has been surrendered to the Requesting State, that State shall not extradite the person to any third State for an offence committed before that person's surrender unless—
 - (a) the Requested State consents to that extradition; or
 - (b) the person has had an opportunity to leave the Requesting State and has not done so within thirty (30) days of final discharge in respect of the offence for which that person was surrendered by the Requested State or if the person has voluntarily returned to the Requesting State after having left it.
2. The Requested State may request the production of the documents submitted by the third State in relation to any consent pursuant to sub-paragraph 1 (a) of this Article.

Article 19

TRANSIT

1. To the extent permitted by its law, transit of a person sought in extradition proceedings by one Contracting State, through the territory of the other Contracting State shall be granted on a request in writing. The request for transit —
 - (a) may be transmitted by any means; and
 - (b) shall contain the information referred to in paragraph 2 of Article 12, and the particulars of the transit and ultimate proposed surrender.
2. No authorization for transit shall be necessary when air travel is used and no landing is scheduled in the territory of the transit State. In the case of an unscheduled landing, the transit State may require the request for transit provided for in paragraph 1. To the extent permitted by its law, the transit State shall detain the person in transit until the request is received and the transit is carried out, provided that the request is received within forty eight (48) hours after the unscheduled landing.

Article 20

EXPENSES

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition.
2. The Requested State shall bear the expenses incurred in its territory in the arrest of the person whose extradition is sought, and in the maintenance in custody of the person until surrender to the Requesting State.
3. The Requesting State shall bear the expense incurred in conveying the person extradited from the territory of the Requested State.

Article 21

INTERNATIONAL OBLIGATIONS UNDER CONVENTIONS AND TREATIES

The present Treaty shall not affect the rights and obligations of the Contracting States arising from international conventions or treaties to which they are parties.

Article 22

CONSULTATION

The Ministry of External Affairs of the Republic of India and the Department for Justice and Constitutional Development of the Republic of South Africa or persons designated by the respective Ministers may consult with each other through the diplomatic channel in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

Article 23

ENTRY INTO FORCE, AMENDMENT AND TERMINATION

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force on the date of the exchange of instruments of ratification.
3. This treaty may be amended by mutual consent.
4. Either Contracting State may terminate this Treaty. The termination shall take effect six (6) months from the date on which it was notified to the other Contracting State.
5. The Contracting State may also terminate this Treaty by mutual consent on such terms and conditions as may be agreed to between the States.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done at New Delhi this the 16th day of October of the year Two Thousand and Three, in two originals each, in Hindi and English, both text being equally authentic. However, in case of divergence of interpretation, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by Sub-section 1 of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the Republic of South Africa from the date of publication of this order.

[T 413/21/2000]

P. M. MEENA, Jt. Secy. (Consular)

Extradition Treaty between the Republic of India and the Republic of Tajikistan

The Republic of India and the Republic of Tajikistan, hereinafter referred to as the “Contracting Parties”;

Desiring to make more effective the cooperation of the two Parties in the suppression of crime by making further provision for the reciprocal extradition of offenders;

Recognizing that concrete steps are necessary to combat terrorism;

Have agreed as follows:

Article 1

Obligation to extradite

1. Each Contracting Party undertakes to extradite to the other Contracting Party in the circumstances and subject to the conditions specified in this Treaty, any person who being accused or convicted of an extradition offence as described in Article 2 of this Treaty, committed within the territory of the Requesting Party, is found within the territory of the Requested Party, whether such offence was committed before or after the entry into force of this Treaty.
2. Extradition shall also be available in respect of an extradition offence as describe in Article 2 of this Treaty committed outside the territory of the Requesting Party but in respect of which it has jurisdiction, if the Requested Party would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested Party shall have regard to all the circumstances of the case including the seriousness of the offence.
3. Extradition shall also be available for an extradition offence as described in Article 2 of this Treaty, if it is committed in a third State by a citizen of the Requesting Party and it bases its jurisdiction on the citizenship of the offender, subject to the provisions under Article 15 of the Treaty.

Article 2

Extradition Offences

1. An extradition offence for the purposes of the Treaty is constituted by conduct which under the laws of each Contracting Party is punishable by a term of imprisonment for a period of at least one year.
2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

Article 3

Composite Offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested Party, if this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence under the laws of both the Contracting Parties.

Article 4

Offences of conspiracy, incitement and attempt, and extra-territorial jurisdiction

1. It shall be an offence under the laws of both the Contracting Parties for any person to abet, conspire or attempt to commit or incite or participate as an accomplice in the commission of, any extradition offence.
2. It shall also be an offence under the laws of both the Contracting Parties, for any citizen of a Contracting Party to commit any offence in any place beyond its territory.

Article 5

Grounds for refusal of extradition

1. A person may not be extradited if:
 - 1.1. he is a citizen of the Requested Party; or
 - 1.2. he satisfies the Requested Party that he might, if extradited, be prejudiced at his trial or be punished, by reason of his race, religion, nationality or political opinions; or
 - 1.3. he satisfies the Requested Party that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason of:
 - 1.3.1. the expiry of the limitation-period for initiating the criminal proceedings under the legislation of the Requested Party or for execution of a sentence, or on other legal grounds;
 - 1.3.2. the accusation against him having not been made in the interests of justice; or
 - 1.4. the extradition is not permitted according to the laws of the Requested Party;
 - 1.5. the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.
2. A person shall also not be extradited if in respect of the offence for which his extradition is requested, he has been previously proceeded against in the Requested Party, and convicted or acquitted.
3. The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for the extradition offence in the courts of that Party.

Article 6

Obligation to Prosecute

1. Where the Requested Party refuses a request for extradition for the reason set out in paragraph 3 of Article 5 of this Treaty, it shall submit the case to its competent authorities for prosecution.
2. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 7

Consequences of non-extradition of own citizens

If according to paragraph 1.1 of Article 5 of this Treaty, extradition is refused, the Requested Party, shall initiate criminal prosecution against such person for the same offence according to its laws. For this the Requesting Party shall transfer to the Requested Party the relevant documents and evidence.

Article 8

Postponement of extradition and temporary extradition

1. If the person to be extradited is being prosecuted or serving sentence for another crime in the territory of the Requested Party, the extradition may be postponed till the end of the proceedings of the case, end of sentence or release, which shall be advised to the Requesting Party.
2. If the postponement of extradition can cause the expiration of the limitation or impede the investigation, the person can be extradited temporarily under a special request of the Requesting Party.
3. The temporarily extradited person must be returned to the Requested party immediately after the end of the proceedings of the case.

Article 9

Extradition procedures

1. The request for extradition shall be made through diplomatic channels.
2. The request shall be accompanied by:
 - 2.1. the name and surname (petronym) of the person whose extradition is requested, information on his citizenship, place of residence or whereabouts and other pertaining data, as well as, if possible, the description of the person's appearance, his photographs and fingerprints;
 - 2.2. a statement of the facts of the offence for which extradition is requested; and
 - 2.3. the text, of the corresponding law:
 - 2.3.1. defining that offence; and
 - 2.3.2. prescribing the punishment for that offence.

3. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the warrant of arrest issued by a competent court or authority of the Requesting Party.
4. If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certified copy of the judgement and a statement that the person is no longer entitled to question the conviction or sentence and showing how much of sentence has not been carried out.(sic)
5. If the Requested Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within a reasonable time.

Article 10

Provisional arrest

1. In urgent cases a person may be provisionally arrested by the Requested Party, in accordance with its law, on the request of the competent authorities of the Requesting Party, made either through Diplomatic Channels or the National Central Bureau of International Criminal Police organisation - INTERPOL, before the receiving of the request for extradition. The request shall contain an indication of intention to request the extradition of that person and a statement of existence of a warrant of arrest or a conviction against him; and if available, the data specified in paragraphs 2.1 and 2.3 of Article 9 of this Treaty and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person been convicted, in the territory of the Requested party.
2. A person arrested upon such a request shall be set at liberty upon the expiration of 60 days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request for extradition is subsequently received.

Article 11

Rule of speciality

1. The extradited person may not without consent of the Requested Party, be prosecuted or punished in the Requesting Party for the offence other than that for which extradition has been granted and any lesser offence disclosed by the facts proved for the purpose of securing his extradition, nor may such a person, without consent of the Requested Party, be extradited to a third State.
2. The consent of the Requested Party is not required if:
 - 2.1. the extradited person has not left, though had the opportunity, the territory of the Requesting Party within 30 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the Requesting Party for reasons beyond his control;

- 2.2. if the extradited person, once having left the territory of the Requesting Party, voluntarily returns there.
3. The provisions of paragraph 1 of this Article shall not apply to offences committed after the return of person to the Requesting Party or matters arising in relation to such offences.

Article 12

Recognition of documents and evidence

1. Documents issued or certified and statements recorded by competent Courts or other authorities in the prescribed form in the territory of one Contracting Party as per its laws shall not require any form of authentication in the territory of the other Contracting Party.
2. Documents considered as public in the territory of one of the Contracting Parties shall have the evidential force of public documents also in the territory of the other Contracting Party.

Article 13

Competing requests

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting Party and a third State with which the Requested Party has an extradition arrangement, the Requested Party shall determine the State to which the person shall be extradited, and shall not be obliged to give preference to the Contracting Party.

Article 14

Capital punishment

If under the law of the Requesting party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested Party does not provide for the death penalty for the same offence, extradition may be refused unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be carried out.

Article 15

Transfer

1. The modalities of transfer of the person to be extradited shall be agreed upon by the competent authorities of both the Contracting Parties as mutually convenient.
2. The Requesting Party shall take the person sought from the territory of the Requested party within one month of the consent of Requested Party to extradite or such longer period as may be permitted under the law of the Requested party. If the person is not removed within that period, the Requested party may refuse to extradite him for the same offence.

Article 16

Transfer of articles connected with crime

1. The Requested Party shall, within the limits of its legislation, transfer by the request of Requesting party the articles used for committing crime by the person being extradited, articles bearing crime traces or crime proceeds.
2. The above articles shall be transferred also in cases when the extradition cannot be effected if the person died, fled or due to other reasons.
3. The Requested party may temporarily postpone the transfer of the articles referred to the paragraph 1 of this Article if they are required for proceedings instituted in connection with another criminal case till the end of such proceedings.
4. The rights of third persons to the articles transferred to Requesting Party shall remain in force. Upon termination of the proceedings the Requesting Party shall return these articles to their owners in its territory. If the owners are in the territory of the Requested Party the articles are to be returned to it for the transfer to them. If the owners are in the territory of a third country the articles shall be returned to them by the Requesting Party without charge.
5. The transfer of the articles and of money shall be effected within the limits provided for by the legislation of the Requested party.

Article 17

Mutual legal assistance in extradition

Each contracting Party shall, to the extent permitted by its law, afford the other the widest possible measure of mutual legal assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 18

Expenses on extradition

All expenses related to the extradition shall be borne by the Contracting Party in whose territory the same occurred. The expenses caused by the transit transportation of the extradited person by one of the Contracting Parties from a third State through the territory of the other Contracting Party shall be borne by the Contracting Party effecting the transit.

Article 19

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other contracting Party or in the English language.

Article 20

International Conventions/ Treaties

The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from other international Conventions/Treaties to which the Contracting parties are signatories.

Article 21

Ratification and termination

1. This Treaty shall be subject to ratification and it shall enter into force on the date of exchange of the instrument of ratification.
2. Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorized thereto by their respective Authorities, have signed this Treaty.

Done in duplicate at Dushanbe this 14 November 2003 in Hindi, Tajik, Russian and English languages, each version being equally authentic. In case of any interpretation difference, the English text shall prevail.

For the Republic of India

For the Republic of Tajikistan

MINISTRY OF EXTERNAL AFFAIRS NOTIFICATION

New Delhi, the 19th September, 2008

Treaty on Extradition between the Republic of India and the Republic of Mauritius

G.S.R. 661(E).—Whereas the Extradition Treaty between the Republic of India and the Republic of Mauritius was signed at New Delhi on 21st November, 2003; and the exchange of the Instrument of Ratification of the Treaty took place at Port Louis on 23rd June, 2008 and has entered into force from the date of the exchange of instruments of ratification in terms of Article 20, and which Treaty provides as follows:

The Government of the Republic of India and the Government of the Republic of Mauritius;

Desirous of making more effective the corporation of the two countries in the suppression of crime by making further provision for the reciprocal extradition offenders;

Recognising that concrete steps are necessary to combat terrorism;

Have agreed as follows:

Article 1— Duty to Extradite

- (1) Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one State, is found within the territory of the other State, whether such offence was committed before or after the entry into force of this Treaty.
- (2) Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it has jurisdiction it the Requested State would, in corresponding circumstances, have jurisdiction over such as offence. In such circumstances the Requested State shall have regard to all the circumstances of the case including the seriousness of the offence.
- (3) In addition, extradition shall be available for an extradition offence as described in Article 2 :
 - (a) if it is committed in a third State by a national of the Requesting State and the Requesting State bases its jurisdiction on the nationality of the offender; and
 - (b) if it occurred in the Requesting State, it would be an offence under the law of that State punishable with imprisonment for a term of at least one year.

Article 2— Extradition Offences

- (1) An extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one year.
- (2) An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

Article 3—Composite Offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under the law of that State this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting State.

Article 4—Extradition of Nationals

Nothing in this Treaty shall preclude the extradition by the Requested State of its nationals either in respect of a territorial offence or in respect of an extraterritorial offence.

Article 5 — The Political Offence Exception

- (1) Extradition may be refused if the offence of which it is requested is an offence of a political character.
- (2) For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:
 - (a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December, 1970;
 - (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September, 1971;
 - (c) an offence within the scope of the Convention on the Prevention and Punishment of Crimes against internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December, 1973;
 - (d) an offence within the scope of the International Convention against the “faking of Hostages, opened for signature at New York on 18 December, 1979;
 - (e) murder;
 - (f) manslaughter or culpable homicide;
 - (g) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;

- (h) the causing of an explosion likely to endanger life or cause serious damage to property;
- (i) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
- (j) the possession of a firearm or ammunition ion by a person who intends either himself or through another person to endanger life;
- (k) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
- (l) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as lo whether the life of another would thereby be endangered;
- (m) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
- (n) incitement to murder;
- (o) any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character:
- (p) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 6—Extradition and Prosecution

- (1) The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extradition offence in the courts of that State.
- (2) Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.
- (3) If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 7—Grounds for Refusal of Extradition

- (1) A person may not be extradited if:
 - (a) he satisfies the Requested State that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason of:
 - (i). the trivial nature of the offence of which he is accused or was convicted: or
 - (ii). the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or

- (iii). the accusation against him not having been made in good faith in the interests of justice;
or
 - (b) the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.
- (2) A person who has been convicted of an extradition offence may not be extradited therefor unless he was sentenced to imprisonment or other form of detention for a period of four months or more.
- (3) A person may not be extradited if he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction.

Article 8—Postponement of Surrender

- (1) If criminal proceedings against the person sought are instituted in the territory of the Requested State, or he is lawfully detained in consequence of criminal proceedings, the decision whether or not to extradite him may be postponed until the criminal proceedings have been completed or he is no longer detained.
- (2) A person sought may not be extradited until:
- (a) it has been decided in accordance with the law of the Requested State that he is liable to be extradited: and
 - (b) the expiration of any further period which may be required by the law of that State.

Article 9—Extradition Procedures

- (1) The request for extradition under this Treaty shall be made through the diplomatic channel.
- (2) The request shall be accompanied by:
- (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence:
 - (b) a statement of the facts of the offence for which extradition is requested, and
 - (c) the text, if any, of the law:
 - (i) defining that offence; and
 - (ii) prescribing the maximum punishment for that offence.
- (3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as according to the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.

- (4) If the request relates to a person already convicted and sentenced, it shall also be accompanied:
 - (a) by a certificate of the conviction and sentence
 - (b) by a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence has not been carried out,
- (5) If the Requested State considers that the evidence produced or information supplied for the purpose of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.

Article 10—Provisional Arrest

- (1) In urgent cases the person sought may in accordance with the law of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of intention to request the extradition of that person and statement of the existence of a warrant of arrest or a conviction against him, and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the Requested State.
- (2) A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article 11—Rule of Speciality

- (1) Any person who is returned to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article, be dealt with in the territory of the Requesting State for or in respect of any offence committed before he was returned to that territory other than :
 - (a) the offence in respect of which he was returned;
 - (b) any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made; or
 - (c) any other offence in respect of which the Requested Party may consent to his being dealt with other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made.
- (2) The period referred to in paragraph (1) of this Article is the period beginning with the day of his arrival in the territory of the Requesting State or his return under this Treaty and ending forty-five days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting State.

- (3) The provisions of paragraph (1) of this Article shall not apply to offences committed after the return of a person under this Treaty or matters arising in relation to such offences.
- (4) A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty days of his final discharge, or has returned to that territory after having left it.

Article 12—Evidence

- (1) The authorities of the Requested State shall admit as evidence, in any proceedings for extradition, any evidence taken on oath or by way of affirmation, any warrant and any certificate of, or judicial document stating the fact of, a conviction, if it is authenticated :
 - (a) (i) in the case of a warrant being signed, or in the case of any original document by being certified, by a judge, magistrate or other competent authority of the Requesting State; and
(ii) either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting State; or
 - (b) In such other manner as may be permitted by the law of the Requested State.
- (2) The evidence described in paragraph (1) shall be admissible in extradition proceedings in the Requested State whether sworn or affirmed in the Requesting State or in some third State.

Article 13—Competing Requests

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting State and a third State with which the Requested State has an extradition arrangement, the Requested State shall determine to which State the person shall be extradited, and shall not be obliged to give preference to the Contracting State.

Article 14—Capital Punishment

- (1) If under the law of the Requesting State the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested State does not provide for the death penalty in a similar case, extradition may be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death penalty will not be carried out.

Article 15—Surrender

- (1) If extradition is granted, the person sought shall be sent by the authorities of the Requested State to such convenient point of departure from the territory of that State as the Requesting State shall indicate.

- (2) The Requesting State shall remove the person sought from the territory of the Requested State within one month or such longer period as may be permitted under the law of the Requested State. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.

Article 16—Surrender of Property

- (1) When a request for extradition is granted, the Requested State shall, upon request and so far as its laws allow, hand over to the Requesting State articles (including sums of money) which may serve as proof or evidence of the offence,
- (2) If the articles in question are liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned.
- (3) These provisions shall not prejudice the rights of the Requested State or any person other than the person sought. When these rights exist the articles shall on request be returned to the Requested State without charge as soon as possible after the end of the proceedings.

Article 17—Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 18—Documents and Expenses

- (1) If in any particular case the Requested State so requires, the Requesting State shall supply a translation of any document submitted in accordance with the provisions of this treaty.
- (2) Expenses incurred in the territory of the Requested State by reason of the request for extradition shall be borne by that State.
- (3) The Requested State shall make all the arrangements which shall be requisite with respect to the representation of the Requesting State in any proceedings arising out of the request.

Article 19—Obligations under International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Contracting States arising from International Conventions/Treaties to which they are parties.

Article 20—Final provisions

- (1) The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
- (2) This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification.
- (3) Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

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 the 21st day of November 2003, in Hindi and English, both languages being equally authentic, in case of any divergence of interpretation, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section (1) of the Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the Republic of Mauritius from the dated of the publication of this notification.

[No. T 413/03/2003]

P.M. MEENA, Jt. Secy. (Consular)

MINISTRY OF EXTERNAL AFFAIRS
ORDER

New Delhi, the 20th September, 2005

**Extradition Treaty between the Government of the Republic of India and
the Government of the Kingdom of Bahrain**

G.S.R.606(E).—Whereas the Extradition Treaty between the Republic of India and the Kingdom of Bahrain was signed at New Delhi, on 13th January, 2004, and the instruments of ratification exchanged at Bahrain on 16th July, 2005 and which treaty provides as follows :

The Government of the Republic of India and the Government of the Kingdom of Bahrain, hereinafter referred to as “the Contracting States”,

Being desirous to promote the bonds of fruitful cooperation between the two countries;

Recognising that concrete steps are necessary to combat terrorism and other crimes;

Determined to make more effective the cooperation between the two countries in the suppression of crime by entering into an extradition Treaty;

Have agreed as follows :

Article 1

The Contracting States shall extradite any person found in their respective territories who is accused or convicted of an extraditable offence in the territory of the other Contracting State, in accordance with the rules and stipulations contained in the subsequent Articles, whether such offence was committed before or after the entry of this Treaty into force.

Article 2

1. An “extraditable offence” shall be any offence punishable under the laws of both Contracting States by imprisonment for a period of at least one year.
2. The following persons shall be extradited:
 - (a) Persons accused of an extraditable offence.
 - (b) Persons sentenced by the Courts of the requesting State to imprisonment for at least six months in respect of an extraditable offence.

Article 3

1. Subject to Article 2 for offences in connection with taxes, fiscal charges and customs duties extradition shall be effected in accordance with the provisions of this Treaty only if the said offence corresponds to an offence of a similar nature under the law of the requested State.

2. An attempt or conspiracy to commit or incite or participate in the commission of an extraditable offence shall also be regarded as an extraditable offence.

Article 4

1. Extradition shall be granted in respect of an extraditable offence committed outside the territory of the requesting State, if it has jurisdiction to try the offence, and provided that the requested State, in corresponding circumstances, would have jurisdiction over such an offence.
2. Extradition shall also be available for an extraditable offence notwithstanding that the criminal conduct of the person sought occurred wholly or partly in the requested State, if under the law of that State his conduct and its effects or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable offence in its territory.
3. Extradition shall be available for an extraditable offence if committed in a third State by a national of the requesting State who is present in the requested State.

Article 5

1. If the offence for which the extradition is requested is a political offence. In the application of this Treaty, the following shall not be regarded as political offences;
 1. Assault upon the President and Vice President of the Republic of India or their immediate families, or assault upon any member of the Council of Ministers of the Republic of India or their immediate family.
 2. Assault upon the King, the Prime Minister or the Crown Prince of the Kingdom of Bahrain, or their immediate families, or assault upon any member of the Council of Ministers of the Kingdom of Bahrain or their immediate family.
 3. Offences of murder, culpable homicide not amounting to murder, or theft by coercion against individuals, authorities, or public transport.
 4. Offences of kidnapping, assault causing bodily harm, hostage-taking, offences involving serious damage to property or disruption of public facilities, and offences relating to firearms or other weapons, or explosives, or dangerous substances;
 5. Any attempt or conspiracy to commit or incite or participate in any of the above offences;
 6. Any offence within the scope of an international Convention to which both Contracting States are parties and which obligates the State parties to prosecute or grant extradition.
2. If the offence of which the person is accused or convicted is a military offence which is not also an offence under the general criminal law.
3. If the offence for which extradition is requested was committed in the requested State.
4. If the offence has been the subject of a final judgement in the requested State.

5. If the case or the sentence had lapsed by virtue of the law of either of the Contracting States when the request for extradition was received;
6. If the requested person is under investigation or standing trial in the requested state for the same offence which is the subject of the extradition request.

Article 6

Extradition shall be refused if the person wanted is a national of the requested State. For the purpose of this Treaty, nationality of the person, sought for extradition shall be determined to be that at the time of the commission of the offence.

Article 7

1. Where the requested State refuses a request for extradition for any of the reasons set out in the foregoing Articles 5 and 6 it shall submit the case to its competent authorities for prosecution. Those authorities shall determine the case in the same manner as in the case of any offence of a similar nature under the law of that State.
2. Where extradition is refused under paragraph 3 of Article 5, if at any stage of the prosecution or investigation in the requested State, the investigating, prosecuting or judicial authorities in the requested State find the prosecution of the person wanted non-feasible in that State, the request for extradition may be reconsidered.

Article 8

The request for extradition shall be made in writing and despatched through diplomatic channels with the following supporting documents and particulars:

1. If the request relates to a person already convicted and sentenced, an official copy of the sentence passed against the person to be extradited or, if the person to be extradited is wanted for trial, the warrant of arrest, or remand or any document having the same effect, issued by a competent authority;
2. Particulars as to identity, description and a photograph of the person to be extradited, if possible;
3. The date, the place of the commission of the acts for which extradition is requested, the legal characterisation of those offences, and a certified copy of the applicable legal provisions, and a statement by the prosecuting authorities as to evidence against the person to be extradited;
4. In case of persons not yet sentenced, such other evidence as, according to the laws of the requested State, would justify his arrest and committal for trial had the offence been committed within the jurisdiction of the requested State;

All documents referred to above shall be translated into English and authenticated by the requesting State.

Article 9

1. In case of urgency, a person to be extradited may be provisionally arrested and kept in custody until the request for extradition, together with the documents referred to in the preceding Article are received.
2. The request for provisional arrest shall be communicated in writing to the competent authority of the requested State, either directly or through the International Criminal Police Organisation (INTERPOL) channels.
3. The same request shall be confirmed through the diplomatic channels, and shall contain a reference to the existence of any of the documents, enumerated in paragraph (1) of Article 8, and confirming the intention of the requesting State to transmit a request for extradition, a statement of the offence for which extradition is requested, the sentence specified for that offence or the sentence imposed, the time and place of the commission of the offence and a detailed description of the person to be extradited as far as possible. The requesting State shall expeditiously be notified of any action taken in respect of the request.
4. The provisional arrest shall be made in accordance with the legal procedures of the requested State.

Article 10

1. The competent authority in the requested State may, if the documents required under Article 8 of this Treaty are not delivered within sixty days from the date of the arrest of the person to be extradited release that person.
2. The period of the provisional detention shall not, in any case, exceed ninety days from the date of its commencement. However, the release of such person shall not prevent his re-arrest and extradition, if the request for extradition is submitted afterwards.
3. The person to be extradited may at any time be released on bail, if the requested State takes all necessary measures to prevent his escape.

Article 11

If the requested State needs additional clarifications to ensure compliance with the conditions proscribed under this Treaty, it shall notify the requesting State through diplomatic channels, before rejecting the request, and may fix a date for receiving such clarifications.

Article 12

1. If more than one request for extradition for the same person or offence are made from States to which the Requested State is obliged, by virtue of any international agreement to which it is a party, to extradite persons, priority shall be given to the State whose security or interest or its nationals or their interests are affected by the offence, and then to the State on whose territory the offence is committed, and lastly to the State of which the person to be extradited is a national.

2. If the circumstances are identical, the State which made the first request, shall have preference. If the requests for extradition are for several offences, then priority is accorded to the circumstances of the offence and its gravity.

Article 13

Without prejudice to the right of others acting in good faith, and to the laws in force in the requested State anything found in possession of the person to be extradited, at the time of his arrest, whether being the proceeds of the offence or used in the commission of, or connected with it, or relevant as evidence, shall be attached and may be handed over to the requesting State, even if the offender is not extradited due to his death or his absconding.

Article 14

1. The competent authorities in each Contracting State shall determine the request for extradition in accordance with the law in force at the time of the request.
2. In the event of accepting the extradition request, the requesting State shall be notified of the date and place of the extradition.
3. In case the request is rejected, the requested State shall communicate to the requesting State, through diplomatic channels, the decision taken stating the reasons for rejection.
4. The requesting State shall, within thirty days from the date of its notification of the extradition, receive the person to be extradited, otherwise the requested State may discharge him, and in such event no second request for extradition may be accepted for the same offence.
5. If exceptional circumstances prevent a Contracting State from surrendering or taking delivery of the person sought in the prescribed time, it shall notify the other Contracting State. In such a case, the competent authorities of the Contracting States may agree upon a new date for the surrender.

Article 15

1. If the person to be extradited is under investigation or standing trial or is convicted in the requested State for an offence other than that for which his extradition is requested, then the requested State shall determine the request and communicate its decision to the requesting State.
2. If the request for extradition is accepted, then the surrender of the person to be extradited, shall be postponed until his trial in the requested State is completed and the punishment passed is executed.
3. The provisions of this Article shall not preclude the possibility of the provisional surrender of the person to be extradited to appear before the judicial authorities of the requesting state, provided that the requesting state expressly undertakes to return him to the other contracting State, after the completion of the judicial proceedings pertaining thereto, subject to the law of the requested State.

Article 16

1. The competent authorities of the requested State shall admit as evidence, in any proceedings for extradition, any statement taken on oath or by way of affirmation, any warrant or any certificate or judicial document stating the fact of conviction, if it is authenticated:
 - (a) In the case of a warrant being signed by a competent person, or in the case of any original document being certified by a judge, magistrate or other competent authority of the requesting State; and
 - (b) In the case of depositions or statements either by oath of some witness or by being sealed with the official seal of the appropriate authority of the requesting State; or
 - (c) In such other manner as may be permitted by the law of the requested State.
2. The evidence described in the foregoing paragraph shall be admissible in extradition proceedings in the requested State whether sworn or affirmed in the requesting State or in some third State.

Article 17

1. The person to be extradited shall not be tried or punished in the requesting State except for the offence for which his extradition has been sought or for offences connected therewith, or offences committed after his extradition. If the characterization of the offence is modified during the proceedings taken against the person extradited, he shall not be charged or tried, unless the ingredients of the offence in its new characterisation, permit extradition in conformity with the provisions of this Treaty.
2. If the person extradited had the liberty and means to leave the territory of the State to which he was extradited, and he did not leave within thirty days subsequent to his final release or left during that period, but voluntarily returned, he may be tried for the other offences.

Article 18

The Contracting State to which the person is extradited shall not extradite him to a third State, without the consent of the other Contracting State, unless any of the conditions under Article 17 (2) are applicable.

Article 19

The term of provisional arrest referred to under Article 9 shall be remitted from any sentence passed in the requesting State against the person to be extradited.

Article 20

1. Transit of a person who is the subject of extradition from a third State through the territory of a Contracting State to the territory of the other Contracting State shall be granted on submission of a request, provided that the offence concerned is an extraditable offence under the provisions of this Treaty.
2. Transit of a national of the requested State may be refused if it is inadmissible under its law.
3. The request for transit must be accompanied by the documents mentioned in this Treaty.

4. The documents mentioned in the foregoing paragraph shall be delivered to the Requested State forty five days before the date fixed for transit.

Article 21

1. The Requested State shall meet all the expenses necessitated by the extradition of the person arising within its territory but the Requesting State shall pay all the transportation expenses to its territory.
2. The requesting State shall bear the expenses of the return of the extradited person to the place, he was in at the time of his extradition if his commission of the offence or complicity is not proved.

Article 22

Each Contracting State shall in accordance with its national law and bilateral agreements afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 23

The present Treaty shall not affect the rights and obligations of the Contracting States arising from international conventions, treaties or agreements to which they are parties.

Article 24

1. This Treaty is subject to ratification in accordance with the Constitutional procedures and practice in each of the Contracting States and the instruments of ratification shall be exchanged through diplomatic channels as soon as possible. It shall come into force on the date of exchange of instruments of ratification.
2. Either of the Contracting States may terminate this Treaty by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the Treaty shall cease to have any force or effect.
3. Any difficulties or dispute in the application and/or interpretation of this Treaty shall be settled amicably between the Contracting States through diplomatic channels.

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

Done at New Delhi on this 13 day of January 2004, in two original each in the Hindi, Arabic and English languages, all texts being equally authentic. However, in case of difference, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section 1 of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the Kingdom of Bahrain with effect from the date of the publication of this notification

[F. No. T. 413/7/2000]
R.R. DASH, Jt. Secy. (CPV)

Extradition Treaty between the Government of the Republic of India and the Government of the Republic of the Philippines

The Government of the Republic of India and the Government of the Republic of the Philippines, hereinafter referred to as the Contracting States;

Desiring to make more effective the cooperation of the two countries' in the suppression of crime by making further provision for the reciprocal extradition of criminal offenders;

Recognizing that concrete steps are necessary to combat crime;

Have agreed as follows:

Article-1

Obligation to Extradite

- (1) Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or having been convicted of an extraditable offence as described in Article 2 committed within the territory of the Requesting State, is found within the territory of the other State, whether such offence was committed before or after the entry into force of this Treaty.
- (2) Extradition shall also be available in respect of an extraditable offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it has jurisdiction, if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence.
- (3) Extradition shall be available for an extraditable offence as described in Article 2 if it is committed in a third State by a national of the Requesting State and the Requesting State bases its jurisdiction on the nationality of the offender.

Article-2

Extraditable Offences

- (a) An offence shall be an extraditable offence if it is punishable under the laws of both contracting States by imprisonment for a period of at least one year.
- (b) An offence may be an extraditable offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.
- (c) An offence shall also be extraditable notwithstanding that any or \I of the essential elements or acts constituting the offence were committed in the territory of the Requested State.

Article-3

Extradition of Nationals

Nothing in this Treaty shall preclude the extradition by the Requested State of its nationals in respect of an extraditable offence.

Article-4

The Political Offence Exception

- (1) Extradition may be refused if the offence involved is of a political character.
- (2) For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:
 - (a) an offence for which both Contracting States have the obligation, pursuant to an international treaty/agreement to which both are Parties, to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;
 - (b) the taking or attempted taking of the life of a Head of State or Head of Government or a member of his or her family;
 - (c) murder, manslaughter or other culpable homicide, malicious wounding or inflicting grievous bodily harm;
 - (d) an offence involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage;
 - (e) an offence involving the placing or use of firearms, explosives, incendiaries or destructive devices or substances capable of endangering life or of causing grievous bodily harm or substantial property damage;
 - (f) the unlawful making or possession of an explosive substance, firearm or ammunition; and
 - (g) abetting, attempting to commit, or inciting to commit any of the foregoing offences or participating as an accomplice of a person who commits or attempts to commit such an offence.

Article-5

Extradition and Prosecution

- (1) The request for extradition may be refused by the Requested State if the person whose extraditable is sought may be tried for the extraditable offence in the courts of that State.
- (2) Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.
- (3) If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this treaty.

Article-6

Grounds for Refusal of Extradition

- (1) A person may not be extradited:
 - (a) if the offence of which he is accused or convicted is a military offence which is not also an offence under the general Criminal law;
 - (b) if the person sought to be extradited was previously tried for the same offence for which extradition is requested and was acquitted or was convicted and had completed the sentence or is undergoing it;
 - (c) if the person whose extradition is requested cannot, according to the laws of either Contracting State, be prosecuted or punished by reason of lapse of time;
 - (d) if a person whose extradition is sought is being investigated or tried in the Requested State for the same offence for which his extradition is requested.
- (2) If a person convicted of such an offence is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six (8) months of the imprisonment remains to be served.
- (3) A person may not be extradited if he would, if proceeded against the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction.

Article-7

Postponement of Surrender

When the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of any sentence that may have been imposed.

Article-8

Extradition Procedures

- (1) The request for Extradition under this Treaty shall be made through diplomatic channels.
- (2) The request shall be accompanied by:
 - (1) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence;
 - (2) a statement of the facts of the offence for which extradition is requested; and

- (3) the text, if any, of the law:
 - (i) defining that offence; and
 - (ii) prescribing the punishment for that offence.
- (3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.
- (4) If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certificate of the conviction and sentence.
- (5) In relation to a convicted person who was not present at his trial, the person shall be treated for the purposes of paragraph (4) of this Article as if he had been accused of the offence for which he was convicted.
- (6) If the Requested State considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.

Article-9

Provisional Arrest

- (1) In urgent cases the person sought may, in accordance with the law of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an Indication of intention to request the extradition of that person and shall be accompanied by a copy of the judgment(sic) of conviction or warrant of arrest, as the case may be a description of the offence, when and where it was committed and the details of the identity of the person sought.
- (2) The request for provisional arrest may be made through diplomatic channels or directly between the Ministry of Home Affairs of India and the Department of Justice of the Philippines or through the International Criminal Police organization (INTERPOL) by any means acceptable to the Requested State, such as post, telegraph or facsimile machine, etc.
- (3) A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if the request for his extradition is not received by the Ministry/Department of Foreign Affairs of the Requested State. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article-10

Rule of Speciality

- (1) Any person who is returned to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article be dealt with the territory of the Requesting state for or in respect of any offence committed before he was returned to that territory other than:
 - (a) the offence in respect of which he was returned;
 - (b) any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made.
- (2) The period referred to in paragraph (1) of this Article is the period beginning with the day of his arrival under this Treaty and ending forty-five days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting State.
- (3) The provisions of paragraph (1) of this Article shall not apply to offences committed after the return of a person under this Treaty or matters arising in relation to such offences.
- (4) A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within forty-five days of his final discharge, or has returned to that territory after having left it.

Article-11

Evidence

- (1) The authorities of the Requested State shall admit as evidence, in say proceedings for extradition, if duly authenticated, any statement made under oath or by way of affirmation, any warrant and any certificate or judicial document stating the fact of a conviction. A document is duly authenticated for the purpose of this Treaty if it purports to be:
 - (a) signed or certified by a Judge, Magistrate or other authorized officer in or of the Requesting State;
 - (b) verified by oath or affirmation or sealed with an official or public seal of the Requesting State or of a Minister of State, or of a Department or officer of the Government of the Requesting State; and
 - (c) certified by a diplomatic or consular officer of the Requested State accredited to the Requesting State.

Article-12

Competing Request

If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person either for the same offence or for a different offence, the executive authority of the Requested State shall determine to which State it will surrender the person, in making the decision, the Requested State shall consider all relevant factors, including, but not limited to:

- (1) whether the requests were made pursuant to a treaty;
- (2) the place where the offence(s) was committed;
- (3) the respective interests of the Requesting States;
- (4) the gravity of the offences;
- (5) the nationality of the victim(s);
- (6) the possibility of further extradition between the Requesting States; and
- (7) the chronological order in which the requests were received from the Requesting States.

Article-13

Capital Punishment

- (1) When the offence for which extradition is requested is punishable by death under the laws of the Requesting State and the laws of the Requested State do not permit such punishment for that offence, extradition may be refused unless the Requesting State provides such assurances as the Requested State considers sufficient that if the death penalty is imposed, it will not be carried out.
- (2) In instances in which the Requesting State provides an assurance in accordance with paragraph 1 of this Article, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

Article-14

Decision and Surrender

- (1) The Requested State shall promptly notify the Requesting State through diplomatic channels of its decision on the request for extradition.
- (2) If the request is denied in whole or in part, the Requested State shall communicate the reasons for the denial. The Requested State shall provide copies of relevant judicial decisions upon request.
- (3) If the request for extradition is granted, the authorities of the Contracting States shall agree on the time and place for the surrender of the person sought.
- (4) If the person sought is not removed from the territory of the Requested State within one month or such longer period as may be permitted under the law of the Requested State, that person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offence.

Article-15

Voluntary Return

If the person sought consents in writing to surrender to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings.

Article-16

Surrender of Property

- (1) When a request for extradition is granted, the Requested State shall, upon request and so far as its law allows, hand over to the Requesting State articles (including sums of money) which may serve as proof or evidence of the offence.
- (2) If the articles in question are liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending proceedings, temporarily retain or hand these over on condition that these be returned.
- (3) These provisions shall not prejudice the rights of the Requested State or any person other than the person sought. When these rights exist, the articles shall on request be returned to the Requested State without charge as soon as possible after the conclusion of the proceedings.

Article-17

Representation and Expenses

- (1) The Requested State shall advise, assist, appear in court on behalf of the Requesting State, and represent the interests of the Requesting State, in any proceeding arising out of a request for extradition.
- (2) The Requesting State shall bear the expenses related to the English translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.
- (3) Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination or surrender of person(s) sought under this Treaty.

Article-18

Consultation

The appropriate authorities of both the Contracting States may consult with each other directly in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

Article-19

International Obligations

The present Treaty shall not affect the rights and obligations of the Contracting States arising from international conventions/treaties to which they are parties.

Article-20

Applicable Laws

Except where this Treaty provides otherwise, the laws of the Requested State shall be applicable with respect to proceedings relating to extradition.

Article-21

Ratification and Termination

- (1) This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible, it shall enter into force on the date of the exchange of instruments of ratification.
- (2) Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through diplomatic channels, and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice. Such termination shall not affect the continuation of the proceedings instituted or the consideration of request(s) already received.

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

DONE in duplicate at Manila this 12th day of March 2004 in Hindi and English, both languages being equally authentic. In case of any doubt, the English text shall prevail.

On behalf of the Government of
the Republic of India

On behalf of the Government of
the Republic of the Philippines

NAVREKHA SHARMA
Ambassador Extraordinary and
Plenipotentiary of the
Republic of India

MA. MERCEDITAS N. GUTIERREZ
Acting Secretary of Justice
Department of Justice
Republic of the Philippines

MINISTRY OF EXTERNAL AFFAIRS
NOTIFICATION

New Delhi the 26th September, 2007

Extradition Treaty between the Republic of India and the State of Kuwait

G.S.R. 634(E).—Whereas the Extradition Treaty between the Republic of India and the State of Kuwait was signed at New Delhi on 25th August, 2004; and the Treaty has entered into force from 7th August, 2007 in terms of Article 24 on receipt of information from the State of Kuwait regarding the completion of legal procedure for the entry into force of the Treaty, and which Treaty provides as follows:

The Government of the Republic of India and the Government of the State of Kuwait and, hereinafter referred to as the “Contracting Parties”;

Being desirous to promote the bonds of fruitful Cooperation between the Contracting Parties;

Recognizing that concrete steps are necessary to combat terrorism and other crimes;

Determined to make more effective the cooperation between the Contracting Parties in combating crime by entering into an extradition treaty;

Have agreed as follows:

ARTICLE 1

The Contracting Parties shall extradite any person found in their respective territories who is accused or convicted of an extraditable offence in the territory of the other Contracting Party, in accordance with the rules and stipulations contained in the subsequent Articles, whether such offence was committed before or after the entry into force of this Treaty.

ARTICLE 2

The following persons shall be extradited:

1. Persons accused of an offence punishable under the laws of both the Contracting Parties by imprisonment for a period of at least one year or more; and
2. Persons sentenced by the courts of the Requesting Party with imprisonment for at least six months in respect of an extraditable offence.

ARTICLE 3

1. For offences in connection with taxes, fiscal charges and customs duties, extradition shall be effected in accordance with the provisions of this Treaty only if the said offence corresponds to an offence of a similar nature under the law of the Requested Party.

2. An attempt or conspiracy to commit or incite or participate in the commission of an extraditable offence shall also be regarded as an extraditable offence.

ARTICLE 4

1. Extradition shall be granted in respect of an extraditable offence committed outside its territory but within the jurisdiction as asserted by the Requesting Party, if the Requested Party would, in corresponding circumstances, have jurisdiction over such an offence. In such cases, the Requested Party shall have regard to all the circumstances of the case including the seriousness of the offence.
2. Extradition shall be available for an extraditable offence if committed in a third State by a national of the Requesting Party who is present in the Requested Party and provided that it would be an extraditable offence under the laws of the Requested Party, had the offence been committed in the Requested Party.
3. Extradition shall also be available for an extraditable offence notwithstanding that the conduct of the person sought occurred wholly or partly in the Requested Party, if under the law of that Party his conduct and its effects or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable offence in the territory of the Requesting Party.

ARTICLE 5

1. The nationals of either of the two Contracting Parties shall not be extradited to the other Contracting Party. In this case the Requested Party shall submit the case for prosecution to the competent authority, if the act committed or omission is considered as an offence under the law of the Requested Party.
2. Nationality shall be determined as at the time of the commission of the offence.

ARTICLE 6

Extradition may be refused:

- (a) If the offence for which the extradition is requested is a political offence or connected with a political offence. In the application of this Treaty, the following shall not be regarded as political offences:
 - (a) assault against the President, Vice President or Prime Minister of either Contracting Party;
 - (b) murder, culpable homicide not amounting to murder or robbery;
 - (c) offences relating to terrorism, including murder, culpable homicide not amounting to murder, assault causing bodily harm; kidnapping, hostage-taking, offences involving serious damage to property or disruption of public facilities, and offences relating to firearms or other weapons, or explosives, or dangerous substances;
 - (d) any offence within the scope of international conventions to which both Contracting Parties are parties and which obligate the Parties to grant extradition or prosecute; or

- (e) an attempt or conspiracy to commit or incite or participate in the commission of any of the above offences.
- (b) Extradition may also be refused if;
 - (a) the person sought to be extradited was previously tried for the same offence for which extradition is requested and was acquitted or was convicted and had completed the sentence or is undergoing it;
 - (b) the criminal proceedings had expired or the sentence lapsed by time, in pursuance of the law of the Requesting Party, when the request for extradition was received;
- 3. the offence was committed outside the territory of the Requesting Party, by an alien, and if it is not an offence under the law of the Requested Party;
- 4. the offence for which extradition is requested was committed in the Requested Party, provided the Requested Party prosecutes the person;
- 5. a person whose extradition is sought is being investigated or tried in the Requested Party for the same offence for which his extradition is requested; or
- 6. The sentence remaining to be served by a person convicted of an extraditable offence is less than six months.

ARTICLE 7

- 1. Where the Requested Party refuses a request for extradition for the reasons set out under this Treaty, it shall submit the case to its competent authorities for prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a similar nature under the law of that Party .
- 2. If, after refusing extradition, prosecution is not found feasible in the Requested Party for whatever reason, the Requested Party shall re-consider the extradition request, and may extradite the person sought to the Requesting Party.

ARTICLE 8

- 1. The request for extradition shall be made in writing and despatched through the diplomatic channels with the under-mentioned documents and particulars appended :
 - (a) if the request relates to a person already convicted and sentenced, an official copy of the sentence passed against the person to be extradited;
 - (b) the warrant of arrest, or remand or any document having the same effect, issued by a competent authority, if the person to be extradited is under investigation;
 - (c) particulars as to identity, description and a photograph of the person to be extradited, if possible;

- (d) the date, the place of the commission of the acts for which extradition is requested, the legal characterization of those offences, and a certified copy of the applicable legal provisions, and a statement by the prosecuting authorities as to evidence against the person to be extradited;
 - (e) in case of the person not yet sentenced, such other evidence, as according to the laws of the Requested Party, would justify his arrest and committal for trial had the offence been committed within the jurisdiction of the Requested Party.
2. All documents referred to above shall be translated into English and authenticated by the Requesting Party.

ARTICLE 9

1. In case of urgency, a person to be extradited may be provisionally arrested and remanded in custody until the request for extradition, together with the documents referred to in the preceding Article, is received.
2. The request for provisional arrest and remand shall be communicated in writing to the competent authority of the Requested Party, either directly or through the International Criminal Police Organization (INTERPOL) channels.
3. The same request shall be confirmed through the diplomatic channels, and shall contain a reference to the existence of any of the documents, enumerated in the preceding Article, and intimating the intention of the Requesting Party to transmit a request for extradition, a statement of the offence for which extradition is requested, the sentence specified for that offence or the sentence imposed, the time and place of the commission of the offence and a detailed description of the person to be extradited. The Requesting Party shall forthwith be notified of any action taken in respect of the request.
4. The provisional arrest and remand shall be made in accordance with the legal procedures of the Requested Party.

ARTICLE 10

1. The competent authority in the Requested Party may, if the documents required under this Treaty are not delivered within 45 days from the date of the arrest of the person to be extradited, release that person.
2. The period of the provisional detention shall not, in any case, exceed 60 days from the date of its commencement.
3. The person to be extradited may at any time be released on bail, if the Requested Party takes all necessary measures to prevent his escape. The release of such person shall not prevent his re-arrest and extradition, if the request for extradition is received afterwards.

ARTICLE 11

If the Requested Party needs additional clarifications/evidence to ensure the compliance with the conditions embodied in this Treaty, it shall notify the Requesting Party through diplomatic channels, before rejecting the request, and may fix a date for receiving such clarifications/evidence.

ARTICLE 12

1. If numerous requests from more than one state for extradition are made for the same offence, priority shall be given to the State whose security or interest or nationals or their interests are affected by the offence, and then to the State on whose territory the offence is committed, and lastly to the State of which the person to be extradited is a national.
2. If the circumstances are identical, then the State which made the first request shall have preference, if the requests for extradition are for several offences, then preponderance is accorded to the circumstances of the offence and its gravity.

ARTICLE 13

Without prejudice to the rights of others acting in good faith, and to the laws in force in the Requested Party, everything found in possession of the person to be extradited, at the time of his arrest or remand or at a later stage, whether being the proceeds of the offence or used in the commission of, or connected with it, or relevant as evidence, shall be attached and may be handed over to the Requesting Party, even if the offender is not extradited due to his death or his absconding.

ARTICLE 14

1. The competent authorities in each Contracting Party shall determine the request for extradition in accordance with the laws in force at the time of the request.
2. In the event, of granting the extradition request, the Requesting Party shall be notified of the date and place of extradition.
3. In case the request is rejected, the Requested Party shall communicate to the Requesting Party, through diplomatic channels, the decision taken, giving reasons thereof,
4. The Requesting Party shall, within thirty days from the date of its notification of the extradition, receive the person to be extradited, otherwise the Requested Party may discharge him, and in such event no second request for extradition may be accepted for the same offence.
5. If exceptional circumstances prevent a Contracting Party from surrendering or taking delivery of the person sought within the stipulated time, it shall notify the other Contracting Party prior to the expiration of the time limit. In such a case, the competent authorities of the Contracting Party may agree upon a new date for the surrender.

ARTICLE 15

1. If the person to be extradited is under investigation or standing trial or is convicted in the Requested Party for an offence other than that for which his extradition is requested, then the Requested Party shall decide on the request and communicate the decision made to the Requesting Party.
2. If the request for extradition is granted, then the surrender of the person concerned shall be postponed until his trial in the Requested Party is complete and the punishment awarded is executed.
3. The provisions of this Article shall not preclude the possibility of the provisional surrender of the person concerned to appear before the judicial authorities of the Requesting Party, provided that the Requesting Party expressly undertakes to return him to the other Contracting Party, after the completion of the judicial proceedings pertaining thereto, subject to the law of the Requested Party.

ARTICLE 16

1. The competent authorities of the Requested Party shall admit as evidence, in any proceedings for extradition, any statement taken on oath or by way of affirmation, any warrant or any certificate or judicial document stating the fact of conviction, if it is authenticated:
 - (a) In the case of a warrant being signed, or in the case of any original document being certified by a judge, magistrate or other competent authority of the Requesting Party;
 - (b) In the case of deposition or statements either by oath of some witness or by being sealed with the official seal of the appropriate authority of the Requesting Party;
 - (c) In such other manner as maybe permitted by the law of the Requested Party.
3. The evidence described in paragraph 1 shall be admissible in extradition proceedings in the Requested Party whether sworn or affirmed in the Requesting Party or in some third State.

ARTICLE 17

1. The person to be extradited shall not be tried or punished in the Requesting Party except for the offence for which his extradition is sought or for offences connected therewith, or offences committed after his extradition. If the characterization of the offence is modified during the proceedings taken against the person extradited, he shall not be charged or tried, unless the ingredients of the offence in its new characterisation, permit extradition in conformity with the provisions of this Treaty.
2. If the person extradited had the liberty and means to leave the territory of the Party to which he was extradited, and he did not leave within 30 days subsequent to his final release or left during that period, but voluntarily returned, he may be tried for any other offence.

ARTICLE 18

1. The Contracting Party to which the person is extradited shall not extradite him to a third State, without the consent of the other Contracting Party.
2. The person may be extradited to a third State if the conditions under Article 17 (2) exist.

ARTICLE 19

The term of provisional remand shall be remitted from any sentence passed in the Requesting Party against the person to be extradited.

ARTICLE 20

1. Transit of a person who is the subject of extradition from a third State through the territory of a Contracting Party to the territory of the other Contracting Party shall be granted on submission of a request, provided that the offence concerned is an extraditable offence under Article 2, and that the Contracting Party requested to grant transit does not consider the offence to be one covered by Article 6.
2. Transit of a national of the Requested Party may be refused if, in the opinion of that Party, it is inadmissible under its law.
3. The request for transit must be accompanied by documents as mentioned in article 8 of this Treaty.

ARTICLE 21

1. Each Contracting Party shall reciprocally bear all the expenses necessitated by the extradition of the concerned person, except transportation expenses which shall be borne by the Requesting Party.
2. The Requesting Party shall pay the expenses of the return of the extradited person to the place, he was in at the time of his extradition if commission of the offence by him or his complicity therein is not proved.

ARTICLE 22

Each Contracting Party shall, in accordance with national laws and bilateral agreements, afford the other the widest measures of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

ARTICLE 23

The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from international conventions/treaties to which they are parties.

ARTICLE 24

This Treaty shall be subject to ratification in accordance with the constitutional procedures in force in both Contracting Parties. It shall become effective from the date of the last intimation, by which either contracting party shall inform the other that all the necessary legal procedures for the enforcement of the Treaty have been fulfilled.

ARTICLE 25

This Treaty has been concluded for an indefinite period of time. Either of the contracting parties may terminate this Treaty by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the Treaty shall cease to have any force or effect.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done at New Delhi on this the 25th Day of August 2004 in two originals each in the Hindi, Arabic and English languages, all the text being equally authentic. In the event of any differences the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section 1 of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the State of Kuwait from the date of the publication of this notification.

[No. T-413/18/1999]

P. M. MEENA, Jt. Secy. (Consular)

Treaty on Extradition between the Republic of India and the Republic of Korea

The Republic of India and the Republic of Korea (hereinafter referred to as “the Parties”),
Desiring to strengthen their bilateral relations and to make more effective their cooperation in the
prevention and suppression of crime by concluding a treaty on extradition,
Have agreed as follows:

Article 1

Obligation to Extradite

Each Party agrees to extradite to the other, in accordance with the provisions of this Treaty, any person who is wanted in the Requesting Party for prosecution/trial, or imposition or enforcement of punishment for an extraditable offence.

Article 2

Extraditable Offences

1. For the purpose of this Treaty, extraditable offences are offences which, at the time of the request, are punishable under the laws of both Parties by deprivation of liberty for a period of at least one year or by a more severe penalty.
2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six (6) months of the sentence remains to be served.
3. For purpose of this Article, in determining whether an offence is an offence against the laws of both Parties:
 - (a) it shall not matter whether the laws of the Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology; and
 - (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Parties, the constituent elements of the offence differ.
4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the grounds that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the Requesting Party.
5. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence

committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.

6. If the request for extradition refers to several offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraphs 1 and 2 of this Article, extradition may be granted for the offences provided that the person is to be extradited for at least one extraditable offence.

Article 3

Mandatory Grounds for Refusal

Extradition shall not be granted under this Treaty in any of the following circumstances:

- (a) when the Requested Party determines that the offence for which extradition is requested is a political offence or an offence connected with a political offence. Reference to a political offence shall not include the following offences:
 - (i) the taking or attempted taking of the life or, an assault on the person of a Head of State or Head of Government or a member of his or her family,
 - (ii) an offence in respect of which the Parties have the obligation to extradite or submit the case to their competent authorities for prosecution, by reason of a multilateral international treaty/convention to which they are both parties;
 - (iii) murder or culpable homicide/manslaughter;
 - (iv) an offence, involving firearms, explosives, incendiaries, destructive devices or substances, causing death, grievous bodily harm or serious damage to property; or
 - (v) a conspiracy or attempt to commit, or participation in, any of the foregoing offences;
- (b) when the person sought is being proceeded against or has been tried and convicted or acquitted in the territory of the Requested Party for the offence for which his extradition is requested;
- (c) when the prosecution or the punishment for the offence for which extradition is requested would have been barred by lapse of time under the law of the Requested Party had the same offence been committed in the Requested Party. Acts or circumstances that would suspend the lapse of time under the law of the Requesting Party shall be given effect by the Requested Party, and in this regard the Requesting Party shall provide a written statement of the relevant provisions of its law relating to the lapse of time;
- (d) when the Requested Party has well-founded reasons to suppose that the request for extradition has been presented with a view to prosecuting or punishing the person sought, by reason of race, religion, nationality, sex or political opinion, or that the person's position may be prejudiced for any of those reasons.

Article 4

Optional Grounds for Refusal

Extradition may be refused under this Treaty in any of the following circumstances:

- (a) when the offence for which extradition is sought is regarded under the law of the Requested Party as having been committed in whole or in part within its territory. If extradition is refused solely on this ground, the Requested Party shall, at the request of the Requesting Party, submit the case to its authorities for prosecution. Where extradition is refused on that ground and subsequently prosecution is not found feasible in the Requested Party for whatever reason, the Requested Party shall so inform the Requesting Party. In such circumstances, the Requesting Party may again request the extradition of that person. The Requested Party shall reconsider the request;
- (b) when the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable;
- (c) when, in exceptional cases, the Requested Party, while also taking into account the seriousness of the offence and the interests of the Requesting Party, deems that the extradition would be incompatible with humanitarian considerations, particularly the age or health of the person sought;
- (d) when the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law.

Article 5

Postponement of Extradition

When the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party may surrender the person sought or postpone surrender until the conclusion of the proceeding or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.

Article 6

Extradition of Nationals

1. Neither of the Parties shall be bound to extradite its own nationals under this Treaty, but the Requested Party shall have the power to extradite such person if, in its discretion, it is deemed proper to do so.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested Party shall, at the request of the Requesting Party, submit the case to its authorities for prosecution.
3. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

Article 7

Extradition Procedures and Required Documents

1. The request for extradition shall be submitted in writing through diplomatic channels.
2. The request for extradition shall be accompanied by:
 - (a) documents which describe the identity, and, if possible, the nationality and location of the person sought;
 - (b) a statement of the facts of the case,
 - (c) a statement of the laws describing the essential elements and the designation of the offence;
 - (d) a statement of the laws describing the punishment for the offence; and
 - (e) a statement of the laws relating to the time limit on the prosecution or the execution of punishment of the offence.
3. When the request for extradition relates to a person who is wanted for prosecution/trial, it shall be accompanied by:
 - (a) a copy of the warrant of arrest issued by a judge or other competent authority of the Requesting Party;
 - (b) information establishing that the person sought is the person to whom the warrant of arrest refers; and
 - (c) a statement regarding the conduct alleged to constitute the offence such as would provide reasonable ground to believe that the person sought has committed the offence for which extradition is requested.
4. When the request for extradition relates to a person tried and convicted, it shall be accompanied by:
 - (a) a certified copy of the judgement setting out the conviction and the sentence imposed;
 - (b) information establishing that the person sought is the same person who has been convicted; and
 - (c) a statement regarding the conduct constituting the offence for which the person was convicted.
5. The extradition request and all supporting documents to be presented pursuant to the provisions of this Treaty shall be authenticated and accompanied by a translation thereof into the English language for a request to be made to the Republic of India and into the Korean language for a request to be made to the Republic of Korea.
6. A document is authenticated for the purpose of this Treaty, if it has been signed or certified by a judge or other competent officer of the Requesting Party and sealed by the official seal of the competent authority of the Requesting Party.

Article 8

Supplementary Information

1. If the Requested Party considers at any stage that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that supplementary information be furnished within such time as it may specify.
2. If the person whose extradition is sought is under arrest and the supplementary information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a new request for the extradition of that person.
3. Where the person is released from the custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.

Article 9

Provisional Arrest

1. In case of urgency, a Party may request the provisional arrest of the person sought pending the presentation of the request for extradition. A request for provisional arrest may be transmitted through diplomatic channels or directly between the Central Bureau of Investigation of the Republic of India and the Ministry of Justice of the Republic of Korea.
2. The application for provisional arrest shall be in writing and contain:
 - (a) a description of the person sought, including information concerning the person's nationality;
 - (b) the location of the person sought, if known;
 - (c) a brief statement of the facts of the case, including, if possible, the time and place of the commission of the offence;
 - (d) a description of the laws violated;
 - (e) a statement of the existence of a warrant of arrest, or judgement of conviction against the person sought; and
 - (f) a statement that a request for extradition of the person sought will follow.
3. On receipt of such an application, the Requested Party shall take the necessary steps to secure the arrest of the person sought and the Requesting Party shall be promptly notified of the result.
4. The person arrested may be set at liberty if the Requesting Party fails to present the request for extradition, accompanied by the documents specified in Article 7, within forty-five (45) days from the date of arrest, provided that this shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.
5. The period of the provisional arrest shall not, in any case, exceed sixty (60) days from the date of the provisional arrest.

Article 10

Simplified Extradition

When a person sought advises a court or other competent authorities of the Requested Party that he/she consents to his/her extradition, the Requested Party shall take all necessary measures to expedite the extradition to the extent permitted under its laws.

Article 11

Concurrent Requests

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested Party shall determine to which of those States the person is to be extradited and shall notify those States of its decision.
2. In determining to which State a person is to be extradited, the Requested Party shall consider all relevant factors, including but not limited to:
 - (a) the nationality and the ordinary place of residence of the person sought;
 - (b) whether the requests were made pursuant to an applicable treaty or arrangement;
 - (c) the time when and the place where each offence was committed;
 - (d) the respective interests of the requesting States;
 - (e) the gravity of the offences,
 - (f) the nationality of the victim;
 - (g) the possibility of further extradition between the requesting States; and
 - (h) the respective dates of the requests.

Article 12

Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through diplomatic channels. Reasons shall be given for any complete or partial refusal of a request for extradition.
2. The Requested Party shall surrender the person sought to the competent authorities of the Requesting Party at a location in the territory of the Requested Party acceptable to both Parties.
3. The Requesting Party shall remove the person from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if the person is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition for the same offence.

4. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party, and in this case the provisions of paragraph 3 of this Article shall not apply. The two Parties shall mutually decide upon a new date of surrender or removal in accordance with the provisions of this Article.

Article 13

Surrender of Property

1. To the extent permitted under the laws of the Requested Party and subject to the rights of third parties, which shall be duly respected, all property found in the territory of the Requested Party that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting Party so requests, be surrendered if extradition is granted.
2. Subject to paragraph 1 of this Article, the above-mentioned property shall, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition cannot be carried out owing to the death, disappearance or escape of the person sought.
3. Where the law of the Requested Party or the protection of rights of third parties so requires, any property so surrendered shall be returned to the Requested Party free of charge if that Party so requests.

Article 14

Rule of Speciality

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting Party except for:
 - (a) the offence for which extradition has been granted or a differently denominated offence based on the same facts, on which extradition was granted, provided such offence is extraditable, or is a lesser included offence;
 - (b) an offence committed after the extradition of the person; or
 - (c) an offence for which the executive authority of the Requested Party consents to the person's detention, trial, or punishment for an offence;

For the purpose of this subparagraph:

- (i) the Requested Party may require the submission of the documents called for in Article 7;
 - (ii) a copy of statement, if any, made by the extradited person with respect to the offence shall be submitted to the Requested Party; and
 - (iii) the person extradited may be detained by the Requesting Party for such period of time as the Requested Party may authorize, while the request is being processed.
2. A person extradited under this Treaty may not be extradited to a third State for an offence committed prior to his extradition unless the Requested Party consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:
 - (a) that person leaves the territory of the Requesting Party' after extradition and voluntarily returns to it; or
 - (b) that person does not leave the territory of the Requesting Party within 45 days of the day on which that person, is free to leave.

Article 15

Information of Results

The Requesting Party shall provide timely information to the Requested Party relating to the proceedings against or the imposition or enforcement of punishment upon the person extradited or the re-extradition of that person to a third State.

Article 16

Transit

1. To the extent permitted by its law, transportation of a person surrendered to one Party by a third State through the territory of the other Party shall be authorized on request in writing made through diplomatic channels or directly between the Central Bureau of Investigation of the Republic of India and the Ministry of Justice of the Republic of Korea.
2. Authorization for transit shall not be required when air transport is to be used and no landing is scheduled in the territory of the Party of transit. If an unscheduled landing occurs in the territory of that Party, it may require the other Party to furnish a request for transit as provided in paragraph 1 of this Article.

Article 17

Costs

1. The Requested Party shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.
2. The Requested Party shall bear the cost incurred in its territory in connection with the arrest and detention of the person whose extradition is sought, or the seizure and surrender of property.
3. The Requesting Party shall bear the cost incurred in removing the person whose extradition is granted from the territory of the Requested Party and the cost of transit.

Article 18

Consultation

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

Article 19

Relations with International Conventions

This Treaty shall not affect the rights and obligations of the Parties arising from multilateral international conventions/agreements to which they both are parties.

Article 20

Entry into Force and Termination

1. This Treaty is subject to ratification. It shall enter into force on the date of the exchange of the instruments of ratification.
2. This Treaty shall apply to offences committed before as well as after the date it enters into force.
3. Either Party may terminate this Treaty by giving notice in writing through diplomatic channels at any time. Termination shall take effect six (6) months after the date on which the notice is given.

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

DONE in duplicate at New Delhi on this 5th day of October 2004 in the Hindi, Korean and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section 1 of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the Republic of Korea with effect from the date of the publication of this notification

[F. No. T 413/7/2002]

R.R. DASH, Jt. Secy. (CPV)

MINISTRY OF EXTERNAL AFFAIRS
ORDER

New Delhi, the 1st June, 2006

Extradition Treaty between the Republic of India and the Sultanate of Oman

G.S.R. 341(E).—Whether the Extradition Treaty between the Republic of India and the Sultanate of Oman was signed at Muscat, on 26th December, 2004, and the instruments of ratification were exchanged at New Delhi on 14th September, 2005 in accordance with Article 28 of the Treaty and which treaty provides as follows :

The government of the Republic of India and the government of the Sultanate of Oman, hereinafter referred to as the Contracting States;

Recalling the traditional friendly relations between the two countries;

Deeply concerned by the magnitude of and rising trend in acts of international terrorism and organized crime;

For the necessity of strengthening and reinforcing the effective legitimate methods for the cooperation between-the two countries in the field of criminal matters; and,

Endeavouring to achieve the common intent of cooperation in crime combat, as to reflect the friendly bilateral relations between the two countries,

Have agreed as follows;

ARTICLE 1

The Contracting States shall extradite any person found in their respective territories who is accused or convicted of an extraditable offence in the territory of the other Contracting State.

The Contracting States shall commit themselves to extradition for offences committed before or after the entry into force of this Treaty.

ARTICLE 2

The following persons shall be extradited:

1. Persons accused of an offence punishable under the laws of both Contracting States by imprisonment for not: less than one year or for more severe punishment.
2. Persons sentenced by the Courts of the Requesting State with imprisonment for six months or more in respect of an extraditable offence.

ARTICLE 3

The crimes punishable by death penalty in both countries shall be extraditable. Where any crime for which the extradition is sought is not punishable by death penalty in the Requested State, extradition shall not be granted unless the Requesting State gives such an assurance that the death penalty will not be imposed or if imposed will not be executed.

ARTICLE 4

An offence may be extraditable notwithstanding its relation to taxation, revenue or is one of purely fiscal nature.

ARTICLE 5

An attempt or conspiracy to commit, incite or participate in committing an extraditable offence, shall also be regarded as an extraditable offence if the same is an offence in both Contracting States.

ARTICLE 6

Extradition shall not be refused on the ground that the person sought is a national of the Requested State.

ARTICLE 7

- a. Extradition shall be granted by the Requested State in respect of an extraditable offence committed outside its territory but within the jurisdiction of the Requesting State provided that the Requested State would, in similar circumstances, have jurisdiction over such offence. In such cases, the Requested State shall observe all the circumstances of the case including the seriousness of the offence.
- b. Extradition shall be granted for an extraditable offence if it is committed in a third State by a national of the Requesting State provided that it is an extraditable offence under the laws of the Requested State had it been committed therein.
- c. Extradition shall also be granted for an extraditable offence notwithstanding that the acts of the person sought occurred wholly or partly in the Requested State, if under the law of that State his acts and effects or intended effects thereof, as a whole, would constitute an extraditable offence in the territory of the Requesting State.

ARTICLE 8

Extradition may be refused:

1. If the offence for which the extradition is requested is a political offence or an offence of political nature. In the application of this Treaty, the following shall not be regarded as political offences or offences of a political nature:
 - a. Assault, or attempted assault against the Head of the State, Head of the Government, Vice Presidents, any member of their families, members of the Royal Family of the Sultanate of Oman, members of the Council of Ministers, any persons holding the rank of a Minister of either Contracting States or any member of their families;
 - b. Murder, culpable homicide, robbery and theft crimes accompanied by coercion whether committed by one or several persons against an individual, government, local authorities or against the means of communication and transportation;
 - c. Terrorism offences, including murder, manslaughter, assault causing bodily harm., Kidnapping, hostage-taking, offences involving serious damage to property or disruption of public facilities, and offences related to fire-arms, other weapons, explosives or dangerous substances;
 - d. Any offence under an international convention to which both the Contracting States are parties and which obligates the parties to prosecute or grant extradition;
 - e. An attempt, conspiracy to commit, incite or participate in the commission of any of-the above-mentioned offences.
2. If the person sought to be extradited was previously tried for the same offence for which extradition is requested and was acquitted or convicted and had served the sentence or was serving it.
3. If the criminal proceedings have abated or the sentence is time barred under the law of either Contracting State, when the request for extradition is received.
4. If the offence is committed by an alien outside the territory of the Requesting State, and it is not an offence under the law of the Requested State.
5. If the offence for which the extradition is requested was committed in the Requested State, provided the Requested State prosecutes the person.
6. If a person whose extradition is sought is being investigated or tried in the Requested State for the same offence for which his extradition is requested.

ARTICLE 9

Where the Requested State rejects a request for extradition for the reasons set out under this Treaty it shall submit the case to its competent authorities for prosecution in accordance with procedures applicable in such cases in the Requested State and notify the Requesting State of the results.

ARTICLE 10

The request for extradition shall be made in writing and served through the diplomatic channels accompanied by the following documents and particulars:

1. Particulars as to identity, description and photograph of the person to be extradited, if possible.
2. The warrant of arrest, remand or any document having the same effect, issued by a competent authority, if the person to be extradited is an accused.
3. The date, the place of the commission of the acts for which extradition is requested, the legal characterization of those offences, and a certified copy of the applicable legal provisions, and a statement by the prosecuting authorities as to evidence against the person to be extradited.
4. In case of a convicted offender, an official copy of the judgement passed.
5. Such other evidence as according to the laws of the Requested State, would justify the offender's arrest and committal for trial had the offence been committed within the jurisdiction of the Requested State.

All documents referred to above shall be translated into English and authenticated by the Requesting State.

ARTICLE 11

1. In case of urgency, a person to be extradited may be provisionally arrested and detained until the request for extradition, together with the documents referred to in the preceding Article are received.
2. The provisional request shall be communicated in writing to the competent authority of the Requested State, either by post, telegram or any similar means including the International Criminal Police Organisation (INTERPOL).
3. The same request shall be confirmed through the diplomatic channels, and shall contain a reference to the existence of any of the documents enumerated in the preceding Article, and intimating the intention of the Requesting State to transmit a request for extradition, a statement of the offence for which extradition is requested, the sentence specified for that offence or the sentence inflicted, the time and place of the commission of the offence and a detailed description of the person to be extradited as far as possible. The Requesting State shall forthwith be notified of any action taken in respect of the request.
4. The provisional arrest shall be executed in accordance with the legal procedures of the Requested State.

ARTICLE 12

1. If the documents required under this treaty are not delivered within ninety days from the date of the arrest of the person to be extradited, the competent authority in the Requested State may release that person.

2. The person to be extradited may at any time be released on bail, if the Requested State takes all necessary measures to prevent his escape. The release of such person shall not prevent his re-arrest and extradition if the request for extradition is completed afterwards.

ARTICLE 13

If the Requested State needs additional clarifications to ensure the compliance with the conditions embodied in this Treaty, it shall notify the Requesting State through the diplomatic channels and/or INTERPOL, before rejecting the request, and may fix a reasonable period for receiving such clarifications.

ARTICLE 14

If the extradition of the same person, whether for the same offence or different offences is requested by a Contracting State and a third State with which the Requested State has extradition agreement, the Requested State shall determine to which State the person shall be extradited taking into consideration and giving priority to the State whose security or interest or its nationals or their interest are affected by the offence, and then to the State on whose territory the offence is committed, and lastly to the State of which the person is to be extradited is a national. If the circumstances are identical the State which made the first request shall have preference. If the requests for extradition are for several offences, the preponderance is accorded to the circumstances of the offence and gravity of the offence.

ARTICLE 15

1. Without prejudice to the right of others acting in good faith and to the laws in force in the Requested State, anything found in possession of the person to be extradited at the time of his arrest or remand or at a later stage, provided that these things are proceeds of the offence or used in the commission thereof, or connected with it, or may be relevant as evidence of the offence, shall be attached and may be handed over to the Requesting State, even if the person concerned is not extradited due to his death or absconding.
2. If the seized materials referred to in para 1 of this Article are still required for the investigation of the crime pending in the Requested State, then the delivery of these materials may be delayed, or they may be delivered provided that they should be returned after the settlement of the case and proceedings in the Requesting State.

ARTICLE 16

1. The competent authorities in each of the Contracting States shall determine the requests for extradition in accordance with their domestic laws in force at the time of the request, provided that they are not inconsistent with the provisions of this Treaty.
2. The Requested State shall communicate to the Requesting State the decision taken in respect of extradition request, through diplomatic channels without any delay.

3. In the event of approval of the extradition request, the Requesting State shall be notified of the date and place of extradition.
4. The Requesting State shall within thirty days from the date of the above notification of extradition, receive the person to be extradited, otherwise the Requested State may discharge him, and in such event no second request for extradition for the same person may be accepted for the same offence.
5. Where extradition is approved under this Treaty, the Requesting State shall ensure that the person extradited is brought to trial within six months of the extradition and if the trial has not commenced within six months, the Requesting State shall bring the person extradited before its appropriate courts for bail to be considered pending trial and to fix a trial date for charges for which the extradition was approved.

ARTICLE 17

1. If the person to be extradited is under investigation, standing trial or convicted in the Requested State for an offence other than that for which his extradition is requested, the Requested State shall decide on the request and communicate the decision to the Requesting State.
2. If the request for extradition is approved, then the extradition of such person shall be postponed until his trial in the Requested State is completed and the punishment passed is executed.

ARTICLE 18

1. In any proceeding for extradition, the competent authorities of the Requested State shall admit as evidence any statement taken on oath or by affirmation, statement made before an investigating officer, warrant and any certificate or judicial document stating a conviction, if it is authenticated in the following manner:
 - a. By signature in case of a warrant, and in case of any original document by certification by a judge, magistrate or other competent authority of the Requesting State; and
 - b. In case of dispositions or statements either by oath, testimony by witness or by the official seal of the appropriate minister of the Requesting State; or
 - c. In such other manner as may be permitted by the law of the Requested State.
2. The evidence prescribed in para 1 shall be admissible in extradition proceeding in the Requested State whether adduced on oath or corroborated in the Requesting State or in a third State.

ARTICLE 19

1. The person to be extradited shall not be tried or punished in the Requesting State except for the offence for which his extradition is sought, offences connected therewith, offences committed after his extradition or if the nature of the offence is modified during the proceedings against him.

2. If the person extradited has the liberty and means to leave the territory of the State to which he has been extradited and he has not left within thirty days subsequent to his final release or has left during that period, but voluntarily returned, he may be tried for the other offences.

ARTICLE 20

1. The Contracting State to which the person is extradited shall not extradite him to a third State, without, the consent of the other Contracting State.
2. The person may be extradited to a third State, if he has not left the territory of the State to which he has been extradited within thirty days of his final release or has left during that period but voluntarily returned to it.

ARTICLE 21

The present Treaty shall not prejudice the rights and obligations of the Contracting States arising from international conventions or treaties to which they are parties.

ARTICLE 22

The term of provisional detention shall be deducted from any sentence passed in the Requesting State against the person to be extradited.

ARTICLE 23

1. Each of the Contracting States shall grant the person to be extradited from a third State passage through its territory upon request made through the diplomatic channels.
2. The request shall be supported by documents pertaining to an offence for which extradition can be granted under the provisions of this Treaty.

ARTICLE 24

1. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person extradited. The Requested State shall pay all other expenses incurred in that State in connection with the extradition proceedings.
2. The Requesting State shall pay the return expenses of an extradited person to the place where he was at the time of extradition if his commission of the offence or complicity therein is not proved.

ARTICLE 25

Both Contracting States, in accordance with their domestic laws and the bilateral Treaty, shall spare no effort in mutual cooperation in criminal matters relating to the crime for which the extradition is requested.

ARTICLE 26

Either of the two Contracting States may submit a request for amendment to this Treaty.

The request for amendment shall be submitted via diplomatic channels. The amendment shall only be valid after the agreement of the other State.

ARTICLE 27

The Contracting States shall maintain the confidentiality of information and documents exchanged under this Treaty.

ARTICLE 28

This Treaty shall be ratified in accordance with the legal procedures in force in each State, and shall come into force after one month from the date of exchange of the instruments of ratification.

ARTICLE 29

Either of the two Contracting States may terminate this Treaty at any time by giving the other State a six-month notice, provided that the procedures commenced by either State shall proceed to the end.

Done in Muscat on this 26th day of December of 2004 in two originals each in the Hindi, Arabic and English languages all the texts being equally authentic. In the event of any differences the English text shall prevail.

Now, therefore, in exercise of the powers conferred by Sub-Section (1) of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the Sultanate of Oman with effect from the date of publication of this notification.

[F. No. T/413/36/96]

R.R. DASH, Jt. Secy. (CPV)

Agreement on Extradition between the Republic of India and the Portuguese Republic

The Republic of India and the Portuguese Republic hereinafter referred to as Contracting States;

Desiring to improve the co-operation of the two countries in the prevention and suppression of crime, by making provisions for the reciprocal extradition of offenders;

Have agreed as follows:

Article 1

Obligation to Extradite

The Contracting States agree to extradite to each other, subject to their laws and to the conditions specified in this Agreement, any accused person wanted for prosecution or any convicted person wanted for the imposition or enforcement of a sentence for an extraditable offence, found in the territory of the other State.

Article 2

Extraditable Offences

1. Extradition shall be granted in respect of offences that are punishable under the laws of both Contracting States by imprisonment or other measure of deprivation of liberty for a maximum period of at least one year. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other measure of deprivation of liberty, extradition shall be granted only if a period of at least six months imprisonment or other measure of deprivation of liberty remains to be served.
2. For the purposes of this Article, in determining whether an offence is an offence against the law of both Contracting States:
 - a) It shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - b) The totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account and it shall not matter whether, under the laws of the Contracting States, the constituent elements of the offence differ.
3. Where the offence for which extradition is requested has been committed outside the territory of the requesting State, extradition shall be granted subject to the provisions of this Agreement:
 - a) If the person whose extradition is requested is a national of the requesting State; or
 - b) If the law of the requested State provides for the punishment of an offence committed outside its territory in similar circumstances.

4. Extradition shall be granted in accordance with the provisions of this Agreement for offences of a fiscal character including duties, taxation, customs and exchange.
5. If the request for extradition includes several separate offences, which are punishable under the laws of both Contracting States, but some of which do not fulfil the other conditions set out in paragraph 1 of this Article, the requested State may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

Article 3

Nationals

1. The requested State shall have the right to refuse to extradite its nationals.
2. Where the requested State refuses to extradite a person on the ground that the person is a national of the requested State, it shall, if the requesting State so requests and the laws of the requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been requested, may be taken.

Article 4

Grounds for Refusal to Extradite

1. Extradition shall not be granted if:
 - a) The requested State considers that the execution of the request is contrary to its Constitutional principles and domestic laws;
 - b) There are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purposes of prosecuting or punishing a person on discriminatory grounds contrary to the international and internal laws in force in each Contracting State.
 - c) The offence for which extradition is requested is an offence of a political nature. For the purposes of this Agreement, the following offences shall not be considered as political offences:
 - (i) Genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions;
 - (ii) Offences that ought not to be regarded as political under the international treaties, conventions or Agreements to which each Contracting State is a party;
 - (iii) Murder, culpable homicide;
 - (iv) Voluntarily causing hurt or grievous hurt by a dangerous weapon or means;
 - (v) Possession of a fire-arm or ammunition with intention to endanger life;
 - (vi) The use of a fire-arm with intention to resist or prevent the arrest or detention;
 - (vii) Causing of loss or damage to property used for public utilities or otherwise with intention to endanger life;

- (viii) Wrongful restraint and wrongful confinement;
 - (ix) Kidnapping and abduction including taking of hostages;
 - (x) Offences related to terrorism and terrorist acts; and
 - (xi) Abetting, conspiring or attempting to commit, inciting, participating as an accomplice in the commission of any of the above offences.
- d) The offence for which extradition is requested is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting States;
 - e) Final judgement has been rendered in the requested State or in a third State in respect of the offence for which the extradition is requested; and
 - i) The judgement resulted in the person's acquittal;
 - ii) The term of imprisonment to which the person was sentenced has been completely enforced, or is wholly or, with respect to the part not enforced, a pardon or an amnesty has been granted; or
 - iii) The court convicted the person without imposing a penalty;
 - f) The person whose extradition is requested has been granted amnesty in respect of the offence for which extradition is requested, or has, according to the law of either Contracting State, become immune from prosecution or punishment by reason of lapse of time, or for any other reason;
 - g) The extradition sought might lead to a trial by a court of exceptional jurisdiction or that has been specially established for the purpose of trying that person's case or where it concerns the enforcement of a sentence passed by such a court. For the purposes of this Agreement, the expression "court of exceptional jurisdiction" shall not be interpreted as referring to a special court which is set up by the regular procedure established by the internal law of each Contracting State.
2. The requested State shall have the right to refuse extradition if:
- a) The competent authorities of the requested State have decided to refrain from prosecuting the person whose extradition is requested for the offence in respect of which extradition is requested;
 - b) The offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State. However, extradition may be granted in accordance with this treaty notwithstanding that the conduct of the person sought occurred wholly or partly in the requested State, if under the laws of that State, his conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable offence in the territory of the requesting State;
 - c) A prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested;

- d) The person sought has been convicted in that person's absence of the offence for which extradition is requested, unless the requesting State provides an assurance, which is considered by the requested State to be sufficient, that the person sought shall, upon surrender, have a right to appeal against the conviction or to seek re-trial;
- e) The requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other reasons of a personal nature to be analysed by the requested State on a case to case basis. If, however the extradition is refused under this clause, the accused shall be prosecuted by the requested State in accordance with its domestic laws.

Article 5

Rule of Specialty

1. Subject to paragraph 3 of this Article, a person extradited under this Agreement shall not be detained or tried, or be subjected to any other restriction of personal liberty, in the requesting State for any offence committed before the extradition other than:
 - a) An offence for which extradition was granted; or
 - b) Any other extraditable offence in respect of which the requested State consents.
2. A request for the consent of the requested State under this Article shall be accompanied by the documents mentioned in paragraph 4 of Article 8.
3. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has returned to the requesting State after leaving it.
4. If the description of the offence charged in the requesting State is altered in the course of proceedings, the person extradited shall be proceeded against or sentenced only in so far as the offence under its new description is an offence for which extradition could be granted pursuant to this agreement.

Article 6

Re-extradition to a Third State

1. Where a person has been surrendered to the requesting State by the requested State, the requesting State shall not extradite that person to any third State for an offence committed before that person's surrender unless:
 - a) The requested State consents to that re-extradition; or
 - b) The person has had an opportunity to leave the requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was surrendered by the requested State or has returned to the requesting State after leaving it.

2. In relation to any consent pursuant to subparagraph 1(a), of this Article the requesting State may request the production of the documents mentioned in Article 8, as well as any declaration made by the extradited person in respect of the re-extradition.

Article 7

Concurrent Requests

If extradition is requested concurrently by a Contracting State and by one or more other States, whether for the same or for different acts or omissions, the requested State shall determine to which of those States the person is to be extradited having regard to the circumstances and, in particular, the existence of other treaties or Agreements binding on the requested State, the relative gravity of the offences and where they were committed, the respective dates of the requests, the nationality of the person and the possibility of subsequent re-extradition.

Article 8

Extradition Procedure

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channels.
2. All documents submitted in support of a request for extradition shall be authenticated.
3. A document is authenticated for the purposes of this Agreement if:
 - a) It purports to be signed or certified by a judge, magistrate or other competent officer in or of the requesting State; and
 - b) It purports to be sealed with an official or public seal of the concerned Ministry or the competent authority of the requesting State.
4. A request of extradition shall be accompanied by:
 - a) If the person is accused of an offence - the original and two certified copies of the warrant for the arrest of the person, a statement of each offence for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offence, and such documents/information as, according to the law of the requested State, would justify his committal for trial if the offence had been committed in the territory of the requested State;
 - b) If a person has been convicted in that person's absence of an offence - a judicial or other document or a copy thereof, authorising the apprehension of the person, a statement of each offence for which extradition is requested, a statement of the acts or omissions which are alleged against the person in respect of each offence and a statement of the relevant law that ensures the right to appeal against the decision or to seek retrial;
 - c) If the person has been convicted of an offence otherwise than in that person's absence - documents evidencing the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;

- d) If the person has been convicted of an offence otherwise than in that person's absence but no sentence has been imposed - documents evidencing the conviction and a statement affirming that it is intended to impose a sentence;
- e) In all cases - a statement of the relevant law creating the offence, including any provision relating to the limitation of proceedings and a statement of the penalty that can be imposed for the offence;
- f) In all cases - a description which is as accurate as possible of the person sought together with any other information which may help to establish the person's identity and nationality; and
- g) If applicable - a statement indicating reasons, which have prevented the person from becoming immune from prosecution or sentence by reason of lapse of time in relation to the offence for which extradition is requested, according to the law of the requesting State;
- h) In the case of an offence committed in a third State, statement demonstrating that the third State does not claim the person sought for that offence;
- i) In cases of conviction in absentia information that the person sought may appeal against the conviction or seek re-trial;
- j) An assurance that the person sought will be afforded the protection provided for by articles 5 and 6 of this Agreement.

Article 9

Supplementary Information

1. If the requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient, in accordance with this Agreement, that State may request that additional information be furnished within such time as it specifies.
2. If a person who is under arrest in relation to extradition is released from custody as a consequence of the failure of the requesting State to provide additional information requested pursuant to paragraph 1 of this article, the requested State shall notify the requesting State as soon as practicable.

Article 10

Provisional Arrest

1. In case of urgency a Contracting State may apply, by means of the facilities of the International Criminal Police Organisation (INTERPOL), or otherwise, for the provisional arrest of the person sought, pending the presentation of the request for extradition.
2. The application may be transmitted by post or telegraph, or by any other means affording a record in writing.
3. The requests for provisional arrest shall indicate the existence of either a detention order or a sentence against the person claimed, describe briefly the facts that amount to an offence, state when

and where such offence was committed, the legal provisions that are applicable, as well as the available data concerning the identity, the nationality and the whereabouts of that person.

4. On receipt of an application for provisional arrest the requested State shall take the necessary steps to secure the arrest of the person sought and the requesting State shall be promptly notified of the result of its application.
5. Provisional arrest shall be terminated if the request for extradition is not received within 18 days of the arrest; it may however be prolonged for up to 40 days of the arrest if the reasons given by the requesting State so justify.
6. The provisions of paragraph 5 above shall not prejudice re-arrest and extradition if a request is received subsequently.

Article 11

Surrender

1. The requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the requesting State. Reasons shall be given for refusal, in whole or in part, of a request.
2. Where extradition is granted, the person shall be removed from the requested State from a point of departure in that State convenient to the Contracting States.
3. The requesting State shall remove the person from the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that period, the person may be released and the requested State may refuse to extradite the person for the same offence.
4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited it shall notify the other Contracting State. The two Contracting States shall mutually decide upon a new date of surrender, and the provisions of paragraph 3 of this article shall apply.

Article 12

Postponement and Temporary Surrender

1. The requested State may postpone the surrender of a person in order to proceed against the person, or so that the person may serve a sentence, for an offence other than an offence constituted by an act or omission for which extradition is requested. In such cases the requested State shall advise the requesting State accordingly.
2. To the extent permitted by its law, the requested State may temporarily surrender the person sought to the requesting State in accordance with conditions to be determined by mutual Agreement between the Contracting States.

Article 13

Surrender of Property

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.
2. The said property may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.
3. When the said property is liable to seizure or confiscation in the requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.
4. Where the law of the requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after the completion of the proceedings, if that State so requests.

Article 14

Transit

1. Where a person is to be extradited to a Contracting State from a third State through the territory of the other Contracting State, the Contracting State to which the person is to be extradited shall request the other Contracting State to permit the transit of that person through its territory.
2. Upon receipt of such a request the requested Contracting State shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so, provided that in any case the transit of a person may be refused on any ground on which the extradition of that person might be refused under this Agreement.
3. Permission for the transit of a person shall, subject to the law of the requested Contracting State, include permission for the person to be held in custody during transit.
4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting State in whose territory the person is being held may direct that the person be released if that person's transportation is not continued within a reasonable time.
5. The Contracting State to which the person is being reimburse the other Contracting State for any expense other Contracting State in connection with the transit.

Article 15

Expenses

1. The requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition.

2. The requested State shall bear the expenses incurred in its territory in the arrest and detention of the person whose extradition is requested until the person is surrendered to a person nominated by the requesting State.
3. The requesting State shall bear the expenses incurred in conveying the person from the territory of the requested State.

Article 16

Language

A Contracting State which sends to the other Contracting State a document, in accordance with this Agreement, that is not in the language of the other Contracting State shall provide a translation of the document into the language of the other Contracting State.

Article 17

International Obligations

The present Agreement shall not affect the rights and obligations of the Contracting States arising from international conventions to which they are parties.

Article 18

Entry into Force and Termination

1. This Agreement shall enter into force thirty days from the date of the last communication through diplomatic channels between the Contracting States indicating the fulfillment of the respective internal legal or constitutional requirements for its entry into force.
2. Either Contracting State may terminate this Agreement by giving notice in writing and at any time to the other through diplomatic channels, and if such notice is given the Agreement shall cease to have effect six months after the receipt of the notice.
3. The provisions of this Agreement shall be applicable to the extradition requests presented after its entry into force, irrespective of the date on which the facts occurred.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at New Delhi, on the Eleventh day of January of the year 2007 (two thousand and seven), in Hindi, Portuguese and English, all texts being equally authentic. However, in case of divergence, the English text shall prevail.

For the Republic of India

For the Portuguese Republic

Treaty on Extradition between the Republic of India and the Republic of Belarus

The Republic of India and the Republic of Belarus, hereinafter referred to as the 'Parties';

Desiring to make more effective the cooperation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders;

Recognising that concrete steps are necessary to combat crime including terrorism;

Have agreed as follows:

Article 1

Duty to Extradite

The Parties agree to extradite to each other, pursuant to the provisions of this Treaty, any person, who is accused or charged with or convicted of any extraditable offence, by the competent authorities of the Requesting Party, whether such offence was committed before or after the entry into force of this Treaty, as well as if it is committed in a third State by a national of the Requesting Party and the Requesting Party bases its jurisdiction on the nationality of the offender.

Article 2

Competent Authority

The competent authority for the Republic of India shall be the Ministry of External Affairs and for the Republic of Belarus shall be the Prosecutor's Office.

Article 3

Extradition Offences

1. An extradition offence for the purposes of this Treaty is constituted by conduct, which under the laws of each Party is punishable by a term of imprisonment for a period of at least one year.
2. A person who has been convicted of an extradition offence may be extradited if he was sentenced to imprisonment or other form of detention for a period of six months or more.
3. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

Article 4

Composite Offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested Party,

if this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence under the laws of both the Contracting Parties.

Article 5

The Political Offence Exception

1. Extradition may be refused if the offence of which it is requested is an offence of a political character.
2. For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:
 - (a) offences provided under international treaties/conventions to which both countries are parties;
 - (b) murder;
 - (c) manslaughter or culpable homicide;
 - (d) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
 - (e) the causing of an explosion likely to endanger life or cause serious damage to property;
 - (f) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
 - (g) the possession of a firearm or ammunition by a person who intends either himself or through another persons to endanger life;
 - (h) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
 - (i) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
 - (j) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
 - (k) incitement to murder;
 - (l) any other offence related to terrorism which at the time of the request is, under the law of the Requested Party, not to be regarded as an offence of a political character;
 - (m) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 6

Grounds for Refusal of Extradition

1. A person may not be extradited if:
 - (a) he is a national/citizen of the Requested Party;
 - (b) according to the legislation of the Requested Party, the person sought to be extradited has become immune from the criminal prosecution or carrying out of a sentence by reason of lapse of time;
 - (c) the accusation against him not having been made in good faith in the interests of justice;
 - (d) the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law;
 - (e) the grant of extradition is contrary to the laws of the Requested Party.
2. A person may not be extradited if he would, if proceeded against in the territory of the Requested Party for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested Party relating to previous acquittal or conviction.
3. The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for the extradition offence in the courts of the Requested Party.

Article 7

Obligation to prosecute

1. Where the Requested Party refuses a request for extradition for the reason set out in paragraph 3 of Article 6 of this Treaty, it shall submit the case to its competent authorities for prosecution.
2. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 8

Consequences of non-extradition of own citizens

If according to paragraph 1 (a) of Article 6 of this Treaty, extradition is refused, the Requested Party shall initiate criminal prosecution against such person for the same offence according to its laws. For this the Requesting Party shall transfer to the Requested Party the relevant documents and evidence.

Article 9

Postponement of extradition and temporary extradition

1. If the person sought to be extradited is being prosecuted or serving his sentence for another offence in the territory of the Requested Party, the extradition may be postponed till the completion of proceedings, completion of sentence or his release, which shall be advised to the Requesting Party.

2. If the postponement of extradition may cause lapse of time or impede the investigation, the person can be temporarily extradited at the request of the Requesting Party.
3. The temporarily extradited person must be returned to the Requested Party immediately after the end of the proceedings of the case.

Article 10

Extradition Procedures

1. The request for extradition under this Treaty shall be made in writing through the diplomatic channels or the competent authorities.
2. The request shall be accompanied by:
 - (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence;
 - (b) a statement of the facts of the offence for which extradition is requested including information about the nature and size of damage caused by the offence for which extradition is requested; and
 - (c) the text, if any, of the law:
 - (i) defining that offence;
 - (ii) prescribing the punishment for that offence.
3. If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting Party and by such evidence as, according to the law of the Requested Party, would justify his committal for trial if the offence had been committed in the territory of the Requested Party, including evidence that the person requested is the person to whom the warrant of arrest refers.
4. If the request relates to a person already convicted and sentenced, it shall also be accompanied:
 - (a) by a certificate of the conviction and sentence;
 - (b) by a statement that the person is not entitled to question conviction or sentence and showing how much of sentence has not been carried out.
5. In relation to a convicted person who was not present at his trial, the person shall be treated for the purposes of paragraph 4 of this Article as if he had been accused of the offence of which he was convicted.
6. If the Requested Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested Party shall require.
7. Upon receipt of the request for extradition, the Requested Party shall, in accordance with its laws and the provisions of this Treaty, take urgent measures for arrest of the person sought.

Article 11

Provisional Arrest

1. In urgent cases the person sought may, in accordance with the law of the Requested Party, be provisionally arrested on the application of the competent authorities of the Requesting party, made either through diplomatic channels or the National Central Bureau of International Criminal Police Organization INTERPOL. The application shall contain an indication of intention to request the extradition of that person and statement of the existence of a warrant of arrest or a conviction against him, and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the Requested Party.
2. The Requested Party shall inform without delay the Requesting Party about such provisional arrest.
3. A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article 12

Rule of Speciality

1. The extradited person may not without consent of the Requested Party, be prosecuted or punished in the Requesting Party for the offence other than that for which extradition has been granted and any lesser offence disclosed by the fact proved for the purposes of securing his extradition, nor may such a person, without consent of the Requested Party, be extradited to a third State.
2. The consent of the Requested Party is not required if the extradited person:
 - (a) has not left, though had the opportunity, the territory of the Requesting Party within 45 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the Requesting Party for reasons beyond his control;
 - (b) once having left the territory of the Requesting Party, voluntarily returns there.
3. The provisions of paragraph 1 of this Article shall not apply to offences committed after the return of the person to the Requesting Party or matters arising in relation to such offences.

Article 13

Recognition of Documents and Evidence

1. The authorities of the Requested Party shall admit in any proceedings for extradition, any evidence and related documents taken on oath or by way of affirmation, any warrant and any certificate of, or judicial document stating the fact of, a conviction, if it is authenticated:
 - (a) (i) in the case of a warrant being signed, or in the case of any original document by being certified, by a judge, magistrate or other competent authority of the Requesting Party; and
(ii) either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting Party; or
 - (b) in such other manner as may be permitted by the law of the Requested Party.
2. The evidence described in paragraph 1 of this Article shall be admissible in extradition proceedings in the Requested Party whether sworn or affirmed in the Requesting Party or in some third Party.
3. Documents considered as public in the territory of one Party shall have the evidential force of public documents also in the territory of the other Party.

Article 14

Competing Requests

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting Party and a third party with which the Requested Party has an extradition arrangement, the Requested Party shall determine to which Party the person shall be extradited, and shall not be obliged to give preference to the Contracting party.

Article 15

Capital Punishment

If under the law of the Requesting Party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested Party does not provide for the death penalty in a similar case, extradition may be refused unless the Requesting Party gives such assurance as the Requested Party considers sufficient that the death penalty will not be carried out.

Article 16

Surrender

1. If extradition is granted, the Requested Party shall notify the Requesting Party of the time and place of delivery of the extradited person.
2. The Requesting Party shall remove the person sought from the territory of the Requested Party within 45 days or such longer period, which may not exceed 60 days. If he is not removed within that period, the Requested Party may refuse to extradite him for the same offence and release the person.

Article 17

Surrender of Property

1. When a request for extradition is granted, the Requested party shall, upon request and so far as its law allows, seize and hand over to the Requesting Party articles (including sums of money) which may serve as proof or evidence of the offence.
2. The articles mentioned in paragraph 1 of this Article shall also be delivered in case the extradition of a person cannot be carried out owing to his death, escape or other reasons.
3. If the articles mentioned in paragraph 1 of this Article are needed in the territory of the Requested Party in connection with pending criminal proceedings, their transfer may be postponed till the completion of the proceedings or they shall be handed over on the condition that they will be returned.
4. These provisions shall not prejudice the rights of the Requested Party or any person other than the person sought. When these rights exist the articles shall be returned to the Requested Party without charge as soon as possible after the end of the proceedings.

Article 18

Expenses

1. Expenses incurred in the territory of the Requested Party by reason of the request for extradition shall be borne by that Party.
2. The expenses incurred by reason of transit of the extradited person shall be borne by the Requesting Party.

Article 19

Languages

While complying with this Treaty, the Parties shall use their national language attaching the translation in the national language of the other Party or in the English language.

Article 20

Obligations under International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Parties arising from International Conventions/Treaties to which they are Parties.

Article 21

Ratification and Termination

1. This Treaty shall be subject to ratification and shall enter into force on the date of exchange of the instruments of ratification.
2. Either Party may terminate this Treaty at any time by giving written notice to the other Party through the diplomatic channel of its intention to terminate the Treaty and the same shall cease to have effect six months after the receipt of the notice by the other Party.

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

Done at New Delhi on the 16th day of April 2007, in two originals, each in Hindi, Russian and English, all languages being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

**On behalf of the
Republic of India**

(Anand Sharma, Minister of State for
External Affairs)

**On behalf of the
Republic of Belarus**

(Viktor Golovanov, Minister of
Justice)

Treaty on Extradition between the Government of the Republic of India and the Government of the United Mexican States

The Government of the Republic of India and the Government of the United Mexican States hereinafter referred to as “The Parties”,

ENCOURAGED by the desire to further strengthen the friendly relations between the parties;

DESIRING to improve the effectiveness of the cooperation between both countries in the prevention and suppression of crime;

CONSCIOUS of the importance of the cooperation in the fight against crime and granting each other assistance on reciprocal extradition of offenders ;

RECOGNIZING that concrete steps are necessary to combat terrorism;

BASED on mutual respect for the sovereignty and equality between the States;

Have agreed as follows:

ARTICLE 1

Obligation to Extradite

1. Each Party undertakes to extradite to the Other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or sentenced of an extradition offence as described in Article 2, committed within the territory of a Parity, is found within the territory of the other Party, whether such offence, was committed before or after the entry into force of this Treaty.
2. Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting Party but in respect of which it has jurisdiction if the Requested Party would, in similar circumstances, have jurisdiction over such an offence. In such circumstances the Requested Party shall have regard to all the circumstances of the case including the seriousness of the offence.
3. In addition, extradition shall be available for an extradition offence as described in Article 2:
 - a) If it is committed in a third State by a national of the Requesting Party and this Party bases its jurisdiction on the nationality of the offender; and
 - b) If it occurred within the territory of the Requested Party and it would an offence under the national legislation of that Party punishable with imprisonment for a term of at least one (1) year.

ARTICLE 2

Extradition offences

1. An extradition offence for the purposes of this Treaty is constituted by a conduct, which pursuant to the national legislation of each Party is punishable by a term of imprisonment for a period of at least one (1) year.
2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.
3. If the extradition is requested for the serving of sentence imposed in the Requesting Party, the duration of the sentence left to be served shall be at least for six (6) months.
4. For the purpose of this Treaty, extradition shall be considered in respect of extraditable crimes included in multilateral conventions to which both States are Parties.

ARTICLE 3

Central Authorities

1. All requests under this Treaty shall be made by the Central Authorities of the Parties through Diplomatic Channels.
2. For the Republic of India the Central Authority is the Ministry of External Affairs and in the United Mexican States the Central Authority is the Ministry of Foreign Affairs.

ARTICLE 4

Composite Offences and Dual Criminality

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or a part in the Requested Party, if under the national legislation of the Party this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting Party.

ARTICLE 5

Extradition of Nationals

The Requested Party shall consider the extradition of its nationals. The nationality for this purpose shall be as at the time of the commission of the offence.

ARTICLE 6

Aut Dedere Aut Judicare (Extradition or Prosecution)

1. The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for the extradition offence in the courts of tribunals of that Party.
2. Where the Requested Party refuses the extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the national legislation of that Party.
3. If the competent authorities decide not to prosecute in such a case, the extradition shall be reconsidered at the request of the Requesting Party, in accordance with this Treaty

ARTICLE 7

Political Offence

1. Extradition shall be refused if the offence for which it is requested is an offence of a political character, or related with an offence of political character, according to each Party's national legislation.
2. For the purpose of this Treaty, the following offences shall not be regarded as offences of political character.
 - a) offences under International Conventions to which both States are Parties;
 - b) murder;
 - c) manslaughter or culpable homicide;
 - d) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
 - e) the causing of an explosion likely to endanger life or cause serious damage to property;
 - f) the making or possession of an explosive substance by a person to intend either himself or another person to endanger life or cause serious damage to property;
 - g) the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
 - h) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
 - i) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
 - j) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
 - k) incitement to murder;

- l) any other offence related to terrorism which at the time of the request is under the national legislation of the Requesting Party, not to be regarded as an offence of a political character; and
- m) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

ARTICLE 8

Grounds for Refusal of Extradition

The extradition may be refused:

1. If the person sought is being prosecuted by the Requested Party for the same offence for which the extradition has been requested;
2. If the person sought has been finally acquitted or convicted and sentenced in the Requested Party or a third State for the same offence for which the extradition is requested;
3. If a person who has been convicted of an extradition offence and sentenced to imprisonment or other form of detention for a period of less than six (6) months;
4. Had he been tried in the territory of the Requested Party for the offence for which his extradition is requested, he would have been entitled to be discharged under any rule of the national legislation of the Requested Party relation to previous acquittal or sentence.
5. When the prosecution has become barred by lapse of time according to the national legislation of the Requesting Party.
6. When the Requested Party has well founded reasons to believed that the request for extradition has been presented with the intention to prosecute or punish the person sought, by reason of race, religion or gender.
7. If the offence for which extradition is requested is an offence under military law, which is not also an offence under the ordinary criminal law.
8. If the extradition for the same offence has been previously denied on the same grounds and with regard to the same person.
9. If the offence for which the extradition is requested is Punishable by death under the law of the Requesting Party, and the death-penalty is not provided for Requesting Party gives such assurance as the Requested Party considers sufficient that the death-penalty will not be imposed or carried out.

ARTICLE 9

Postponement of Surrender

If criminal proceedings against the person sought are instituted in the territory of the Requested Party, or he is lawfully detained in consequence of criminal proceedings, the decision whether or not to extradite him may be postponed until the criminal proceedings have been completed or he is no longer detained.

ARTICLE 10

Extradition Procedures

1. The requested shall be made in writing and accompanied by:
 - a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence including possible location;
 - b) a statement of facts of the offence for which extradition is requested, and
 - c) the text of national legislation:
 - i) Defining the offence;
 - ii) prescribing the maximum punishment for that offence; and
 - iii) establishment the time limit for the prosecution of the offence,
2. If the request relates to an accused person, it must also be accompanied by a certified copy of the charging document establishing accusation, the warrant of arrest issued by a Judge, Magistrate or other competent authority in the territory of the Requesting Party and by such evidence as, in accordance with the national legislation of the of the Requested Party would justify his committal for trial if the offence had been committed within the territory of the Requested Party.
3. If the request relates to a person already convicted and sentenced, it shall be accompanied by:
 - a) certified copies of the warrant of arrest, order of conviction and sentence; and,
 - b) a statement that the conviction or sentence was final and showing the remainder of the sentence to be served.
4. If the Requested Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested Party may require.

ARTICLE 11

Provisional Arrest

1. In urgent cases the person sought may, in accordance with the national legislation of the Requested Party, be provisionally arrested by the competent authorities of the Requested Party. The application shall contain an indication of intention to request the formal extradition of that person and a statement of the existence of a warrant of arrest against him and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest as:
 - a) time and place of the offence committed;
 - b) circumstances of the commission,
 - c) proper information to determine the identity and nationality of the person sought.

2. The request for provisional arrest shall be executed by the competent authorities of the Requested Party in accordance with its national legislation. The Requesting Party shall be informed of the result of the execution of request.
3. The person arrested provisionally could be released if within a period of sixty (60) days of the arrest of the person, sought, the Requested Party has not received the formal request for extradition and the documents required pursuant to Article 10 of this Treaty.
4. The Requesting Party may present a further request even though the provisional arrest has ended. The new request shall be made in accordance with the provisions of this Treaty.

ARTICLE 12

Documents and Evidence

1. In all cases the documents submitted in accordance with the provisions of this Treaty shall be authenticated by the competent authority, in accordance with the national legislation of the Requested Party and accompanied by a translation in the official language of the Requested Party or in English.
2. The authorities of the Requested Party shall admit as evidence, in any proceedings for extradition, any evidence taken on oath or by way of affirmation, any warrant and any certificate of, or judicial document stating the fact of a conviction, if it is authenticated:
 - a)
 - i) in the case of a warrant being signed, or in the case of any original document by being certified, by a Judge, Magistrate or other competent authority of the Requesting Party; and
 - ii) either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting Party; or
 - b) in such other manner as may be permitted by the national legislation of the Requested Party.
3. The evidence described in paragraph (2) shall be admissible in extradition proceedings in the Requested Party whether sworn or affirmed in the Requesting Party or in some third State.

ARTICLE 13

Summary Extradition

If the person sought informs the competent authorities of the Requested Party that he agrees to be extradited, that Party may stop further proceedings, and take all measures for extradition subject to its national legislation in an expeditious manner.

ARTICLE 14

Conflicting requests

If extradition of the same person is requested, whether for the same or for different offences by the other Party and a third State with whom the Requested Party has extradition arrangements, the Requested Party shall determine to which State the person shall be extradited, and shall not be obliged to give preference to the other Party to this Treaty.

ARTICLE 15

Surrender

1. If extradition is granted, the person sought shall be sent by the authorities of the Requested Party to a convenient point of departure from(sic) its territory, in consultation with the Requesting Party.
2. The Requesting Party shall remove the person sought from(sic) the territory of the Requested Party within sixty days (60) or such longer period as may be permitted under the national legislation of the Requested Party. If he/she is not removed within that period, the Requested Party may release the person and refuse to extradite him/her for the same offence.

ARTICLE 16

Seizure and Surrender of Property

1. To the extent permitted under its national legislation, the Requested Party may seize and surrender to the Requesting Party, all articles, documents, and evidence connected with the offence in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when the extradition cannot be effected due to the death, disappearance, or escape of the person sought.
2. The Requested Party may condition the surrender of the property upon satisfactory assurances from the Requesting Party that the property will be returned to the Requested Party as soon as possible. The Requested Party may also defer the surrender of such property if it is needed as evidence in the Requested Party.
3. The rights of third parties in such property shall be duly respected.

ARTICLE 17

Rule of Specialty

1. Any person who is surrendered to the Requesting Party under this Treaty shall not be, during the period described in paragraph (2) of this Article, arrested, imprisoned or tried within the territory of the Requesting Party for or in respect of any offence committed before he was extradited to that territory other than;
 - a. the offence in respect of which he was extradited;

- b. any lesser offence disclosed by the facts proved for the purposes of securing his surrender other than an offence in relation to which an order for his extradition could not lawfully be made; or
 - c. any other offence in respect of which the Requested Party may consent to his arrest, imprisonment or trial concerning the offence other than an offence in relation to which an order for his extradition could not lawfully be made or would not in fact be made.
2. The period referred to in paragraph (1) of this Article is period beginning with the day of his arrival in the territory of the Requesting Party or his extradition under this Treaty and ending forty-five (45) days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting Party.
 3. The provisions of paragraph (1) of this Article shall not apply to offences committed after the return of a person under this Treaty or matters arising in relation to such offences.

ARTICLE 18

Re-Extradition

A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty (60) days of his final discharge, or has returned to that territory after having left it.

ARTICLE 19

Expenses

Expenses incurred in the territory of the Requested Party on account of the execution of the request for extradition shall be borne by that Party. The expenses on account of the transfer of the fugitive shall be borne by the requesting Party.

ARTICLE 20

Obligation under International Conventions

The present Treaty shall not affect the rights and obligations of the Parties in respect of extradition arising from (sic) International Conventions/Treaties to which both are States Parties.

ARTICLE 21

Consultations

Any difference arising out of the application, interpretation or implementation of the present Treaty shall be resolved (sic) amicably through consultations between the Central authorities.

ARTICLE 22

Transit

1. Either Party may authorize transportation through its territory of a person surrendered to the other Party by a third State. A request for transit shall be made through diplomatic channels. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.
2. No authorization is required where air transportation is used and no landing is scheduled on the territory of the Party. In case of an unscheduled landing on the territory of one Party, the other Party may require the request for transit as provided in paragraph 1. That Party shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within ninety-six (96) hours of the unscheduled landing.

ARTICLE 23

Final Provisions

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force on the thirtieth (30th) day after the exchange of the instruments of ratification.
3. This Treaty may be amended by mutual consent.
4. Either Party may terminate this Treaty. The termination shall take effect six (6) months from the date on which it was notified to the other Party.
5. The request for extradition received prior to its termination shall be considered under this Treaty.

Signed in duplicate at New Delhi this the tenth day of September 2007 in Hindi, Spanish, and English, all texts being equally authentic. In case of any divergence, the English text shall prevail.

**FOR THE GOVERNMENT OF THE
REPUBLIC OF INDIA**

**FOR THE GOVERNMENT OF THE
UNITED MEXICAN STATES**

Treaty on Extradition between the Republic of India and the Federative Republic of Brazil

The Republic of India and the Federative Republic of Brazil (hereinafter referred to as “the Parties”)

Desiring more effective bilateral cooperation in the suppression of crime by the extradition of offenders;

Recognizing that concrete steps are necessary to combat transnational organised crime and terrorism;

Wishing to make the efforts in combating impunity more effective;

Respecting the principles of sovereignty, non-interference in internal matters of each of the parties and of the norms of international law;

Have agreed as follows:

Article 1

Obligation to Extradite

1. The Parties shall extradite any person found in their respective territories against whom there is a warrant of arrest, issued by a competent judge, for prosecution in respect of an extraditable crime, or convicted of an extraditable crime in the territory of the other Party, in accordance with the provisions of this Treaty, whether such crime was committed before or after the entry into force of this Treaty.

Article 2

Extraditable Crimes

1. A crime shall be an extraditable crime if it is punishable under the laws of both Parties by deprivation of liberty or imprisonment, for at least a period of one year, or by a more severe penalty.
2. If the extradition is requested for the serving of a sentence imposed in the Requesting Party, the duration of the sentence left to be served shall be of at least for one year.
3. A crime shall also be an extraditable crime if it involves an attempt or a conspiracy to commit, aid or abet the commission of or being an accessory before or after the fact to, a crime described in paragraph 1.
4. For the purpose of this Article, a crime shall be an extraditable crime:
 - (a) Where extradition of a person is sought for a crime against a law relating to taxation, customs duties, foreign exchange, money laundering or other revenue matters. Extradition shall not be refused on the ground that the law of the Requested Party does not impose the same kind of tax

or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the Requesting Party.

- (b) Whether or not the laws in the Requesting Party place the crime within the same category of crime or describe the crime by the same terminology.
5. If extradition has been granted for an extraditable crime, it shall also be granted for any other crime specified in the request, even if the latter crime is punishable by less than one year's deprivation of liberty or imprisonment, provided that all other requirements for extradition are met.

Article 3

Composite Crimes

Extradition may be granted in accordance with this Treaty for an extraditable crime, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested Party, if under the law of that Party the said conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable crime in the territory of the Requesting Party.

Article 4

Extradition and Prosecution

1. The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for that crime in the courts of that Party.
2. Where the Requested Party refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take a decision in the same manner as in the case of any crime of a serious nature under the law of that Party.
3. If the competent authorities decide not to prosecute in such a case, the request for extradition may be re-examined in accordance with this Treaty.

Article 5

Extradition of Nationals

1. Neither Party shall extradite its own nationals. Nationality shall be determined as at the time of the commission of the crime for which extradition is requested.
2. If, pursuant to paragraph 1, the Requested Party does not surrender the person claimed for the sole reason of nationality, it shall, in accordance with its laws and at the request of the Requesting Party, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. If the Requested Party requires additional documents, such documents shall be provided free of charge. The Requesting Party shall be informed of the result of such request through diplomatic channels.

Article 6

The Political Crime Exception

1. Extradition shall not be granted if the crime of which it is requested is a crime of a political character. Simply alleging political motives for committing a crime shall not qualify it as a political crime.
2. For the purpose of this Treaty the following crimes shall not be regarded as crimes of a political character:
 - (a) a crime in respect of which the both Parties have the obligation to extradite or submit the case to their competent authorities for prosecution, by reason of a multilateral international treaty/ convention to which both are parties or may become parties in future;
 - (b) the taking or attempted taking of the life or an assault on the person of a Head of State or Head of Government of one of the Parties, or of member of the Head of State or Head of Government's family;
 - (c) murder or culpable homicide/ manslaughter;
 - (d) (sic) a crime, involving firearms, explosives, incendiaries, destructive devices or substances, causing death, grievous bodily harm or serious damage to property;
 - (e) crimes related to terrorism;
 - (f) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
 - (g) genocide or crimes against the peace and security of humanity; (g)acts of seizing boats and aircraft;
 - (h) a conspiracy or attempt to commit, or participate in, any of the foregoing crimes.
3. Deeming the crime to be of a political nature shall be in accordance with the law of the Requested Party.
4. Extradition shall not be granted, if the Requested Party considers that, having regard to all the circumstances, including the trivial nature of the crime, or in the interest of justice, it would be unjust or inexpedient to extradite the person.

Article 7

Grounds for Refusal

1. The extradition may be refused:
 - (a) if the person sought is being prosecuted by the Requested Party for the same crime for which extradition has been requested;
 - (b) if the person sought has been finally acquitted or convicted and sentenced in the Requested Party or a third State for the same crime for which the extradition is requested;

- (c) had he been tried in the territory of the Requested Party for the crime for which his/her extradition is requested, he/she would have been entitled to be discharged under any rule of the national legislation of the Requested Party in relation to previous acquittal or sentence.
 - (d) when the prosecution has become barred by lapse of time according to the national legislation of the Requesting Party.
2. Extradition may also not be granted:
- (a) if the crime in respect of which it is requested is a military crime, which is not a crime under ordinary criminal law of either Party;
 - (b) when the Requested Party has reasons to believe that the request for extradition has been made with the intention to prosecute or punish the person sought, for reason of race, religion or gender;
 - (c) if the person whose extradition is sought could be subject to a penalty inadmissible in the Requested Party;
 - (d) when the person whose extradition is sought has been convicted or is due to be judged in the territory of the Requesting Party by an extraordinary or ad hoc court or tribunal. For the purpose of this Agreement, the expression “extraordinary or ad hoc court or tribunal” shall not be interpreted as referring to a special court which is set up by the regular procedure established by the internal law of each Contracting State.

Article 8

Postponement of Extradition

When the person sought is being proceeded against or is serving a sentence in the Requested Party for a crime other than that for which extradition is requested, the Requested Party shall surrender the person sought or postpone surrender until the conclusion of the proceeding or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.

Article 9

Extradition Procedures

1. The request for extradition under this Treaty shall be made through diplomatic channels.
2. The request shall be accompanied by:
 - (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his/her identity, nationality and residence;
 - (b) a statement describing the facts of the crime for which extradition is requested, and
 - (b) the text of the law;
 - (c) defining the crime; and
 - (d) prescribing the maximum punishment for that crime.

3. If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting Party and by such evidence as, according to the law of the Requested Party, would justify his committal for trial if the crime had been committed in the territory of the Requested Party, including evidence that the person requested is the person to whom the warrant of arrest refers.
4. If the request relates to a person already convicted and sentenced, it shall also be accompanied:
 - (a) by a copy of the judgment or order of conviction and the sentence of the court of a crime of which extradition may be granted under this Treaty,
 - (b) by a statement showing how much of the sentence has not been carried out.
5. Documents, in support of an extradition request, shall be received and admitted as evidence in extradition proceedings, provided the documents are certified by a judge, magistrate or a competent authority to be the original documents or true copies of such documents and are authenticated by the official seal of the court or by the competent authority.
6. In relation to a convicted person who was not present at his/her trial, the person shall be treated for the purposes of paragraph (4) of this Article as if he/she had been accused of the crime of which he/she was convicted.
7. If the Requested Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time, as the Requested Party shall require.

Article 10

Provisional Arrest

1. In cases of urgency, the Requesting Party may request for the provisional arrest of the person sought pending presentation of the request for extradition. A request for the provisional arrest shall be made through the diplomatic channels. The facilities of the International Crime Police Organization (Interpol) may be used to transmit such a request.
2. The application for provisional arrest shall be in writing and shall contain:
 - (a) a description of the person sought, including information concerning the person's nationality;
 - (b) location of the person sought;
 - (c) a brief statement of the facts of the case, including the time and place of the commission of the crime;
 - (d) a description of the laws violated; a statement of the existence of a warrant of arrest, or judgment of conviction against the person sought;
 - (e) a statement that a request for extradition of the person sought will follow.
3. The person arrested may be set at liberty if the Requesting Party fails to present the request for extradition to the Requested Party, accompanied by the documents specified in Article 9, within 60 (sixty) days from the date of arrest.

Article 11

Rule of Specialty

1. Any person who is surrendered to the Requesting Party under this Treaty shall not be, arrested, imprisoned or tried within the territory of the Requesting Party for or in respect of any crime committed before he was extradited to that territory other than;
 - (a) the crime in respect of which he was extradited;
 - (b) any lesser crime disclosed by the facts proved for the purposes of securing his surrender other than a crime in relation to which an order for his extradition could not lawfully be made; or
 - (c) any other crime in respect of which the Requested Party may consent to his arrest, imprisonment or trial concerning the crime other than a crime in relation to which an order for his extradition could not lawfully be made or would not in fact be made, upon submission of documents listed in Article 9.
2. A person extradited under this Treaty may not be extradited to a third party for a crime committed prior to his/her extradition unless the Requested Party consents.
3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person or the extradition of that person to a third party, if;
 - (a) that person leaves the territory of the Requesting Party after extradition and voluntarily returns to it; or
 - (b) that person does not leave the territory of the Requesting Party within 60 days of the day on which that person is free to leave.

Article 12

Supplementary Evidence/Information

1. If the Requested Party considers at any stage that the information furnished in support of a request for extradition is not sufficient in accordance with the treaty to enable extradition to be granted, that Party may request that supplementary information be furnished within such time as it may specify.
2. If the person whose extradition is sought is under arrest and the supplementary information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a new request for the extradition of that person.
3. Where the person is released from the custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as possible.

Article 13

Waiver of Extradition

If the person sought consents to surrender to the Requesting Party, the Requested Party may, subject to its laws, surrender the person as expeditiously as possible, respecting the need for due process.

Article 14

Capital Punishment

If under the law of the Requesting Party the person sought is liable to the death penalty for the crime for which his/her extradition is requested, but the law of the Requested Party does not provide for the death penalty in a similar case, extradition may be refused unless the Requesting Party gives such assurance as the Requested Party considers sufficient that the death penalty will not be carried out.

Article 15

Guarantees for the Extradited Person

1. The extradited person shall be guaranteed all the rights under the laws of the Requested Party and shall have the right of defense, defense counsel, and if necessary, an interpreter.
2. The period of detention to which the extradited person was subjected in the territory of the Requested Party in consequence of the extradition process shall be calculated as part of the sentence to be served in the territory of the Requesting Party.

Article 16

Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through diplomatic channels. Reasons shall be given for any complete or partial refusal of a request for extradition.
2. The Requested Party shall surrender the person sought to the competent authorities of the Requesting Party at a location in the territory of the Requested Party as acceptable to the both parties.
3. The Requesting Party shall remove the person sought from the territory of the Requested Party within 60 days from the extradition order and if the person sought is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition for the same crime.
4. In the case of unforeseen events or of serious illness duly certified by the competent authority, which may impede or be an obstacle to the surrender of the person to be extradited, the other Party shall be informed of the circumstances before the expiry of the period prescribed under the Treaty, and a new date for the surrender may be mutually agreed upon.

Article 17

Seizure and Surrender of Property

1. To the extent permitted under its national legislation, the Requested Party may seize and surrender to the Requesting Party, all articles, documents, and evidence connected with the crime in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when the Extradition cannot be effected due to the death, disappearance or escape of the person sought.
2. The Requested Party may condition the surrender of the property upon satisfactory assurances from the Requesting Party that the property will be returned to the Requested Party as soon as possible. The Requested Party may also defer the surrender of such property if it is needed as evidence in the Requested Party.
3. The rights of third party in such property shall be duly respected.

Article 18

Transit

1. Each Party may authorize transportation through its territory of a person surrendered to the other Party by a third State. A request for transit shall be made through the diplomatic channels. The facilities of Interpol may be used to transmit such a request. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.
2. No authorization is required where air transportation is used and no landing is scheduled in the territory of either Party. If an unscheduled landing occurs in the territory of one Party, the other Party may require the request for transit to be submitted as in paragraph 1 of this Article. That Party shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 4 (four) days i.e.(96 hours) of the unscheduled landing.

Article 19

Mutual Legal Assistance in Extradition

Either Party shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the crime for which extradition has been requested.

Article 20

Documents and Expenses

1. The extradition request and the documents that accompany it shall be translated into the language of the Requested Party.
2. Expenses incurred in the territory of the Requested Party on account of the execution of the request for extradition shall be borne by that Party. The expenses on account of the transfer of the person to be extradited shall be borne by the Requesting Party.

3. The Requested Party shall facilitate all necessary arrangements, with respect to the representation of the Requesting Party, in any proceedings arising out of the request.

Article 21

Central Authorities

For the purpose of this Treaty, the Parties shall communicate through their Central Authorities. The Central Authority for the Republic of India shall be the Ministry of External Affairs and for the Federative Republic of Brazil, it shall be the Ministry of Justice.

Article 22

Return of Extradited Person

An extradited person who escapes from the territory of the Requesting Party and returns to the territory of the Requested Party shall be detained by means of a simple request made by the Central Authority or through diplomatic channels and shall be surrendered once more without further formalities.

Article 23

Obligations under International Conventions/Treaties

This Treaty shall not affect the rights and obligations of the Parties arising from International Conventions/Treaties to which they are party.

Article 24

Dispute Settlement

Any dispute arising out of the interpretation of this Treaty shall be settled by means of mutual consultations and negotiations.

Article 25

Entry into Force and Termination

1. This Treaty is subject to ratification by both sides and the instruments of ratification shall be exchanged as soon as possible. It shall enter into force 30 days after the date of the exchange of the said instruments.
2. Either Party may terminate this Treaty by giving notice in writing through diplomatic channels at any time. Termination shall take effect six (6) months after the date on which the notice is given.

3. The pending requests as on the date of termination shall be processed in accordance with the provisions of this Treaty.

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

Done at this 16th day of April, Two thousand and eight, in two originals, each in the Hindi, Portuguese, and English language, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

On behalf of the Republic of India

**On behalf of the Federative
Republic of Brazil**

MINISTRY OF EXTERNAL AFFAIRS
ORDER

New Delhi, the 7th March, 2011

**Extradition Treaty between the Republic of India
and Australia**

GS.R. 192(E).—Whereas the Extradition Treaty between the Republic of India and Australia was signed at Canberra on 23rd June, 2008; and the Treaty entered into force with effect from 20th January, 2011 in accordance with Article 20.1 and which Extradition Treaty provides as follows:

The Republic of India and Australia (hereinafter referred to as the ‘Contracting States’)

Desiring to make more effective the co-operation of the two countries in the suppression of crime, including offences related to terrorism, by concluding a treaty on extradition.

Have Agreed as follows :

ARTICLE 1

OBLIGATION TO EXTRADITE

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any person who are wanted for trial, or the imposition or enforcement of a sentence, in the Requesting State for an extraditable offence.

ARTICLE 2

EXTRADITABLE OFFENCES

1. For the purposes of this Treaty, extraditable offences are offences, however described, which are punishable under the laws of both Contracting States by imprisonment for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.
2. For the purpose of this Article, in determining whether an offence is an offence against the law of both Contracting States:
 - (a) it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology; and
 - (b) the totality of the acts or omissions alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting States, the constituent elements of the offence differ.

3. An offence may be an extraditable offence notwithstanding that it relates to taxation, customs duties, foreign exchange control or other revenue matters, or is one of a purely fiscal character. Extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting State.
4. Where the offence has been committed outside the territory of the Requesting State, extradition shall be granted if the law of the Requested State provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested State does not so provide the Requested State may, in its discretion, grant extradition.
5. Extradition shall be granted pursuant to the provisions of this Treaty irrespective of whether the offence for which extradition is sought was committed before or after entry into force of this Treaty, provided in all cases that:
 - (a) it was an offence in the Requesting State at the time of the acts or omissions constituting the offence are alleged to have occurred; and
 - (b) the acts or omissions alleged would, if they had taken place in the territory of the Requested State at the time of the making of the request for extradition, have constituted an offence against the law in force in that State.

ARTICLE 3

COMPOSITE OFFENCES

Extradition shall also be available in accordance with this Treaty for an extraditable offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under the law of that State this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable offence in the territory of the Requesting State.

ARTICLE 4

GROUND OF REFUSAL

1. Extradition shall not be granted if:
 - (a) the offence of which a person is accused or convicted is a military offence which is not also an offence under the general criminal law;
 - (b) if the person whose extradition is sought has, according to the law of the Requesting State, become immune from prosecution or punishment by reason of lapse of time;
 - (c) if the offence with which the person sought is accused or convicted or any other offence for which that person may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting State, unless the extradition request includes an undertaking that the death penalty will not be imposed or, if imposed, will not be carried out.

2. Extradition may be refused if the offence of which it is requested is an offence of a political character. For the purposes of this Treaty the following offences shall not be regarded as offences of a political character :
 - (a) an offence in respect of which the Contracting States have an obligation to extradite or submit the case to their competent authorities for prosecution, under a multilateral/international treaty or convention to which both Contracting States are parties;
 - (b) an offence in respect of the taking or attempted taking of the life of a Head of State, Head of Government, or a member of that person's family;
 - (c) murder, culpable homicide or manslaughter;
 - (d) an offence, involving firearms, explosives, incendiaries, destructive devices or substances, causing death, grievous bodily harm or serious damage to property;
 - (e) any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character; or
 - (f) conspiracy or attempt to commit, or participation in, or abetment of, any of the foregoing offences.
3. Extradition may be refused in any of the following circumstances;
 - (a) if the person has been tried and finally dealt with in respect of the offence for which extradition is sought;
 - (b) if the Requested State has substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinion or that the person's position may be prejudiced for any of those reasons;
 - (c) if the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the Requesting State by an extraordinary or ad hoc court or tribunal;
 - (d) if the Requested State believes that the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought, including because of the person's age or state of health.

ARTICLE 5

EXTRADITION OF NATIONALS

The nationals of one Contracting State may be extradited to the other Contracting State. If extradition is not granted, the Requested State shall, on the request of the Requesting State, submit the case to its competent authorities for prosecution in accordance with the provisions of this Treaty and the laws of the Requested State.

ARTICLE 6

EXTRADITION AND PROSECUTION

1. The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extradition offence in the courts of that State.
2. Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.
3. If the competent authorities decide not to prosecute the request for extradition shall be reconsidered in accordance with this Treaty.

ARTICLE 7

EXTRADITION PROCEDURES

1. The request for extradition under this Treaty shall be made in writing and communicated through diplomatic channels.
2. All documents submitted in support of a request for extradition shall be authenticated in accordance with paragraph 2 of Article 9. Three copies of the request and supporting documents shall also be provided. However, the copies need not be authenticated.
3. The request shall be accompanied by:
 - (a) the details necessary to establish the identity and nationality of the person sought including, where possible, photographs and fingerprints;
 - (b) a statement of the current location of the person, if known;
 - (c) a statement of each offence for which extradition is sought;
 - (d) a statement of the acts and omissions which are alleged against the person in respect of each offence for which extradition is sought;
 - (e) the text of the laws creating each offence and describing the penalty which may be imposed; and
 - (f) a statement as to whether there is any limitation in respect of proceedings or punishment.
1. If the request relates to an accused person, it must also be accompanied by a warrant of arrest, or a copy thereof, issued by a Judge, Magistrate, or other competent authority in the territory of the Requesting State and such documents or other information required by the Requesting State as would reasonably establish that the person sought has committed the offence for which extradition is requested and to establish that the person requested is the person to whom the warrant refers.
2. If the request relates to a person already convicted and sentenced, it shall also be accompanied by:
 - (a) a certificate of conviction and sentence; and
 - (b) a statement that the sentence is enforceable and how much of the sentence remains to be served.

3. If the Requested State considers that the documents or other information supplied for the purposes of this Treaty are not sufficient in order to enable a decision to be taken as to the request, additional documents or other information shall be submitted within such time as the Requested State may require.
4. If in any particular case the Requested State so requires, the Requesting State shall supply a translation of any document submitted in accordance with the provisions of this Treaty.

ARTICLE 8

CONSENT TO SURRENDER

If the person sought consents to surrender to the Requesting State, the Requested State may, subject to its laws, surrender the person as expeditiously as possible without further proceedings.

ARTICLE 9

EVIDENCE/AUTHENTICATION

1. A document that, in accordance with Article 7, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested State.
2. A document is authenticated for the purposes of this Treaty if:
 - (a) it purports to be signed or certified by a Judge, Magistrate or an official in or of the Requesting State; and
 - (b) it purports to be authenticated by the official seal of a Minister of Government, or of a Department or official of the Requesting State; or
 - (c) it has been authenticated in such other manner as may be permitted by the law of the Requested State.
3. Documents described in paragraph 1 of this Article shall be admitted in evidence whether they originated in the Requesting State or in a third State.

ARTICLE 10

PROVISIONAL ARREST

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought, pending presentation of the request for extradition. A request for provisional arrest may be transmitted through diplomatic channels. The facilities of the International Criminal Police Organisation (Interpol) may be used to transmit such a request
2. The application for provisional arrest shall contain:
 1. a description of the person sought;
 2. the location of the person sought, if known;

3. a brief statement of the facts of the case, including, if possible, the time and location of the offence;
 4. a description of the laws violated;
 5. a statement of the existence of a warrant of arrest, or a finding of guilt or judgment of conviction against the person sought; and
 6. a statement that a request for extradition for the person sought will follow.
3. The Requesting State shall be notified without delay of the action taken on its application and the reasons for any denial.
 4. A person who is provisionally arrested may be released from custody on the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 7.
 5. The fact that the person sought has been released from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and extradition of that person, if the extradition request and supporting documents are delivered at a later date.

ARTICLE 11

CONCURRENT REQUESTS

1. Where requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting States of its decision.
2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:
 - (a) if the requests relate to different offences the relative seriousness of the offences;
 - (b) the existence of an extradition treaty with the other State or States;
 - (c) the time and place of commission of each offence;
 - (d) the respective dates of the requests;
 - (e) the nationality of the person; and
 - (f) the ordinary place of residence of the person.

ARTICLE 12

SURRENDER

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State.

2. Where extradition is granted, the Requested State shall surrender the person at a time, and from a point of departure in its territory as may be decided in consultation with the Requesting State.
3. The Requesting State shall remove the person from the territory of the Requested State within such reasonable period as the Requested State may specify and, if the person is not removed within that period, the Requested State may refuse to extradite that person for the same offence.
4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited it shall notify the other Contracting State. The two Contracting States shall agree upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

ARTICLE 13

SURRENDER OF PROPERTY

1. To the extent permitted under the law of the Requested State all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall be surrendered if extradition is granted and the Requesting State so requests.
2. Subject to paragraph I of this Article, the above mentioned property shall, if the Requesting State so requests, be surrendered to the Requested State even if the extradition cannot be carried out.
3. Where the law of the Requested State or the rights of third parties so require, any articles so surrendered shall be returned to the Requested State free of charge if that State so requests.

ARTICLE 14

POSTPONMENT OF EXTRADITION AND TEMPORARY SURRENDER

1. The Requested State may postpone the surrender of a person in order to proceed against that person, or so that the person may serve a sentence, for an offence other than the offence for which extradition is sought. In such a case the Requested State shall advise the Requesting State accordingly.
2. When the person is serving a sentence in the territory of the Requested State for an offence other than the offence for which extradition is sought, the Requested State may temporarily surrender the person to the Requesting State to be prosecuted for an offence for which extradition is sought. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after proceedings against the person have concluded, in accordance with written conditions to be mutually determined by the Contracting States.

ARTICLE 15

RULE OF SPECIALITY

1. Any person who is returned to the territory of the Requesting State under this Treaty shall not be detained or tried or subjected to any other restriction of her or his personal liberty, within the territory of the Requesting State for or in respect of any offence committed before he was returned to that territory other than :
 - (a) the offence in respect of which the person was returned;
 - (b) any other extraditable offence disclosed by the facts upon which the request for extradition was based, provided that the offence does not carry a penalty which is more severe than that which could be imposed for the offence in respect of which the person was returned; or
 - (c) any other extraditable offence in respect of which the Requested State may consent to the person being dealt with.
2. A person extradited under this Treaty may not be extradited to a third State for an offence committed prior to his extradition unless the Requested State consents.
3. Paragraphs 1 and 2 of the present Article shall not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the Requesting State after leaving it.
4. A request for the consent of the Requesting State under the present Article shall be accompanied by such of the documents as mentioned in Article 7 of the present Treaty as may be sought by the Requesting State.

ARTICLE 16

TRANSIT

1. Where a person is to be extradited to a Contracting State from a third State through the territory of the other State, the State to which the person is to be extradited shall request the other State to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other State is scheduled. A person in transit may be held in custody during the period of transit.
2. Upon receipt of such a request, which shall contain relevant information the Requested State shall deal with this request expeditiously pursuant to procedures provided by its own law.
3. In the event of an unscheduled landing, the State to be requested to permit transit may, at the request of the escorting officer, hold the person in custody, subject to its law, pending receipt of the transit request to be made in accordance with paragraph 1 of the present Article.

ARTICLE 17

EXPENSES

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interests of the Requesting State.
2. The Requested State shall bear the expenses incurred in its territory in relation to the arrest and detention of the person whose extradition is sought until that person is surrendered to the Requesting State.
3. The Requesting State shall bear the expenses incurred in conveying the person from the territory of the Requested State.

ARTICLE 18

CONSULTATION

1. The Contracting States shall, at the request of either, consult concerning the interpretation and application of this Treaty.
2. The competent authorities of the Contracting States may consult each other directly in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

ARTICLE 19

OBLIGATIONS UNDER INTERNATIONAL CONVENTIONS/TREATIES

The present Treaty shall not affect the rights and obligations of the Contracting States arising from International Conventions, Treaties to which they are parties.

ARTICLE 20

ENTRY INTO FORCE

1. The Contracting States shall inform each other in writing of the completion of their internal procedures required for entry into force of this Treaty. The Treaty shall enter into force thirty days after the date of the later communication.
2. Either of Contracting States may terminate this Treaty at any time by giving notice to the other through diplomatic channels, and if such notice is given the Treaty shall cease to have effect six months after receipt of the notice.

In witness whereof, the undersigned being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Canberra this the twenty third day of June, two thousand and eight, in English and Hindi, both languages being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by sub-section 1 of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the Act, other than Chapter III, shall apply to Australia from the date of the publication of this notification, by releasing the extradition arrangement between the two countries vide Order G.S.R. 1381 of 30th August, 1971.

[No. T-413/08/2000]
P. M. MEENA, Jt. Secy. (Consular)

Extradition Treaty between the Government of the Republic of India and Government of the Islamic Republic of Iran

The Government of the Republic of India and Government of the Islamic Republic of Iran “hereinafter referred to as the parties”;

Desiring to make more effective the cooperation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders;

Recognizing that concrete steps are necessary to combat terrorism;

Have agreed as follows:

Article 1

Duty to Extradite

- (1) Each Party undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one party, is found within the territory of the other Party, whether such offence was committed before or after the entry into force of this Treaty.
- (2) Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting Party but in respect of which it has jurisdiction if the Requested Party would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested party shall have regard to all the circumstances of the case including the seriousness of the offence.
- (3) In addition, extradition shall be available for an extradition offence as described in Art 2, if it is committed in a third state by a national of the Requesting Party and the Requesting Party bases its jurisdiction on the nationality of the offender; and it would be an offence under the law of the Requested Party punishable with imprisonment for a term of at least one year.

Article 2

Extradition Offences

An extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting Party is punishable by a term of imprisonment for a period of at least one year.

Article 3

Composite Offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested Party, if under the law of that Party this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting Party

Article 4

Grounds for Refusal of Extradition

- (1) Extradition may be refused if:
 - (a) the person sought to be extradited is a citizen of the Requested Party at the time of commission of an offence;
 - (b) the persons satisfies the Requested Party that it would be unjust to extradite him because of lapse of time;
 - (c) the request for extradition is contrary to the Constitution or domestic laws of the Requested Party; and
 - (d) The offence of which he is accused or convicted is of a political character. However, the following shall not be considered as offences of political character:
 - (i) murder, culpable homicide not amounting to murder, assault causing bodily harm, kidnapping, or hostage taking;
 - (ii) offences relating to terrorism including offenses relating to firearms or other weapons, or explosives, or dangerous substances, or offences involving serious damage to property or disruption of public facilities;
 - (iii) any offence within the scope of international conventions to which both the Parties are parties; and
 - (iv) any attempts or conspiracy to commit any of the above.
- (2) The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for the extradition offence in the courts of that Party.
- (3) A Person who has been convicted of an extradition offence may not be extradited, unless the sentence of the sought person is at least 6 months of imprisonment.
- (4) A person may not be extradited if he would, if proceeded against in the territory of the Requested Party for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested Party relating to previous acquittal or conviction.

Article 5

Extradition and Prosecution

- (1) If extradition is refused pursuant to the provisions of Clause 1 (a) of Article 4 of this Treaty, the Requested Party shall prosecute the accused person and initiate criminal proceedings against him/her in its own courts. In such cases, the Requesting Party shall provide the Requested Party with reasons and evidence related to the offence.
- (2) Where the Requested Party refuses a request for extradition for the reasons set out in other clauses of paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that Party.
- (3) If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 6

Postponement of Surrender

- (1) If criminal proceedings against the person sought are instituted in the territory of the Requested Party, or he is lawfully detained in consequence of criminal proceedings, the decision whether or not to extradite him may be postponed until the criminal proceedings have been completed or he is no longer detained.
- (2) The person sought may not be extradited, until it has been decided in accordance with the law of the Requested Party that he is liable to be extradited.

Article 7

Extradition Procedures

- (1) The request for extradition under this Treaty shall be made through the diplomatic channels.
- (2) The request shall be accompanied by:
 - (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence, including, if possible, his photographs and fingerprints;
 - (b) a statement of the facts of the offence for which extradition is requested; and
 - (c) the text, if any, of the law
 - (i) defining that offence; and
 - (ii) prescribing the maximum punishment for the offence.

- (3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting Party and by such evidence as, according to the law of the Requested Party, would justify his committal for trial; as also evidence that the person requested is the person to whom the warrant of arrest refers.
- (4) If the request relates to a person already convicted and sentenced, it shall also be accompanied:
 - (a) by a certificate of the conviction and sentence;
 - (b) by a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence has not been carried.
- (5) In relation to a convicted person who was not present at his trial, the person shall be treated for the purposes of paragraph (4) of this Article as if he had been accused of the offence of which he was convicted.
- (6) If the information to enable a information Requested Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested Party shall require.

Article 8

Provisional Arrest

- (1) In urgent cases the person sought may, in accordance with the law of the Requested Party, be provisionally arrested on the application of the competent authorities of the Requesting Party. The application shall contain an indication of intention to request the extradition of that person and statement of the existence of a warrant of arrest or a conviction against him, and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the Requested Party.
- (2) A person arrested upon such an application shall be set at liberty upon the expiration of (60) days from the date of his arrest if request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article 9

Rule of Specialty

- (1) Any person who is returned to the territory of the Requesting party under this Treaty shall not, during the period described in paragraph (2) of this Article, be dealt with in the territory of the Requesting Party for or in respect of any offence committed before he was returned to that territory other than:
 - (a) the offence in respect of which he was returned;

- (b) any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made; or
 - (c) any other offence in respect of which the Requested party may consent to his being dealt with other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made.
- (2) The period referred to in paragraph (1) of this Article is the period beginning with the day of his arrival in the territory of the Requesting Party or his return under this Treaty and ending (30) thirty days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting Party.
- (3) The provisions of paragraph (1) of this Article shall not apply to offences committed after the return of a person under this Treaty or matters arising in relation to such offences.
- (4) A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the Party to which he has been surrendered, he has not done so within thirty (30) days of his final discharge, or has returned to that territory after having left it.

Article 10

Evidence

- (1) The authorities of the Requested Party shall admit as evidence, in any proceedings for extradition, any evidence taken on oath or by way of affirmation, any warrant and any certificate of, or judicial document stating the fact of, a conviction, if it is authenticated:
- (a) (i) in the case of a warrant being signed, or in the case of any original document by being certified, by a judge, magistrate or other competent authority of the Requesting Party; and
 - (ii) either by oath of some witness or by being sealed with the official seal of the appropriate Ministry of the Requesting Party; or
- (b) In such other manner as may be permitted by the law of the Requested Party.
- (2) The evidence described in paragraph (1) shall be admissible in extradition proceedings in the Requested Party whether sworn or affirmed in the Requesting Party or in some third State.

Article 11

Competing Requests

If extradition of the same person whether for the same offence or for different offences is requested by a Party and a third State with which the Requested Party has an extradition arrangement, the Requested Party shall determine to which State the person shall be extradited, and shall not be obliged to give preference to the Party.

Article 12

Capital Punishment

If under the law of the Requesting Party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested Party does not provide for the death penalty in a similar case, extradition may be refused unless the Requesting Party gives such assurance as the Requested Party considers sufficient that the death penalty will not be carried out.

Article 13

Surrender

- (1) If extradition is granted, the person sought shall be sent by the authorities of the Requested Party to such convenient point of departure from the territory of that Party as the Requesting Party shall indicate.
- (2) The Requesting Party shall remove the person sought from the territory of the Requested Party within one month or such longer period as may be permitted under the law of the Requested Party. If he is not removed within that period, the Requested Party may refuse to extradite him for the same offence.

Article 14

Surrender of Property

- (1) When a request for extradition is granted, the Requested Party shall, upon request and so far as its law allows, hand over to the Requesting Party articles (including sums of money) which may serve as proof or evidence of the offence.
- (2) If the articles in question are liable to seizure or confiscation in the territory of the Requested Party, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned.
- (3) These provisions shall not prejudice the right of the Requested Party or any person other than the person sought. When these rights exist the articles shall on request be returned to the Requested Party without charge as soon as possible after the end of the proceedings.

Article 15

Mutual Legal Assistance in Extradition

Each Party shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 16

Documents and Expenses

- (1) All extradition requests and documents shall be submitted in one of the official languages of the Requesting Party and accompanied by their translation in to English language.
- (2) Expenses incurred in the territory of the Requested Party by reason of the request for extradition shall be borne by that Party.
- (3) The Requested Party shall make all the arrangements which shall be requisite with respect to the representation of the Requesting Party in any proceedings arising out of the request.

Article 17

Obligations under International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Parties arising from International Conventions/Treaties to which they are parties.

Article 18

Central Authorities

1. Requests for extradition under this Treaty shall be made through the Central Authorities of the Parties.
2. In the Republic of India the Central Authority is the Ministry of External Affairs and in the Islamic Republic of Iran, the Central Authority is the Judiciary. (Ministry of Justice)

Article 19

Settlement of Disputes

Any dispute arising out of the implementation and interpretation of this Treaty shall be settled through mutual consultation and negotiation.

Article 20

Final Provisions

- (1) The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
- (2) This Treaty shall be ratified according to the legal formalities provided in the Constitution and domestic laws of both Parties and shall enter into force on the date of sending the last notice by one Party to the other on the fulfilment (sic) of all necessary legal formalities for enforcement of this Treaty.

(3) Either of the Parties may terminate this Treaty at any time by giving notice to the other through the diplomatic channels; and if such notice is given, the Treaty shall cease to have effect six month after the receipt of the notice.

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

Done in two originals at Tehran this the second day of November 2008, each in Hindi, Persian and English, all languages being equally authentic. In case of any doubt, the English text shall prevail.

On behalf of the Government of
The Republic of India

Name:

Designation: MINISTER OF
EXTERNAL AFFAIRS

On behalf of the Government of
The Islamic Republic of Iran

Name:

Designation: MINISTER OF JUSTICE

Extradition Treaty between the Government of the Republic of India and the Government of the Arab Republic of Egypt

The Government of the Republic of India and the Government of the Arab Republic of Egypt;

Desiring to make more effective the cooperation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders;

Recognizing that concrete steps are necessary to combat terrorism;

Have agreed as follows:

Article 1:

Obligation to Extradite

The Contracting States shall extradite any person found in their respective territories who is accused or convicted of an extraditable offence in the territory of the other Contracting State, in accordance with the rules and stipulations contained in the subsequent Articles, whether such offence was committed before or after the entry into force of this Treaty.

Article 2:

Extraditable Offences

- (1) An extraditable offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one year.
- (2) Where on conviction a prison sentence has been awarded on account of an extraditable offence in the territory of the Requesting State, the duration of the penalty remaining to be served must amount at least to six months.
- (3) Even regarding offences related to fiscal matters, customs duties or currency exchange, extradition shall be granted in accordance with the provisions of this Treaty.
- (4) An offence shall also be an extraditable offence if it consists of an attempt or a conspiracy to commit, aid or abet the commission of or being an accessory before or after the fact to, any offence described in paragraph (1).
- (5) If the request for extradition includes several separate offences each of which is punishable under the laws of the two Contracting States by a sentence of imprisonment, but some of which do not fulfill the condition with regard to the duration of the sentence which may be awarded, the requested state shall also have the right to grant extradition for the latter offences.
- (6) Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under

the law of that State this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting State.

Article 3:

Extradition of Nationals

- (1) Neither of the Contracting States shall extradite its own nationals. Nationality shall be determined as at the time of the commission of the offence for which extradition is requested.
- (2) If, pursuant to paragraph (1), the Requested State does not surrender the person claimed for the sole reason of nationality, it shall, in accordance with its laws and at the request of the Requesting State, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. If the Requested State requires additional documents, such documents shall be provided free of charge. The Requesting State shall be informed of the result of its request through the channels provided for in Article 7.

Article 4:

Grounds of Refusal

Extradition shall not be granted:

- (1) if the offence for which extradition is requested is regarded by the Requested State as an offence of a political nature. However, for the purposes of this Treaty the following offences shall not be regarded as offences of a political nature;
 - (a) An offence within the scope of multinational international treaty to which both Contracting States are parties and which imposes on them;
 - (b) assault against the Heads of state or any of their families;
 - (c) murder, robbery;
 - (d) manslaughter or culpable homicide;
 - (e) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm, whether by means of a weapon, a dangerous substance or otherwise;
 - (f) the causing of an explosion likely to endanger life or cause serious damage to property;
 - (g) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
 - (h) the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
 - (i) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;

- (j) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
 - (k) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
 - (l) incitement to murder;
 - (m) any other offence related to terrorism which at the time of the request is, under the law of the Requested state, not to be regarded as an offence of a political character.
 - (n) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.
- (2) if the offence for which extradition is requested is an offence under military law which is not also an offence under the general criminal law.
 - (3) if there has been a final judgment rendered against the person in the Requested State in respect of the offence for which the person's extradition is requested.
 - (4) if the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty, the offence is of trivial nature or the accusation made is not in good faith or in the interests of justice.
 - (5) If the Requested Party has substantial grounds to believe that the request has been made for the purpose of prosecuting or punishing a person on account of race, religion, nationality, or that the position of the said person at his trial may be prejudiced for any of these reasons.

Article 5:

Obligation to Prosecute

- (1) Where the Requested State refuses a request for extradition of an accused, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in accordance with the law of that State.

Article 6:

Postponed or Conditional Surrender

- (1) The Requested State may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that State or, if he has already been convicted, in order that he may serve his sentence in the territory of that State for an offence other than that for which extradition is requested.
- (2) The Requested State may, instead of postponing surrender, temporarily surrender the person claimed to the Requesting State in accordance with conditions to be determined by mutual agreement between both States.

Article 7:

Extradition Procedures

- (1) The request for extradition under this Treaty shall be made through the diplomatic channel.
- (2) The request shall be accompanied by:
 - (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence;
 - (b) a statement of the facts of the offence for which extradition is requested, and
 - (c) the text, if any, of the law :
 - (i) defining that offence; and
 - (ii) prescribing the maximum punishment for that offence.
- (3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.
- (4) If the request relates to a person already convicted and sentenced, it shall also be accompanied:
 - (a) by a certificate of the conviction and sentence;
 - (b) by a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.
- (5) If the Requested State considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.

Article 8:

Provisional Arrest

- (1) In urgent cases the person sought may, in accordance with the law of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of intention to request the extradition of that person and statement of the existence of a warrant of arrest or a conviction against him, and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the Requested State.
- (2) A person arrested upon such an application shall be set at liberty upon the expiration of sixty days from the date of his arrest if request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article 9:

Rule of Speciality

(1) A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than:

- (a) an offence for which extradition was granted;
- (b) any other offence in respect of which the requested State consents.

Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Treaty.

(2) A request for the consent of the requested State under the present article shall be accompanied by the documents mentioned in paragraph 2 of Article 7 of the present Treaty and a legal record of any statement made by the extradited person with respect to the offence.

(3) Paragraph 1 of the present article shall not apply if the person has had an opportunity to leave the requesting State and has not done so within 60 days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State after leaving it.

Article 10:

Extradition to a Third State

A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty days of his final discharge, or has returned to that territory after having left it.

Article 11:

Evidence

Documents, in support of an extradition request, shall be received and admitted as evidence in extradition proceedings, provided the documents are certified by a judge, magistrate, or officer to be the original documents or true copies of such documents and are authenticated by the official seal of the court or competent authority.

Article 12:

Competing Requests

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting State and a third State with which the Requested State has an extradition arrangement, the Requested State shall determine to which State the person shall be extradited, and shall not be obliged to give preference to the Contracting State.

Article 13:

Surrender

- (1) If extradition is granted, the person sought shall be sent by the authorities of the Requested State to such mutually agreed point of departure from the territory of that State.
- (2) The Requesting State shall remove the person sought from the territory of the Requested State within one month or such longer period as may be permitted under the law of the Requested State. If the person is not removed within that period, the Requested State may refuse to extradite him for the same offence.
- (3) If extradition of the requested person is obstructed because of exceptional circumstances, the concerned party shall inform the other of these circumstances before the expiry of the appointed date. Both States shall agree upon a new date and, if required, a new place of extradition. In such case, the provision under paragraph 2 of this article shall be applicable.

Article 14:

Surrender of Property

- (1) When a request for extradition is granted, the Requested State shall, upon request and so far as its law allows, hand over to the Requesting State articles (including sums of money) which may serve as proof or evidence of the offence.
- (2) If the articles in question are liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned.
- (3) These provisions shall not prejudice the rights of the Requested State or any person other than the person sought. When these rights exist the articles shall on request be returned to the Requested State without charge as soon as possible after the end of the proceedings.

Article 15:

Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 16:

Expenses

- (1) The requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.
- (2) The requested State shall also bear the costs incurred in its territory in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought.

- (3) The requesting State shall bear the costs incurred in conveying the person from the territory of the requested State, including transit costs.

Article 17:

Obligations under International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Contracting States arising from International Conventions/Treaties to which they are parties.

Article 18:

Central and Competent Authorities

For the purpose of this Treaty, the Contracting Parties shall communicate through their Central Authorities. The Central Authority for the Republic of India shall be the Ministry of External Affairs and for the Arab Republic of Egypt the Ministry of Justice.

Article 19:

Language

Requests and the supporting documents made pursuant to this Treaty shall be accompanied by a translation into the language of the Requested Party or in a certified copy of English Language.

Article 20:

Final provisions

- (1) The present Treaty shall enter into force from the date of receiving the last notification by either of the Contracting Parties through the diplomatic channels, concerning the execution of the necessary measures for the ratification, according to the domestic laws of either Contracting Parties.
- (2) Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof, the Undersigned being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in duplicate at New Delhi this the 18th day of November 2008, in Hindi, Arabic and English, all languages being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

On behalf of the Government
of the Republic of India

On behalf of the Government
of the Arab Republic of Egypt

Extradition Treaty between the Republic of India and the Republic of Kazakhstan

The Republic of India and the Republic of Kazakhstan; hereinafter referred to as the “Contracting States”

Desiring to make more effective the co-operation of the two States in the suppression of crime by making further provision for the reciprocal extradition of fugitive criminals;

Recognising that concrete steps are necessary to combat terrorism;

Have agreed as follows:

Article 1

Obligation to Extradite

1. Each Contracting State undertakes to extradite to the other Contracting State, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the Requesting State, is found within the territory of the Requested State, whether such criminal offence was committed before or after the entry into force of this Treaty.
2. Extradition shall also be available in respect of an extraditable criminal offence as described in Article 2 of the present Treaty committed outside the territory of the Requesting State but in respect of which it has jurisdiction, if the Requested State would, in corresponding circumstances, have jurisdiction over such a criminal offence. In such circumstances the Requested State shall have regard to all the circumstances of the case including the seriousness of the criminal offence.
3. Extradition shall also be available for an extraditable criminal offence as described in Article 2, of the present Treaty if it is committed in a third State by a citizen of the Requesting State and it bases its jurisdiction on the citizenship of the offender.

Article 2

Extradition Offences

An extraditable criminal offence for the purpose of this Treaty is constituted by conduct which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one year.

Article 3

Composite Offences

Extradition shall be available in accordance with this Treaty for an extraditable criminal offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if his conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable criminal offence under the laws of both the Contracting States.

Article 4

Extra-territorial Jurisdiction

It shall be a criminal offence, under the laws of both the Contracting States, for any citizen of a Contracting State to commit any criminal offence in any place beyond its territory.

Article 5

Grounds for Refusal of Extradition

1. A person may not be extradited if:
 - 1.1 he is a citizen of the Requested State; or
 - 1.2 he satisfies the Requested State that he might, if extradited, be prejudiced at his trial or be punished, by reason of his race, religion, nationality or political opinions; or
 - 1.3 he satisfies the Requested State that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason of the expiry of the limitation-period for initiating the criminal proceedings under the legislation of the Requested State or for execution of a sentence, or on other legal grounds; or
 - 1.4 The extradition is not permitted according to the laws of the Requested State; or
 - 1.5 The criminal offence of which he is accused or convicted is a military offence which is not also a criminal offence under the general criminal law.
2. A person shall not be extradited if in respect of the criminal offence for which his extradition is requested, he has been previously proceeded against in the Requested State, and convicted or acquitted.
3. The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extraditable criminal offence in the courts of the Requested State.

Article 6

Obligation to Prosecute

1. Where the Requested State refuses a request for extradition for the reason set out in paragraph 3 of Article 5, it shall submit the case to its competent authorities for prosecution.
2. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 7

Consequence of Non-extradition of own Citizens

If according to paragraph 1.1 of Article 5, extradition is refused, the Requested State, shall initiate criminal prosecution against such person for the same offence according to its laws. For this the Requesting State shall transfer to the Requested State the relevant documents and evidence.

Article 8

Postponement of Extradition & Temporary Extradition

1. If the person to be extradited is being prosecuted or serving sentence for another crime in the territory of the Requested State, the extradition may be postponed till the end of the proceedings of the case, end of sentence or release, which shall be advised to the Requesting State.
2. If the postponement of extradition can cause the expiration of the limitation or impede the investigation, the person can be extradited temporarily under a special request of the Requesting State.
3. The temporarily extradited person must be returned to the Requested State immediately after the end of the proceedings of the case.

Article 9

Extradition Procedure

1. The request for extradition shall be made through the diplomatic channels.
2. The request shall be accompanied by:
 - 2.1 the name and surname (patronym) of the person whose extradition is requested, information on his citizenship, place of residence or whereabouts and other pertaining data, as well as, if possible, the description of the person's appearance, his photographs and fingerprints;
 - 2.2 a statement of the facts of the criminal offence for which extradition is requested; and
 - 2.3 the text, of the corresponding law;
 - 2.3.1 defining that criminal offence; and
 - 2.3.2 prescribing the punishment for that criminal offence.
3. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the warrant of arrest issued by a competent authority of the Requesting State.
4. If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certified copy of the judgement and a statement that the person is no longer entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.
5. If the Requested State considers that the evidence produced or information supplied for the purpose of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within a reasonable time.

Article 10

Provisional Arrest

1. In urgent cases the person may, in accordance with the law, be provisionally arrested by the Requested State, on the request of the competent authorities of the Requesting State, made either through diplomatic channels or the National Central Bureau of International Criminal Police Organisation-INTERPOL, before the receiving of the request for extradition. The request shall contain an indication of intention to request the extradition of that person and a statement of existence of a warrant of arrest or a conviction against him; and, if available, the date specified in paragraphs 2.1 and 2.3 of Article 9 of the present Treaty and such further information, if any, as would be necessary to justify the issue of a warrant of a arrest had the criminal offence been committed, or the person been convicted, in the territory of the Requested State.
2. A person arrested upon such a request shall be set at liberty upon the expiration of 30 days from the date of his arrest if a request for his extradition shall not have been received within this period. The period of detention shall be extendable up to 60 days on a request to this effect from the Requesting State and up to 90 days in exceptional circumstances.

Article 11

Rule of Speciality

1. The extradited person may not without consent of the Requested State, be prosecuted or punished for the criminal offence other than that for which extradition has been granted and any lesser criminal offence disclosed by the facts provided for the purposes of securing his extradition, nor may such a person, without consent of the Requested State, be extradited to a third State.
2. The consent of the Requested State is not required if:
 - 2.1 the extradited person has not left, though had the opportunity, the territory of the Requesting State within 30 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the Requesting State for reasons beyond his control;
 - 2.2 If the extradited person, once having left that territory, voluntarily returns there.
3. The provisions of paragraph 1 of this Article shall not apply to the criminal offences committed after the return of person or matters arising in relation to such criminal offences.

Article 12

Recognition of Documents and Evidence

1. Documents issued or certified and statements recorded by competent courts or other authorities in the prescribed form in the territory of one Contracting state as per its laws shall not require any form of authentication in the territory of the other Contracting State.

2. Documents considered as public in the territory of one of the Contracting States shall have the evidential force of public documents also in the territory of the other Contracting State.

Article 13

Competing Request

If extradition of the same person whether for the same criminal offence or for different criminal offences is requested by a Contracting State and a third State with which the Requested State has an extradition arrangement, the Requested State shall determine the State to which the person shall be extradited and shall not be obliged to give preference to the Contracting State.

Article 14

Capital Punishment

If under the law of the Requesting State the person sought is liable to the death penalty for the criminal offence for which his extradition is requested, but the law of the Requested State does not provide for the death penalty in a similar case, extradition may be refused, unless the Requesting State gives such assurances as the Requested State considers sufficient that the death penalty will not be carried out.

Article 15

Transfer

1. The modalities of transfer of the person to be extradited shall be agreed upon by the competent authorities of both the Contracting States as mutually convenient.
2. The Requesting State shall take the person sought from the territory of the Requested State within one month of the consent of Requested State to extradite or such longer period as may be permitted under the law of the Requested State. If the person is not removed within that period, the Requested State may refuse to extradite him for the same criminal offence.

Article 16

Transfer of article connected with crime.

1. The Requested State shall, within the limits of its legislation, transfer by the request of the Requesting State the articles used for committing crime by the person being extradited, articles bearing crime traces or crime proceeds.
2. The above articles shall be transferred also in cases when the extradition cannot be effected if the person died, fled or due to other reasons
3. The Requesting State may temporarily postpone the transfer of the articles referred to in paragraph 1 of this Article if they are required for proceedings instituted in connection with another criminal case till the end of such proceedings.

4. The rights of third persons to the articles transferred to the Requesting State shall remain in force. Upon termination of the proceedings the Requesting State shall return these articles to their owners in its territory. If the owners are in the territory of the Requested State the articles are to be returned to it for the transfer to them. If the owners are in the territory of a third country the articles shall be returned to them by the Requesting State without charge.
5. The transfer of the articles and of money shall be effected within the limits provided for by the legislation of the Requested State.

Article 17

Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest possible measure of mutual assistance in criminal matters in connection with the criminal offence for which extradition has been requested.

Article 18

Expenses on Extradition

All expenses related to the extradition shall be borne by the Contracting State in whose territory the same occurred. The expenses caused by transit transportation of the extradited person by one of the Contracting States from a third State through the territory of the other Contracting State shall be borne by the Contracting State effecting the transit.

Article 19

Languages

While complying with the present Treaty, the Contracting States shall use their national language attaching the translation in the national language of the other Contracting State or in the English language.

Article 20

International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Contracting States arising from other international Conventions/Treaties to which the Contracting States are signatories.

Article 21

Transit

1. Transit of a person who is the subject of extradition from a third State through the territory of a Contracting State to the territory of the other Contracting State shall be granted upon submission of a request, provided that the criminal offence concerned is an extraditable criminal offence under Article 2.

2. Transit of a national of the Requested State may be refused if, in the opinion of that State, it is inadmissible under its law.
3. The request for transit must be accompanied by the documents mentioned in Article 9.

Article 22

Alternations and Supplements

The Contracting States may amend the present Treaty by separate protocols, which shall enter into force by the procedure followed for the entry into force of this Treaty.

Article 23

Consultation

Any problem that may arise in the application or interpretation of this Treaty will be resolved by mutual consultations by the Contracting States.

Article 24

Competent Authorities

The competent authorities of the Contracting States for the purpose of operation of this Treaty will be:

For the Republic of India:- Ministry of External Affairs.

For the Republic of Kazakhstan:-Office of the General Prosecutor of the Republic of Kazakhstan.

Article 25

Ratification and Termination

1. The present Treaty shall be subject to ratification and shall enter into force on the date of exchange of the instruments of ratification.
2. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other Contracting State through the diplomatic channels; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.
3. In witness whereof the undersigned being duly authorised thereto have signed this Treaty.

Done at New Delhi on this day of 24th of January 2009 in two originals, each in Hindi, Kazakh, Russian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of India

For the Republic of Kazakhstan

Extradition Treaty between the Government of the Republic of India and the Government of Malaysia

THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF MALAYSIA hereinafter referred to collectively as “Contracting States”;

DESIRING to provide for more effective cooperation between the two States in the suppression of crime by concluding a treaty on the reciprocal extradition of offenders;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

OBLIGATIONS TO EXTRADITE

The Contracting States agree to extradite to each other, upon request and pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have accused or convicted of an extraditable offence within the jurisdiction of the Requesting State, whether such offence was committed before or after the entry into force of this Treaty.

ARTICLE 2

EXTRADITABLE OFFENCES

1. An offence shall be an extraditable offence if it is punishable under the laws of the Contracting States by a term of imprisonment for a period of not less than one year or with death.
2. An offence shall also be an extraditable offence if it consists of an attempt or a conspiracy to commit or an abetment of the commission of any offence described in paragraph 1.
3. An offence shall be an extraditable offence notwithstanding that it is one of a purely fiscal character.
4. For the purposes of this Article, an offence shall be an extraditable offence -
 - (a) whether or not the laws in the Contracting States place the acts or omissions constituting the offence within the same category of offences or describe the offence by the same terminology;
or
 - (b) whether or not under the laws of the Contracting States the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the Requesting State shall be taken into account.

ARTICLE 3

NATIONALITY

1. Extradition of own national is permissible under this Treaty.
2. If extradition of own national is not granted for an extraditable offence, the Requested State shall, at the request of the Requesting State and if the laws of the Requested State so allow, submit the case to its competent authorities for the purpose of prosecution.
3. For the purposes of this Article, nationality shall be determined as at the time of the commission of the offence.

ARTICLE 4

JURISDICTION

1. If the Requested State considers that the offence was committed within its jurisdiction, it may deny extradition. For the purpose of this paragraph, jurisdiction means the territory of the Requested State, its air space and territorial waters or maritime zone in which it is claiming jurisdiction, and any vessel or aircraft registered in that State if such aircraft or vessel is on the high seas or in flight. If extradition is denied pursuant to this paragraph, the Requested State shall submit the case to its competent authorities for prosecution.
2. If the competent authorities of the Requested State are unable to proceed with the prosecution in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.
3. If the offence has been committed outside the territory of the Requesting State, extradition shall be granted if the laws of the Requested State provide for punishment of an offence committed outside its territory in similar circumstances, and if the requirements of extradition under this Treaty are otherwise met. If the laws of the Requested State do not so provide, the executive authority of the Requested State may, in its discretion, deny extradition.

ARTICLE 5

PRIOR PROSECUTION

1. Extradition shall not be granted when the person sought has been convicted, acquitted or pardoned in the Requested State for the offence for which extradition is requested.
2. Extradition shall not be precluded by the fact that the authorities in the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested, or have decided to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

ARTICLE 6

RESTRICTIONS ON SURRENDER

1. A fugitive offender shall not be surrendered if the Requested State is satisfied that -
 - (a) the offence of which that person is accused of or was convicted is an offence of a political character; or
 - (b) if the prosecution for the offence in respect of which his return is sought is, according to the laws of the Requesting State barred by time.
2. For the purposes of this Treaty, the following offences shall not be considered to be of a political character –
 - (a) murder or other wilful crime against the person of a Head of State or Head of Government of one of the Contracting States, or a member of his immediate family;
 - (b) an offence for which the Contracting States have the obligation pursuant to a multilateral/ international treaty to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; or
 - (c) an attempt, abetment or a conspiracy to commit any of the foregoing offences.
3. The executive authority of the Requested State may refuse extradition –
 - (a) for offences under military law which are not offences under ordinary criminal law; or
 - (b) if it appears by reason of –
 - (i) the trivial nature of the case; or
 - (ii) the application for the return not being made in good faith or in the interests of justice or being made for political reasons or for any other reason, it would, having regard to all the circumstances, be unjust or oppressive to return the person to the Requesting State.

ARTICLE 7

DEFERRED SURRENDER

1. The Requested State may, after making its decision on the request for extradition, postpone the surrender of the person sought, in order to proceed against that person, or if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case, the Requested State shall advise the Requesting State accordingly.
2. The Requested State may, instead of postponing surrender, temporarily surrender the person sought to the Requesting State in accordance with conditions to be determined between the Contracting States.

ARTICLE 8

PROCEDURE AND DOCUMENTATION

- (a) A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through diplomatic channels, and the channels of communications shall be in accordance with the procedures designated by the Contracting States.
- (b) A request shall be supported by statutory declarations or statements given on oath or affirmed before a competent authority of the Requesting State setting out -
 - (a) as accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;
 - (b) information describing the facts of the offences;
 - (c) the text of the relevant provisions of the law creating the offence (including case laws, if any) and a statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence; and
 - (d) the documents, statements, or other types of information or evidence specified in paragraph 3 or 4 of this Article, as applicable.
- (c) A request for extradition of a person who is sought for prosecution shall, in addition to the information referred in paragraph 2, also be supported by statutory declarations or statements given on oath or affirmed before any competent authority of the Requesting State setting out -
 - (a) a warrant or order of apprehension, issued by a court or other competent judicial authority or a certified copy of that warrant or order;
 - (b) a copy of the charging document or a report/statement containing the particulars of the acts and/or omissions constituting the alleged offence, including an indication of the time and place of its commission, submitted before the court of the Requesting State; and
 - (c) such evidence as according to the laws of the Requested State that would establish, according to the evidentiary standards of the Requested State that the person is a party to the offence committed to justify his committal for trial if the offence had been committed under the laws of the Requested State PROVIDED THAT neither State shall require, as a condition to extradition pursuant to this Treaty that the other State prove a prima facie case against the person sought.
- (d) A request for extradition relating to a person who has been convicted and sentenced or convicted but not yet sentenced shall also be supported by statutory declarations or statements given on oath or affirmed before any competent authority of the Requesting State setting out -
 - (a) a certified copy of the judgment of conviction, or, if such copy is not available, a statement by a judicial authority that the person has been found guilty;
 - (b) information establishing that the person sought is the person to whom the finding of guilt refers; and
 - (c) a certified copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing the extent to which the sentence has been carried out.

ARTICLE 9

PROVISIONAL ARREST

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. An application for provisional arrest may be forwarded through the diplomatic channels as specified in Article 8 or through the International Criminal Police Organisation (INTERPOL).
2. The application for provisional arrest shall contain -
 - (a) a description of the person sought;
 - (b) the location of the person sought, if known;
 - (c) a statement of the facts of the case, including the offence alleged to have been committed and the time and place of commission of the offence;
 - (d) a description of the laws violated;
 - (e) a copy of, or a statement of the existence of, a warrant of arrest or a finding of guilt or judgment of conviction against the person sought; and
 - (f) a statement that a request for extradition for the person sought will follow.
3. On receipt of the application, the Requested State shall take appropriate steps to secure the arrest of the person sought. The Requesting State shall be notified without delay of the disposal of its application and the reasons for any denial.
4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 8. Upon application of the Requesting State, this period may be extended up to an additional thirty (30) days.
5. The discharge of the person from custody pursuant to paragraph 4 of this Article shall not prevent the subsequent re-arrest and extradition of that person if the extradition request and supporting documents are subsequently received at a later date.

ARTICLE 10

ADDITIONAL DOCUMENTATION

1. If the Requested State considers that the documents furnished in support of the request for the surrender of a person sought are not sufficient to fulfill the requirements of this Treaty, that State shall request the submission of necessary additional documents. The Requested State may set a time-limit for the submission of such documents, and may grant a reasonable extension of the time-limit upon application of the Requesting State setting forth reasons thereof.
2. If the person sought is in custody and the additional documents submitted are not sufficient, or if such documents are not received within the period specified by the Requested State, that person may be discharged from custody. Such discharge shall not prejudice the re-arrest and the surrender of the person if the additional documents are subsequently received.

ARTICLE 11
CONCURRENT REQUESTS

If the Requested State receives requests from the other Contracting State and from any other State or States for extradition of the same person, either for the same offence or for a different offence, the executive authority of the Requested State shall determine as to which State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to -

1. whether the requests were made pursuant to any treaties;
2. the place where each offence was committed;
3. the respective interests of the Requesting States;
4. the gravity of the offences;
5. the nationality of the victim;
6. the possibility of further extradition between the Requesting States; and
7. the order in time in which the requests were received from the Requesting States.

ARTICLE 12
TRANSLATION

1. All documents submitted by the Requesting State shall be translated into the English language unless this requirement is waived by the Requested State.
2. Any documents submitted in support of any requests under this Treaty which were previously translated from the language of the Requesting State shall be duly certified as the correct translation by a competent authority of the Requesting State.

ARTICLE 13
AUTHENTICATION OF DOCUMENTS

1. The warrant of arrest or judicial documents establishing the existence of the conviction, and any deposition or statements or other evidence given on oath or affirmed before any competent authority or any certified copy thereof, shall be received in evidence in any proceedings for extradition -
 - (a) if authenticated in the case of a warrant by being signed, or in the case of any other original document by being certified by a judge, magistrate or other competent authority of the Requesting State, or in the case of a copy by being certified to be true copy of the original; and
 - (b) where the Requesting State is the Republic of India, by being sealed with the official seal of the Minister of External Affairs or Minister of State for External Affairs and where the Requesting State is Malaysia, by being sealed with the official seal of the Minister of Home Affairs or the Deputy Minister of Home Affairs; or

- (c) if it is authenticated in such other manner as may be permitted by the laws of the Requested State.

And if the warrant, depositions, statements, copies, certificates and judicial documents are authenticated by the oath of some witness or sealed with the official seal of the Ministers referred to in sub clause (b) above, the courts of the Contracting States shall take judicial notice of such official seal and shall admit the documents so authenticated and receive in evidence without further proof.

2. The authenticated documents described in paragraph 1 shall be received in evidence in the Requested State irrespective of whether the sworn or affirmed documents were made in the Requesting State or in some third State.

ARTICLE 14

REPRESENTATION AND COSTS

1. The Requested State shall advise, assist, appear in court on behalf of the Requesting State and represent the interests of the Requesting State, or otherwise make the necessary arrangements for the Requesting State's legal representation, in any proceedings arising out of a request for extradition.
2. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered including transit costs. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.
3. Notwithstanding paragraph 2, where expenses incurred in the Requested State by reason of the request are substantial or extraordinary in nature, the Contracting States shall consult each other to determine the manner in which the cost shall be borne.
4. Neither Contracting State shall make any pecuniary claim against the other Contracting State arising out of the arrest, detention, examination or surrender of persons sought under this Treaty.

ARTICLE 15

CONSULTATION

The Ministry of External Affairs of the Republic of India and the Attorney General's Chambers of Malaysia may consult with each other directly or through the facilities of INTERPOL in connection with the processing of each particular request and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

ARTICLE 16

WAIVER OF EXTRADITION PROCEEDINGS

1. If the persons sought consents to return to the jurisdiction of the Requesting State after personally being advised by a competent judicial authority of the effect of such consent under the laws of the Requested State, the Requested State may surrender him without further proceedings.
2. The surrender of a person pursuant to this Article shall be in accordance with Article 17.

ARTICLE 17

SURRENDER

1. If the request for extradition is granted, the authorities of the Contracting States shall agree on the date and place for the surrender of the person sought.
2. If the person sought is not removed from the territory of the Requested State within the time prescribed by the laws of that State, that person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offence.
3. If circumstances beyond its control prevent a Contracting State from surrendering or taking over the person to be extradited, it shall notify the other Contracting State. The Contracting States shall agree to a new date for surrender and the provisions of paragraph 2 of this Article shall apply.
4. Upon the completion of the proceedings against a person surrendered to the Requesting State, the Requesting State shall, upon request, inform the Requested State of the outcome of such proceedings and upon request provide it with a copy of the final court decision.

ARTICLE 18

SURRENDER OF PROPERTY

1. To the extent permitted under its laws, the Requested State may seize and surrender to the Requesting State any property found in the possession of the person sought at the time of his arrest which may be material as evidence in proving the extradition offence.
2. The property mentioned in paragraph 1 may be surrendered even when extradition of the person sought cannot be effected due to his death, disappearance or escape.
3. The Requested State may surrender the property upon satisfactory assurance from the Requesting State that the property will be returned to the Requested State as soon as practicable.
4. The Requested State may also defer surrender of such property if it is needed as evidence in the Requested State.
5. The rights of third parties in such property shall be duly respected.

ARTICLE 19

RULE OF SPECIALITY

1. A person extradited under this Treaty shall not be detained, tried or punished in the Requesting State or subjected to any other restriction of personal liberty except for -
 - (a) the offence for which extradition has been granted;
 - (b) any lesser offence proved by the facts on which his extradition was based;
 - (c) any offence committed after the extradition of the person; or

- (d) any other offence in respect of which the executive authority of the Requested State consents. For the purpose of this subparagraph -
- (i) the Requested State may require the submission of the documents specified in Article 8; and
 - (ii) the person extradited may be detained by the Requesting State for ninety (90) days, or for such longer time as the Requested State may authorize, while the Request is being processed.
2. A person extradited under this Treaty shall not be extradited to a third State for an offence committed prior to his surrender unless the Requested State consents.
3. Paragraph 1 and 2 of this Article shall not prevent the detention, trial or punishments of an extradited person, or the extradition of that person to a third State, if that person had an opportunity to leave the territory of the Requesting State and -
- (a) that person leaves the territory of the Requesting State and voluntarily returns to it; or
 - (b) that person does not leaves the territory of the Requesting State within thirty (30) days of his having been free to leave the jurisdiction after final discharge in respect of the offence for which that person was extradited.

ARTICLE 20

TRANSIT

1. Either Contracting State may authorise transportation through its area of a person surrendered to the other Contracting State by a third State. A request for transit shall be made through the diplomatic channels or directly between the Ministry of Home Affairs of the Republic of India and the Ministry of Home Affairs of Malaysia or through the International Criminal Police Organisation (INTERPOL) by any means acceptable to the Requested State such as post, telegraph, facsimile etc. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be kept in custody during the period of transit.
2. No authorization is required where air transportation is used and no landing is scheduled in the territory of the Contracting State. In the event of an unscheduled landing in the territory of a Contracting State, the escorting officer of the Contracting State may request for transit as provided in paragraph 1. The Contracting State shall detain the person to be transported until the request for the transit is received from the other Contracting State and the transit is effected, so long as the request is received within ninety six (96) hours of the unscheduled landing.

ARTICLE 21
OBLIGATIONS UNDER INTERNATIONAL
CONVENTIONS/TREATIES

This Treaty shall not affect the rights and obligations of the Contracting State arising from international conventions/treaties to which they are parties.

ARTICLE 22
ENTRY INTO FORCE

This Treaty shall enter into force thirty (30) days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

ARTICLE 23
TERMINATION

Either Contracting State may terminate this Treaty at any time by giving written notice through the diplomatic channels to the other Contracting State, and the termination shall be effective six (6) months after the date of receipt of such notice by the other Contracting State.

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

DONE at New Delhi this 20th day of January 2010, in duplicate, in Malay, Hindi and English languages, all texts being equally authentic. In the event of any discrepancy in any of the texts, the English text shall prevail.

FOR THE GOVERNMENT
OF THE REPUBLIC OF
INDIA

FOR THE GOVERNMENT OF
MALAYSIA

MINISTRY OF EXTERNAL AFFAIRS
ORDER

New Delhi, the 31st October, 2011

Extradition Treaty between the Republic of India and the Kingdom of Saudi Arabia

GS.R. 790(E).—Whereas the Extradition Treaty between the Republic of India and Kingdom of Saudi Arabia was signed at Riyadh on 28th February, 2010 and the Treaty entered into force (sic) with effect from 5th October, 2011 in accordance with Article 23.1 and which Extradition Treaty will provide as follows:—

The Republic of India and the Kingdom of Saudi Arabia (hereinafter referred to as the Parties), in furtherance of traditional friendly relations, desiring to strengthen mutual cooperation in combating crimes including acts of terrorism by way of extradition of accused and convicted individuals to either state, and assuring respect for each other's, sovereignty and on the basis of equality and reciprocity; Have agreed as follows:

Article 1

Obligation to Extradite

The Parties undertake to extradite any person found in their respective territories, who is accused of or convicted of an extraditable offence in the territory of the other party in accordance with the provisions of this treaty, for the purpose of trial or serving of sentence, whether such offence was committed before or after the entry into force of this Treaty.

Article 2

Extraditable Offences

1. An offence shall be an extraditable offence if it is punishable under the laws of the Parties by imprisonment for at least one year or by a more severe penalty.
2. Extradition shall also be available for an extraditable offence committed outside the territory of the requesting State in respect of which it has jurisdiction, and in respect of which the requested State would also, in corresponding circumstances, have jurisdiction.
3. In case of extradition for the purpose of serving a sentence, the person sought must have been sentenced at least for six months for an extraditable offence or the sentence left to be served must not be less than six months.

Article 3
Grounds for Refusal

Extradition shall be refused in the following circumstances:

1. If the crime for which the extradition is sought is political in nature. The following crimes shall not be deemed political in nature for the purpose of this Treaty:
 1. An offence against the King, Crown Prince or their spouses, ascendants and descendants or members of the Royal family;
 2. An offence against the Head of State, the Head of Government and the members of their families;
 3. Murder, manslaughter or culpable homicide;
 4. Assault resulting in actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm;
 5. The making of or possession of explosives and using them-for-unlawful purposes, or of elements for inciting sedition and disturbance, or. tools or materials jeopardizing the safety of people or causing human or material harm;
 6. The possession or use of a firearm or ammunition by a person who intends, either himself or through another person, to endanger life;
 7. The use of a firearm by a person with the intent to resist or prevent the arrest or detention of himself or another person;
 8. Causing damage to property;
 9. Kidnapping, abduction, unlawful detention, including the taking of hostages;
 10. Terrorism and offences related thereto;
 11. Offences under international conventions to which both contracting States are a Party and;
 12. An attempt or conspiracy or incitement to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.
2. If the crime for which extradition is sought is a military crime, and is not an offence under ordinary criminal law.
3. If the time for trial of the offence for which extradition is sought has lapsed in accordance with the law of the Requesting Party.
4. If the person sought has already been tried in respect of the offence sought for and has been acquitted or if convicted, has served the sentence.
5. If the person sought is under investigation or trial in the requested State for the same crime for which his extradition is sought.

Article 4

Extradition of Nationals

The Requested Party may refuse extradition of its own nationals, provided that the Requested Party conducts trial of the person sought in its own courts according to its laws in respect of the offence sought for using, inter alia, evidence, documents, investigation summary and information submitted by the Requesting Party.

Article 5

Extradition Procedure

An extradition request under this Treaty shall be submitted in writing by the Central Authority of the Requesting Party to the Central Authority of the Requested Party through diplomatic channels. The extradition request shall be accompanied by the

1. A detailed statement of the identity of the person sought, his description, nationality and if possible his address in the requested State and photograph.
2. Arrest warrant against the person sought issued by the competent authority, a statement of the facts of the offence and punishment for which extradition is sought, the text of the relevant legal provisions, and sufficient evidence for the detention of the person sought for trial.
3. If the request relates to a person who is already convicted and sentenced, it shall also be accompanied by a certified copy of the conviction and sentence, a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence is remained to be served.

Article 6

Additional Information

If the Requested Party needs additional information/ clarification in order to reach a decision as to an extradition request, it may so advise to the Requesting Party. The Requesting Party will provide the required information/ clarification within the period as may be specified by the Requested Party.

Article 7

Provisional Arrest

1. In urgent cases and upon request by the Competent Authority of the Requesting Party, the person sought may be provisionally arrested for the purpose of extradition, and temporarily detained until the receipt of a formal extradition request under this Treaty. The request for provisional arrest shall be submitted to the Competent Authority of the Requested Party through diplomatic channels or through the International Police (Interpol), or any other applicable means of communication.
2. The request for provisional arrest shall contain a description of the person sought, a statement that extradition is to be requested, a statement as to the existence of the warrant of arrest, a statement of

the punishment that can be or has been imposed for the offence, including the time left to be served and where known the location of the person sought.

3. If a formal extradition request is not received within sixty days of the date of provisional arrest, the person sought will be set free. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article 8

Waiver of Extradition

If the person sought, under the Treaty, consents to surrender to the Requesting State, the Requested State may, subject to its laws, surrender the person as expeditiously as possible without further proceedings.

Article 9

Concurrent Request

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting Party and a third State with which the Requested Party has an extradition arrangement, the Requested Party shall determine to which State the person shall be extradited. In making its decision, the Requested Party shall consider all relevant factors, including but not limited to: whether the requests were made pursuant to a treaty; the place where each offence was committed; the respective interests of the Requesting States; the gravity of the offence/s; the nationality of the victim/s; and the chronological order in which the requests were received from the Requesting States.

Article 10

Execution of Request

The Requested Party shall decide the extradition requests in accordance with the provisions of this Treaty, its law and procedure. It shall notify the Requesting Party of its decision. Reasons for refusing the extradition request shall be given.

Article 11

Surrender

1. If extradition is granted, the person sought shall be sent by the authorities of the Requested Party to such convenient point of departure from the territory of that State as may be agreed upon by the Parties.
2. The Requesting Party shall take into custody the person sought from the territory of the Requested Party within one month or such longer period as may be permitted under the law of the Requested Party. If he is not taken into custody within that period, the Requested Party may refuse to extradite the person for the same offence, and set the person free.

Article 12

Postponement of Surrender

1. The Requested Party may postpone the surrender of a person who is being prosecuted or is serving a sentence in the territory of that Party. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.
2. If the extradition request is granted in the case of a person, who is being prosecuted or is serving a sentence in the territory of the Requested Party, that Party may, subject to its laws, temporarily surrender the person sought to the Requesting Party for the purpose of prosecution. The person surrendered shall be kept in custody in the territory of the Requesting Party and shall be returned to the Requested Party after the conclusion of the proceedings against that person, in accordance with conditions to be determined by agreement of the Parties.

Article 13

Seizure and Surrender of property

1. To the extent permitted under the law of the Requested Party and subject to the rights of third Parties, which shall be duly respected, all property found in the Requested Party that has been acquired as a result of the offence or that may be required as evidence shall, if the Requesting Party so requests, be surrendered if extradition is granted.
2. The said property may, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition agreed to can not be carried out.
3. When the said property is liable to seizure or confiscation in the Requested Party, it may retain it or temporarily hand it over.
4. Where the law of the Requested Party or the protection of the right of third parties so require, any property so surrendered shall be returned to the Requested Party, free of charge after the completion of the proceedings, if that Party so requests.

Article 14

Rule of Specialty

1. The person extradited shall not be tried or punished in the Requesting Party, except for offence/s for which that person's extradition was granted or for offence/s connected therewith; or offence/s committed after that person's extradition; or the offence/s to which the Requested Party consents.
2. When the person extradited had the liberty and means to leave the territory of the Party to which the person was extradited, but did not leave within 30 days subsequent to final release or left during that period, but voluntarily returned, the person may be tried for any other offence/s.
3. Except in the situation of paragraph two (2) above, a person shall not be re-extradited to a third State, without the consent of the Party from which the person was extradited.

Article 15

Reduction of term of sentence

The period of detention during extradition proceedings in the Requested State shall be deducted from any sentence in the Requesting State against the person extradited.

Article 16

Transit

Transit of a person, who is a subject of extradition from a third State through the territory of a Party to the territory of the other Party, shall be granted on submission of an advance request, in accordance with its domestic laws. To this end, coordination shall be made through Interpol offices of both Parties.

Article 17

Expenses

1. The Requested Party shall meet the costs of any proceedings in its jurisdiction arising out of a request for extradition.
2. The Requested Party shall also bear the costs incurred in its territory in connection with the seizure and handing over of the property, or the arrest and detention of the person whose extradition is sought.
3. The Requesting Party shall bear the costs incurred in conveying the person and/or the property from the territory of the Requested Party, including transit costs.

Article 18

Central Authority

1. All requests under this treaty shall be received and submitted through the Central Authorities of the Parties.
2. For the Republic of India, Central Authority will be the Ministry of External Affairs and for the Kingdom of Saudi Arabia it will be the Interpol Riyadh, Ministry of Interior.

Article 19

Consultation

A joint committee comprised of experts on the extradition of accused persons and convicts from the two states shall be formed. It shall discuss issues of cooperation in extradition, and make necessary recommendations to improve the Treaty to fulfil the expectations of the two States. It shall submit the said recommendations to the competent authorities to take the necessary measures towards implementing them. The committee shall convene alternately in the two States whenever the need arises or following a request of either Party.

Article 20

Amendment

This Treaty may be amended by mutual agreement of the Contracting States. Any amendment will enter into force by the same procedure as is applicable for the entry into force of this Treaty.

Article 21

Obligations under International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Parties arising from International-Conventions/Treaties to which they are party.

Article 22

Language

The requests and supporting documents shall be in English or shall be accompanied by a translation into English.

Article 23

Final Provisions

1. The Parties shall complete all the necessary legal and constitutional procedures for entry into force of this Treaty. It shall enter into force after thirty (30) days from the date of the receipt of last communication through diplomatic channels regarding the completion of such procedures.
2. This Treaty shall remain in force for an indefinite period.
3. Either Party may terminate this Treaty by writing through diplomatic Channels to the other Party. This Treaty shall terminate after the lapse of six months from the date of receipt of such communication. This shall have no effect on requests submitted during the validity of the Treaty.

Done at Riyadh on 14 *Rabea Alawal 1431H*, corresponding to February 28, 2010, in two originals in the Hindi, Arabic and English languages, all texts being equally authentic. In case of difference of interpretation of the provisions of this Treaty, the English text shall prevail.

Now, therefore, in exercise of the powers conferred by Sub-Section (1) of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the Act, other than Chapter III, shall apply to Kingdom of Saudi Arabia from the date of the publication of this notification.

[F. No. T-413/43/2008]

P. M. MEENA Jt. Secy. (Consular)

Ministry of External Affairs
CPV Division
(Extradition Section)

GUIDELINES FOR EXTRADITION

Extradition request for an accused/fugitive can be initiated after charge sheet has been filed before an appropriate Court and said court having taken cognizance of the case has issued orders/directions justifying accused/fugitive's committal for trial on the basis of evidence made available in the charge sheet and has sought presence of the accused/fugitive to face trial in the case.

All extradition requests should be supported by documents and information enumerated below :

1. It should be in spiral bound and contain an index with page numbers.
2. The request should be supported by a self-contained affidavit, executed by the Court by whom the fugitive is wanted or by a Senior Officer in-charge of the case (not below the rank of Superintendent of Police of the concerned Investigating agency) sworn before a judicial Magistrate (of the Court by which the fugitive is wanted for prosecution). The affidavit should contain brief facts and history of the case, referring at the appropriate places the statements of witnesses and other documentary evidences. Criminal's description establishing his identity; provision of the law invoked etc. so that a prima facie case is made out against the fugitive criminal.
3. Paragraph 1 of the affidavit should indicate the basis/capacity in which the affidavit is executed.
4. The affidavit should indicate that the offences for which the accused is charged in India.
5. The affidavit should also indicate that the law in question was in force at the time of Commission of offences and it is still in force, including the penalty provisions.
6. The evidence made available should be admissible under Indian laws. Accordingly, the affidavit should indicate whether the statements of witness are admissible as evidence in India in a criminal trial/prosecution. Statements of witnesses should be sworn before the Court.
7. The affidavit should also indicate that if the accused were extradited to India, he would be tried in India only for those offences for which his/her extradition is sought.
8. Copy of First Information Report (FIR), duly countersigned by the competent judicial authority, should be enclosed with the request.
9. Competent authority should countersign copy of charge sheet, which is enclosed with the documents.
10. A letter/order from the concerned court justifying accused person's committal for trial on the basis of evidence made available in the Charge Sheet, with a direction seeking accused person's presence in court to stand trial in said court from the country of present stay.
11. Warrant of arrest should be in original and open dated indicating clearly only those offences for which the accused is charged and Court has taken cognizance with relevant sections thereof.
12. Nationality, identity and address of the accused including his photograph should be made available with the request.

13. Copy of the relevant provisions under which the accused is charged along with the provisions of the relevant laws indicating the maximum sentence prescribed for the offence for which the accused is charged or convicted.
14. The extradition request is to be made in quadruplet (four copies). All original and copies should be attested/authenticated by the concerned court.
15. All the documents should be very clear, legible and in a presentable form, as they are to be (sic) presented to the sovereign Governments of Foreign Countries.
16. Original documents in national languages should be sent along with certified English translation of each such document from authorized translators.
17. Extradition requests/documents to the country where English is not first language should be submitted along with duly translated copy in host country's local language. The Court issuing warrant should certify such translated copy.

After completion of necessary formalities, the request for extradition should contain a letter/note form a Senior Official (not below the rank of Joint Secretary) or the concerned State Government indicating the correctness of the case/material with a request to the Central Executive to forward it to the Government of the concerned foreign country.

N.D.: If the concerned court is requesting for extradition of a person, the request in the form of an affidavit should be in the first person, i.e. by the Hon'ble Magistrate/Judge himself/herself. *(Such requests are usually received from Court Masters or other court officials writing in third person on behalf of the Court. Requested States object to it).*

Extradition Treaty between the Republic of India and the Republic of Indonesia

The Government of the Republic of India and the Government of the Republic of Indonesia (hereinafter referred to as “the Contracting States”);

Desiring to make more effective cooperation between the two Countries in the suppression of crime on the basis of mutual respect for sovereignty, equality and mutual benefit;

HAVE AGREED as follows:

ARTICLE 1

OBLIGATION TO EXTRADITE

Each Contracting State agrees to extradite to the other, subject to the provisions of this Treaty, any person who may be found in the territory of the Requested State and is wanted in the Requesting State for prosecution or for the imposition or enforcement of a sentence in respect of an extraditable offence, whether such offence was committed before or after the entry into force of this Treaty.

ARTICLE 2

EXTRADITABLE OFFENCES

1. An offence shall be an extraditable offence, if it is punishable under the laws in both States, by imprisonment for a period of at least one year or by a more severe penalty.
2. An offence shall also be an extraditable offence, if it consists of an attempt or a conspiracy to commit, aiding or abetting, counseling or procuring the commission of or being an accessory to the commission of an offence described in Paragraph 1.
3. For the purpose of this Article, in determining whether the alleged conduct constitutes an offence under the laws of both parties, it shall be immaterial whether the laws of both Parties, place the alleged conduct of the fugitive within the same category of offence/s or denominate the offence/s by the same terminology. The totality of the alleged conduct shall be taken into account, regardless of any differences in the constituent elements of the offence/s for which the extradition is requested.
4. If the request for extradition includes several offences and some of them are not punishable for at least one year imprisonment in both States, extradition may be granted for all offences if it meets the other requirements in accordance with the provisions of the Treaty and includes grant of extradition of at least one extraditable offence.
5. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the grounds that the law of the Requested State does not impose the same kind of tax or duty or does not provide for a tax, duty, customs or foreign exchange regulation of the same kinds as the laws of the Requesting State.

6. Without prejudice to Article 3(4) of this Treaty, an offence would be extraditable under this Treaty, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under the law of that State this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting State.
7. Where the extradition request is aimed at executing a sentence imposed, the sentence remaining to be served in an extraditable offence must not be less than six months.

ARTICLE 3

REFUSAL OF EXTRADITION

MANDATORY GROUNDS

1. Extradition shall not be granted where:
 - a. the offence for which the extradition is requested is a political offence;
 - b. the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on account of that person's race, religion, nationality, ethnic origin, political opinion, or that person may, for any of those reasons, be subjected to unfair treatment in judicial proceedings;
 - c. the offence for which extradition is requested is a military offence, which is not an offence under the ordinary criminal law;
 - d. the person sought cannot be prosecuted because of the lapse of time under the laws of the Requesting State or his sentence cannot be enforced by reason of pardon;
 - e. a final judgment has been passed against the person sought in respect of the offence for which the extradition is requested;
 - f. the request for extradition is made by the Requesting State pursuant to a judgment rendered *in absentia*, unless the Requesting State guarantees that the person sought, if surrendered, would be treated as an accused person.
 - g. the offence for which extradition is requested, is punishable by death penalty under the law of the Requesting State, while under the law of the Requested State such an offence is not punishable by death penalty, unless the Requesting State gives an assurance that if that person is awarded the death penalty, the same will not be carried out.
2. For the purpose of this Treaty, the following shall not be considered as political offences:
 - a. an offence against the life or person of the Head of State or the Head of Government or member(s) of their immediate family;
 - b. an offence under any international convention to which the Parties have the obligation by virtue of becoming a State Party thereto, to either extradite or prosecute the person sought or submit the case without undue delay to their competent authorities for the purpose of prosecution;

- c. offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character;
 - d. an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.
3. Serious offences against the body, person, life and property, even if politically motivated shall not be considered as political offence for the purpose of this Treaty.

OPTIONAL GROUNDS

4. Extradition may not be granted where the Requested State has jurisdiction over the offence for which the extradition is requested, under its national law. In such a situation, the Requested State shall have the obligation to prosecute the person wanted in respect of the offence/s sought for in its courts in accordance with its laws. If the competent authorities of the Requested State decide not to prosecute in such a case or the prosecution is not feasible because of whatever reason, the request for extradition shall be reconsidered.

ARTICLE 4 **NATIONALS**

1. Each Contracting State shall have the right to refuse extradition of its own nationals.
2. If extradition is not granted pursuant to Paragraph 1, the Requested State shall, at the request of the Requesting State, submit the case to its competent authorities for criminal prosecution in respect of the offence/s sought for in accordance with its national law. For this purpose, the Requesting State shall provide the Requested State the documents and evidence relating to the case.
3. The nationality of the person sought shall be determined as at the time of the commission of the offence for which extradition is requested.

ARTICLE 5 **CENTRAL AUTHORITIES**

1. Each Contracting State shall designate a Central Authority for the purpose of the implementation of this Treaty.
2. For the Government of the Republic of India, the Central Authority shall be the Ministry of External Affairs and for the Government of the Republic of Indonesia, the Central Authority shall be the Ministry of Law and Human Rights.

ARTICLE 6

EXTRADITION REQUEST AND DOCUMENTS

1. A request for extradition and all communications relating thereto will be sent by the Central Authority of a Contracting State to the Central Authority of the other Contracting State through Diplomatic Channels.
2. A request for extradition shall be accompanied with the following:
 - a. description of the person sought including the name, age, gender, nationality, other identification documents, if any, occupation, probable location of the person sought, physical description, photographs, fingerprints of the person where available and other information that may help identifying and locating that person;
 - b. a brief statement of the facts of the case, description of the offence/s for which extradition is requested, including the time and place of the commission of the offence/s and the punishment provided for them under the Law;
 - c. the text of the legal provisions determining the offence and the punishment and legal provisions regarding limitation of period for prosecution or enforcing of sentence as the case may be in respect of the offence/s.
3. If the request for extradition relates to the prosecution, it shall be accompanied by: warrant of arrest issued by a court or other competent authority for the purpose of extradition; a charge sheet or indictment charging the accused(sic) with the alleged offence/s; and such evidence as would justify his committal(sic) for prosecution.
4. Where the request for extradition relates to the execution of a sentence imposed on the person sought, it shall be accompanied by a certified copy of the final judgment and a statement of the period of sentence which has already been served and remains to be served.
5. A request for extradition under this Treaty shall be signed and sealed by the competent authority of the Requesting State.
6. Extradition request and all communications related thereto shall be made in the English language.

ARTICLE 7

ADDITIONAL INFORMATION

If the Requested State considers that the information furnished in support of a request for extradition is not sufficient as to consider the request, that Requested State may request additional information within 30 (thirty) days or within a period as may be agreed between the Contracting States.

ARTICLE 8

VOLUNTARY SURRENDER

When a person sought explicitly consents before the court during extradition proceedings that he/she volunteers to be surrendered to the Requesting State, the Requested State, subjects to its national law, may surrender the person as expeditiously as possible without further extradition proceedings.

ARTICLE 9

PROVISIONAL ARREST

1. In urgent cases, a Contracting State may request the other Contracting State for the provisional arrest of a fugitive criminal for the purpose of extradition before a formal extradition request is submitted. Such request may be submitted in writing through the channels provided for in Article 5 of this Treaty, the International Criminal Police Organization (INTERPOL) or other channels agreed by both Contracting States.
2. The request for provisional arrest shall contain the information indicated in Article 6(2) of this Treaty, a statement of the existence of the warrant of arrest and a statement that a formal request for extradition against the person shall follow the provisional arrest.
3. The Requested State shall promptly inform the Requesting State of the result of the request for provisional arrest.
4. The person arrested provisionally shall be released if, within a period of sixty (60) days of his/her arrest, the competent authorities of the Requested State has not received the formal request for extradition.
5. The release of the person pursuant to Paragraph 4 of this Article shall not prevent the subsequent re-arrest and institution of extradition proceedings of that person if the Requested State has subsequently received the formal request for extradition.

ARTICLE 10

DECISION ON THE REQUEST FOR EXTRADITION

1. The Requested State shall consider an extradition request made under this Treaty in accordance with the procedures provided under its national law, and shall promptly inform the Requesting State of its decision.
2. If the Requested State refuses the whole or any part of the request for extradition, the reasons for refusal shall be notified to the Requesting State.

ARTICLE 11

SURRENDER

1. If the extradition has been granted by the Requested State, the Contracting States shall agree on the time, place and other relevant matters relating to the surrender of the fugitive. The Requested State shall inform the Requesting State of the period of time for which the person to be extradited was detained prior to the surrender.
2. If the Requesting State has not taken over the person to be extradited within 15 (fifteen) days after the date agreed for surrender, the Requested State shall release that person immediately and may refuse to consider a fresh request by the Requesting State for extradition of that person for the same offence.
3. If a Contracting State fails to surrender or take over the person to be extradited within the agreed period for reasons beyond its control, the other Contracting State shall be notified promptly. The Contracting States shall agree on a new time and place and relevant matters for the execution of the extradition subject to their national laws. In this case, the provisions of Paragraph 2 of this Article shall apply.

ARTICLE 12

POSTPONEMENT AND TEMPORARY SURRENDER

1. If the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which the extradition is requested, the Requested State may, after having made a decision to grant extradition, postpone the extradition until the conclusion of the proceedings or the completion of the sentence. The Requested State shall inform the Requesting State of the postponement.
2. If the postponement of the extradition may seriously impede the criminal proceedings in the Requesting State, the Requested State may, upon request, temporarily surrender the person sought to the Requesting State, provided that its ongoing criminal proceedings are not hindered, and that the Requesting State undertakes to return that person unconditionally and immediately upon conclusion of relevant proceedings.

ARTICLE 13

CONCURRENT REQUESTS

Where, requests for extradition are received from two or more Countries for the extradition of the same person either for the same offence or for different offences, for the purpose of determining to which of those Countries the person is to be extradited, the Requested State shall consider all relevant factors, including but not limited to:

- a. whether the request was made pursuant to a treaty;
- b. the gravity of the offence/s;

- c. the time and place of the commission of the offence/s;
- d. the nationality of the person sought and of the victim/s;
- e. respective dates of the requests; and
- f. the possibility of subsequent extradition to another Country.

ARTICLE 14

RULE OF SPECIALITY

The person extradited in accordance with this Treaty shall neither be proceeded against nor subjected to the execution of sentence in the Requesting State for an offence committed by that person before his surrender other than the offence for which the extradition is granted, nor shall that person be re-extradited to a third Country, unless:

- a. the Requested State has consented in advance. For the purpose of such consent, the Requested State may require the submission of the documents and information mentioned in Article 6 of this Treaty;
- b. that person has not left the Requesting State within 30 (thirty) days after having been free to do so or that person has voluntarily returned to the Requesting State after leaving it. However, this period of time shall not include the time during which that person fails to leave the Requesting State for reasons beyond his control; or
- c. any lesser offence disclosed by the facts for the purpose of securing his return, other than an offence for which extradition could not lawfully be made.

ARTICLE 15

SURRENDER OF PROPERTY

- 1. If the Requesting State so requests, the Requested State shall, to the extent permitted by its national law, seize the proceeds and instruments of the offence and other property which may serve as evidence found in its territory or found in the possession of the person sought, and when extradition is granted, shall surrender these property to the Requesting State.
- 2. When the extradition is granted, the property mentioned in Paragraph 1 of this Article may nevertheless be surrendered even if the extradition can not be carried out owing to the death, disappearance or escape of the person sought, or any other reasons.
- 3. The Requested State may, for conducting any other pending criminal proceedings, postpone the surrender of above-mentioned property until the conclusion of such proceedings, or temporarily surrender that property on condition that the Requesting State undertakes to return it.
- 4. The surrender of such property shall not prejudice any legitimate right of the Requested State or any third party to that property. Where these rights exist, the Requesting State shall, at the request of the Requested State, promptly return the surrendered property without charge to the Requested State as soon as possible after the conclusion of the proceedings.

ARTICLE 16

MUTUAL LEGAL ASSISTANCE

Each Contracting State shall, to the extent permitted by its laws, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

ARTICLE 17

TRANSIT

1. When a person is to be extradited to a Contracting State from a third Country through the territory of the other Contracting State, it shall request the other Contracting State for the permission of transit. No such request is required where air transportation is used and no landing in the territory of the other Contracting State is scheduled.
2. The Requested State shall, in so far as not contrary to its national law, grant the request for transit made by the Requesting State.
3. If an unscheduled landing in the territory of the other Contracting State occurred, transit shall be subjected to the provision of Paragraph 1. That Contracting State may, in so far as not contrary to its national law, hold the person in custody for a period of 96 (ninety six) hours while waiting the request of transit.

ARTICLE 18

NOTIFICATION OF RESULT

The Requesting State shall inform the Requested State promptly about the outcome of the criminal trial or the execution of sentence against the person extradited or information concerning the re-extradition of that person to a third Country.

ARTICLE 19

EXPENSES

Expenses arising from the procedures for extradition in the Requested State shall be borne by that State. Expenses of transportation and the transit expenses in connection with the surrender or taking over of the extradited person shall be borne by the Requesting State.

ARTICLE 20

INTERNATIONAL OBLIGATIONS

This Treaty shall not affect the rights and obligations of the Contracting States concerning extradition pursuant to international conventions or other arrangements to which they are a party.

ARTICLE 21
SETTLEMENT OF DIFFERENCES

Any differences arising from the interpretation or application of this Treaty shall be settled by consultation between the Contracting States through diplomatic channels.

ARTICLE 22
AMENDMENT

This Treaty may be amended at any time by mutual consent of the Contracting States. Such an amendment shall enter into force by the same procedure as applicable for the entry into force of this Treaty.

ARTICLE 23
FINAL PROVISIONS

1. The Contracting States shall notify each other about the completion of their respective domestic requirements for the entry into force of this Treaty. The Treaty shall enter into force on the date of the receipt of the later notification. The Contracting States shall notify each other about the completion of their respective domestic requirements for the entry into force of this Treaty. The Treaty shall enter into force on the date of the receipt of the later notification.
2. Either Contracting States may terminate this Treaty by giving a notice in writing to the other Contracting State through diplomatic channels at any time. Termination shall take effect after 6 (six) months of the receipt of such notice. Termination of this Treaty shall not affect the extradition requests submitted prior to the termination.

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

DONE at New Delhi on this 25th day of January, 2011, in two originals each in the Hindi, Indonesian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF
INDIA

FOR THE REPUBLIC OF
INDONESIA

Treaty on Extradition between the Republic of India and the Socialist Republic of Vietnam

The Republic of India and the Socialist Republic of Vietnam (hereinafter referred to as “the Parties”),

Desiring to provide for more effective cooperation between the two countries in the prevention and suppression of crime, and to facilitate relations between the two countries in the area of extradition by concluding a treaty on extradition of offenders.

Recognising that concrete steps are necessary to combat terrorism,

Have agreed as follows:

Article 1

Obligation to Extradite

Each Party agrees to extradite to the other Party, in accordance with the provisions of this Treaty, any person who is found in its territory and sought by the other Party for prosecution, trial, or execution of punishment for an extraditable offence, whether such offence, was committed before or after the entry into force of this Treaty.

Article 2

Extraditable Offences

1. For the purposes of this Treaty, extraditable offences are offences which, at the time of the request, are punishable under the laws of both Parties by deprivation of liberty for a period of at least one year, or by a more severe penalty.
2. An offence shall also be an extraditable offence if it involves an attempt or a plan to commit, aiding or abetting the commission of or being an accessory before or after the fact to, an offence described in paragraph 1.
3. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six (6) months of the sentence remains to be served.
4. For the purposes of this Article, in determining whether an offence is an offence against the laws of both Parties:-
 - (a) it shall not matter whether the laws of the Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Parties, the constituent elements of the offence differ.

5. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition shall not be refused on the grounds that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the Requesting Party.
6. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.
7. If the request for extradition refers to several offences, each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraphs 1 and 2 of this Article, extradition may be granted for the offences provided that the person is to be extradited for at least one extraditable offence.

Article 3

Refusal of extradition

1. Extradition shall not be granted in any of the following circumstances:
 - a) The person whose extradition is requested is a citizen of Requested Party;
 - b) The person whose extradition is requested cannot be prosecuted or does not have to serve the sentence imposed due to lapse of the statute of limitations;
 - c) The person whose extradition is requested for prosecution has been convicted under a final judgment by a competent court for the conduct to which the request relates or the case has been suspended according to the criminal procedural law of Requested Party; or
 - d) Where the request for extradition relates to more than one offenses and each of which is punishable under the law of the requesting State but does not fall under Article 2 of this Treaty.
2. Extradition shall not be granted, if the Requested State considers that, having regard to all the circumstances, including the trivial of the nature of the offence, or in the interest of justice, it would be unjust or inexpedient to extradite the person.
3. Extradition shall not be granted if the offence in respect of which it is requested is a military offence.

Article 4

The Political Offence Exception

1. Extradition shall not be refused if the offence of which it is requested is an offence of a political character.
2. For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:
 - (a) An offence in respect of which the both Contracting States have the obligation to extradite or submit the case to their competent authorities for prosecution, by reason of a multilateral international treaty/convention to which both are parties or may become parties in future;
 - (b) the taking or attempted taking of the life or an assault on the person of a Head of State or Head of Government of one of the Contracting States, or of member of the Head of State's or Head of Government's family;
 - (c) murder or culpable homicide/ manslaughter;
 - (d) an offence, involving firearms, explosives, incendiary, destructive devices or substances, causing death, grievous bodily harm or serious damage to property;
 - (e) a conspiracy or attempt to commit, or participation in, any of the foregoing offences;
 - (f) offences related to terrorism which at the time of the request is, under the law of the Contracting State, not to be regarded as political offence;
 - (g) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;

Article 5

Postponement of Extradition

1. When the person sought is being investigated, prosecuted or has been tried or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party may postpone the extradition of the person sought until the conclusion of the proceeding or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement. When the conditions of the postponement no longer exist, the Requested Party shall promptly inform the Requesting Party and resume the process for extradition unless otherwise informed by the Requesting Party.
2. When the postponement of extradition referred to in the paragraph 1 would bar the criminal proceedings due to the lapse of time or create a serious difficulty for the proceedings, the Requested Party may, at the request of the Requesting Party and pursuant to its laws, grant temporary extradition of the person whose extradition is sought.
3. The person whose temporary extradition is granted shall be returned as soon as the criminal proceedings are completed or the mutually agreed time permitted for the request for temporary

extradition is ended. The Requested Party may extend, upon request, the initial agreed time period if it deems that reasonable grounds for such extension exist.

Article 6

Extradition of Nationals

1. Neither of the Parties shall be bound to extradite its own nationals under this Treaty.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested Party shall, at the request of the Requesting Party, submit the case to its authorities for prosecution.
3. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

Article 7

Extradition Procedures

1. The request for extradition under this Treaty shall be made through the diplomatic channel.
2. The request shall be accompanied by:
 - (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence;
 - (b) a statement of the facts of the offence for which extradition is requested, and
 - (c) the text, if any, of the law:
 - (i) defining that offence; and
 - (ii) prescribing the maximum punishment for that offence.
3. If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.
4. If the request relates to a person already convicted and sentenced, it shall also be accompanied:
 - (a) by a certificate of the conviction and sentence;
 - (b) by a statement that the judgment is final and no further proceedings are pending and showing how much of the sentence has not been carried out.
5. Documents, in support of an extradition request, shall be received and admitted as evidence in extradition proceedings, provided the documents are certified by a judge or magistrate to be the original documents or true copies of such documents and are authenticated by the official seal of the court or by the competent authority.

6. In relation to a convicted person who was not present at his/her trial, the person shall be treated for the purposes of paragraph (4) of this Article as if he/she had been accused of the offence of which he/she was convicted.
7. If the Requested State considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.

Article 8

Supplementary Information

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that supplementary information be furnished within such time as it may specify.
2. If the person whose extradition is sought is under arrest and the supplementary information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a new request for the extradition of the person.
3. When the person is released from custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.

Article 9

Provisional Arrest

1. In case of urgency, Requesting Party may request the provisional arrest of the person sought pending the presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Ministry of Public Security of the Socialist Republic of Vietnam and Ministry of External Affairs of the Republic of India.
2. The application for provisional arrest shall be in writing and contain:-
 - (a) a description of the person sought, including information concerning the person's nationality;
 - (b) the location of the person sought, if known;
 - (c) a brief statement of the facts of the case, including, possible, the time and location of the offence;
 - (d) a description of the laws violated;
 - (e) a statement of the existence of a warrant of arrest or detention, or a finding of guilt or judgment of conviction against the person sought; and
 - (f) a statement that a request for extradition for the person sought will follow.
3. On receipt of such an application, the Requested Party shall take the necessary steps to secure the arrest of the person sought and the Requesting Party shall be promptly notified of the result.

4. The person arrested shall be set at liberty if the Requesting Party fails to present the request for extradition, accompanied by the documents specified in Article 7, within sixty (60) days from the date of arrest, provided that this shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article 10

Simplified Extradition

If the person sought consents to surrender to the Requesting State, the Requested State may, subject to its laws, surrender the person as expeditiously as possible without further proceedings.

Article 11

Concurrent Requests

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested Party shall determine to which of those States the person is to be extradited and shall notify those States of its decision.
2. In determining to which State a person is to be extradited, the Requested Party shall consider all relevant factors, including but not limited to:-
 - (a) the nationality and the ordinary place of residence of the person sought;
 - (b) whether the requests were made pursuant to treaty;
 - (c) the time and place where each offence was committed;
 - (d) the respective interests of the Requesting State;
 - (e) the gravity of the offences;
 - (f) the nationality of the victim;
 - (g) the possibility of further extradition between the Requesting States; and
 - (h) the respective dates of the requests.

Article 12

Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through the diplomatic channel. Reasons shall be given for refusal of a request for extradition.
2. The Requested Party shall surrender the person sought to the competent authorities of the Requesting Party at a location in the territory of the Requested Party acceptable to both Parties.

3. The Requesting Party shall remove the person from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if the person is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition for the same offence.
4. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party, and in this case the provisions of paragraph 3 of this Article shall not apply. The Parties shall mutually decide upon a new date of surrender or removal, which shall not be later than 60 days from the date of the decision.

Article 13

Re-extradition

Where the person extradited has absconded the criminal proceeding against him and returned to the territory of the Requested Party, the Requesting Party may submit a request for re-extradition of that person.

Article 14

Seizure and Surrender of Property

1. The Requested State may seize and surrender to the Requesting State, all articles, documents, and evidence connected with the offence in respect of which extradition is granted.
2. The Requested State, if so requested, may surrender the Articles to the Requesting State even if the extradition cannot be carried out owing to the death, disappearance or escape of the person sought.
3. Where the law of the Requested State to the protection of rights of third parties so requires, any property so surrendered shall be returned to Requested State as soon as practicable and free of charge.

Article 15

Rule of Specialty

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:
 - (a) the offence for which extradition has been granted or a differently denominated offence based on the same facts, on which extradition granted, provided such offence is extraditable or is a lesser included offence;
 - (b) an offence in respect of which he/she was extradited, or another offence in respect of which he/she could be convicted based on the proven facts used to support the request for his/her extradition; or

- (c) an offence for which the executive authority of the Requested State consents to the person's detention, trial, or punishment for an offence for the purpose of this subparagraph:
 - (i) The Requested State may require to submit documents called for in Article 7;
 - (ii) a copy of the statement, if any, made by the extradited person with the request of the offence shall be submitted to the Requested State; and
 - (iii) The person extradited may be detained by the Requesting State for such period of time as the Requested State may authorize, while the request is being processed.
- 2. A person extradited under this Treaty may not be extradited to a third State for an offence committed prior to his/her extradition unless the Requested State consents.
- 3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person or the extradition of that person to a third State, if;
 - (a) that person leaves the territory of the Requested State after extradition and voluntarily returns to it; or
 - (b) that person does not leave the territory of the Requested State within 60 days of the day on which that person is free to leave.

Article 16

Notification of the Results

The Requesting Party shall timely notify the Requested Party of the information relating to the proceeding against or the execution of punishment upon the person extradited or the re-extradition of that person to a third State.

Article 17

Transit

- 1. To the extent permitted by its law, transportation of a person surrendered to one Party by a third State through the territory of the other Party shall be authorized on request in writing made through the Central Authorities.
- 2. Authorization for transit shall not be required when air transport is to be used and no landing is scheduled in the territory of the Party of transit. If an unscheduled landing occurs in the territory of that Party, it may require the other Party to furnish a request for transit as provided in paragraph 1 of this Article. That Contracting State shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 4 (four) days (96 hours) of the unscheduled landing.

Article 18

Costs

1. The Requested Party shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.
2. The Requested Party shall bear the cost incurred in its territory in connection with the arrest and detention of the person whose extradition is sought, or the seizure and surrender of property.
3. The Requesting Party shall bear the cost incurred in conveying the person whose extradition is granted from the territory of the Requested Party and the cost of transit.

Article 19

Central Authorities

For the purpose of this Treaty, the Requesting States shall communicate through their Central Authorities. The Central Authorities for the Republic of India shall be the Ministry of External Affairs and for the Socialist Republic of Vietnam shall be Ministry of Public Security.

Article 20

Consultation

1. The Parties shall consult, at the request of either Party, concerning the interpretation and the application of this Treaty.
2. The Ministry of Public Security of the Socialist Republic of Vietnam and Ministry of External Affairs of the Republic of India may consult with each other directly in connection with the processing of individual cases and in furtherance of maintaining improving procedures for the implementation of this Treaty.

Article 21

Obligations under International Conventions/Treaties

The present Treaty shall not affect the rights and Obligations of the Requesting State arising from International Conventions/Treaties to which they are parties.

Article 22

Entry into Force and Termination

1. This treaty is subject to ratification. This Treat shall enter into force upon the exchange of the instruments of ratification.
2. Either Party may terminate this Treaty by notice in writing at any time. Termination shall take effect six (6) months after the date on which the notice is given.

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

DONE in duplicate at New Delhi on the 12th day of October, 2011 in the Hindi, Vietnamese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For and on behalf of

THE REPUBLIC OF INDIA

THE SOCIALIST REPUBLIC
OF VIETNAM

Extradition Treaty between the Government of the Republic of India and the Government of the State of Israel

The Government of the Republic of India and the Government of the State of Israel (hereinafter referred to as the “Contracting States”);

Desiring to make more effective the cooperation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders; and

Recognizing that concrete steps are necessary to combat crime, including terrorism;

Have agreed as follows:

Article 1

Duty to Extradite

1. Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one State, is found within the territory of the other State, whether such offence was committed before or after the entry into force of this Treaty.
2. Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it has jurisdiction if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested State shall have regard to all the circumstances of the case including the seriousness of the offence.
 - (a) if it is committed in a third State by a national of the Requesting State and the Requesting State bases its jurisdiction on the nationality of the offender; and
 - (b) if it occurred in the Requested State, it would be an offence under the law of that State punishable with imprisonment for a term of at least one year.

Article 2

Extradition Offences

1. An extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one year.
2. If extradition has been granted for an extradition offence, it may also be granted for any other offence specified in the request, even if the latter offence is punishable by less than one year’s deprivation of liberty, provided that all other requirements for extradition are met.

Article 3

Composite Offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that, the conduct of the person sought occurred wholly or in part, in the Requested State, if in corresponding circumstances, the Requested State would have jurisdiction over such an offence. In considering extradition, the Requested State may consider the conduct and its effects, or its intended effects, taken as a whole.

Article 4

Extradition of Nationals

1. Neither of the Contracting States shall be obligated to extradite its own nationals.
2. If extradition is refused solely on the basis of nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its authorities for consideration of prosecution.
3. Nationality shall be determined at the time of commission of the offence for which extradition is requested.

Article 5

Political Offence

1. Extradition may be refused if the offence of which it is requested is an offence of a political character.
2. For the purpose of this Treaty For the following offences shall not be regarded as offences of a political character:
 - (a) any offence for which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;
 - (b) murder;
 - (c) manslaughter or culpable homicide;
 - (d) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
 - (e) the causing of an explosion likely to endanger life or cause serious damage to property;
 - (f) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
 - (g) the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
 - (h) the use of a firearm by a person with intent, to resist or prevent the arrest or detention of himself or another person;

- (i) damaging property whether used for public utilities or Requested otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
- (j) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of hostage;
- (k) incitement to murder;
- (l) any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character;
- (m) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 6

Extradition and Prosecution

1. The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extradition offence in the courts of that state.
2. Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a similar nature under the law of that State.
3. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 7

Grounds for Refusal of Extradition

1. Extradition of a person may be refused:
 - (a) if the Requested State has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that person's position may be prejudiced for any of these reasons; or
 - (b) if the offence for which extradition is requested is an offence under military law which is not an offence under ordinary criminal law; or
 - (c) if the prosecution has become barred by lapse of time according to the laws of either of the Contracting States; or
 - (d) if the competent authority of the Requested State determines that, having regard to all the circumstances, it would be unjust or oppressive to extradite the person sought, by reason of the trivial nature of the offence of which he is accused or was convicted,

2. A person may not be extradited if he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction.

Article 8

Capital Punishment

If under the law of the Requesting State the person sought, is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested State does not provide for the death penalty in a similar case, extradition may be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death penalty will not be carried out.

Article 9

Postponement of Surrender

1. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the Requested State, the Requested State, subject to its laws, may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against the person, in accordance with conditions to be determined by agreement of the Contracting State.
2. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

Article 10

Extradition Procedures

1. All requests for extradition shall be submitted through the diplomatic channels,
2. All Requests for extradition shall be supported by:
 - (a) documents, statements, or other types of information which describe the identity and probable location of the person sought;
 - (b) information describing the facts of the offence and the procedural history of the case;
 - (c) a statement of the provisions of the law describing the essential elements of the offence for which extradition is requested;
 - (d) a statement of the provisions of the law describing the punishment for the offence; and
 - (e) the documents, statements, or other type of information specified in paragraph 3 or paragraph 4 of this Article, as applicable.

3. A request for extradition of a person who is sought for prosecution shall also be supported by:
 - (a) a copy of the warrant or order of arrest, issued by a judge or other competent authority;
 - (b) a copy of the charging document, if any; and
 - (c) such information and evidence as would justify the committal for trial of the person if the offence had been committed in the Requested State.
4. A request for extradition relating to a person who has been convicted of the offence for which extradition is sought shall also be supported by :
 - (a) a copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person has been convicted;
 - (b) information establishing that the person sought is the person to whom the conviction refers;
 - (c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out;

Article 11

Admissibility of Documents and Evidence

The evidence in writing, or the declarations given on oath or not, or certified copies of such evidence or declarations, or the warrant of arrest or any other legal documents establishing the fact of the conviction, which accompany an extradition request, shall be received and admitted as valid evidence in extradition proceedings if they have been signed by a judge or official of the Requesting State or if they are accompanied by a certificate issued by such a judge or official or if they have been authenticated by the seal of the Ministry of Justice in the case of Israel and by the seal of the Ministry of External Affairs in the case of India.

Article 12

Provisional Arrest

1. In urgent cases the person sought may, in accordance with the law of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of intention to request the extradition of that person and statement of the existence of a warrant of arrest or a conviction against him, and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the Requested State. The request for provisional arrest may be made by any means, including through the International Police Organization (INTERPOL), which allows for a written record.
2. A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article 13

Rule of Specialty

1. Any person who is extradited to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article, be detained, tried, or punished in the territory of the Requesting State except for :
 - (a) the offence in respect of which he was extradited;
 - (b) any lesser included offence substantially based on the same facts proved for the purposes of securing his extradition, provided that such an offence is itself extraditable ; or
 - (c) any other extraditable offence in respect of which the Requested State will provided its written consent.
2. The period referred to in paragraph (1) of this Article is the period beginning with the day of his arrival in the territory of the Requesting State or his extradition under this treaty and ending forty five days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting State.
3. The provisions of paragraph (1) of this Article shall not apply to offences committed after the extradition of a person under this Treaty or matters arising in relation to such offences.
4. A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty days of his final discharge, or has returned to that territory after having left it.

Article 14

Competing Requests

If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person, either for the same offence or for different offences, the competent authority of the Requested State shall determine to which State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to:

- (a) Whether the requests were made pursuant to a treaty;
- (b) the place where each offence was committed;
- (c) the respective interests of the Requesting States;
- (d) the gravity of the offences;
- (e) the nationality of the victim and of the person sought;
- (f) the possibility of further extradition between the Requesting States; and
- (g) the chronological order in which the requests were received from the Requesting States.

Article 15

Surrender

1. If extradition is granted, the person sought shall be sent by the authorities of the Requested State to such convenient point of departure as may be mutually agreed to between the Contracting States.
2. Upon the final grant of extradition, the Requested State shall immediately inform the Requesting State that the person sought may be removed from its territory. The Requesting State shall so remove the person sought from the territory or the Requested State within one month or such longer period as may be permitted under the law of the Requested State. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.

Article 16

Surrender of Property

1. When a request for extradition is granted, the Requested State shall, upon request and so far as its law allows, hand over to the Requesting State documents and articles including sums of money found in his possession at the time of arrest, which may serve as proof or evidence of the offence.
2. If the articles in question are liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they shall be returned.
3. These provisions shall not prejudice the rights of the Requested State or any person other than the person sought. When these rights exist the articles shall on request be returned to the Requested State without charge as soon as possible after the end of the proceedings.

Article 17

Expeditious Surrender

If the person sought consents to surrender to the Requesting State, the Requested State may, subject to its laws, surrender the person as expeditiously as possible without further extradition proceedings.

Article 18

Transit

1. Either Contracting State may, in accordance with its laws, authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall be made through the diplomatic channel. The facilities of Interpol may be used to transmit such a request. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.
2. No authorization is required where air transportation is used and no landing is scheduled on the territory of the Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, the other Contracting State may require the request for transit, as provided in

paragraph (1) of this Article. That Contracting State shall detain the person to be transported until the request for transit is received and the transit is effected, as long as the request is received within 96 hours of the unscheduled landing.

Article 19

Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 20

Language

A request under this Treaty and the supporting documents thereto shall be provided in English or with a translation in English.

Article 21

Expenses

1. Expenses incurred in the territory of the Requested State by reason of the request for extradition shall be borne by that State.
2. The Requested State shall make all the arrangements which shall be required with respect to the representation of the Requesting State in any proceeding arising out of the request.

Article 22

Obligation under International Conventions/Treaties

The present Treaty shall not affect the rights and obligations between the Contracting States arising from international Convention/Treaties to which they are Parties.

Article 23

Consultation

The competent authorities of the Republic of India and the State of Israel may consult with each other directly or through the facilities of Interpol in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

Article 24

Final Provisions

1. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
2. This Treaty shall be subject to ratification. Each Contracting State shall notify the other as soon as possible, in writing, through diplomatic channels, upon the completion of its legal procedure required for the entry into force of the Treaty. The Treaty shall come into force on the first day of the second month following the date of the last notification.
3. The Treaty shall remain in force for an indefinite period. It may, however, be terminated by either of the Contracting State by giving a written notice of termination to the other Contracting State. The termination shall take effect after six months of the date of such notice.
4. Notwithstanding the termination, the Treaty shall continue to apply to requests of extradition submitted before the date of the notice of termination.

In witness whereof, the Undersigned being duly authorized thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Jerusalem on this the 10th day of January which corresponds to the 15 day of Tevet, 5772 in the Hebrew Calendar, in the Hindi, English and Hebrew languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

On behalf of the Government of the
Republic of India

On behalf of the Government of the
the State of Israel

Extradition Treaty between the Republic of India and the Republic of Azerbaijan

The Republic of India and the Republic of Azerbaijan

Hereinafter referred to as: “the Contracting parties”

Desiring to strengthen the relations between two countries;

Desiring to further strengthen cooperation in fighting crime more effectively; and

Desirous to cooperate in matters related to the extradition of criminals between two countries,

Have agreed as follows:

Article 1

Obligation to Extradite

1. Each Contracting Party undertakes to extradite to the other Contracting Party, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2 of this Treaty, committed within the territory of the Requesting Party, is found within the territory of the Requested Party, whether such offence was committed before or after the entry into force of this Treaty.
2. Extradition shall also be available in respect of an extradition offence as described in Article 2 of this Treaty committed outside the territory of the Requesting Party but in respect of which it has jurisdiction, if the Requested Party could, in corresponding circumstances, have jurisdiction over such an offence.
3. Extradition shall also be available for an extradition offence as described in Article 2 of this Treaty, if it is committed in a third State by a citizen of the Requesting Party and it bases its jurisdiction on the citizenship of the offender.
4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfill the other conditions set out in this treaty, the requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

Article 2

Extradition Offences

1. An extradition offence for the purpose of this Treaty is constituted by conduct which under the laws of each Contracting party is punishable by a term of imprisonment for a period of at least one year. For the extradition of a convict, the period remained to be served must be at least six months.
2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

3. Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested Party, if this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence under the laws of both the Contracting parties.

Article 3

Refusal of Extradition

1. Extradition shall not be granted:
 - a) If the offence for which it is requested is an offence of a political nature;
 - b) The requested Party has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that persons position may be prejudiced for any of these reasons;
 - c) If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;
 - d) the person sought to be extradited has been granted asylum in the territory of the requested Party;
 - e) the person, whose extradition is requested, is a citizen of the requested Party;
 - f) the Requested party has passed a final judgement against the person sought to be extradited in respect of the offence for which extradition is requested;
 - g) the request for extradition is made by the requesting party pursuant to a judgment passed in absentia, unless the requesting party gives the guarantee to retry the person wanted on extradition;
 - h) according to the law of either the requesting party, the person sought to be extradited has become immune from the criminal prosecution or carrying out of a sentence by reason of lapse of time or other legal ground;
 - i) in the territory of the requested Party the person sought to be extradited has been pardoned or amnestied in respect of the offence for which extradition is requested.
2. In the application of this Treaty, the following shall not be regarded as political offences:
 - a) Assault against the head of the State or head of the Government of either Party or any member of their families;
 - b) Terrorist offences;
 - c) Any offence specified in an international conventions to which both Contracting Parties are a party, which obligates the parties to prosecute or extradite the fugitives of such offence.

- d) Murder;
- e) Manslaughter or culpable homicide;
- f) Assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
- g) The causing (sic) of an explosion likely to endanger life or cause serious damage to property;
- h) The making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
- i) The possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
- j) The use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
- k) Damaging property whether used for public utilities or otherwise intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered.
- l) Kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
- m) Incitement to murder;
- n) any other offence related to terrorism which at the time of the requested is, under the law of the Requested party, not to be regarded as an offence of a political character;
- o) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 4

Obligation to Prosecute

1. Where the Requested Party refuses a request for extradition on the basis of jurisdiction, it shall submit the case to its competent authorities for prosecution of the fugitive for the offences sought for.
2. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 5

Consequences of non-extradition of own citizens

1. If extradition is refused on the basis of citizenship, the requested party shall initiate criminal prosecution against such person for the same offence according to its laws. For this purpose, the requesting Party shall transfer to the requested Party the relevant documents and documents.

Article 6

Postponement of Extradition and Temporary Extradition

1. If the person to be extradited is being prosecuted or serving sentence for another crime in the territory of the Requested Party, the extradition may be postponed till the end of the proceedings of the case, end of sentence or release, which shall be advised to the Requesting party .
2. If the postponement of extradition can cause the expiration of the limitation or impede the investigation, the person can be extradited temporarily under a special request of the Requesting Party.
3. The temporarily extradited person must be returned to the Requested Party immediately after the end of the proceedings of the case.

Article 7

Extradition Procedures

1. The request for extradition shall be made through diplomatic channels.
2. The request shall be accompanied by:
 - 2.1. The name and surname (patronymic) of the person whose extradition is requested, information on his citizenship, place of residence or whereabouts and other pertaining data, as well as, if possible, the description of the person's appearance, his photographs and fingerprints.
 - 2.2. A statement of the facts of the offence for which extradition is requested and charging document as well as accusation act;
 - 2.3. The text, of the corresponding law;
 - 2.3.1. Defining that offence; and
 - 2.3.2. Prescribing the punishment for that offence.
3. The request for extradition of an accused for trial, besides the information specified above, must be accompanied by the warrant of arrest issued by a competent court or authority of the Requesting party.
4. If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certified copy of the judgment and a statement that the person is no longer entitled to question the conviction or sentence and showing how much of sentence has not been carried out;
5. If the Requested Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within a reasonable time.
6. A request for extradition and its supporting documents shall be signed by the authorised person and officially sealed by the competent authority of the Requesting Party.

Article 8

Provisional Arrest

1. In case of urgency, a person sought to be extradited may be provisionally arrested on the application of the competent authority of the requesting Party before the receiving of the request for extradition together with the documents specified in Article 7 of this Treaty. Such application can be sent by fax or through the National Central Bureau of International Criminal Police Organization (INTERPOL), or through other channels agreed by the competent authorities of the Parties.
2. The said application shall contain the data specified in paragraph 2 of Article 7 of this Treaty; a statement of existence of a warrant of arrest issued by the competent authority of the requesting Party or a sentence that has come into force, and an indication that a formal request for extradition of the person sought to be extradited shall be submitted.
3. The requested Party shall inform without delay the requesting Party of the result of its handling of the request.
4. A person provisionally arrested, shall be released if, within a period of 60 days after arrest, the competent authority of the requested Party has not received the request for his extradition.
5. The expiration of a time period stipulated in paragraph 4 of this Article shall not prevent the consideration of extradition of the person if the request for his extradition has been subsequently received.

Article 9

Rule of Specialty

1. The extradited person may not without consent of the Requested party, be prosecuted or punished in the Requesting Party for the offence other than that for which extradition has been granted and any lesser offence disclosed by the facts proved for the purposes of securing his extradition, nor may such a person, without consent of the Requesting Party, be extradited to a third state.
2. The consent of the Requested party is not required if:
 - 2.1. the extradited person has not left, though had the opportunity, the territory of the Requesting Party within 30 days after termination of the criminal proceedings, serving or the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the Requesting party for reasons beyond his control;
 - 2.2. if the extradited person, once having left the territory of the Requesting Party, voluntarily returns there.
3. The provisions of paragraph 1 of this Article shall not to the Requesting party apply to offences committed after the return of person to the Requesting Party or matters arising in relation to such offences.

Article 10

Recognition of documents and evidence

1. Documents issued or certified and statements recorded by competent Courts or other authorities in the prescribed form in the territory of one Contracting Party as per its laws shall not require any form of authentication in the territory of the other Contracting party.
2. Documents considered as public in the territory of one of the Contracting Parties shall have the evidential force of public documents also in the territory of the other Contracting party.

Article 11

Concurrent requests

If more than one State make requests for extradition of the same person for the same or different offences, the requested Party shall decide to which of those States the person is to be extradited taking into consideration all the circumstances, especially the relative gravity of the offence or offences, the place of commission of the offence, the respective dates of requests, the nationality of the person sought to be extradited and the possibility of subsequent extradition to another State.

Article 12

Capital Punishment

If under the law of the Requesting Party, the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested Party does not provide for the death penalty for the same offence, extradition may be refused, unless the Requesting party gives such assurances as the Requested Party considers sufficient that the death penalty will not be carried out.

Article 13

Surrender

1. The modalities of transfer of the person to be extradited shall be agreed upon by the competent authorities both the Contracting Parties as mutually convenient.
2. The Requesting Party shall take the person sought from the territory of the Requested Party within one month the consent of Requested Party to extradite or such longer period as may be permitted under the law of the Requested Party. If the person is not removed within that period, the Requested Party may refuse to extradite him for the same offence.
3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of the present Article shall apply.

Article 14

Transfer of articles connected with crime

1. The Requested Party shall, within the limits of its legislation, surrender by the request of the Requesting Party the articles used for committing crime by the person being extradited, articles bearing crime traces or crime proceeds.
2. The above articles shall be surrendered also in cases where the extradition cannot be effected if the person died, fled or due to other reasons.
3. The Requested party may temporarily postpone the surrender of the articles referred to in paragraph 1 of this Article if they are required for proceedings instituted in connection with another criminal case till the end of such proceedings.
4. The rights of third persons to the articles surrendered to the Requesting Party shall remain in force. Upon termination of the proceedings, the Requesting Party shall return these articles to their owners in its territory. If the owners are in the territory of the Requested Party, the articles are to be returned to it for the surrender to them. If the owners are in the territory of a third country, the articles shall be returned to them by the Requesting party without charge.

Article 15

Mutual Legal Assistance in Extradition

Each contracting party shall, to the extent permitted by its law, afford the other the widest possible measure of mutual legal assistance in criminal matters in connection with the offence for which extradition has been requested.

Article 16

Transit

1. When either of the Parties is to extradite a person from a third state through the territory of the other Party, the former should request the latter for the permission of such transit.
2. The requested party shall, in so far as not contrary to its laws, and without prejudice to any provisions of this Treaty, approve the request for transit made by the requesting party.
3. No permission is required where air transport is used and no landing is scheduled for.
4. In the event of an unscheduled landing, the party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for 96 hours, pending receipt of the transit request to be made in accordance with paragraphs 1 and 2 of the present article.

Article 17

Expenses on Extradition

All expenses related to the extradition shall be borne by the Contracting Party in whose territory the same occurred. The expenses caused by transit transportation of the extradited person by one of the Contracting Parties from a third State through the territory of the other Contracting party shall be borne by the Contracting party affecting the transit.

Article 18

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting party or in the English language.

Article 19

Central Authorities

Central Authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty. The Central Authority for the Republic of India shall be the Ministry of External Affairs; and the Central Authority for the Republic of Azerbaijan shall be the Ministry of Justice.

Article 20

International Conventions/ Treaties

The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from other International Conventions/Treaties to which the Contracting parties are a party.

Article 21

Amendment

1. This Treaty may be amended by mutual agreement of the Parties,
2. The amendment shall come in force by the procedure provided for the entry into force of this Treaty.

Article 22

Consultation

Any matter arising from implementation or interpretation of this Treaty shall be settled by consultations through diplomatic channels.

Article 23

Ratification and Termination

1. This Treaty shall be subject to ratification and it shall enter into force on the date of exchange of the instruments of ratification.
2. Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorised thereto by their respective Authorities, have signed this Treaty.

Done in duplicate at New Delhi on this fourth day of April 2013 in Hindi, Azerbaijani and English languages, each version being equally authentic. In case of any interpretational difference, the English text shall prevail.

For the Republic of India

For the Republic of Azerbaijan

Treaty between the Republic of India and the Kingdom of Thailand on Extradition

The Republic of India and the Kingdom of Thailand (hereinafter referred to as “the Contracting States”);
Desirous of promoting effective cooperation between the two countries in the suppression of crime by
concluding a treaty on extradition;

Have agreed as follows:

ARTICLE 1

Obligation to Extradite

The Contracting States undertake to extradite to each other, in accordance with the provisions of this Treaty, persons found in the territory of one of the Contracting States who are wanted for prosecution, trial or for the imposition or execution of punishment in the territory of the other State for an extraditable offence.

ARTICLE 2

Extraditable offences

1. For the purposes of this Treaty, extraditable offences are offences that are punishable under the laws of both Contracting States by imprisonment or any other form of deprivation of liberty for a period of at least one year, or by a more severe penalty.
2. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or any other form of deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least six months of such sentence remains to be served.
3. In determining whether an offence is an offence punishable under the laws of both Contracting States, it shall not matter whether:
 - (a) the laws of both Contracting States place the acts or omission constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - (b) under the laws of both Contracting States, the constituent elements of the offence differ, the totality of the acts or omission alleged against the person sought shall be taken into account.
4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matter, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting State.

5. An offence which is punishable by imprisonment, or any other forms of deprivation of liberty for a period of less than one year may be subject to extradition if it relates to the extraditable offence for which the extradition has been granted, irrespective of whether the request was made at the same time as the initial request or afterwards.
6. Extradition shall also be granted in respect of an attempt to commit, or aiding, abetting, inciting or participating as an accomplice in the commission of an extraditable offence.
7. If the offence has been committed outside the territory of the Requesting State, extradition shall be granted if the laws of the Requested State provide for the punishment of an offence committed outside its territory in similar circumstances, and if the requirements of extradition under this Treaty, and its domestic laws are otherwise met. If the laws of the Requested State do not so provide, the Requested State may, at its discretion, grant extradition.

ARTICLE 3

Central Authorities

The Central Authority for the Republic of India shall be the Ministry of External Affairs and the Central Authority for the Kingdom of Thailand shall be the Attorney General. Each Contracting State shall inform the other Contracting State of any change of the Central Authority through diplomatic channels.

ARTICLE 4

Grounds for Mandatory Refusal

Extradition shall not be granted under this Treaty in any of the following circumstances:

1. The (sic) Requested State considers the offence for which the request for extradition is made by the Requesting State as a political offence. Reference to a political offence shall not include the following:
 - (a) taking or attempt to take the life or an attack, or an attempt to attack on the person or deprivation of liberty of the Head of State or the Head of Government of the Requesting State or a member of his or her family;
 - (b) any acts or omissions which are punishable as a criminal offence according to the obligations under multilateral treaties to which both Contracting States are party;
1. The Requested State has substantial grounds for believing that a request for extradition for a criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion or that the position of the person sought may be prejudiced for those reasons;
2. The offence for which the request for extradition is made is exclusively an offence under the military law of the Requesting State and does not constitute an offence under the criminal law of the Requesting State;

3. The prosecution or the enforcement of a sentence in respect of the offence for which extradition is requested has become barred by lapse of time according to the laws of the Requesting State; or
4. There has been a final judgment rendered against the person in the Requested State in respect of the offence for which the person's extradition is requested.

ARTICLE 5

Grounds for Discretionary Refusal

Extradition may be refused if:

1. the Requested State has jurisdiction over the offence for which extradition is requested. If the Requested State so refuses, it shall submit the case to its competent authorities in order that proceedings for prosecution of the person may be considered. For this purpose, the Requesting State shall submit documents and evidence relating to the offence for which extradition is requested to the Requested State. If the competent authorities of the Requested State decide not to prosecute in such a case or the prosecution is not feasible because of whatever reason, the request for extradition shall be reconsidered;
2. the Requested State is in the process of proceeding against the person sought in respect of the same offence;
3. in exceptional cases, the Requested State while taking into account the seriousness of the offence and the interests of the Requesting State deems that, because of the age or health of the person sought, the extradition would be incompatible with humanitarian considerations.

ARTICLE 6

Extradition of Nationals

1. Each Contracting State shall have the right to refuse extradition of its own nationals.
2. If extradition is not granted pursuant to paragraph 1 of this Article, the Requested State shall, at the request of the Requesting State, submit the case to its competent authority for prosecution. For this purpose, the Requesting State shall submit documents and evidence relating to the case to the Requested State.

ARTICLE 7

Request for Extradition and Required Documents

1. A request for extradition shall be made in writing and transmitted to the Central Authority of the Requested State through diplomatic channels. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 10.

2. The request for extradition shall be accompanied by:
 - (a) a description of the person sought, together with any other information which would help to establish the person's identity, nationality and probable location;
 - (b) a statement of facts, including time and location of the commission of the offence for which extradition is requested;
 - (c) the text of laws establishing each offence and describing the penalty which may be imposed; and
 - (d) a statement as to whether there is any limitation under the laws of the Requesting State in respect of proceedings or punishment.
3. If the request relates to an accused person sought for prosecution, it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for prosecution if the offence had been committed in the territory of the Requested State, including evidence that the person sought is the person to whom the warrant of arrest refers.
4. If the person has been convicted of an offence but no sentence has been imposed, it shall also be accompanied by documents providing evidence of the conviction including a copy of the judgment or certificate of conviction and a copy of the warrant of arrest.
5. If the person has been convicted of an offence and has been sentenced, it shall also be accompanied by documents providing evidence of the conviction including a copy of the judgment or certificate of conviction and a copy of the warrant of arrest and the sentence imposed including a statement indicating the sentence is enforceable and how much of the sentence remains to be served.

ARTICLE 8

Additional Information

1. If the Requested State considers that the information provided in support of a request for surrender is not sufficient, it may request that additional information be furnished within such time as it specifies.
2. If the person sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person sought may be released. Such release shall not preclude the Requesting State from making a fresh request for the extradition of the person.

ARTICLE 9

Language of Documentation

All documents submitted in accordance with this Treaty shall be in, or translated into, an official language of the Requested State.

ARTICLE 10

Authentication

1. Documents supporting a request for extradition shall be admitted in evidence, if authenticated, in any proceedings in the territory of the Requested State.
2. Documents are duly authenticated for the purposes of this Treaty if they purport to be:
 - (a) signed or certified by a judge, magistrate or other competent authority of the Requesting State, and
 - (b) sealed with the official seal of a competent authority of the Requesting State.

ARTICLE 11

Provisional Arrest

1. In case of urgency, one Contracting State may request the other Contracting State to provisionally arrest the person sought. Such a request shall be made in writing and transmitted to the Central Authority of the Requested State through diplomatic channels.
2. The application for provisional arrest shall contain:
 - (a) an indication of intention to request the extradition of the person;
 - (b) a statement about the reason for urgency;
 - (c) information concerning identity, nationality and probable location and a description of the person;
 - (d) a brief description of the offence and the punishment prescribed there under;
 - (e) A brief statement of the facts of the case, including, if possible, the time and the location of the offence; and
 - (f) a statement of the existence of a warrant of arrest or a judgment of conviction against the person.
3. The Requesting State shall be notified without delay of the result of its request.
4. A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of that person's arrest if a request for extradition and supporting documents specified in Article 7, have not been received. This provision shall not prevent the institution of proceedings to extradite the person sought if the request for extradition is subsequently received.
5. The release of a person pursuant to paragraph 4 shall not prejudice the extradition of the person sought if the extradition request and supporting documents are subsequently received.

ARTICLE 12

Surrender

1. The Requested State shall notify the Requesting State without delay of its decision on the request for extradition, as soon as a decision has been made.
2. Where extradition is granted, the Requested State shall surrender the person from a convenient point of departure in the Requested State as agreed by the Contracting States.
3. The Requesting State shall remove the person sought from the territory of the Requested State within the period specified by the Requested State.
4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited, it shall notify the other Contracting State. The Contracting States shall agree upon a new date of surrender, in accordance with the law of the Requested State.
5. If the person sought is not removed within the agreed period specified in paragraph 3 or paragraph 4, the person sought shall be released.
6. If the Requesting State fails to remove the person sought within the period specified in paragraph 3 or paragraph 4, the subsequent request for extradition of the person sought for the same offence may be refused in accordance with the law of the Requested State.

ARTICLE 13

Postponed and Temporary Surrender

1. When the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may, to the extent permitted by its law, surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested State shall inform the Requesting State of any postponement.
2. To the extent permitted by its law, where a person serving a sentence in the Requested State has been found extraditable, the Requested State may temporarily surrender the person sought for the purpose of prosecution to the Requesting State in accordance with conditions to be determined between the Contracting States. A person who is returned to the Requested State following a temporary surrender may be finally surrendered to the Requesting State to serve any sentence imposed, in accordance with the provisions of this Treaty.

ARTICLE 14

Concurrent Requests

1. Where requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting State of its decision.

2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:
 - (a) the existence of a bilateral extradition treaty;
 - (b) if the requests relate to different offences, the relative seriousness of the offences;
 - (c) the time and place of commission of each offence;
 - (d) the respective dates of the requests;
 - (e) the nationality of the person;
 - (f) the ordinary place of residence of the person; and
 - (g) the possibility of any of the Requesting States extraditing the person to another State.

ARTICLE 15

Rule of Speciality

1. A person extradited under this Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State or subjected to any other restriction of personal liberty in the territory of the Requesting State for any offence committed before surrender other than:
 - (a) an offence for which extradition was granted;
 - (b) any other extraditable offence in respect of which the Requested State consents. A request for consent shall be accompanied by such of the documents mentioned in Article 7 as are sought by the Requested State.
2. Paragraph 1 of this Article does not apply if:
 - (a) the person has had an opportunity to leave the territory of the Requesting State and has not done so within forty-five days of final discharge in respect of the offence for which the person was extradited; or
 - (b) the person has voluntarily returned to the territory of the Requesting State after leaving it.

ARTICLE 16

Surrender of Property

1. The Requested State shall, insofar as its law permits and at the request of the Requesting State, seize and, upon the granting of the extradition, surrender property:
 - (a) Which may be required as evidence; or
 - (b) Which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person sought or which is subsequently detected.

2. The property mentioned in paragraph 1 of this Article shall be surrendered even if extradition, having been granted, cannot be carried out due to the death, disappearance, or escape of the person sought.
3. When the said property is liable to seizure or confiscation in the territory of the Requested State, the Requested State may, in connection with pending criminal proceedings, temporarily retain it or surrender it on condition that it be returned.
4. Any right which the Requested State or any State or individual may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State at its request as soon as possible after the end of the proceedings.

ARTICLE 17

Simplified Procedure for Extradition

1. The Requested State may grant extradition, in accordance with its law, if the person sought explicitly consents before a competent authority.
2. The provisions of Articles 12 and 16 shall apply to a person surrendered pursuant to this Article.

ARTICLE 18

Transit

1. When a person is to be extradited to a Contracting State from a third State through the territory of the other Contracting State, the former Contracting State shall request the latter to permit the transit.
2. Each Contracting State shall grant the request for transit made by the other Contracting State, provided that it is not against its law.

ARTICLE 19

Assistance and Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interests of the Requesting State.
2. Expenses incurred in the territory of the Requested State relating to the extradition proceedings up to the moment of surrender of the person sought, including the arrest and detention of the person sought, shall be borne by the Requested State.
3. The Requesting State shall bear the expenses incurred in conveying the person sought from the territory of the Requested State.
4. If it becomes apparent that exceptional expenses may be incurred as a result of a request for extradition, the Contracting States shall consult with a view to deciding how these expenses will be met.

ARTICLE 20

Rights and Obligations under Multilateral Treaties

This Treaty shall not affect any rights and obligations of the Contracting States arising under Multilateral Treaties to which both Contracting States are party.

ARTICLE 21

Settlement of Disputes

Any dispute arising from the implementation or interpretation of this Treaty shall be settled by mutual consultation or negotiation between the Contracting States.

ARTICLE 22

Final Provisions

1. The provisions of this Treaty shall apply to requests for extradition including requests for provisional arrest made after its entry into force regardless of the date of the commission of the offence or offences set out in the request.
2. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification.
3. Either of the Contracting States may terminate this Treaty at any time by giving notice in writing to the other Contracting State through diplomatic channels. In that event the Treaty shall cease to have effect on the one hundred and eightieth day from the date on which the other Contracting State receives such notice.

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

DONE in duplicate at Bangkok this Thirtieth day of May Two thousand and Thirteen in the Hindi, Thai, and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

FOR THE REPUBLIC OF
INDIA

(Salman Khurshid)
Minister of External Affairs

FOR THE KINGDOM OF
THAILAND

(Surapong Tovichakchaikul)
Deputy Prime Minister and
Minister of Foreign Affairs

MUTUAL LEGAL ASSISTANCE TREATIES

Agreement on Mutual Assistance in Criminal Matters between the Government of the Republic of Turkey and the Government of the Republic of India

The Government of the Republic of Turkey and the Government of the Republic of India.

Desiring to regulate and to make provisions for mutual assistance in criminal matters between the two countries.

Have resolved to conclude the following agreement to this effect.

CHAPTER 1 GENERAL PROVISIONS

Article 1

Provision for Mutual Assistance

The Contracting Parties undertake to afford to each other, in accordance with the provisions of this Agreement, mutual assistance in criminal matters.

Article 2

Scope of Assistance

1. Cooperation in regard to criminal matters for which mutual assistance shall be afforded for the locating of witnesses, obtaining information about persons who are under investigation and investigation of crimes not involving any measure to compel any person to answer any question, between the competent authorities of the two Parties.
2. Mutual assistance shall include:
 - a) Execution of Letters Rogatory for the purposes of procuring evidence and, in particular, the taking of testimonies of statements of witnesses or experts;
 - b) Issuance of court's summons or warrants for production of documents using compulsory measures, and
 - c) Service of summons or warrants referred to in sub-paragraph (b) above.

Article 3

Refusal of Mutual Assistance

1. Requests for mutual assistance in criminal matters may be refused by the Requested Party in any of the following cases:
 - a) if the investigation is related to:
 - i) an offence which the Requested Party considers to be a political offence or an offence connected with a political offence; or
 - ii) a purely military offence which does not constitute an offence under ordinary criminal law.
 - b) If the Requested Party considers that execution of the request is likely to prejudice its sovereignty, security, public order or its other essential interests.
2. For the purpose of this Agreement the following offences shall not be considered political offences or offences connected with a political offence: offences for which investigation and proceedings are obligatory for the Contracting Parties under multilateral and international agreements.

Article 4

Action on the Requests

1. If the Requested Party determines that the request for assistance is not consistent with the provisions of this Agreement or that it cannot be executed under its laws that Party shall immediately inform the Requesting Party and specify the reasons therefore.
2. Upon execution of a request for assistance, the Requested Party shall return the original request to the Requesting Party together with all the documents, information or evidence obtained.
3. If the authority to whom the requests for assistance has been addressed is not competent to execute it, it shall, of its own accord, forward the request to the competent authority of its country.

Article 5

Channel and Language of Communication

1. Requests for mutual assistance shall be submitted in writing through the diplomatic channel.
2. The request for mutual assistance and the documents shall be drawn up or a certified copy thereof shall be provided in the English language.

CHAPTER II

LETTERS ROGATORY

Article 6

Letters Rogatory

1. Each Contracting Party may address to the competent authorities of the other Party, Letters Rogatory for the purpose of procuring evidence such as taking of testimony or statements of witnesses or experts and the transmission of documents and records of evidence taken.
2. If the Requesting Party desires witnesses or experts to give evidence on oath, it shall expressly specify so in its request. The Requested Party shall comply with such a request if it deems it acceptable under its own law.

Article 7

Contents of Letters Rogatory

1. In Letters Rogatory, the request for mutual assistance shall indicate in so far as possible:
 - a) The name of the authority making the request.
 - b) The aim of and the principal need for the evidence or information required.
 - c) The subject-matter and nature of the investigation or prosecution.
 - d) The particulars of the offence and the accusation and a summary of the facts.
 - e) The identity, address and nationality of the person who is subject of the investigation or prosecution.
 - f) The identity, address and nationality of the person whose testimony or statement is requested; and
 - g) A description of the documents and records of evidence required.
2. To the extent necessary, a description of the particular procedure to be followed by the authorities of the Requested Party and a description of the testimony or statements required by the Requesting Party shall also be specified in the Letters Rogatory.

Article 8

Execution of Letters Rogatory

1. The Requested Party shall execute the Letters Rogatory related to criminal matters and addressed to it by the Requesting Party, in accordance with the usual procedure and manner provided for by its own laws.
2. The Requested Party may apply, upon request, a particular procedure required by the Requesting Party in the execution of the Letters Rogatory, to the extent that such procedure is not incompatible with the laws of the Requested Party.

3. The Requested Party shall transmit the certified copies of documents and records of evidence requested, unless the Requesting Party expressly requires the transmission of their originals.
4. Appropriate officials of the Requesting Party and the other interested persons or their representatives may be present, as observers, at the execution of the Letters Rogatory, if the Requested Party consents thereto.
5. To that end and on the express request of the Requesting Party, the Requested Party shall duly inform the former of the date and place of execution of the Letters Rogatory.

Article 9

Delivery and Return of Documents and Records of Evidence

1. Any original documents and records of evidence delivered in execution of Letters Rogatory shall be returned by the Requesting Party as soon as possible unless the Requested Party waives their return.
2. The Requested Party may postpone the delivery of original documents and records of evidence requested, if they are needed in connection with pending proceedings by the Requested Party.

CHAPTER III
SUMMONS OR WARRANTS FOR PRODUCTION OF
DOCUMENTS AND THINGS

Article 10

**Summons or Warrants for Production of Documents and
Things Using compulsive measures**

1. The requesting Party may send to the other Party the summons or warrants issued by its criminal Court addressed to a specific Court of the Requested Party having jurisdiction in the matter, with the request to the Court of the other, Party to secure production of documents and things mentioned in such summons or warrants using, if necessary, appropriate compulsive measures as are permissible under the laws of the Requested Party.
2. Each Contracting Party shall retain the right to serve judicial documents on its own nationals in the territory of the Requested Party through its diplomatic or consular officials.

Article 11

**Contents of the Requests for execution of summons or warrants for production of
documents and things**

The requests for execution of summons or warrants for production of documents and things shall indicate;

- a) the name of the authority making the request; and
- b) the name, address and if known, nationality of the person or entity against whom summons or warrants are to be executed.

Article 12

**Execution of Summons or Warrants for Production
of Documents and Things**

1. The Court of the Requested Party shall execute summons or warrants for production of documents and things transmitted to it for this purpose by the court of the Requesting Party in the manner provided for by its own laws and procedures for the execution of similar summons or warrants.
2. The Requested Party shall promptly transmit to the Requesting Party the documents and things received by its Court.
3. If the execution of summons or warrants cannot be effected, the reasons therefore shall be communicated to the Requesting Party.

CHAPTER IV
MISCELLANEOUS PROVISIONS

Article 13

Judicial Records

The Requested Party shall communicate extracts from and information related to judicial records which are open to public, if requested by the competent authorities of the Requesting Party and needed in a criminal matter.

Article 14

Exchange of Information

Each Contracting Party shall inform the other party of all original convictions pronounced by its judicial authorities in respect of the nationals of the latter party and entered in the judicial records.

Such information shall be communicated as soon as possible through the diplomatic channel.

**CHAPTER V
FINAL PROVISIONS**

Article 15

Scope of Effect

The provisions of this Agreement shall apply to all the requests for mutual assistance related to the acts or offences which are committed after the date of entry into force of this Agreement.

Article 16

Entry into force

This Agreement shall be subject to ratification. It shall enter into force thirty days after the exchange of the instruments of ratification and shall remain in force for an indefinite period.

Article 17

Termination

Either Contracting Party may terminate by giving a six months prior written notice to the other Party.

IN WITNESS WHEREOF, the respective Plenipotentiaries of the Contracting Parties have signed this Agreement and have affixed hereto their seals.

Done at Ankara this eighteenth day of July 1988 in duplicate and in the English language.

FOR THE GOVERNMENT OF
THE REPUBLIC OF TURKEY

Sd/-

A. MESUT YILMAZ
MINISTER OF FOREIGN AFFAIRS

FOR THE GOVERNMENT OF THE
REPUBLIC OF INDIA

Sd/-

K. NATWAR SINGH
MINISTER OF STATE
FOR EXTERNAL AFFAIRS

**Agreement on Mutual Legal Assistance in Criminal Matters between
the Government of the Switzerland and the Government of
the Republic of India**

EffingersLrasse 45

3008 Berne

AMBASSADOR OF INDIA

Your Excellency

20 February 1989

I have the honour to refer to the exchange of views between the delegations of India and Switzerland on the question of providing mutual assistance in criminal matters, and on the basis of the understanding reached between the two delegations, the Government of India proposes to the Government of Switzerland that the authorities of both countries competent to investigate offences shall provide to each other, on the basis of reciprocity and in accordance with their national law, the widest measure of assistance in criminal matters as follows:

1. Cooperation between law enforcement authorities may include assistance in locating witnesses, obtaining statements and testimony of witnesses, production and authentication of judicial or business records, service of judicial or administrative documents and the restitution of objects or valuables originating from the offences for the purpose of returning them to the entitled persons. Further, within the limits of the law of the requested State, information will also be provided on the assets owned or possessed by persons who are the subjects of the investigation in the requesting country.
2. Taking of evidence and production of documents by the use of compulsory measures for the purposes of criminal proceedings in India or Switzerland as far as the facts described in the request would also be an offence punishable under the laws of both countries. For this purpose, India and Switzerland regard the expression "criminal proceedings" as including trial of a person for an offence or a proceeding to determine whether to place a person who is accused of an offence on trial for that offence. Under Indian law the competent authority to ask for assistance abroad is the court, tribunal, judge or magistrate exercising jurisdiction. Under Swiss law the competent authority to ask for assistance abroad is any examining magistrate, notwithstanding the denomination of "Bezirksanwalt, Untersuchungsrichter, juge d'instruction, Verhorrichter" a. s. o. and all judicial authorities.
3. Taking statements of persons without the use of compulsory measures.
4. Provision of publicly available documents and records being documents and records that are available to the public as being part of a public register or that are otherwise available to the public for purchase.

5. Service of documents which does not involve exercise of any measure to compel any person to comply with any requirement set out in those documents.
6. Investigation of crime by police or other law enforcement agencies not involving the exercise of any measure to compel any person to answer questions or to provide information.
7. There may be other ways in which assistance could be rendered in criminal matters and India and Switzerland would be prepared to consider whether other forms of assistance could be provided in particular cases upon request.

It is understood that assistance shall be granted, in accordance with the law of the requested State, in the investigation or prosecution of criminal offences, including murder, inflicting serious bodily harm, theft, fraud, embezzlement, abuse of official powers or institution to obtain unlawful profits, extortion, blackmail, forgery, counterfeiting of currency, fabrication of false evidence, bribery, knowingly and willingly making fraudulent statements or representations in matters which are within the jurisdiction of any department, agency, or authority of the requesting state, as well as dealing in narcotic drugs and psychotropic substances.

Requests of mutual assistance and their enclosures shall be transmitted through diplomatic channels and accompanied by a translation either into French, German or Italian if the requests are addressed to Switzerland, and either into Hindi or English if the requests are addressed to India.

Information obtained through the means of judicial assistance shall not be used for investigative purposes nor be introduced into evidence in the requesting State in any proceeding relating to offences for which assistance is not admissible. Any further use shall be subject to approval by the appropriate authority of the requested State.

I have further the honour to request you to confirm on behalf of the Government of Switzerland that the above correctly sets out the understanding reached between the delegations of the two Governments and to confirm that the present letter and your reply shall constitute an Agreement between the two Governments.

This Agreement will come into force upon receipt of this reply.

Please accept, Excellency, the assurances, of my highest consideration.

Sd/-

(A.S.Chib)
Ambassador of India

H.E. Mr. Rene Felber,
Federal Councillor For Foreign Affairs,
Government of the Confederation of Switzerland
Berne

LE CHEF

3003 Berne, 20 February 1989

DEPARTMENT FEDERAL

AAFAIRES ETRANGERES

Excellency,

I have the honour to acknowledge receipt of your letter 20 February 1989, which read as follows:

“Your Excellency,

I have the honour to refer to the exchange of views between the delegations of India and Switzerland on the question of providing mutual assistance in criminal matters, and on the basis of the understanding reached between the two delegations, the Government of India proposes to the Government of Switzerland that the authorities of both countries competent to investigate offences shall provide to each other, on the basis of reciprocity and in accordance with their national law, the widest measure of assistance in criminal matters as follows:

1. Cooperation between law enforcement authorities may include assistance in locating witnesses, obtaining statements and testimony of witnesses, production and authentication of judicial or business records, service of judicial or administrative documents and the restitution of objects or valuables originating from the offences for the purpose of returning them to the entitled persons. Further, within the limits of the law of the requested State, information will also be provided on the assets owned or possessed by persons who are the subjects of the investigation in the requesting country.
2. Taking of evidence and production of documents by the use of compulsory measures for the purposes of criminal proceedings in India or Switzerland as far as the facts described in the request would also be an offence punishable under the laws of both countries. For this purpose, India and Switzerland regard the expression “criminal proceedings” as including trial of a person for an offence or a proceeding to determine whether to place a person who is accused of an offence on trial for that offence. Under Indian law the competent authority to ask for assistance abroad is the court, tribunal, judge or magistrate exercising jurisdiction. Under Swiss law the competent authority to ask for assistance abroad is any examining magistrate, notwithstanding the denomination of “Bezirksanwalt, Untersuchungsrichter, juge d’instruction, Verhorrichter” a. s. o. and all judicial authorities.
3. Taking statements of persons without the use of compulsory measures.
4. Provision of publicly available documents and records being documents and records that are available to the public as being part of a public register or that are otherwise available to the public for purchase.
5. Service of documents which does not involve exercise of any measure to compel any person to comply with any requirement set out in those documents.

6. Investigation of crime by police or other law enforcement agencies not involving the exercise of any measure to compel any person to answer questions or to provide information.
7. There may be other ways in which assistance could be rendered in criminal matters and India and Switzerland would be prepared to consider whether other forms of assistance could be provided in particular cases upon request.

It is understood that assistance shall be granted, in accordance with the law of the requested State, in the investigation or prosecution of criminal offences, including murder, inflicting serious bodily harm, theft, fraud, embezzlement, abuse of official powers or institution to obtain unlawful profits, extortion, blackmail, forgery, counterfeiting of currency, fabrication of false evidence, bribery, knowingly and willingly making fraudulent statements or representations in matters which are within the jurisdiction of any department, agency, or authority of the requesting state, as well as dealing in narcotic drugs and psychotropic substances.

Requests of mutual assistance and their enclosures shall be transmitted through diplomatic channels and accompanied by a translation either into French, German or Italian if the requests are addressed to Switzerland, and either into Hindi or English if the requests are addressed to India.

Information obtained through the means of judicial assistance shall not be used for investigative purposes nor be introduced into evidence in the requesting State in any proceeding relating to offences for which assistance is not admissible. Any further use shall be subject to approval by the appropriate authority of the requested State.

I have further the honour to request you to confirm on behalf of the Government of Switzerland that the above correctly sets out the understanding reached between the delegations of the two Governments and to confirm that the present letter and your reply shall constitute an Agreement between the two Governments. This Agreement will come into force upon receipt of this reply.

Please accept, Excellency, the assurances of my highest consideration.”

I have the honour to confirm that the understanding set forth in your letters accords with that of the Swiss Federal Council and that your letter and the present reply shall constitute an Agreement between the two Governments. This Agreement comes into force with immediate effect.

Please accept, Excellency, the assurances of my highest consideration.

Sd/-

Rene Felber

His Excellency
Mr Ashoke Sen Chib
Ambassador of the Republic
of India in Switzerland
Berne

Treaty between the Government of the Republic of India and the Government of Canada on Mutual Assistance in Criminal Matters

The Government of the Republic of India and the Government of Canada,

Desiring to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime, including crime related to terrorism and the tracing, restraint, forfeiture or confiscation of the proceeds 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 investigations, inquiries, trials other 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.

ARTICLE 2 **DEFINITIONS**

1. (a) For the purposes of this Treaty, criminal matters mean, for India, investigations, inquiries, trials or other proceedings relating to an offence created by a law of Parliament or by the legislature of a State and, for Canada, investigations or proceedings relating to any offence created by a law of Parliament or by the legislature of a province. This shall include any offence relating to aiding and abetting, conspiracy or the funding of criminal activity.
(b) Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments.
(c) Assistance shall include:
 - (i) Measures to locate, restrain, forfeit or confiscate the proceeds of crime;
 - (ii) Taking of evidence and obtaining of statements of persons;
 - (iii) Provision of information, documents and other records, including criminal and judicial records;

- (iv) Location of persons and objects, including their identification;
 - (v) Search and seizure;
 - (vi) Delivery of property, including lending of exhibits;
 - (vii) Making detained persons and others available to give evidence or assist investigations;
 - (viii) Service of documents, including documents seeking the attendance of persons; and
 - (ix) Other assistance consistent with the objects of this Treaty.
2. For the purposes of this Treaty:
- (a) proceeds of crime means any property that is derived or realized directly or indirectly by any person from an offence or offences or the value of any such property; and
 - (b) property includes money and all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property.

ARTICLE 3

DUAL CRIMINALITY

Assistance shall be provided without regard to whether the conduct under investigation or prosecution in the Requesting State constitutes an offence or may be prosecuted by the Requested State.

ARTICLE 4

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.
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. The requested State shall not decline execution of a request on the ground of bank secrecy.

ARTICLE 5

REFUSAL OR POSTPONEMENT OF ASSISTANCE

1. Assistance may be refused by the Requested State if in the opinion of Requested State the execution of the request would impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person.

2. Assistance may be refused if execution of the request would be contrary to the domestic law of the Requested State.
3. The Requested State may refuse to execute a request seeking restraint, forfeiture or confiscation of proceeds of a crime which, had it occurred in the Requested State, would not have been a crime in respect of which an order of restraint, forfeiture or confiscation could have been made. However, the Requested State shall not refuse a request for other types of assistance relating to a proceeds of crime case because a restraint, forfeiture, or confiscation order for the proceeds of the crime could not have been obtained in the Requested State.
4. Assistance may be postponed by the Requested State if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.
5. 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 6
TAKING EVIDENCE IN THE REQUESTED STATE

1. A person, including a person in custody, requested to testify and produce documents, records or other articles in the Requested State may be compelled by subpoena or order to appear and testify and produce such documents, records and other articles, in accordance with the law of the requested State.
2. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons concerned in the proceedings in the Requested State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence.
3. The right to participate in the taking of evidence includes the right of counsel present to pose questions. 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 7
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 the 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 8
**AVAILABILITY OF PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATION IN
THE REQUESTING STATE**

1. The Requesting State may request that a person be made available to testify or to assist in an investigation.
2. The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

ARTICLE 9

MAKING DETAINED PERSONS AVAILABLE TO GIVE EVIDENCE OR ASSIST IN 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 in investigations or 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 10

SAFE CONDUCT

1. A person present in the Requesting State in response to a request seeking 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. A person, who is present in the Requesting State by consent as a result of a request for the person's attendance to answer before a judicial authority any acts, commissions 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 thirty (30) days after being officially notified that person's attendance is not longer required or, having left that territory, has voluntarily returned.
4. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

ARTICLE 11
PROCEEDS OF CRIME

1. The Requested State shall, upon request endeavor 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.
2. A request may be made for assistance in securing the forfeiture or 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 giving effect to an order made by a court or other competent authority in the Requesting State or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested State.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds.
4. Proceeds forfeited or confiscated pursuant to this Treaty shall accrue to the requested State, unless otherwise agreed in a particular case.
5. Where action has been taken in the Requested State pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in Canada or India as the case may be by a person affected by the order, the relevant State shall inform the other State as soon as possible and shall inform it promptly of the outcome of that representation.

**PART III
PROCEDURE**

ARTICLE 12
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) the need, if any, for confidentiality and the reasons therefor; and
 - (e) 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 investigation or proceedings;
 - (b) where necessary, details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor;
 - (c) 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;
 - (d) 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;
 - (e) 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.
 - (f) 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; and
 - (g) In the case of requests for restraint of forfeiture of proceeds of crime, where possible, ;
 - (i) A detailed description of the proceeds including their location;
 - (ii) A statement describing the basis for belief that the monies or property are the proceeds of crime; and
 - (iii) A statement describing the evidence that would be available for a proceeding in the Requested State.

3. The Requested State shall not refuse to execute the request solely because it does not include all of the information described in paragraphs 1 and 2 if it can otherwise be executed according to the law of the Requested State.
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.
5. 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.

ARTICLE 13

CENTRAL AUTHORITIES

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 India shall be the Ministry of Home Affairs.

ARTICLE 14

CONFIDENTIALITY AND LIMITATION OF USE

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.
3. 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 Requested State.

ARTICLE 15

AUTHENTICATION

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

ARTICLE 16

LANGUAGE

Requests and supporting documents shall be accompanied by a translation into one of the official languages 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 5.
2. Consular officials may serve documents on an individual 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 Article 8 or 9 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. Assistance provided or continued to be provided to each other pursuant to other treaties, arrangements or otherwise is no bar for seeking and extending the assistance under this Treaty.

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
THIRD STATES

Where judicial authorities of a third State issue any order in the context of an investigation or proceedings that requires a national or resident of one of the parties to undertake or refrain from any conduct in the territory of the other Party in a manner that conflicts with the laws or established policies of that other Party, the Parties agree to consult to identify means to avoid or limit such conflict.

ARTICLE 23

ENTRY INTO FORCE AND TERMINATION

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall come into force upon the exchange of instruments of ratification.
2. Either of the contracting States may terminate this Treaty by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the Treaty shall cease to have any force or effect.

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

DONE at Ottawa this the twenty fourth day of October, one thousand nine hundred and ninety four in duplicate, in Hindi, English and French languages each version being equally authentic.

Sd/-

Sd/-

Hon'ble S.B.CHAVAN

Hon'ble HERB GRAY

Minister of Home Affairs

Solicitor General Of Canada

For the Government of the

For the Government of

Republic of India

Canada

**Agreement between the Government of the Republic of
India and the Government of the French Republic Concerning
Mutual Legal Assistance in Criminal Matters**

The Government of the Republic of India and the Government of the French Republic hereinafter called the Parties;

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution and prevention of crime and the confiscation of the proceeds and instruments of crime:

Have agreed as follows:

Article 1

Scope of Assistance

1. a. The Parties shall provide, in accordance with the provisions of this Agreement the widest measure of mutual legal assistance in the investigation and prosecution of criminal offences falling within the jurisdiction of the Requesting Party and in proceedings related thereto at the time of the request for assistance.
- b. Criminal offences shall also include offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters.
2. Assistance shall include, but not be limited to:
 - a. Identifying and locating persons;
 - b. Serving of documents or processes;
 - c. The obtaining of evidence, including articles or documents;
 - d. Executing requests for search and seizure;
 - e. Facilitating the personal appearance of witnesses or experts;
 - f. Effecting the temporary transfer of persons in custody to appear in court proceedings or to assist in an investigation, as witnesses;
 - g. Obtaining production of judicial or official records;
 - h. Tracing, restraining, seizing and confiscating the proceeds and instruments of crime;
 - i. Providing information, documents and records;
 - j. Delivery of property, including lending of exhibits; and
 - k. Other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.

3. This Agreement does not apply either to the execution of arrests and enforcement of verdicts, except in the case of confiscation, or to offences under military law which are not offences under the ordinary criminal law.
4. Subject to the provisions of Article 17 (3), assistance shall be provided without regard to whether the conduct under investigation or prosecution in the territory of the Requesting Party constitutes an offence or not in the territory of the Requested Party.

Article 2

Central Authorities

1. Requests for mutual assistance under this agreement shall be addressed through the Central Authorities of the Contracting Parties.
2. The Central Authority of the Republic of India shall be the Ministry of Home Affairs. The Central Authority of the French Republic shall be the Ministry of Justice.
3. Requests under this Agreement shall be transmitted from the Central Authority of the Requesting Party to the Central Authority of the Requested Party directly or through diplomatic channels and returned through the same channels. Requests shall be in writing. In urgent cases the Central Authority may transmit requests by fax or through INTERPOL followed by the original request in writing.
4. The Central Authority of the Requested Party shall promptly comply with requests or, where appropriate, forward them to its competent authorities for them to carry out.

Article 3

Other Assistance

The mutual assistance provided by the Parties under this Agreement shall be without prejudice to any assistance that may be provided by them pursuant to other treaties, agreements or practices.

Article 4

Limitations on compliance

1. The Requested Party shall refuse assistance if;
 - a. The request for assistance impairs its sovereignty, security, public order or other essential interests.
 - b. The Requesting Party is unable to comply with any conditions in relation to confidentiality or limitation as to the use of material provided;
 - c. The request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned by the Requested Party.

2. The requested party may refuse assistance if:
 - a. The request for assistance relates to an offence of a political character except serious offences against the life, the physical integrity or the freedom of person;
 - b. The execution of the request would interfere with an ongoing investigation or prosecution in the territory of the Requested Party.
3. Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority:
 - a. Shall promptly inform the Requesting Party of the reason for considering denial or postponement; and
 - b. Shall consult with the Requesting party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.
4. If the Requesting Party accepts assistance subject to the terms and conditions referred to in para 3 (b), it shall comply with those terms and conditions;

Article 5

Requests and Supporting Documents

1. Requests shall include:
 - a. The name of the authority requesting assistance;
 - b. A description of the nature of the investigation or proceedings including a summary of the relevant facts and laws;
 - c. A description of the purpose and nature of assistance requested;
 - d. Any requirements of confidentiality;
 - e. Details of any particular procedure the Requesting party wishes to be followed; and
 - f. The time limit within which the request should be complied with.
2. Where appropriate, the request shall also include:
 - a. Any available information as to the identity and the location of the person or property which is the subject matter of the request;
 - b. The relation between the person or property concerned and the investigation or the proceedings, which are the subject matter of the request;
 - c. A description, as precise as possible, of the place to be searched and of the documents or articles to be seized; and
 - d. A list of the questions to be answered.

Article 6

Execution of Requests

1. A request shall be executed in accordance with the law of the Requested Party and to the extent not prohibited by its law, and, so far as practicable, in the manner stated in the request.
2. The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.
3. The Requested Party shall promptly inform the Requesting Party of its decision not to comply in whole or in part with a request for assistance and the reasons for that decision.

Article 7

Limitations on use of information

1. The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.
2. The Requesting Party 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 Party.
3. The Requested Party shall to the extent requested, keep confidential a request, supporting documents and any action taken pursuant to the request except to the extent necessary to execute it.

Article 8

Attendance of Persons

If so required by the Requesting Party, the Requested Party shall state the date and place of execution of the request. The competent authorities and the persons designated by the Requesting Party may be present at the time of execution of the request if the Requested Party consents thereto.

Article 9

Obtaining of evidence, articles or documents

1. Where a request is made that evidence be taken, the Requested Party shall arrange to have such evidence taken in accordance to its law.
2. For the purpose of this Agreement, the giving or taking of evidence shall include the production of documents, records or other material.
3. For the purposes of requests under this Article, the Requesting Party shall specify the questions to be put to the witness or person giving evidence and the subject matter about which they are to be examined.

4. If necessary, any questions additional to those specified in paragraph 3 of this Article, may be put to the witness or person giving evidence by the competent authority of the Requested Party, either of its own volition or if requested by any of the persons referred to in Article 8.
5. A person who is required to give evidence as a witness in the territory of the Requested Party, pursuant to a request for assistance, may decline to give evidence if the law of the Requested Party would permit the person to decline to give evidence in similar circumstances in proceedings which originated in the territory of the Requested Party. If the witness claims that there is a right to decline to give evidence under the law of the Requesting Party the evidence shall nonetheless be taken and the making of the claim recorded and transmitted to the Central Authority of the Requesting Party for resolution by the authorities of that Party.

Article 10

Service of documents

1. The Requested Party shall effect service of writs, judicial verdicts and other records and documents which are transmitted to it for this purpose by the Requesting Party.
2. The Requesting Party shall transmit the request for the service of a document pertaining to a response in the territory of the Requesting Party within a reasonable time before the scheduled response.
3. The Requesting Party shall transmit to the Requested Party, a request for the service of a document pertaining to appearance of witnesses or experts in the territory of the Requesting Party at least forty days before the scheduled appearance.
4. Service may be effected by the Requested Party, by simple transmission of the document to the person to be served. If the Requesting Party expressly so requests, service shall be effected by the Requested Party in the manner provided for the service of analogous document under its own law or in a special manner consistent with such law.
5. The Requested Party shall, in so far as its law permits, return a proof of service in the manner required by the Requesting Party.
6. A person who fails to comply with any process served on him shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party.

Article 11

Restitution of documents or property

1. Evidence obtained and the originals of records and documents communicated in compliance with a request shall be kept by the Requested Party, except if the Requesting Party requires that they be returned; and
2. The Requesting Party may require from the Requested Party, pursuant to the decision of a Competent Judicial Authority of the Requesting Party, the restitution of any property or monies derived from criminal offence to the victim of the same, without prejudice to the rights of a third party.

Article 12

Publicly available and official documents

1. Subject to its law, the Requested Party shall provide copies of publicly available documents.
2. The Requested Party may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own competent authorities.

Article 13

Certification and authentication

1. Subject to the provisions of paragraph 2 of this Article, evidence, documents, records or other material transmitted pursuant to this Agreement shall not require any form of certification or authentication, unless expressly requested by the Central Authority of the Requesting Party.
2. Material shall be certified or authenticated by Consular or Diplomatic officers only if the law of the Requesting Party specifically so requires.

Article 14

Transfer of persons in custody

1. A person in the custody of the Requested Party, who is required to appear in court proceedings or to assist in investigations, as a witness, pursuant to this Agreement shall be transferred from the Requested party to the Requesting Party, provided the Requested Party and the person concerned consent and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.
2. Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst the person is in the custody of the Requesting Party, the Requested Party shall so advise the Requesting party which shall ensure that person's release from custody.
3. Consequent to his release and if his presence in the territory of the Requesting Party is still required in connection with the purpose of the original transfer, that person, subject to his consent, shall be treated as a person transferred under Article 15.

Article 15

Transfer of other persons

1. If the Requesting Party considers the personal appearance of a witness or expert for the purpose of giving evidence or providing assistance, it shall so inform the Requested Party. The Requested Party shall notify the witness or expert of the request, and then advise the Requesting Party of the reply received from the witness or expert.

2. Where a request is made pursuant to paragraph 1 of this Article, the Requesting Party shall also indicate the approximate amounts of allowances, including travelling and accommodation expenses payable to such witness or expert.

Article 16

Safe Conduct

1. A person who consents to transfer pursuant to Article 14 or Article 15 shall not be prosecuted, detained or restricted in his personal liberty in the territory of the Requesting Party for any criminal offences or be subject to a civil suit to which the person could not be subjected if the person was not in the territory of the Requesting Party for any act or omission which preceded his departure from the territory of the Requested Party.
2. A person who consents to transfer, pursuant to Article 14 or Article 15, shall not be subject to prosecution based on his testimony, except for giving false evidence.
3. A person who consents to transfer, pursuant to Article 14 or Article 15, shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.
4. A person who does not consent to transfer, pursuant to Article 14 or Article 15, shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.
5. A person who responds to summons from the Requesting Party to answer for acts forming the subject of proceedings against him shall not be prosecuted or detained or restricted in his personal liberty in the territory of the Requesting Party for acts or omissions which preceded his departure from the territory of the Requested Party and which are not specified in the summons.
6. Paragraphs 1 and 5 shall not apply if the person being free to leave, has not left the territory of the Requesting Party within a period of thirty days after being notified that his presence is no longer required or having left the territory of the Requesting Party, has returned.

Article 17

Search and Seizure

1. The Requested Party shall, in so far as its law permits, carry out requests for search, seizure and delivery of material to the requesting Party which is relevant to a proceeding or investigation in relation to a criminal matter.
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 property seized.
3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

Article 18

Proceeds of Crime

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime against the law of the Requesting Party 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 may be located in its jurisdiction.
2. Where pursuant to paragraph 1, suspected proceeds of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in transfer or disposal of those suspected proceeds of crime, pending a final determination in respect of those proceeds by a Court of the Requesting Party.
3. A request made for assistance in securing confiscation of proceeds of crime, shall be executed if the said proceeds could be confiscated under the law of the Requested Party in similar circumstances.
4. Proceeds of crime confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.
5. Proceeds of crime include instruments used in connection with the commission of an offence, means any property, money and all kinds of movables or immovable, tangibles or intangibles, including any interest accrued that are derived or realized directly or indirectly or used by any person from an offence or offences, or the value of such property.

Article 19

Provision of other information in connection with proceedings

Where an offence has been committed within the territory of one Party and that offence can also be prosecuted by the other Party, the former shall inform the latter if it decides not to prosecute the offence. Upon request, the former Party may provide information and evidence in relation to that offence.

Article 20

Exchange of information from criminal records

Each party shall, subject to the requirements of its law, inform the other Party of all sentences of imprisonment imposed on the nationals of that Party. Such information shall be communicated through the Central Authority annually.

Article 21

Transit

1. One party may authorise the transit, through its territory, of a person in custody in another state, whose personal appearance to give evidence as a witness has been requested by the other Party. Such authorisation is granted for a request accompanied by all relevant documents.
2. The person under transfer will continue to be in custody on the territory of the Party requested for transit, unless the Requesting Party, at the request of the third state, asks for his release during transit,
3. Each Party may refuse transit of its nationals.

Article 22

Language

Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested Party.

Article 23

Representation and Expenses

1. The Requested Party shall assume all ordinary expenses of executing a request within its territory except:
 - a. Fees of experts;
 - b. Expenses of translation; and
 - c. Travel expenses and allowances of witnesses, experts, persons being transferred in custody and escorting officers.
2. If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Parties shall by mutual consultation determine the terms and conditions under which the execution of the request may continue.

Article 24

Settlement of disputes

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach an Agreement.

Article 25

Entry into force and termination

1. This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.
2. Either party may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect on receipt of that notice. Requests for assistance which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

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

Done in triplicate at New Delhi this 25th day of January 1998 in the Hindi, English and French languages, each text being equally authentic.

For the Government of
The Republic of India

For the Government of the
French Republic

Treaty between the Republic of India and the Russian Federation on Mutual Legal Assistance in Criminal Matters

The Republic of India and the Russian Federation, hereinafter referred to as the “Contracting Parties”,

Desiring to improve the effectiveness of both Parties in the investigation, prosecution and suppression of crime, including terrorism, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

Part I- GENERAL PROVISIONS

Article 1

Obligation to grant mutual legal 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 of this Article shall be any assistance given by the Requested Party in respect of investigations or proceedings in the jurisdiction of the Requesting Party 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 of this Article mean, for the Russian Federation, investigations or proceedings relating to any offence enacted by criminal legislation of the Russian Federation, and, for the Republic of India, investigations or proceedings relating to any offence created by a law of Parliament or by the legislatures of States.
4. Criminal matters shall also include investigations or proceedings relating to criminal offences concerning taxation, duties, customs and international transfer of capital or payments, including those for perpetuating terrorism.
5. Criminal matters shall further include investigations or proceedings relating to criminal offences concerning terrorism, i.e. use of violence for political ends or for putting public in fear.
6. Assistance shall include:
 - 6.1 locating and identifying persons and objects;
 - 6.2 serving documents including documents seeking the attendance of persons;
 - 6.3 providing information, documents and other records, including criminal records, judicial records and government records;

- 6.4 delivering property;
- 6.5 lending exhibits;
- 6.6 taking evidence and obtaining statements of persons;
- 6.7 executing requests for search and seizure;
- 6.8 making persons in custody and others, including experts, available to give evidence or assist investigations;
- 6.9 taking measures to locate, restrain, seize and confiscate the proceeds of crime;
- 6.10 taking measures to locate, identify, restrain, seize and confiscate funds meant for purposes of terrorism; and
- 6.11 providing other assistance consistent with the purposes of this Treaty.

Article 2

Execution of requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner specified by the Requesting Party.
2. The Requested Party shall, when the Requesting Party specifically requests it, inform the Requesting Party of the time and place of execution of the request.
3. The Requested Party 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, in the opinion of the Requested Party the execution of the request would impair its sovereignty, security, public order or any other essential public interest.
2. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or prosecution in the jurisdiction of the Requested Party.
3. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request, or to postpone execution, and shall give reasons for that decision.
4. Before refusing to grant a request for assistance or before postponing the granting of such assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.

PART II- SPECIFIC PROVISIONS

Article 4

Location or identification of persons and object

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

Article 5

Service of documents

1. The Requested Party shall serve any document transmitted to it for the purpose of service.
2. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the jurisdiction of the Requesting Party within a reasonable time before the scheduled response or appearance. In determining what time is “reasonable”, the Requesting Party shall take into account conditions in the jurisdiction of the Requested Party.
3. The Requested Party shall return a proof of service in the manner required by the Requesting Party. If service is delayed or cannot be effected, the reason therefor shall be communicated to the Requesting Party.

Article 6

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, unless the Requesting party expressly requests the originals, in which case the Requested Party shall make every effort to comply with the request.
2. The original records or documents or objects transmitted to the Requesting Party shall be returned to the Requested Party as soon as possible, upon the latter’s request.
3. Insofar as not prohibited by the law of the Requested Party, records, documents or objects 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.

Article 7

Presence of persons involved in the proceedings in the jurisdiction of the Requested Party

1. A person requested to testify and produce documents, records or objects in the jurisdiction of the Requested Party shall be compelled, if necessary by subpoena or order to appear and testify and produce such documents, records or objects, in accordance with the requirements of the law of the Requested Party.

2. The Requested Party, in accordance with its laws, shall permit the presence of such persons as specified in the request during the execution of the request, and may allow them to pose questions to the person being questioned.
3. The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. To the extent not prohibited by the law of the Requested Party, the use of technical means to make such a verbatim transcript shall be permitted.

Article 8

Availability of persons to give evidence or assist investigations in The jurisdiction of the Requesting Party

1. The Requesting Party may request the other Contracting Party that a person be made available to testify or to assist an investigation.
2. The Requested party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's voluntary concurrence thereto. That person shall be informed of any expenses and allowances payable. The Requested Party shall promptly inform the Requesting Party of the person's response.

Article 9

Search and seizure

1. The competent authority that has executed a request for search and seizure shall provide such information as may be required by the Requesting Party concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.
2. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized documents, records or objects which may be delivered to the Requesting Party.

Article 10

Making persons in custody available to give evidence or assist investigations

1. A person in custody in the jurisdiction of the Requested Party shall, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to assist investigations or to give evidence in proceedings provided that the person consents to that transfer and there are no overriding grounds against transferring the person. The Requesting Party shall hold that person in custody and shall return the person in custody to the Requested Party at the conclusion of the execution of the request.
2. Where the sentence imposed expires, or 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 invited pursuant to Article 8 of this Treaty.

Article 11

Safe Conduct

1. A person present in the jurisdiction of the Requesting Party in response to a request seeking that person's attendance shall not be detained or subjected to any other restriction of personal liberty except as specified in paragraph 1 of Article 10 of this Treaty, nor shall that person be prosecuted for any acts or omissions which preceded that person's departure from the jurisdiction of the Requested Party, 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 jurisdiction of the Requesting Party, has not left it within a period of thirty days after being officially notified that that person's attendance is no longer required or, having left that jurisdiction, has voluntarily returned.
3. Any person who fails to appear in the jurisdiction of the Requesting Party may not be subjected to any sanction or compulsory measure by the Requested Party.

Article 12

Proceeds of crime

7. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime, including funds for purposes of terrorism, are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
8. A request may be made for assistance in securing the forfeiture or confiscation of proceeds of crime, including funds for purposes of terrorism. Such assistance shall be given in accordance with the law of the Requested Party by whatever means appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting Party or submitting the request to a competent authority of the Requested Party for the purpose of seeking forfeiture or confiscation order in the Requested Party.
9. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds.
10. Proceeds forfeited or confiscated pursuant to this treaty shall accrue to the Requested Party, unless otherwise agreed in a particular case.
11. Where action has been taken in the Requested Party pursuant to a request for assistance under paragraph 1 or 2 of this Article, and there is a representation in the Russian Federation or the Republic of India, as the case may be, by a person affected by the order, the relevant Contracting Party shall inform the other Contracting Party as soon as possible and shall also inform it promptly of the outcome of that representation.

PART III-PROCEDURE

Article 13

Contents of requests

In all cases requests for assistance shall include:

- 1.1 the competent authority conducting the investigation, criminal prosecution or proceedings to which the request relates;
- 1.2 a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and laws;
- 1.3 the purpose for which the request is made and the nature of the assistance sought; and
- 1.4 any time limit within which compliance with the request is desired.

Requests for assistance shall also contain the following information:

- 2.1 where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - 2.2 where necessary, details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefor;
 - 2.3 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 Party.
 - 2.4 in the case of requests to take evidence from a person, information as to whether that evidence is required to be sworn, affirmed, or otherwise taken in conformity with the law of the Requested Party, and description of the subject matter of the evidence or statement sought;
 - 2.5 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;
 - 2.6 in the case of making persons in custody available, the person or class of persons who will have custody during the transfer, the place to which the person in custody is to be transferred and the date of that person's return;
 - 2.7 the need, if any, for confidentiality and the reasons therefor;
 - 2.8 any other information that might be useful in order to execute 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, that Party 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 Party, a request may be made by facsimile or other agreed means of electronic communication but shall be confirmed in original written form promptly thereafter,

Article 14

Central Authorities

Central Authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty. The Central Authority for the Republic of India shall be the Ministry of Home Affairs of the Republic of India; the Central Authority for the Russian Federation shall be the General Prosecutor's Office of the Russian Federation.

Article 15

Confidentiality

1. The Requested Party may require 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. If the Requesting Party accepts the information or evidence subject to such terms and conditions, it shall comply with them.
2. The Requested Party shall, upon request, and to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so notify the Requesting Party, which shall determine whether the request should nevertheless be executed.

Article 16

Limitation of use

The Requesting Party 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 Party.

Article 17

Certification

Evidence or documents transmitted pursuant to this Treaty shall not require any form of certification, save as is specified in Article 6 of this Treaty.

Article 18

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting party or in the English language.

Article 19

Consular Officers

1. Consular Officers 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 of this Treaty.
2. Consular Officers may serve documents on an individual who appears voluntarily at the consular premises.

Article 20

Expenses

1. The Requested Party shall meet the cost of executing the request for assistance, except that the Requesting Party shall bear:
 - 1.1 the expenses associated with conveying any person to or from the jurisdiction of the Requested Party at the request of the Requesting Party, and any allowance or expenses payable to that person while in the jurisdiction of the Requesting Party pursuant to a request under Articles 7 or 8 of this Treaty;
 - 1.2 the expenses and fees of experts either in the jurisdiction of the Requested Party or the Requesting Party.
2. If it becomes apparent that the execution of the request requires expenses of extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

PART IV-FINAL PROVISION

Article 21

Other bases for cooperation

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

Article 22

Scope of application

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

Article 23

Consultation

The Contracting Parties shall consult promptly, at the request of either Contracting Party, concerning the interpretation and the application of this Treaty, either generally or in relation to a particular request.

Article 24

Ratification and termination

1. This Treaty shall be subject to ratification and it shall enter into force on the date of exchange of the instruments of ratification.
2. Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorised thereto by their respective Authorities, have signed this Treaty.

Done in duplicate at New Delhi this 21st day of December 1998 in Hindi, Russian and English languages, each version being equally authentic. In case of any interpretational difference, the English Text shall prevail.

Sd/-

For the Republic of India

Sd/-

For the Russian Federation

Treaty between the Republic of India and the Republic of Kazakhstan on Mutual Legal Assistance in Criminal Matters

The Republic of Kazakhstan and the Republic of India, hereinafter referred to as “the Parties”.

guided by the traditional friendly relations between the two states; recognizing the need to facilitate the widest measures of mutual legal assistance in criminal matters; have agreed as follows:

Article 1

Scope of legal assistance

1. Under this Treaty, the Parties shall grant each other the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance shall include:
 - 1) measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime;
 - 2) taking of evidence and obtaining of statements of persons;
 - 3) providing of information, documents and other records, including criminal and judicial records;
 - 4) location of persons and objects, including their identification;
 - 5) search and seizure of materials and objects related to the case;
 - 6) delivery of property, including lending of exhibits;
 - 7) making detained persons and others temporarily available to give evidence or assist investigations;
 - 8) service of documents, including documents seeking the attendance of persons, and
 - 9) other assistance consistent with the objects of this Treaty which does not contradict with the national laws of the requested Party.
3. For the purpose of this Treaty mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a Court or some other authority.
4. The provisions of this Treaty shall be without prejudice to other obligations subsisting between the Parties pursuant to the other international treaties,
5. This Treaty shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.

Article 2

Definitions

For the purpose of this Treaty:

1. “Criminal matters” mean:
 - 1) for Kazakhstan, the whole complex of procedural actions and decisions implemented under the particular criminal case in the course of its institution, preparation prior to its submission to the court, trial, and execution of a sentence (court decision);
 - 2) for India, investigations, inquiries, trials or other proceedings relating to an offence created by a law of parliament or by the legislature of a state;
 - 3) criminal matters shall also include investigations or proceedings relating to economical offences.
2. “Proceeds of crime” means any property that is derived or realized directly or indirectly by any person from an offence or the value of any such property.
3. “Property” includes money, securities, and all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property.
4. “Confiscation” means any compulsory forfeiture of all or part of the property under the court’s decision.
5. “Instruments of crime” means any property, thing or means which are, or are intended to be, used in connection with the commission of an offence.
6. “Restraint of property” means measures for the prevention of dealing in or transfer or disposal of property.

Article 3

Central Authorities

1. Requests for assistance under this Treaty shall be made through the Central Authorities of the Parties.
2. In the Republic of Kazakhstan the Central Authority is the Office of the Attorney General. In the Republic of India the Central Authority is the Ministry of Home Affairs.
3. In case of change of the Central Authority in either Party, the concerned Party shall immediately inform the other Party through diplomatic channels.

Article 4

Contents of Requests

Requests for assistance under this Treaty shall be made in writing.

1. However, in urgent circumstances, or where otherwise permitted by the requested party, requests may be made by fax, e-mail or other means of communication pending the complete request which should be submitted within sixty (60) days.
2. Requests for assistance shall include a statement of :
 - 1) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - 2) the matters, including the relevant facts and laws, to which the investigation or proceedings relates;
 - 3) the purpose for which the request is made and the nature of the assistance sought;
 - 4) details of any particular procedure or requirement that the requesting Party wishes to be followed.
 - 5) Any time limit within which compliance with the request is desired;
 - 6) The identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - 7) In the case of requests for the taking of evidence or search and seizure of materials and objects related to the case, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the requested Party;
 - 8) In the case of lending of exhibits, the body and official 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;
 - 9) 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;
 - 10) the need, if any, for confidentiality and the reasons therefor; and
 - 11) in the case of requests for restraint or forfeiture of proceeds or instruments of crime, where possible:
 - a) a detailed description of the proceeds or instruments including their location;
 - b) a statement describing the basis for belief that the monies or property are the proceeds or instruments of crime; and
 - c) a statement describing the evidence that would be available for a proceeding in the requested Party.

3. The requested Party shall not refuse to execute the request solely because it does not include all of the information described under this article if it can be executed according to the law of the requested Party.
4. If the requested Party considers that additional information is needed to enable the request to be dealt with, that Party may request such additional information.

Article 5

Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the Requested Party and may be executed in accordance with any requirement/ manner specified in the request if not incompatible with the law of the requested Party.
2. The Requested Party shall, upon request, inform the requesting Party of any circumstances which are likely to cause a significant delay in execution of the request.
3. The requested Party shall promptly inform the requesting Party of a decision of the requested Party not to comply in whole or in part with a request for assistance, or to postpone execution and shall give reasons for that decision.

Article 6

Refusal of Assistance

1. The requested Party may refuse the assistance, if:
 - 1) the execution of the request would impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person;
 - 2) the execution of the request would be contrary to the domestic law of the requested Party;
 - 3) if the request seeking restraint, forfeiture or confiscation of proceeds or instruments of activity which, had it occurred within the jurisdiction of the requested Party, would not have been an activity in respect of which a confiscation order could have been made,
 - 4) the request relates to an offence in respect of which the accused person had been finally acquitted, pardoned or amnestied.
2. Before refusing to grant a request for assistance, the requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the requesting Party accepts assistance subject to conditions, it shall comply with them.

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, unless the requesting Party expressly requests the originals.
2. 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.
3. Insofar as not prohibited by the laws 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.
4. Evidence or documents transmitted pursuant to this Treaty shall not require any form of authentication, save as specified in the present Article.

Article 8

Taking evidence in the Requested Party

1. A person, including a person in custody, requested to testify and produce documents, records or other objects in the requested Party may be compelled by subpoena or order to appear and testify and produce such documents, records and other objects, in accordance with the laws of the requested Party.
2. Subject to the law of the requested Party, commissioners, other officials of the requesting Party and persons concerned in the proceedings in the requesting party shall be permitted to be present when evidence is taken in the requested Party and to participate in the taking of such evidence.
3. The right to participate in the taking of evidence includes the right of counsel present to pose questions. 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 9

Availability of Persons to Give Evidence or Assist in Investigation

1. The requesting Party has the right to send a request to the requested Party to make available a person or persons for giving evidence or assisting in the investigation.
2. The requested Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

Article 10

Making Detained Persons Available to Give Evidence or Assist in Investigations

A person in custody in the territory of the requested Party, summoned before the Court or other competent authority of the requesting Party shall be temporarily transferred to that Party to assist in investigation or proceedings, with the following conditions:

- 1) the summoned person agrees to the transfer;
- 2) the temporarily transferred person shall be returned to the requested party at the conclusion of the proceedings of the criminal matter, in respect of which the person has been transferred, but no later than in three months beginning from the date of transfer of that person. When required under the submission of a corresponding justification the term of three months can be extended by the agreement of the Parties;
- 3) where no overriding grounds exist against transferring the person;
- 4) Where the person transferred is required to be kept in custody under the law 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.
- 5) A temporarily transferred person shall not be obliged to give evidence in the course of any proceeding or assist in investigation of criminal matter other than of the proceeding or investigation in respect of which a request has been made.
- 6) Where the sentence imposed expires, or 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 person present in the requesting Party pursuant to a request seeking that person's attendance.

Article 11

Safe Conduct

1. A person present in the requesting Party in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in the territory of 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 other than the proceedings to which the request relates.
2. A person, who is present in the requesting Party by consent as a result of a request for the person's attendance to answer before a judicial authority 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 Party, 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 Party, has not left it within a period of thirty (30) 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 does not consent to appear in the requesting Party may not be subjected to any sanction or compulsory measure in either Party.
5. Any person who is in the territory of the requesting Party pursuant to a request under this Treaty and who fails to appear before the competent authority of the requesting Party, may be compelled to appear before the above mentioned such competent authority according to the national laws of the requesting Party.

Article 12

Proceeds and Instruments of Crime

1. The requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments are located within its jurisdiction and shall notify the requesting Party of the results of its inquiries.
2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the requested Party by whatever means are appropriate. This may include giving effect to an order made by a court or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the requested Party.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy and order for the recovery of proceeds and instruments of crime or damages done by the crime.
4. Proceeds or instruments forfeited or confiscated pursuant to this Treaty shall accrue to the requested Party unless otherwise agreed in a particular case.
5. Where action has been taken in the requested Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in either of the Parties by a person affected by the order, the relevant Party shall inform the other Party as soon as possible and shall also inform it promptly of the outcome of that representation.

Article 13

Confidentiality and Limitation of Use

1. The requested Party may require, after consultation with the requesting Party, 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 party 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.
3. The requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the requested Party.

Article 14

Language

Requests and supporting documents shall be accompanied by a translation into one of the languages of the requested Party.

Article 15

Costs

1. the requested Party shall bear the costs of executing the request for assistance except that the requesting Party shall bear:
 - 1) 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 allowance or expenses payable to that person while in the requesting Party pursuant to a request under Article 9 or 10 of this Treaty; and
 - 2) the expenses and fees of experts either in the requested Party or the requesting Party.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult each other to determine the terms and conditions under which the requested assistance can be provided.

Article 16

Amendments and changes

The Parties may by mutual consultation amend or change this Treaty, if required. Such amendments or changes shall constitute a separate protocol, which shall be treated as a part of this treaty.

Article 17

Settlement of differences

Any differences arising out of the interpretation or application of this Treaty shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach an agreement.

Article 18

Entry into Force

This Treaty is subject to ratification and it shall come into force from the date of exchange of instruments of ratification.

Article 19

Termination

This Treaty shall be valid till either of the Parties terminates it by giving six (6) months notice thereof through diplomatic channels. The Treaty shall cease to have any force or effect on the expiry of such notice.

IN WITNESS WHEREOF, the undersigned, having been duly authorized, have signed this Agreement.

DONE at New Delhi this seventeenth day of August One thousand nine hundred nine hundred and ninety Nine in two originals each in Hindi, English Kazakh and Russian all being equally authentic. In case of any interpretational difference the English text shall prevail.

Sd/-

For the Republic of India

Sd/-

For the Republic of Kazakhstan

Treaty between the Republic of India and the Kyrgyz Republic on Mutual Legal Assistance in Criminal Matters

The Republic of India and the Kyrgyz Republic hereinafter referred to as the “Parties”.

Desiring to improve the effectiveness of both Parties in the investigation, prosecution and suppression of crime, including terrorism, through cooperation and mutual assistance in criminal matters;

Have agreed as follows:

PART I – GENERAL PROVISIONS

ARTICLE 1

OBLIGATION TO GRANT MUTUAL LEGAL ASSISTANCE

- 1.1 The Contracting Parties shall, in accordance with this Treaty, grant each other the widest measure of mutual assistance in criminal matters.
- 1.2 Mutual assistance for the purpose of paragraph 1 shall be any assistance given by the Requested Party in respect of investigation or proceedings in the jurisdiction of the Requesting Party in a criminal matter, irrespective of whether the assistance is sought or to be provided by a court or some other authority.
- 1.3 Criminal matters for the purpose of paragraph 1 mean, for the Kyrgyz Republic, investigations or proceedings relating to any offence enacted by criminal legislation of the Kyrgyz Republic, and, for the Republic of India, investigations or proceedings relating to any offence created by a law of Parliament or by the legislatures of States.
- 1.4 Criminal matters shall also include investigations or proceedings relating to criminal offences concerning taxation, duties, customs and international transfer of capital or payments, including those for perpetuating terrorism.
- 1.5 Criminal matter shall further include investigations or proceedings relating to criminal offences concerning terrorism, i.e. use of violence for political ends or for putting public in fear.
- 1.6 Assistance shall include:
 - 1.6.1 locating and identifying persons and objects;
 - 1.6.2 serving documents, including documents seeking the attendance of persons;
 - 1.6.3 providing information, documents and other records, including criminal records, judicial records and government records;
 - 1.6.4 delivering property;
 - 1.6.5 lending exhibits;

- 1.6.6 taking evidence and obtaining statements of persons;
- 1.6.7 executing requests for search and seizure;
- 1.6.8 making persons in custody and others, including experts, available to evidence or assist investigations;
- 1.6.9 taking measures to locate, restrain, seize and confiscate the proceeds of crime;
- 1.6.10 taking measures to locate, identify, restrain, seize and confiscate funds meant for purposes of terrorism; and
- 1.6.11 providing other assistance consistent with the purposes of this Treaty.

ARTICLE 2

EXECUTION OF REQUESTS

- 2.1 Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and the request of Requesting Party, the Requested Party may apply the judicial procedure insofar as it is not prohibited by that law, in the manner specified by the Requesting Party.
- 2.2 The Requested Party shall, when the Requesting Party specifically requests it, inform the Requesting Party of the time and place of execution of the requests.
- 2.3 The Requested Party shall not decline execution of a request on the ground of bank secrecy.

ARTICLE 3

REFUSAL OF POSTPONEMENT OF ASSISTANCE

- 3.1 The Central Authority of the Requested Party may refuse to provide the legal assistance if:
 - 3.1.1 the execution of the request would impair its sovereignty, security, public order or any other essential public interest;
 - 3.1.2 Request is not in consonance with Provisions of the present Treaty.
- 3.2 Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or prosecution in its jurisdiction of the Requested Party.
- 3.3 The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request, or to postpone execution, and shall give reasons for that decision.
- 3.4 Before refusing to grant a request for assistance or before postponing of such assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.

PART II - SPECIFIC PROVISIONS

ARTICLE 4

LOCATION OF IDENTIFICATION OF PERSONS AND OBJECTS

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

ARTICLE 5

SERVICE OF DOCUMENTS

- 5.1 The Requested Party shall serve any document transmitted to it for the purpose of service.
- 5.2 The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the jurisdiction of the Requesting Party within a reasonable time before the scheduled response or appearance. In determining what time is “reasonable” the Requesting Party shall take into account conditions in the jurisdiction of the Requested Party.
- 5.3 The Requested Party shall return a proof of service in the manner required by the requesting Party . If service is delayed or cannot be effected, the reason there of shall be communicated to the Requesting Party.

ARTICLE 6

TRANSMISSION OF DOCUMENTS AND OBJECTS

- 6.1 When the request for assistance concerns the transmission of records and documents, the requested Party may transmit certified true copies thereof , unless the requesting Party expressly requests the originals, in which case the Requested Party shall make every effort to comply with the request.
- 6.2 The original records or documents or objects transmitted to the Requesting Party shall be returned to the Requested Party as soon as possible, upon the latter’s request.
- 6.3 Insofar as not prohibited by the law of the Requested Party, records, documents or objects 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.

ARTICLE 7

PRESENCE OF PERSONS INVOLVED IN THE PROCEEDINGS IN THE JURISDICTION OF THE REQUESTED PARTY

- 7.1 A person requested to testify and produce documents, records or objects in the jurisdiction of the Requested Party shall be compelled, if necessary by subpoena or order to appear and testify and produce such documents, records or objects, in accordance with the requirements of the law of the Requested Party.

- 7.2 The Requested Party, in accordance with its laws, shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow them to pose questions to the person being questioned.
- 7.3 The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. To the extent not prohibited by the law of the Requested Party, the use of technical means to make such a verbatim transcription shall be permitted.

ARTICLE 8

AVAILABILITY OF PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS IN THE JURISDICTION OF THE REQUESTING PARTY

- 8.1 The Requesting Party may request that a person be made available to testify or to assist an investigation.
- 8.2 The Requested Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that persons' voluntary concurrence thereto. That person shall be informed of any expenses and allowances payable. The Requested party shall promptly inform the Requesting Party of the person's response.

ARTICLE 9

SEARCH AND SEIZURE

- 9.1 The competent authority that has executed a request for search and seizure shall provide such information as may be required by the Requesting Party concerning but not limiting to, the identity, condition, integrity and continuity of possession of the documents, records or object seized and the circumstances of the seizure.
- 9.2 The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized documents, records or objects which may be delivered to the Requesting Party.

ARTICLE 10

MAKING PERSONS IN CUSTODY AVAILABLE TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS.

- 10.1 A person in custody in the jurisdiction of the requested Party shall, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to assist investigations or to give evidence in proceedings provided that the person consents to that transfer and there are no overriding grounds against transferring the person. The requesting Party shall hold that person in custody and shall return the person in custody to the Requested Party at the conclusion of the execution of the request.
- 10.2 Where the sentence imposed expires, or 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 invited pursuant to Article 8.

ARTICLE 11
SAFE CONDUCT

- 11.1 A person present in the jurisdiction of the Requesting Party in response to a request seeking that person's attendance shall not be detained or subjected to any other restriction of personal liberty except as specified in Article 10(1), nor shall that person be prosecuted for any acts or omissions which preceded that person's departure from the jurisdiction of the Requested party, nor shall that person be obliged to give evidence in any other proceedings other than the proceedings to which the request relates.
- 11.2 Paragraph 1 of this Article shall cease to apply if a person, being free to leave the jurisdiction of the Requesting Party, has not left it within a period of thirty days after being officially notified that that person's attendance is no longer required or, having left that jurisdiction, has voluntarily returned.
- 11.3 Any person who fails to appear in the jurisdiction of the Requesting Party may not be subjected to any sanction or compulsory measure by the Requesting Party.

ARTICLE 12
PROCEEDS OF CRIME

- 12.1 The Requested State shall, upon requests, endeavour to ascertain whether any proceeds of a crime, including funds for purposes of terrorism, are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
- 12.2 A request may be made for assistance in securing the forfeiture or confiscation of proceeds of crime, including funds for the purposes of terrorism. Such assistance shall be given in accordance with the law of the Requested State by whatever means appropriate. This may include giving effect to an order made by a court or other competent authority in the requesting State or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested State.
- 12.3 A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds.
- 12.4 Proceeds forfeited or confiscated pursuant to this Treaty shall accrue to the Requested State, unless otherwise agreed in a particular case.
- 12.5 Where action has been taken in the Requested State pursuant to a request for assistance under paragraph (1) or (2) of this Article, and there is a representation in the Republic of India, as the case may be, by a person affected by the order, the relevant State shall inform the other State as soon as possible and shall also inform it promptly of the outcome of that representation.

PART III – PROCEDURE ACTIONS

ARTICLE 13

CONTENTS OF REQEUSTS

- 13.1 In all cases requests for assistance shall include the following:
- 13.1.1. the name of competent authority conducting the investigation, criminal prosecution or proceedings to which the request relates;
 - 13.1.2 a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and laws;
 - 13.1.3 the purpose for which the request is made and the nature of the assistance sought; and
 - 13.1.4 any time limit within which compliance with the request is desired.
- 13.2 Request for assistance shall also contain the following information:
- 13.2.1 where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - 13.2.2 Where necessary, details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefore;
 - 13.2.3 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 Party;
 - 13.2.4 In the case of requests to take evidence from a person, information as to whether that evidence is required to be sworn, affirmed, or otherwise taken in conformity with the law of the Requested Party, and a description of the subject matter of the evidence or statement sought;
 - 13.2.5 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 transferred, any tests to be conducted and the date by which the exhibit will be returned;
 - 13.2.6 In the case of making persons in custody available, the person or class of persons who will guard them during the transfer, the place to which the person in custody is to be transferred and the date of that person's return;
 - 13.2.7 if necessary, to specify the need for confidentiality and the reasons therefor;
 - 13.2.8 any other information that might be useful in order to execute the request.
- 13.3 If the Requested Party 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.
- 13.4 A request shall be made in writing. In urgent circumstances or where otherwise permitted by the Requested Party, a request may be made by facsimiles or other agreed means of electronic communication but shall be confirmed in original written form promptly thereafter.

ARTICLE 14
CENTRAL AUTHORITIES

For the purpose of this Treaty the Central Authorities shall transmit and receive all requests and responses thereto. The Central Authority for the Kyrgyz Republic shall be the General Prosecutor's Office of the Kyrgyz Republic; the Central Authority for the Republic of India shall be Ministry of Home Affairs.

ARTICLE 15
CONFIDENTIALITY

- 15.1 The Requested Party may require 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. If the Requesting Party accepts the information or evidence subject to such terms and conditions, it shall comply with them.
- 15.2 The Requested State shall, upon request, and to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality, the requested Party shall so notify the Requesting Party, which shall determine whether the request should nevertheless be executed.

ARTICLE 16
LIMITATION OF USE

The Requesting Party 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 Party.

ARTICLE 17
CERTIFICATION

Evidence or documents transmitted pursuant to this Treaty shall not require any form of certification, save as is specified in Article 6.

ARTICLE 18
LANGUAGE

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English or Russian languages.

ARTICLE 19

CONSULAR OFFICIALS

- 19.1 The consular officials may collect evidence in the territory of the country of stay from witnesses on a voluntary basis without a formal request. The prior notice of the intended proceedings shall be given to the country of stay. It may refuse its consent for any reason provided under the Article 3.
- 19.2 The consular officials may serve documents to an individual who appears voluntarily at the consular premises.

ARTICLE 20

EXPENSES

- 20.1 The Requested Party shall meet the cost of executing the request for the legal assistance, except that the Requesting Party shall bear;
- 20.1.1. the expenses associated with conveying any person to or from the jurisdiction of the Requested Party at the request of the Requesting Party, and any allowance or expenses payable to that person while in the jurisdiction of the Requesting Party pursuant to a request under Articles 7 or 8.
 - 20.1.2 the expenses and fees of experts either in the jurisdiction of the Requested Party or the Requesting Party .
- 20.2 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 21

OTHER BASIS FOR CO-OPERATION

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 22

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 23

CONSULTATIONS

The Contracting Parties shall consult promptly at the request of either Party, concerning the interpretation and the application of this Treaty, either generally or in relation to a particular request.

ARTICLE 24

RATIFICATION AND TERMINATION

- 24.1 The Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at Bishkek. It shall enter into force on the date of exchange of instruments of ratification.
- 24.2 Either of the Contracting States may terminate this Treaty at any time by giving an advance notice to the other through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.
- 24.3 In spite of notification received in accordance with the paragraph 2 of the present article regarding the termination of this Treaty, the contracting States would continue to execute the requests on legal assistance submitted before they received such notification.

Done in New Delhi this day of 13th April 1999 in duplicate each of them is in Hindi, English, Kyrgyz and Russian Languages. All texts are equally authentic.

Sd/-

For the Republic of India

Sd/-

For the Republic of Kyrgyzstan

Treaty between the Republic of India and the Republic of Uzbekistan on Mutual Legal Assistance in Criminal Matters

The Republic of India and the Republic of Uzbekistan, hereinafter referred to as the “Contracting Parties”,

Desiring to improve the effectiveness of both Parties in the investigation, prosecution and suppression of crime, including terrorism, through co-operation and mutual legal assistance in criminal matters.

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Obligation To Grant Mutual Legal 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 of this Article shall be any assistance given by the Requested Party in respect of investigation or proceedings in the jurisdiction of the Requesting Party 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 propose of paragraph 1 of this Article mean, for the Republic of Uzbekistan, investigations or proceedings relating to any offence enacted by criminal legislation of the Republic of Uzbekistan, and, for the Republic of India investigations or proceedings relating to any offence created by a law of Parliament or by the legislature of States.
4. Criminal matters shall also include investigations or proceedings relating to criminal offences concerning taxation, duties, customs and international transfer of capital or payments, including those for perpetuating terrorism.
5. Criminal matters shall further include investigations or proceedings relating to criminal offences concerning terrorism, i.e. use of violence for political ends or for putting public in fear.
6. Assistance shall include:
 - 6.1 locating and identifying persons and objects;
 - 6.2 serving documents, including documents seeking the attendance of persons;
 - 6.3 providing information, documents and other records, including criminal and judicial records;
 - 6.4 delivering property;

- 6.5 lending exhibits
- 6.6 taking evidence and obtaining statements of persons;
- 6.7 executing requests for search and seizure;
- 6.8 making persons in custody and others, including experts, available to give evidence or assist investigation;
- 6.9 taking measures to locate, restrain, seize and confiscate the proceeds of crime;
- 6.10 taking measures to locate, identify, restrain, seize and confiscate funds meant for purposes of terrorism, and
- 6.11 providing other assistance consistent with the purposes of this Treaty.

Article 2

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner specified by the Requesting Party.
2. The Requested Party shall, when the Requesting Party specifically requests it, inform the Requesting Party of the time and place of execution of the request.
3. The Requested Party 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, in the opinion of the Requested Party the execution of the request would impair its sovereignty, security, public order or any other essential public interest.
2. Assistance may be postponed by the Requested party if execution of the request would interfere with an ongoing investigation or prosecution in the jurisdiction of the Requested Party.
3. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request, or to postpone execution, and shall give reasons for that decision.
4. Before refusing to grant a request for assistance or before postponing the granting of such assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.

PART II
SPECIFIC PROVISIONS

Article 4

Location Or Identification Of Persons And Objects

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

Article 5

Service of Documents

1. The Requested Party shall serve documents transmitted to it for the purposes of service.
2. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the jurisdiction of the Requesting Party within a reasonable time before the scheduled response or appearance. In determining what time is “reasonable”, the Requesting Party shall take into account conditions in the jurisdiction of the Requested Party.
3. The requested Party shall return a proof of service in the manner required by the Requesting Party. If service is delayed or cannot be effected, the reason therefor shall be communicated to the Requesting Party.

Article 6

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, unless the Requesting Party expressly requests the originals, in which case the Requested Party shall make every effort to comply with the request.
2. The original records or documents or objects transmitted to the Requesting Party shall be returned to the Requested party as soon as possible, upon the latter’s request.
3. Insofar as not prohibited by the law of the Requested party, records, documents or objects 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.

Article 7

**Presence Of Persons Involved In The Proceedings In the
Jurisdiction Of The Requested Party**

1. A person requested to testify and produce documents, records or objects in the jurisdiction of the Requested Party shall be compelled, if necessary by subpoena or order to appear and testify and produce such documents, records or objects, in accordance with the requirements of the law of the Requested Party.

2. The Requested Party, in accordance with its laws, shall permit the presence of such persons as specified in the request during the execution of the request, and may allow them to pose questions to the person being questioned.
3. The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. To the extent not prohibited by the law of the Requested Party, the use of technical means to make such a verbatim transcript shall be permitted.

Article 8

Availability Of Persons To Give Evidence Or Assist Investigations In The Jurisdiction Of The Requesting Party

1. The Requesting Party may request the Requested Party that a person be made available to testify or to assist an investigation.
2. The Requested party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's voluntary concurrence thereto. That person shall be informed of any expenses and allowances payable. The Requested party shall promptly inform the Requesting Party of the person's response.

Article 9

Search and Seizure

1. The competent authority that has executed a request for search and seizure shall provide such information as may be required by the Requesting Party concerning , but not limiting to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.
2. The Requesting Party shall observe conditions imposed by the Requested Party in relation to seized documents, records or objects which may be delivered to the Requesting Party.

Article 10

Making persons in custody available to give evidence or assist investigations

1. A person in custody in the jurisdiction of the Requested Party shall, at the request of the Requesting party, be temporarily transferred to the Requested Party to assist investigations or to give evidence in proceedings provided that the person consents to that transfer and there are no overriding grounds against transferring the person. The Requesting Party shall hold that person in custody and shall return the person in custody to the Requested Party at the conclusion of the execution of the request.
2. Where the sentence imposed expires, or 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 invited pursuant to article 8 of this Treaty.

Article 11

Safe Conduct

1. A person present in the jurisdiction of the Requesting Party in response to a request seeking that person's attendance shall not be detained or subjected to any other restriction of personal liberty except as specified in paragraph 1 of Article 10 of this Treaty, nor shall that person be prosecuted for any acts or omissions which preceded that person's departure from the jurisdiction of the Requested party, nor shall that person be obliged to give evidence in any proceedings 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 jurisdiction of the Requesting party, has not left it within a period of thirty days after being officially notified that that person's attendance is no longer required or, having left that jurisdiction, has voluntarily returned.
3. Any person who fails to appear in the jurisdiction of the Requesting Party may not be subjected to any sanction or compulsory measure by the Requested Party.

Article 12

Proceeds of Crime

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime, including funds for purposes of terrorism, are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds of crime, including funds for purposes of terrorism. Such assistance shall be given in accordance with the law of the Requested Party by whatever means appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting Party or submitting a request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested Party.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds.
4. Proceeds forfeited or confiscated pursuant to this treaty shall accrue to the Requested Party, unless otherwise agreed in a particular case.
5. Where action has been taken in the Requested Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in Republic of Uzbekistan or the Republic of India, as the case may be, by a person affected by the order, the relevant Contracting Party shall inform the other Contracting Party as soon as possible and shall also inform it promptly of the outcome of that representation.

**PART III
PROCEDURE**

Article 13

Contents of requests

1. In all cases requests for assistance shall include:
 - 1.1 the competent authority conducting the investigation, criminal prosecution or proceedings to which the request relates;
 - 1.2 a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and laws;
 - 1.3 the purpose for which the request is made and the nature of the assistance sought; and
 - 1.4 any time limit within which compliance with the request is desired,
2. Request for assistance shall also contain the following information:
 - 2.1 where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - 2.2 where necessary, details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefor,
 - 2.3 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 Party;
 - 2.4 in the case of requests to take evidence from a person, information as to whether that evidence is required to be sworn, affirmed, or otherwise taken in conformity with the law of the Requested Party, and description of the subject matter of the evidence or statement sought;
 - 2.5 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;
 - 2.6 in the case of making persons in custody available, the person or class of persons who will have custody during the transfer, the place to which the person in custody is to be transferred and the date of that person's return;
 - 2.7 the need, if any, for confidentiality and the reasons therefor;
 - 2.8 any other information that might be useful in order to execute 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, that Party 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 party, a request may be made by facsimile or other agreed means of electronic communication but shall be confirmed in original written form promptly thereafter.

Article 14

Central Authorities

Central Authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty.

The Central Authority for the Republic of Uzbekistan shall be the Prosecutor's Office of the Republic of Uzbekistan; the Central Authority for the Republic of India shall be the Ministry of Home Affairs of the Republic of India.

Article 15

Confidentiality

1. The Requested Party may require 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. If the Requesting Party accepts the information or evidence subject to such terms and conditions, it shall comply with them.
2. The Requested Party shall, upon request, and to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality, the Requested party shall so notify the Requesting Party, which shall determine whether the request should nevertheless be executed.

Article 16

Limitation of Use

The Requesting Party 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 Party.

Article 17

Certification

Evidence or documents transmitted pursuant to this Treaty shall not require any form of certification, save as is specified in Article 6 of this Treaty.

Article 18

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.

Article 19

Consular Officers

1. Consular officers 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 of this Treaty.
2. Consular officers may serve documents on an individual who appears voluntarily at the consular premises.

Article 20

Expenses

1. The Requested Party shall meet the cost of executing the request for assistance in its territory, except that the Requesting Party shall bear;
 - 1.1 the expenses associated with conveying any person to or from the jurisdiction of the Requested party at the request of the Requesting Party, and any allowance or expenses payable to that person while in the jurisdiction of the Requesting Party pursuant to a request under Articles 7 or 8 of this Treaty.
 - 1.2 The expenses and fees of experts either in the jurisdiction of the Requested Party or the Requesting Party.
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 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

International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from other international Conventions/ Treaties to which the Contracting Parties are signatories.

Article 23

Consultations

The Contracting parties shall consult promptly, at the request of either Contracting Party, concerning the interpretation and the application of this Treaty either generally or in relation to a particular request.

Article 24

Ratification and Termination

1. This Treaty shall be subject to ratification and it shall enter into force on the date of exchange of the instruments of ratification.

Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channel and if such notice is given the treaty shall cease to have effect six months after the receipt of the notice.

Done at New Delhi on 2nd May, 2000, in two originals in the Hindi, Uzbek and English languages, all texts being equally authentic. In case of divergence in interpretation of the provisions of this Treaty, the English text shall prevail.

Sd/-
For the Republic
of Uzbekistan

Sd/-
For the Republic of India

Treaty between the Republic of India and Mongolia on Mutual Legal Assistance in Criminal Matters

The Republic of India and Mongolia, hereinafter referred to as the “Contracting Parties”;

Desiring to improve the effectiveness of both Parties in the investigation, prosecution and suppression of crime, including terrorism through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

PART I GENERAL PROVISIONS

ARTICLE 1

Obligation To Grant Mutual Legal 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 of this Article shall be any assistance given by the Requested Party in respect of investigations or proceedings in the jurisdiction of the Requesting Party in a criminal matter, irrespective of whether the assistance is sought to be provided by a court or some other authority.
3. Criminal matters for the purpose of paragraph 1 of this Article mean, for Mongolia, investigations or proceedings relating to any offence enacted by criminal legislation of Mongolia, and, for the Republic of India, investigations or proceedings relating to any offence created by a law of Parliament or by the legislatures of States.
4. Criminal matters shall also include investigation or proceedings relating to criminal offences concerning taxation, duties, customs and international transfer of capital or payments, including those for perpetuating terrorism.
5. Criminal matter shall further include investigations or proceedings relating to criminal offences concerning terrorism, i.e. use of violence for political ends or for putting public in fear.
6. Assistance shall include:
 - 6.1 locating and identifying persons and objects;
 - 6.2 serving documents, including documents seeking the attendance of persons;
 - 6.3 providing information, documents and other records, including criminal records, judicial records and government records;
 - 6.4 delivering property;
 - 6.5 lending exhibits

- 6.6 taking evidence and obtaining statements of persons;
- 6.7 executing requests for search and seizure;
- 6.8 making persons in custody and others, including experts, available to give evidence or assist investigation;
- 6.9 taking measures to locate, restrain, seize and confiscate the proceeds of crime;
- 6.10 taking measures to locate identify, restrain, seize and confiscate funds meant for purposes of terrorism, and
- 6.11 providing other assistance consistent with the purposes of this Treaty.

Article 2

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner specified by the Requesting Party.
2. The Requested Party shall, when the Requesting Party specifically requests it, inform the Requesting Party of the time and place of execution of the request.
3. The Requested Party 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, in the opinion of the Requested Party the execution of the request would impair its sovereignty, security, public order or any other essential public interest.
2. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or prosecution in the jurisdiction of the Requested Party.
3. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request, or to postpone execution, and shall give reasons for that decision.
4. Before refusing to grant a request for assistance or before postponing the granting of such assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.

PART II
SPECIFIC PROVISIONS

Article 4

Location or identification of persons and objects

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

Article 5

Service of Documents

1. The Requested Party shall serve any document transmitted to it for the purposes of service.
2. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the jurisdiction of the Requesting Party within a reasonable time before the scheduled response or appearance. In determining what time is “reasonable”, the Requesting Party shall take into account conditions in the jurisdiction of the Requested Party.
3. The Requested Party shall return a proof of service in the manner required by the Requesting Party. If service is delayed or cannot be effected, the reason therefor shall be communicated to the Requesting Party.

Article 6

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, unless the Requesting Party expressly requests the originals. In which case the Requested Party shall make every effort to comply with the request.
2. The original records or documents or objects transmitted to the Requesting Party shall be returned to the Requested Party as soon as possible, upon the latter’s request.
3. Insofar as not prohibited by the law of the Requested Party, records, documents objects 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.

Article 7

Presence of persons involved in the proceedings in the jurisdiction of the Requested party

1. A person requested to testify and produce documents, records or objects in the jurisdiction of the Requested Party shall be compelled, if necessary by subpoena or order to appear and testify and produce such documents, records or objects, in accordance with the requirements of the law of the Requested Party.

2. The Requested Party, in accordance with its laws, shall permit the presence of such persons as specified in the request during the execution of the request, and may allow them to pose questions to the persons being questioned.
3. The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. To the extent not prohibited by the law of the Requesting Party, the use of technical means to make such a verbatim transcript shall be permitted.

Article 8

Availability of persons to give evidence or assist investigations in the jurisdiction of the Requesting Party

1. The Requesting Party may request the other Contracting Requested Party that a person be made available to testify or to assist an investigation.
2. The Requested Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's voluntary concurrence thereto. That person shall be informed of any expenses and allowances payable. The Requested Party shall promptly inform the Requesting Party of the person's response.

Article 9

Search and Seizure

1. The competent authority that has executed a request for search and seizure shall provide such information as may be required by the Requesting Party concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.
2. The Requesting Party shall observe conditions imposed by the Requested Party in relation to any seized documents, records or objects which may be delivered to the Requesting Party.

Article 10

Making persons in custody available to give evidence or assist investigations

1. A person in custody in the jurisdiction of the Requested Party shall, at the request of the Requesting party, be temporarily transferred to the Requested Party to assist investigations or to give evidence in proceedings provided that the person consents to that transfer and there are no overriding grounds against transferring the person. The Requesting Party shall hold that person in custody and shall return the person in custody to the Requested Party at the conclusion of the execution of the request.
2. Where the sentence imposed expires, or 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 invited pursuant to Article 8 of this Treaty.

Article 11

Safe Conduct

1. A person present in the jurisdiction of the Requesting Party in response to a request seeking that person's attendance shall not be detained or subjected to any other restriction of personal liberty except as specified in paragraph 1 of Article 10 of this Treaty, nor shall that person be prosecuted for any acts or omissions which preceded that person's departure from the jurisdiction of the Requested Party, nor shall that person be obliged to give evidence in any proceedings 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 jurisdiction of the Requesting Party, has not left it within a period of thirty days after being officially notified that that person's attendance is no longer required or, having left that jurisdiction, has voluntarily returned.
3. Any person who fails to appear in the jurisdiction of the Requesting Party may not be subjected to any sanction or compulsory measure by the Requested Party.

Article 12

Proceeds of Crime

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime, including funds for purposes of terrorism, are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds of crime, including funds for purposes of terrorism. Such assistance shall be given in accordance with the law of the Requested Party by whatever means appropriate. This may include giving effect to an order made by a court or other competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested Party.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds.
4. Proceeds forfeited or confiscated pursuant to this treaty shall accrue to the Requested Party, unless otherwise agreed in a particular case.
5. Where action has been taken in the Requested Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in Mongolia or the Republic of India, as the case may be, by a person affected by the order, the relevant Contracting Party shall inform the other Contracting Party as soon as possible and shall also inform it promptly of the outcome of that representation.

**PART III
PROCEDURE**

Article 13

Contents of requests

1. In all cases requests for assistance shall include:
 - 1.1 the competent authority conducting the investigation, criminal prosecution or proceedings to which the request relates;
 - 1.2 a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and laws;
 - 1.3 the purpose for which the request is made and the nature of the assistance sought; and
 - 1.4 any time limit within which compliance with the request is desired,
2. Request for assistance shall also contain the following information:
 - 2.1 where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - 2.2 where necessary, details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons thereof,
 - 2.3 in the case of requests for the taking of evidence of search and seizure, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the Requested Party;
 - 2.4 in the case of requests to take evidence from a person, information as to whether that evidence is required to be sworn, affirmed, or otherwise taken in conformity with the law of the Requested Party, and description of the subject matter of the evidence or statement sought;
 - 2.5 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;
 - 2.6 in the case of making persons in custody available, the person or class of persons who will have custody during the transfer, the place to which the person in custody is to be transferred and the date of that person's return;
 - 2.7 the need, if any, for confidentiality and the reasons thereof;
any other information that might be useful in order to execute the request.
2. If the Requested Party 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.
3. A request shall be made in writing. In urgent circumstances or where otherwise permitted by the Requested Party, a request may be made by facsimile or other agreed means of electronic communication but shall be confirmed in original written form promptly thereafter.

Article 14

Central Authorities

Central Authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty. The Central Authority for the Republic of India shall be the Ministry of Home Affairs of the Republic of India; the Central Authority for Mongolia shall be the General Prosecutor's Office.

Article 15

Confidentiality

1. The Requested Party may require 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. If the Requesting Party accepts the information or evidence subject to such terms and conditions, it shall comply with them.
2. The Requested Party shall, upon request, and to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so notify the Requesting Party, which shall determine whether the request should nevertheless be executed.

Article 16

Limitation of Use

The Requesting Party 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 Party.

Article 17

Certification

Evidence or documents transmitted pursuant to this Treaty shall not require any form of certification, save as is specified in Article 6 of this Treaty.

Article 18

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.

Article 19

Consular Officers

1. Consular officers 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 of this Treaty.
2. Consular officers may serve documents on an individual who appears voluntarily at the consular premises.

Article 20

Expenses

The Requested party shall meet the cost of executing the request for assistance, except that the Requesting Party shall bear;

- 1.1 the expenses associated with conveying any person to or from the jurisdiction of the Requested party at the request of the Requesting Party, and any allowance or expenses payable to that person while in the jurisdiction of the Requesting Party pursuant to a request under Articles 7 or 8 of this Treaty.
- 1.2 the expenses and fees of experts either in the jurisdiction of the requested party or the Requesting Party.
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 21

Other basis for cooperation

This Treaty shall not derogate from obligation 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 22

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 23

Consultations

The Contracting Parties shall consult promptly, at the request of either Contracting Party, concerning the interpretation and the application of this Treaty either generally or in relation to a particular request.

Article 24

Ratification and Termination

1. This Treaty shall be subject to ratification and it shall enter into force on the 30th day after the exchange of the instruments of ratification.
2. This Treaty shall remain in force until either of the Contracting Parties terminates it by sending a note to that effect to the other Contracting Party and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorised thereto by their respective Authorities, have signed this Treaty.

Done in duplicate at New Delhi this third day of January, Two Thousand and One in Hindi, Mongolian and English Languages, each version being equally authentic. In case of any interpretational difference, the English text shall prevail.

Sd/-

For the Republic of India

Sd/-

For Mongolia

Treaty between the Republic of India and the Republic of Tajikistan on Mutual Legal Assistance in Criminal Matters

The Republic of India and the Republic of Tajikistan hereinafter referred to the “Contracting Parties”.

Desiring to improve the effectiveness of both Parties in the investigation, prosecution and suppression of crime, including terrorism, through cooperation and mutual legal assistance in criminal matters.

Have agreed as follows:

PART I GENERAL PROVISIONS

ARTICLE 1

Obligation To Grant Mutual Legal 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 of this Article shall be any assistance given by the Requested Party in respect of investigations or proceedings in the jurisdiction of the Requesting Party 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 of this Article mean, for the Republic of Tajikistan, investigations or proceedings relating to any offence enacted by criminal legislation of the Republic of Tajikistan, and, for the Republic of India, investigations or proceedings relating to any offence created by a law of Parliament or by the legislatures of States.
4. Criminal matters shall also include investigations or proceedings relating to criminal offences concerning taxation, duties, customs and international transfer of capital or payments, including those for perpetuating terrorism.
5. Criminal matters shall further include investigations or proceedings relating to criminal offences concerning terrorism, i.e. use of violence for political ends or for putting public in fear.
6. Assistance shall include:
 - 6.1 locating and identifying persons and objects;
 - 6.2 serving documents, including documents seeking the attendance of persons;
 - 6.3 providing information, documents and other records, including criminal and judicial records;
 - 6.4 delivering property;

- 6.5 lending exhibits;
- 6.6 taking evidence and obtaining statements of persons;
- 6.7 executing requests for search and seizure;
- 6.8 making persons in custody and others, including experts, available to give evidence or assist investigation;
- 6.9 taking measures to locate, restrain, seize and confiscate the proceeds of crime;
- 6.10 taking measures to locate identify, restrain, seize and confiscate funds meant for purposes of terrorism, and
- 6.11 providing other assistance consistent with the purposes of this Treaty.

Article 2

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner specified by the Requesting Party.
2. The Requested Party shall, when the Requesting Party specifically requests it, inform the Requesting Party of the time and place of execution of the request.
3. The Requested Party 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, in the opinion of the Requested Party the execution of the request would impair its sovereignty, security, public order or any other essential public interest.
2. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or prosecution in the jurisdiction of the Requested Party.
3. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request, or to postpone execution, and shall give reasons for that decision.
4. Before refusing to grant a request for assistance or before postponing the granting of such assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.

PART II
SPECIFIC PROVISIONS

Article 4

Location Or Identification Of Persons And Objects

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

Article 5

Service of Documents

1. The Requested Party shall serve documents transmitted to it for the purposes of service.
2. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the jurisdiction of the Requesting Party within a reasonable time before the scheduled response or appearance. In determining what time is “reasonable”, the Requesting Party shall take into account conditions in the jurisdiction of the Requested Party.
3. The Requested Party shall return a proof of service in the manner required by the Requesting Party. If service is delayed or cannot be effected, the reason therefor shall be communicated to the Requesting Party.

Article 6

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, unless the Requesting Party expressly requests the originals in which case the Requested Party shall make every effort to comply with the request.
2. The original records or documents or objects transmitted to the Requesting Party shall be returned to the Requesting Party as soon as possible, upon the latter’s request.
3. Insofar as not prohibited by the law of the Requested Party, records, documents or objects 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.

Article 7

**Presence Of Persons Involved In The Proceedings In the
Jurisdiction Of The Requested Party**

1. A person requested to testify and produce documents, records or objects in the jurisdiction of the Requested Party shall be compelled, if necessary by subpoena or order to appear and testify and produce such documents, records or objects, in accordance with the requirements of the law of the Requested Party.

2. The Requested Party, in accordance with its laws, shall permit the presence of such persons as specified in the request during the execution of the request, and may allow them to pose questions to the person being questioned.
3. The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. To the extent not prohibited by the law of the Requested Party, the use of technical means to make such a verbatim transcript shall be permitted.

Article 8

Availability Of Persons To Give Evidence Or Assist Investigations In The Jurisdiction Of The Requesting Party

1. The Requesting Party may request the Requested Party that a person be made available to testify or to assist an investigation.
2. The Requested Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's voluntary concurrence thereto. That person shall be informed of any expenses and allowances payable. The Requested Party shall promptly inform the Requesting Party of the person's response.

Article 9

Search and Seizure

1. The competent authority that has executed a request for search and seizure shall provide such information as may be required by the Requesting Party concerning, but not limiting to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.
2. The Requesting Party shall observe conditions imposed by the Requested Party in relation to seized documents, records or objects which may be delivered to the Requesting Party.

Article 10

Making persons in custody available to give evidence or assist investigations

1. A person in custody in the jurisdiction of the Requested Party shall, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to assist investigations or to give evidence in proceedings provided that the person consents to that transfer and there are no overriding grounds against transferring the person. The Requesting Party shall hold that person in custody and shall return the person in custody to the Requested Party at the conclusion of the execution of the request.
2. Where the sentence imposed expires, or 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 invited pursuant to Article 8 of this Treaty.

Article 11

Safe Conduct

1. A person present in the jurisdiction of the Requesting Party in response to a request seeking that person's attendance shall not be detained or subjected to any other restriction of personal liberty except as specified in paragraph 1 of Article 10 of this Treaty, nor shall that person be prosecuted for any acts or omissions which preceded that person's departure from the jurisdiction of the Requested Party, nor shall that person be obliged to give evidence in any proceedings 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 jurisdiction of the Requesting Party, has not left it within a period of thirty days after being officially notified that that person's attendance is no longer required or, having left that jurisdiction, has voluntarily returned.
3. Any person who fails to appear in the jurisdiction of the Requesting Party may not be subjected to any sanction or compulsory measure by the Requested Party.

Article 12

Proceeds of Crime

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime, including funds for purposes of terrorism, are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds of crime, including funds for purposes of terrorism. Such assistance shall be given in accordance with the law of the Requested Party by whatever means appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting Party or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested Party.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds.
4. Proceeds forfeited or confiscated pursuant to this treaty shall accrue to the Requested Party, unless otherwise agreed in a particular case.
5. Where action has been taken in the Requested Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in Republic of Tajikistan or the Republic of India, as the case may be, by a person affected by the order, the relevant Contracting Party shall inform the other Contracting Party as soon as possible and shall also inform it promptly of the outcome of that representation.

**PART III
PROCEDURE**

Article 13

Contents of requests

1. In all cases requests for assistance shall include:
 - 1.1 the competent authority conducting the investigation, criminal prosecution of proceedings to which the request relates;
 - 1.2 a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and laws;
 - 1.3 the purpose for which the request is made and the nature of the assistance sought; and
 - 1.4 any time limit within which compliance with the request is desired.
2. Request for assistance shall also contain the following information:
 - 2.1 where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - 2.2 where necessary, details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefor,
 - 2.3 in the case of requests for the taking of evidence of search and seizure, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the Requested Party;
 - 2.4 in the case of requests to take evidence from a person, information as to whether that evidence is required to be sworn, affirmed, or otherwise taken in conformity with the law of the Requested Party, and description of the subject matter of the evidence or statement sought;
 - 2.5 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;
 - 2.6 in the case of making persons in custody available, the person or class of persons who will have custody during the transfer, the place to which the person in custody is to be transferred and the date of that person's return;
 - 2.7 the need, if any, for confidentiality and the reasons therefor;
 - 2.8 any other information that might be useful in order to execute 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, that Party 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 Party, a request may be made by facsimile or other agreed means of electronic communication but shall be confirmed in original written form promptly thereafter.

Article 14

Central Authorities

Central Authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty.

The Central Authority for the Republic of Tajikistan shall be the Prosecutor's Office of the Republic of Tajikistan; the Central Authority for the Republic of India shall be the Ministry of Home Affairs of the Republic of India.

Article 15

Confidentiality

1. The Requested Party may require 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. If the Requesting Party accepts the information or evidence subject to such terms and conditions, it shall comply with them.
2. The Requested Party shall, upon request, and to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so notify the Requesting Party, which shall determine whether the request should nevertheless be executed.

Article 16

Limitation of Use

The Requesting Party 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 Party.

Article 17

Certification

Evidence or documents transmitted pursuant to this Treaty shall not require any form of certification, save as is specified in Article 6 of this Treaty.

Article 18

Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.

Article 19

Consular Officers

1. Consular officers 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 of this Treaty.
2. Consular officers may serve documents on an individual who appears voluntarily at the consular premises.

Article 20

Expenses

1. The Requested Party shall meet the cost of executing the request for assistance in its territory, except that the Requesting Party shall bear;
 - 1.1 the expenses associated with conveying any person to or from the jurisdiction of the Requested Party at the request of the Requesting Party, and any allowance or expenses payable to that person while in the jurisdiction of the Requesting Party pursuant to a request under Articles 7 or 8 of this Treaty.
 - 1.2 the expenses and fees of experts either in the jurisdiction of the Requested Party or the Requesting Party.
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 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

International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from other international Conventions/Treaties to which the Contracting Parties are signatories.

Article 23

Consultations

The Contracting Parties shall consult promptly, at the request of either Contracting Party, concerning the interpretation and the application of this Treaty either generally or in relation to a particular request.

Article 24

Ratification and Termination

1. This Treaty shall be subject to ratification and it shall enter into force on the date of exchange of the instruments of ratification.

Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channel and if such notice is given the treaty shall cease to have effect six months after the receipt of the notice.

Done at New Delhi on 10th May, 2001, in two originals in the Hindi, Tajik and English languages, all texts being equally authentic. In case of divergence in interpretation of the provisions of this Treaty, the English text shall prevail.

Sd/-
For the Republic
of Tajikistan

Sd/-
For the Republic of India

MLAT between the Republic of India and the United States of America

The Government of the Republic of India and the Government of the United States of America, hereinafter referred to as the Contracting Parties, desiring to improve the effectiveness of the law enforcement authorities of both states in the investigation, prosecution, prevention, and suppression of crimes, including those relating to terrorism, narcotics trafficking, economic crimes, and organized crime, through cooperation and mutual legal assistance in criminal matters.

Have agreed as follows:

Article 1

Scope of Assistance

1. The Contracting Parties shall provide the widest measure of mutual assistance to each other, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, prevention and suppression of offenses, and in proceedings related to criminal matters..
2. Assistance shall include:
 - a. taking the testimony and statements of persons;
 - b. providing documents, records and items of evidence;
 - c. locating or identifying persons or items;
 - d. serving documents;
 - e. transferring persons in custody for testimony or other purposes.
 - f. executing requests for searches and seizures;
 - g. assisting in proceedings related to seizure and forfeiture of assets, restitution, collection of fines; and
 - h. any other form of assistance not prohibited by the laws of the Requested State.
3. Assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution or proceeding in the Requested State would constitute an offense under the laws of the Requested State.
4. This Treaty is intended solely for mutual legal assistance between the Contracting Parties. 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 Party 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 a person designated by the Attorney General. For India, the central Authority shall be the Ministry of Home Affairs or a person designated by the Ministry of Home Affairs.
3. The Central Authorities 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 that would not be an offense under ordinary law;
 - b) the execution of the request would prejudice the security or similar essential interests of the Requested State;
 - c) the request relates to a political offense; or
 - d) the request is not made in conformity with the Treaty.
2. For the purposes of this Treaty, the following offenses shall not be considered to be political offenses:
 - a) a murder or other willful crime against the Person of a Head of State or Head of Government of one of the Contracting Parties, or of a member of the Head of State's or head of Government's family;
 - b) aircraft hijacking offenses, as described in the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;
 - c) acts of aviation sabotage, as described in the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on September 23, 1971;
 - d) crimes against internationally protected persons, including diplomats, as described in the Convention on the Prevention and Punishment of crimes Against Internationally Protected Persons, including Diplomatic Agents, done at New York on December 14, 1973;
 - e) hostage taking as described in the International Convention Against the taking of Hostages, done at New York on December 17, 1979;
 - f) offenses related to illegal drugs, as described in the Single Convention on Narcotic Drugs, 1961, done at New York on March 30, 1961, the Protocol Amending the Single Convention on Narcotic Drugs, 1961, done at Geneva on March 25, 1972, and the United Nations Convention

Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, done at Vienna on December 20, 1988;

- g) Any other offense within the scope of a multilateral terrorism convention to which both Contracting Parties are a party; and
 - h) A conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.
3. 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.
 4. 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 Contents of Requests

1. A request for assistance shall be made in writing except that the Central Authority of the Requested State may accept a request made otherwise in urgent situations. If the request is not in writing, it shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise. The request shall be in English 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 proceedings. and the manner in which service is to be made;
 - c) information on the identity and suspected location of a person or item to be located.
 - d) A precise description of the place or person to be searched and of the items to be seized.
 - e) a 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 that 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, shall 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. The Central Authority of the Requested State shall make all necessary arrangements for the representation in the Requested State of the Requesting State in any proceedings arising out of a request for assistance.
3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. 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. The Requested State shall not decline execution of a request on the ground of bank secrecy.
5. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined 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.
6. 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 such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of Requesting State which shall then determine whether the request should nevertheless be executed.
7. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State on progress toward execution of the request.
8. 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 execution of the request is denied, delayed, or postponed the Central Authority of the Requested State shall inform the Central authority of the requesting State of the reasons for the denial delay or postponement.

Article 6

Costs

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

Article 7

Limitations on Use

1. The Central Authority of the Requested State may request that the Requesting State not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested State. If the Requested State makes such a request the Requesting State shall comply with the conditions.
2. 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. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.
3. Nothing in this Article shall preclude the use or disclosure of information or evidence to the extent that such information or evidence is exculpatory to a defendant in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such proposed disclosure.
4. Information or evidence that has been made public in the Requesting State pursuant to paragraph 1 or 2 may thereafter be used for any purpose.

Article 8

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 items, including documents and records.
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 specified persons during the execution of the request, and shall allow such persons to pose questions to be asked of the person giving the testimony or evidence.
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 evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Insofar as not prohibited by the law of the Requested State, evidence which has been produced in the Requested State pursuant to this Article or which has been the subject of testimony taken under this Article shall be transmitted in a form or accompanied by such certification as may be requested by the requesting State in order to make it admissible according to the law of the Requesting State. Where the United States is the Requesting State, such documents shall, upon request, be authenticated by Form A and the absence or nonexistence of such records shall, upon request, be certified by Form B. Such documents and forms shall be admissible in evidence in the United States.

Article 9

Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of publicly available records related to the request, including documents or information in any form, in the possession of government departments and agencies in the Requested State.
2. The Requested State may provide copies of any records related to the request, including documents or information in any form, that 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 records would be available to the Requested State's own law enforcement or judicial authorities. The Requested State may in its discretion deny, entirely or in part, a request pursuant to this paragraph.
3. Insofar as not prohibited by the laws of the Requested State, records produced pursuant to this Article shall, upon request, be authenticated by the official responsible for maintaining them and 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. Where the United States is the Requesting State, such documents shall, upon request, be authenticated by Form C and the absence or non-existence of such records shall, upon request, be certified by Form D. Such documents and forms shall be admissible in evidence in the United States.

Article 10

Appearance Outside the Requested State

1. When the Requesting State requests the appearance of a person outside the Requested State, the Requested State shall invite the person to so appear. The Requesting State shall indicate the extent to which the person's expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.
2. A person appearing in the Requesting State pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded that person's departure from the Requested State.
3. The safe conduct provided for by this Article shall cease ten days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or when the person, having left the Requesting State, voluntarily

returns to it. The Central Authority of the Requesting State may, in its discretion, extend this period up to twenty days for it determines that there is good cause to do so.

Article 11

Transfer of persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is sought for purposes of assistance under this Treaty shall be transferred from the Requested State for that purpose if the person consents and if the Central Authorities of both States agree.
2. A person in the custody of the Requesting State whose presence in the requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State if the person consents and if the Central Authorities of both States agree.
3. For the 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 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.

Article 12

Transit of Persons in Custody

1. The Requested State may authorize the transit through its territory of person held in custody, by the Requesting State or a third State, whose personal appearance has been requested by the Requesting State in an investigation, prosecution, or proceeding.
2. The Requested State shall have the authority and the obligation to keep the person in custody during transit.

Article 13

Location or Identification of Persons or Items

If the Requesting State seeks the location or identity of persons or items in the Requested State, the Requested State shall use its best efforts to ascertain such location or identity.

Article 14

Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.
2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State within a reasonable time before the scheduled appearance.
3. The Requested State shall return a proof of service in the manner specified in the Request.

Article 15

Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting 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 the identity of the item, the continuity of custody, and any changes in its condition. For the United States such certification shall, upon request, be made through the use of Form E and shall be admissible in the United States. No further certification shall be required.
3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 16

Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items, including documents and records, furnished to it in execution of a request under this Treaty.

Article 17

Assistance in Forfeiture Proceedings

1. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of crimes which are located in the territory of the other Contracting Party and may be forfeitable or otherwise subject to seizure under the laws of that Contracting Party, it may so inform the Central Authority of the other Contracting Party. If that other Contracting Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other Contracting Party on the action taken.
2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to

the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include, as appropriate under the laws of the Requested State, action to temporarily restrain, attach, immobilize, or seize the proceeds or instrumentalities pending further proceedings.

3. The Contracting Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Contracting Party may transfer all or part of such assets, or the proceeds of their sale, to the other Contracting Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article 18

Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Contracting Party through the provisions of other applicable international agreements, or through the provisions of its national laws. Either Contracting Party may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

Article 19

Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 20

Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force on the date of the exchange of instruments of ratification.
3. This Treaty shall apply to any request presented after the date of its entry into force whether the relevant acts or omissions occurred prior to or after that date.
4. Either Contracting Party may terminate this Treaty by means of written notice to the other Contracting Party. Termination shall take effect six months following the date of notification.

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

DONE at New Delhi, this day of October 17, 2001, in duplicate, in the Hindi and the English languages. In case of divergence between the two texts, the English text shall prevail.

Sd/-
For the Government
of The Republic of India

Sd/-
For the Government
of The United States of America

Form A

CERTIFICATION OF BUSINESS RECORDS

I,-----[name]-----attest on penalty of criminal punishment for false statement or attestation that I am employed by /associated with _____
-----[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 of the original record 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 any such record is not the original, is a duplicate of the original.

-----[signature]-----

-----[date]-----

Sworn to or affirmed before me, _____[name]_____, a judicial officer, this _____ day of _____, 20__.

Form B

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF
BUSINESS RECORDS

I, -----[name]-----, attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with _____[name of business from which documents are sought]_____, in the position of -----[business position or title]----- and by reason of my position am authorized and qualified to make this attestation.

As a result of my employment/association with the above-named business, I am familiar with the business records it maintains. The business maintains records that are:

- A) 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) kept in the course of a regularly conducted business activity; and
- C) made or kept by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

-----[date of execution]-----

-----[place of execution]-----

-----[signature]-----

Form C

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS

I, -----[name]-----, attest on penalty of criminal punishment for false statement or attestation that my position with the Government of -----[Country]-----is -----[official title]----- and that in that position I am authorized by law to attest that the documents attached and described below are true and accurate copies of original official records which are recorded or filed in of -----[name of office or agency]-----, which is a government office or agency of -----[country]-----.

Description of Documents:

-----[signature]-----

-----[title]-----

-----[date]-----

Form D

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF OFFICIAL RECORDS

I, -----[name]-----, attest on penalty of criminal punishment for false statement or attestation that:

1. _____[name of office or agency]_____ is a government office or agency of -----[country]----- and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;
2. records of the type described below set forth matters that are authorized by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;
3. my position with the above-named public authority is -----[official title]-----;
4. In my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and
5. no such records have been found to exist therein.

Description of Documents:

-----[signature]-----

-----[date]-----

Form E

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 -----[official title]----- . 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 Items:

Changes in condition while in my custody:

-----[signature]-----

-----[title]-----

-----[place]-----

-----[date]-----

Treaty between the Republic of India and Ukraine on Mutual Legal Assistance in Criminal Matters

The Republic of India and Ukraine (hereinafter referred to as Contracting Parties);

Guided by the traditional friendly relations between the two countries;

Recognising the need to facilitate the widest measures of mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

Desiring to improve the effectiveness of measures of both countries in the investigation, prosecution and suppression of crime, including crime related to terrorism and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

Article 1

Scope of Application

1. Under this Treaty, the Contracting Parties shall grant each other the widest measure of mutual legal assistance in criminal matters.
2. For the purpose of this Treaty mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a court or some other competent authority.
3. This Treaty shall be without prejudice to other obligations between the Contracting parties pursuant to other treaties or arrangements or otherwise, and shall not prevent the Contracting Parties or their competent authorities from providing assistance to each other pursuant to other treaties or arrangements.
4. This Treaty shall also apply to any requests for mutual legal assistance relating to offences committed before its entry into force.

Article 2

Definitions

For the purpose of this Treaty:

1. (a) Criminal matters, mean inquiries, investigations, trials and other proceedings relating to an offence created by:

For the Republic of India, a law of Parliament or by the legislature of a State; and

For Ukraine, the laws of Ukraine.

- (b) Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, customs and international transfer of capital or payments.

- (c) Assistance shall include:
- (i) measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime;
 - (ii) taking of evidence and obtaining of statements of persons;
 - (iii) providing of information, documents and other records, including criminal, judicial and procedural records;
 - (iv) location of persons and objects, including their identification;
 - (v) search and seizure;
 - (vi) delivery of property, including lending of exhibits;
 - (vii) making persons detained or in custody and other available to give evidence or assist investigations;
 - (viii) service of documents, including documents seeking the attendance of persons; and
 - (ix) other assistance consistent with the objects of this Treaty.
2. (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 movable or immovable, tangible or intangible property, and includes any interest in such property;
- (c) “confiscation” means any measure resulting in the deprivation of property;
- (d) “instruments of crime” means any property which is or is intended to be used in connection with the commission of an offence; and
- (e) “the restraint of property” means any measure for the prevention of dealing in or transfer or disposal of property.

ARTICLE 3

Central Authorities

1. Requests for assistance under this Treaty shall be made through the Central Authorities of the Contracting Parties.
2. In the Republic of India the Central Authority is the Ministry of Home Affairs. In Ukraine, the Central Authorities are the General Prosecutor’s Office of Ukraine (concerning requests by pre-trial investigation authorities) and the Ministry of Justice of Ukraine (concerning requests by courts).

ARTICLE 4

Contents of Requests

1. Requests for assistance under this Treaty shall be made in writing. However, in urgent circumstances, or where otherwise permitted by the Requested Contracting Party, requests may be made orally. If the request is not made in writing, it shall be confirmed in writing within thirty days thereafter unless the Central Authorities of the Contracting parties agree otherwise.
2. Requests for assistance shall include a statement of :
 - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - (b) the matters, including the relevant facts and laws, to which the investigation or proceedings relates;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting Contracting Party wishes to be followed;
 - (e) any time limit within which compliance with the request is desired;
 - (f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - (g) 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 Contracting Party;
 - (h) 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 and if needed, a list of question which a person should be asked;
 - (i) in the case of lending of exhibits, person(s) who will have custody of the exhibit, the place to which the exhibit is to be removed and any tests to be conducted;
 - (j) in the case of making persons detained or in custody available, persons who will have custody during the transfer, the place to which such person is to be transferred and the date of that person's return;
 - (k) the need, if any, for confidentiality and the reasons therefore; and
 - (l) in the case of requests for restraint or forfeiture of proceeds or instruments of crime, where possible:
 - (i) a detailed description of the proceeds or instrument including their location;
 - (ii) a statement describing the basis for belief that the monies or property are the proceeds or instruments of crime; and

- (iii) a statement describing the evidence that would be available for a proceeding in the Requested Contracting Party.
3. The Requested Contracting Party shall not refuse to execute the request solely because it does not include all of the information described under this Article if it can otherwise be executed according to the law of the Requested Contracting Party.
4. If the Requested Contracting Party considers that additional information is needed to enable the request to be dealt with, that Contracting party may request such additional information. All efforts will be made to give this information at the earliest.

ARTICLE 5

Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the Requested Contracting Party and may be executed in accordance with any requirements or in the manner specified in the request if not incompatible with the law of the Requested Contracting Party.
2. The Requested Contracting Party shall inform the Requesting Contracting Party of any circumstances which are likely to cause a significant delay in execution of the request.
3. The Requested Contracting Party shall promptly inform the Requesting Contracting Party of a decision of the Requested Contracting Party not to comply in whole or in part with a request for assistance, or to postpone execution and shall give reasons for that decision.

ARTICLE 6

Refusal of Assistance

1. The Requested Contracting Party may refuse the assistance if:
 - (a) the execution of the request would impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person;
 - (b) the execution of the request would be contrary to the domestic law of the Requested Contracting Party;
 - (c) if the request seeking restraint, forfeiture or confiscation, of proceeds or instruments of commission of offence which, had it occurred within the jurisdiction of the Requested Contracting Party, would not have been an offence in respect of which a confiscation order could have been made;
 - (d) the request relates to an offence in respect of which the accused person had been prosecuted and finally convicted or acquitted or pardoned.
2. Before refusing to grant a request for assistance, the Requested Contracting Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Contracting Party accepts assistance subject to conditions, it shall comply with them.

ARTICLE 7

Transmission of Documents and Objects

1. When the request for assistance concerns the transmission of records and documents, the Requested Contracting Party may transmit certified true copies thereof, unless the Requesting Contracting Party expressly requests the originals.
2. Any object as well as the original records or documents transmitted in execution of the request, shall be returned by the Requesting Contracting Party to the Requested Contracting Party as soon as possible unless the latter Contracting Party waives the return thereof.
3. Insofar as not prohibited by the law of the Requested Contracting Party, documents, objects and records shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting Contracting Party in order to make them admissible according to the law of the Requesting Contracting Party.

ARTICLE 8

Taking Evidence in the Requested Contracting Party

1. A person, including a person detained or in custody, requested to testify and produce documents, records or other articles, in the requested Contracting Party may be compelled by subpoena or order to appear and testify and produce such documents, records and other articles, in accordance with the law of the Requested Contracting Party.
2. Subject to the law of the Requested Contracting Party, commissioners, other officials of the Requesting Contracting Party and persons concerned in the proceedings in the Requesting Contracting Party shall be permitted to be present when evidence is taken in the Requested Contracting Party and to participate in the taking of such evidence.
3. The right to participate in the taking of evidence includes the right of counsel present to pose questions. 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 9

Availability of Persons to Give Evidence or Assist in Investigation in the Requesting Contracting Party

1. The Requesting Contracting party may request that a person be made available to testify or to assist in an investigation.
2. The Requested Contracting Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

ARTICLE 10

Making Persons Detained or in Custody Available to Give Evidence or Assist in Investigations

1. A person detained or in custody in the Requested Contracting Party shall, at the request of the Requesting contracting Party, be temporarily transferred to the Requesting Contracting Party to assist in investigations or 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 Contracting Party, the Requesting Contracting 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 sentence imposed expires, or where the Requested Contracting Party advises the Requesting Contracting 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 person present in the Requesting Contracting Party pursuant to Article 9 of the present Treaty.

ARTICLE 11

Safe Conduct

1. A person present in the Requesting Contracting Party in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in the territory of that Contracting Party for any acts or omissions which preceded that person's departure from the Requested Contracting Party, nor shall that person be obliged to give evidence in any proceeding other than the proceedings to which the request relates.
2. A person, who is present in the Requesting Contracting Party by consent as a result of a request for the person's attendance to answer before a judicial authority 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 Contracting Party, 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 Contracting Party, has not left it within a period of 30 days after being officially notified that the 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 Contracting Party may not be subjected to any sanction or compulsory measure in the Requested Contracting Party.

ARTICLE 12

Proceeds and Instruments of Crime

1. The Requested Contracting Party shall upon request endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Contracting Party of the results of its inquiries.

2. A request may be made for assistance in securing the forfeiture confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested Contracting Party by whatever means appropriate.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds or instruments.
4. Proceeds or instruments forfeited or confiscated pursuant to this Treaty shall accrue to the Requested Contracting Party, unless otherwise agreed in a particular case.
5. Where action has been taken in the Requested Contracting Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in either of the Contracting Parties as the case may be by a person affected by the order, the relevant Contracting party shall inform the other Contracting Party as soon as possible and shall also inform it promptly of the outcome of that representation.

ARTICLE 13

Confidentiality and Limitation of Use

1. The Requested Contracting Party may require, after consultation with the Requesting Contracting party, 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 Contracting Party 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.
3. The Requesting Contracting party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Requested Contracting Party.

ARTICLE 14

Authentication

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

ARTICLE 15

Language

Requests and supporting documents shall be accompanied by a translation into English.

ARTICLE 16

Costs

1. The Requested Contracting Party shall meet the cost of executing the request for assistance, except that the Requesting Contracting Party shall bear:
 - (a) the expenses associated with conveying any person to or from the territory of the Requested Contracting Party at the request of the Requesting Contracting Party, and any allowance or expenses payable to that person while in the Requesting Contracting Party pursuant to a request under Articles 9 or 10 of this Treaty; and
 - (b) the expenses and fees of experts either in the Requested Contracting Party or the Requesting Contracting Party.
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 17

Entry Into Force and Termination

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at the place and date mutually agreed by the Contracting Parties as soon as possible. It shall enter into force thirty days after the date of the exchange of instruments of ratification.
2. Either of the Contracting Parties may terminate this Treaty at any time by giving written notice to the other Contracting Party through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of such notice by the other Contracting Party.

DONE at New Delhi this the 3rd day of October 2002, in duplicate, in Hindi, Ukrainian and English, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of India

For Ukraine

**Treaty between the Government of the Republic of India and
the Government of The Republic of South Africa on
Mutual Legal Assistance in Criminal Matters**

The Government of the Republic of India and the Government of Republic of South Africa; (hereinafter referred to as contracting States);

Desiring to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime, including crimes related to terrorism, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

Article 1

Scope of Application

1. The Contracting States shall, in accordance with this Treaty, provide each other the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions, or proceedings to the Requesting State in criminal matters, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.
3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting State would constitute an offence under the laws of the Requested State.
4. Assistance includes-
 - (a) locating and identifying persons and objects;
 - (b) serving documents, including documents seeking the attendance of persons;
 - (c) providing information, documents and records;
 - (d) providing objects, including lending exhibits;
 - (e) search and seizure;
 - (f) taking evidence and obtaining statements;
 - (g) authorizing the presence of persons from the Requesting State at the execution of requests;
 - (h) making detained persons available to give evidence or assist investigations;
 - (i) facilitating the appearance of witnesses or the assistance of persons in investigations;
 - (j) taking measures to locate, restrain, or forfeit the proceeds of crime; and
 - (k) any other form of assistance not prohibited by the law of the Requested State.
5. This Treaty shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.

Article 2

Definitions

For the purpose of this Treaty-

1. Criminal matters means, for the Republic of South Africa both statutory and common law offences and, for the Republic of India, investigations, inquiries, trials or other proceedings relating to an offence created by Parliament or by the legislature of a state/province.
2. Criminal matters shall include investigations, prosecutions or proceedings relating to offences concerning taxation, duties, customs and foreign exchange.

Article 3

Central Authorities

Central Authorities shall transmit and receive all requests for the purposes of this Treaty. The Central Authority for the Republic of India is the Ministry of Home Affairs and the Central Authority for the Republic of South Africa shall be the Director General, Department for Justice and Constitutional Development or a person designated by the Director General.

Article 4

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, in so far as not prohibited by that law, in the manner specified by the Requesting State.
2. The Requested State shall, on request inform the Requesting State of the date and place of execution of the request for assistance.
3. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

Article 5

Contents of requests

1. In all cases, requests for assistance shall indicate-
 - (a) the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
 - (b) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;
 - (c) the purpose of the request and the nature of the assistance sought;
 - (d) the degree of confidentiality required and the reasons therefor; and
 - (e) any time limit within which the request should be executed.

2. In the following cases, requests for assistance shall include:
 - (a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
 - (b) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
 - (c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, 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;
 - (d) in the case of making a detained person available, an indication of 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 probable date of that person's return; and
 - (e) in the case of requests in respect of search and seizure, a statement describing the basis of belief that the money or property is the proceeds of crime and liable for search and seizure.
3. If necessary, and where possible, request for assistance shall include –
 - (a) the identity, nationality and location of a person who is the subject of the investigation, prosecution or proceedings;
 - (b) details of any particular procedure or requirement that the Requesting State wishes to be followed and reasons therefor.
4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information.
5. A request shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing promptly thereafter.

Article 6

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, essential public interest or prejudice the safety of any person.
2. Assistance may be refused if the execution of the request would be contrary to the domestic law of the Requested State.
3. Assistance may be refused if the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.

4. Assistance may be refused if the request seeking restraint, forfeiture or confiscation of proceeds of crime or seizure of property is in respect of conduct/activity which cannot be made the basis for such restraint, forfeiture, confiscation or seizure in the Requested State.
5. 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.
6. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
7. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

Article 7

Service of Documents

1. The Requested State shall serve any document transmitted to it for the purposes 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.

Article 8

Provision of Information, Documents, Records and Objects

1. The Requested State shall provide copies of publicly available information, documents and records of government departments, ministries and agencies.
2. The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.
3. The Requested State may provide certified copies of documents or records, unless the Requesting State expressly requests originals.
4. Original documents, records or object provided to the Requesting State shall be returned to the Requested State as soon as possible upon request.
5. In so far as permitted by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

Article 9

Search and Seizure

1. The Requested State shall execute a request for a search and seizure.
2. Search and seizure shall be conducted by the Requested State in accordance with its domestic laws.
3. The competent authority that has executed a request for a search and seizure 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 objects seized and the circumstances of the seizure.

Article 10

Taking Evidence in the Requested State

1. A person requested to testify and produce documents, records or objects in the Requested State may be compelled, if necessary, to appear and testify and produce such documents, records or objects, in accordance with the law of the Requested State.
2. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State. The right to participate in the taking of evidence includes the right to pose questions.
3. 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.
4. To the extent permitted by its law, the Requested State shall execute a request for the taking of evidence in the manner requested by the Requesting State.

Article 11

Presence of Persons at the Execution of Requests

To the extent permitted by the law of the Requested State, persons specified in the request shall be permitted to be present at the execution of the request.

Article 12

Making Detained Persons Available to give Evidence or Assist in Investigations

1. Upon request, a person serving a sentence in the Requested State shall be temporarily transferred to the Requesting State to assist in investigations or to testify, provided that the person consents.
2. When 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. When 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 13

Providing Evidence or Assisting in Investigations in the Requesting State

The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's agreement thereto. That person shall be informed of any expenses and allowances payable.

Article 14

Safe Conduct

1. Subject to Article 12(2), a person present in the Requesting State in response to a request 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 that 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 thirty (30) days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.
3. Any person who fails to appear in the requesting State may not be subjected to any sanction or compulsory measure in the Requesting or the Requested State.

Article 15

Proceeds and Instruments 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.
2. When, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take measures as are permitted by its law to restrain and forfeit those proceeds.
3. Proceeds forfeited pursuant to this treaty shall accrue to the Requested State unless otherwise agreed.

Article 16

Restitution and Fine Enforcement

The Requested State shall, to the extent permitted by its law, provide assistance concerning restitution to the victims of crime and the collection of fines imposed as a sentence in a criminal prosecution.

Article 17

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 to be kept confidential, disclosed or used only subject to such terms and conditions as it may specify.
2. The Requested State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

Article 18

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 Requested State.

Article 19

Authentication

Documents records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 8 or as required by the Requesting State.

Article 20

Language

1. Requests shall be submitted in the English language.
2. Supporting documents, if not in the English language, shall be accompanied by an English translation.

Article 21

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 expenses payable to that person while in the Requesting State pursuant to a request under Articles 12 or 13 of this Treaty;
 - (b) the expenses and fees of experts either in the Requested State or the Requesting State; and
 - (c) expenses of translation, interpretation and transcription.

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

Article 22

Compatibility with other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either Contracting State from granting assistance to the other State through the provisions of other applicable international conventions or agreements, or through the provisions of its domestic law. The States may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

Article 23

Consultation

The Central Authorities of the Contracting States shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 24

Entry into Force, Amendment and Termination

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force on the date of exchange of the instruments of ratification.
3. This Treaty may be amended by mutual consent.
4. Either Contracting State may terminate this Treaty. The termination shall take effect six (6) months from the date on which it was notified to the other Contracting State.
5. The Contracting States may also by mutual consent terminate this Treaty on such terms and conditions as may be agreed to between the States.

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

DONE at ... this the 16th day of October of the year Two Thousand and three in two originals each in Hindi and English, both texts being equally authentic . However, in case of divergence of interpretation, the English text shall prevail.

Sd/-

For the Government of
the Republic Of India

Sd/-

For the Government of
the Republic of South Africa

Agreement between the Republic of India and the Kingdom of Bahrain on Mutual Legal Assistance in Criminal Matters

The Government of the Republic of India and the Government of the Kingdom of Bahrain, hereinafter referred to as “the Contracting States”;

Desirous to strengthen traditional friendly relations between their respective countries;

Recognising the need for mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

Desirous to improve the mutual cooperation between both countries in the investigation, prosecution and suppression of crime, including crime related to terrorism and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

HAVE AGREED as follows:

Article 1

Scope of Application

1. The Contracting States shall grant each other the widest measure of mutual legal assistance in criminal matters in accordance with the terms of this Agreement.
2. For the purpose of this Agreement mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a Court or some other authority;
3. This Agreement shall be without prejudice to other obligations between the States pursuant to other treaties or arrangements, and shall not prevent the States or their law enforcement agencies from providing assistance to each other pursuant to other treaties or arrangements.
4. The measure taken by a Requested State pursuant to a request for a mutual assistance in accordance with this Agreement shall have the same legal effect as that which would have been taken by the competent authority of the Requesting State.
5. This Agreement shall apply to any requests for mutual legal assistance relating to acts or omissions committed before or after its entry into force.

Article 2

Definitions

1. For the purpose of this Agreement, unless the context requires otherwise, the following words and expressions shall have their corresponding meaning:
 - (a) “criminal matters” means taking of evidence, searches, investigations, inquiries and other proceedings relating to an offence punishable by the laws of both Contracting States, including proceedings related to offences concerning taxation, duties, customs and international transfer of capital or payments and money laundering.

- (b) “property” includes money and all kinds of moveable or immovable, tangible or intangible property, and includes any interest in such property;
 - (c) “proceeds of crime” means any property that is derived or realized directly or indirectly by any person from an offence or the value of any such property;
 - (d) “confiscation” means any measure resulting in the deprivation of property;
 - (e) “instruments of crime” means any property which is or is intended to be used in connection with the commission of an offence; and
 - (f) “the restraint of property” means any measure for the prevention of dealing in or transfer or disposal of property temporarily.
2. Assistance shall include:
- (i) measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime;
 - (ii) taking of evidence and obtaining of statements of persons;
 - (iii) providing of information, documents and other records, including criminal and judicial records;
 - (iv) location of objects and persons connected with the offence including their identification;
 - (v) search and seizure;
 - (vi) delivery of property, including lending of seized objects;
 - (vii) making detained persons and others available to give evidence or assist investigations;
 - (viii) service of document, including documents seeking the attendance of persons;
 - (ix) Judicial commissions; and
 - (x) Other assistance consistent with the objects of this agreement.

Article 3

Central Authorities

1. Requests for assistance under this Agreement shall be made through the Central Authorities of the Contracting States.
2. In the Republic of India, the Central Authority is the Ministry of Home Affairs. In the Kingdom of Bahrain, the Central Authority is the Ministry of Justice.

Article 4

Contents of Requests

1. Requests for assistance under this Agreement shall be made in writing. However, in urgent circumstances, or where otherwise permitted by the Requested State, requests may be made orally but shall be confirmed in writing thereafter;
2. Requests for assistance shall be effected in accordance with the procedures provided for in the laws of the Requested State. The request shall be signed by a competent official under the seal of the Requesting State without a need for authentication.
3. Requests for assistance shall include a statement of :
 - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - (b) the matters, including the relevant facts and laws, to which the investigation or proceedings relates;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting State wishes to be followed;
 - (e) any time limit within which compliance with the request is desired;
 - (f) the identity, nationality and location of the person or persons who are the subject of investigation or proceedings;
 - (g) in the case of requests for 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;
 - (h) 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 sought;
 - (i) in the case of lending of exhibits, the person or class of persons who will have custody of the exhibits, 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;
 - (j) 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;
 - (k) in the case of a Commission, the request for assistance shall be accompanied by an official copy of the records of the investigation conducted by the Requesting State, a detailed statement on the facts, the related evidence and the applicable laws together with a statement on the measures and investigation required;
 - (l) the need, if any, for confidentiality and the reasons thereof.

4. In the case of requests for assistance for restraint or forfeiture of proceeds or instruments of crime, where possible:
 - (a) a detailed description of the proceeds and instruments including their location;
 - (b) a statement describing the basis for belief that the property is a proceed or instrument of crime; and
 - (c) a statement describing the evidence that would be available in or for proceedings in the Requested State.
5. The Requested State shall not refuse to execute the request solely because it does not include all the information described under this Article if it can otherwise be executed according to the law of the Requested State.
6. If the Requested State considers that additional information is needed to enable the request to be dealt with, that State may request such additional information.

Article 5

Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the Requested State and may be executed in accordance with any requirements/ manner specified in the request if not incompatible with the law of the Requested State.
2. The Requested State shall, upon request, inform the Requesting State of any circumstances which are likely to cause a significant delay in execution of the request.
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.

Article 6

Refusal of Assistance

1. The Requested State may refuse the assistance if:
 - (a) the execution of the request would , in its judgment, impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person;
 - (b) the execution of the request would be contrary to the laws of the Requested State;
 - (c) if the request seeking restraint, forfeiture or confiscation of proceeds or instruments of activity which, had it occurred within the jurisdiction of the Requested State, would not have been an activity in respect of which a confiscation order could have been made;
 - (d) if the request is not, in accordance with its laws, within the jurisdiction of the Requested State;
 - (e) the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.

2. Before refusing to grant a request for assistance, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems it necessary. If the Requesting State accepts assistance subject to conditions, it shall comply with those conditions.

Article 7

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 the objects transmitted to the Requesting State shall be returned to the Requested State as soon as possible, unless agreed otherwise on a case by case basis.
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 8

Taking evidence in the Requested State

1. A person, including a person in custody, requested to testify and produce documents, records or other articles in the Requested State may be compelled by subpoena or order issued by the competent authority to appear and testify and produce such documents, records and other articles, in accordance with the law of the Requested State.
2. The provisions of the preceding paragraph do not preclude the right of each State to take evidence of the nationals of the other contracting state, with their consent, through its consular or diplomatic representatives. Nationality of the person requested to be heard shall be determined in accordance with the legislation of the Requested State.
3. Subject to the law of the Requested State, commissioners and other officials of the Requesting State concerned in the proceedings shall be permitted to be present when evidence is taken in the Requested State.

Article 9

Availability of Persons to give Evidence or Assist in Investigation in the Requesting State

1. The Requesting State may request that a person be made available to testify or to assist in an investigation.
2. The Requested State shall invite the person, with his consent, to assist in the investigation or to appear as a witness in the proceedings. That person shall be informed of any expenses and allowances payable.

3. Serving of summons to a person to appear to testify or assist in an investigation in the Requesting State shall be subject to the applicable procedure in the Requested State. The service of the summons may be effected by compulsion in accordance with the relevant legislation of the Requested State.

Article 10

Making Detained Persons Available to give Evidence or Assist in Investigations

1. A person in custody in the Requested State, may, at the request of the Requesting State, be temporarily transferred to the Requesting State to give evidence or assist in investigations or 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 on the transferred person 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 person present in the Requesting State pursuant to a request seeking that person's attendance.
4. The Requested State may refuse the transfer of the person in custody if his presence in the Requested State is necessary due to criminal proceedings.

Article 11

Safe Conduct of the Transmitted Persons

1. A person transmitted, even with his consent, to the Requesting State in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in the territory of 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 and provided with the means to leave the Requesting State, as set forth under Paragraph 1(a) of Article 16, has not left it within a period of 30 days after being officially notified that his or her attendance is no longer required or, having left that territory, has voluntarily returned.
3. Any person who fails to appear in the Requesting state may not be subjected to any sanction or compulsory measure in either of the Contracting States.
4. Except in the cases referred to under Paragraph (2), a person may not be transmitted to any third state or other body except with the prior consent of the Requested State.

Article 12

Proceeds and Instruments of Crime

1. The Requested State shall upon request endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting state of the results of its enquiries.
2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested State by whatever means are appropriate. This assistance may include giving effect to an order made by a court or other competent authority in the Requesting State or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested State.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds or instruments.
4. Proceeds or instruments forfeited or confiscated pursuant to this agreement shall be disposed of in accordance with the law of the Requested State, unless otherwise agreed on a case- by- case basis.
5. Where action has been taken in the Requested State pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in either of the Contracting States as the case may be by a person affected by the order, the relevant State shall inform the other State as soon as possible and shall also inform it promptly of the outcome of that representation.
6. In all cases where assistance is rendered pursuant to this Article, the rights of the Requested State, and those rights acquired by third parties in good faith, over such matters shall not be affected.

Article 13

Confidentiality and Limitation of Use

1. The Requested State may require, after consultation with the Requesting State, that information or evidence furnished pursuant to this Agreement 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.
3. 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 Requested State.

Article 14

Authentication

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

Article 15

Language

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

Article 16

Costs

1. The Requested State shall meet the cost of executing within its territory the request for assistance, and the Requesting State shall bear the other expenses including:
 - (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 during his presence in the territory of the Requesting State pursuant to a request under Articles 9 or 10 of this Agreement, 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 States shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 17

Other Agreements and Treaties

The present Treaty shall not affect the rights and obligations of the Contracting States arising from international convention, treaties or agreements to which they are parties.

Article 18

Entry into Force, Termination, Settlement of Difficulties or Disputes

1. This Agreement is subject to ratification in accordance with the constitutional procedure and practice in each of the Contracting States and the instruments of ratification shall be exchanged through diplomatic channels as soon as possible. It shall come into force on the date of exchange of instruments of ratification.
2. Either of the Contracting States may terminate this Agreement by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the Agreement shall cease to have any force or effect.
3. Any difficulties or dispute in the application and/ or interpretation of this Agreement shall be settled amicably between the Contracting States through diplomatic channels.

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

Done at New Delhi on this 13th day of January, 2004, in two originals each in the Hindi, Arabic and English languages, all texts being equally authentic. However, in case of difference, the English text shall prevail.

Signed

Signed

Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of India and the Republic of Korea

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

Recognizing 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 India, investigations, prosecutions, or other proceedings relating to any offence created by a law of Parliament or by the legislature of a state and, 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.
 - (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 judgments 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 India shall be the Ministry of Home Affairs. The Central Authority for the Republic of Korea shall be the Ministry of Justice.
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 related 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 identify 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 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, and 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.

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

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 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 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 5th day of October 2004 in the Hindi, Korean, and English languages, all texts being equally authentic. In case of any divergence in interpretation the English text shall prevail.

Sd/-

For the Republic of India

Sd/-

For the Republic of Korea

Agreement between the Republic of India and the State of Kuwait on Mutual Legal Assistance in Criminal Matters

The Government of the Republic of India and the Government of the State of Kuwait (hereinafter referred to as the Contracting Parties);

Guided by the traditional friendly relations between the two countries;

Desiring to improve the effectiveness of both countries in the investigation, prosecution and suppression of all types of crime, and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

ARTICLE 1

Scope of application

1. Under this agreement, the Contracting Parties shall grant each other the widest measure of mutual legal assistance in criminal matters.
2. Contracting Parties shall exchange information on final sentences rendered against the citizens of the other contracting party.
3. For the purpose of this Agreement, mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a Court or some other authority.
4. This Agreement shall be without prejudice to other obligations between the Parties pursuant to other treaties or arrangements or otherwise, and shall not prevent the Parties or their law enforcement agencies from providing assistance to each other pursuant to other treaties or arrangements.
5. This Agreement shall also apply to any requests for mutual legal assistance relating to acts or omissions committed before its entry into force.

ARTICLE 2

Definitions

For the purpose of this Agreement:

- a) “Criminal matters” means investigations, inquiries, trials or other proceedings relating to an offence created by law.
- b) “Criminal matters” shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments.
- c) “Assistance” shall include:
 - 1) measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime;

- 2) taking of evidence and obtaining of statements of persons;
 - 3) providing of information, documents and other records, including criminal and judicial records;
 - 4) location of persons and objects, including their identification;
 - 5) search and seizure;
 - 6) delivery of property, and lending of exhibits;
 - 7) making detained persons and others available to give evidence or assist investigations;
 - 8) service of documents, including documents seeking the attendance of persons; and
 - 9) other assistance consistent with the objectives of this Agreement.
- d) “Proceeds of crime” means any property that is derived or realised directly or indirectly by any person from an offence or the value of any such property.
- e) “Property” includes money and all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property.
- f) “Confiscation” means any measures resulting in the deprivation of property by conclusive decision.
- g) “Instrument of crime” means any property which, is or is intended to be, used in connection with the commission of an offence.
- h) “The restraint of property” means any measure for the prevention of dealing in or transfer or disposal of property.

ARTICLE 3

Central Authorities

1. Requests for assistance under this Agreement shall be made through the Central authorities of the Contracting Parties.
2. In the Republic of India the Central Authority is the Ministry of Home Affairs. In the State of Kuwait the Central Authority is the Ministry of Justice (Criminal Execution Office & Foreign Communications).

ARTICLE 4

Contents of Requests

1. Requests for assistance under this agreement shall be made in writing. However, in urgent circumstances or where otherwise permitted by the Requested Party, requests may be made orally but shall be confirmed in writing immediately thereafter.
2. Requests for assistance shall include a statement of:
 - a) the name of the competent authority conducting the investigation or proceedings to which the request relates;

- b) the matters, including the relevant facts and laws, to which the investigation or proceedings relate;
 - c) the purpose for which the request is made and the nature of the assistance sought;
 - d) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - e) any time limit within which compliance with the request is desired;
 - f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - g) 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 Party;
 - h) 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;
 - i) 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;
 - j) 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;
 - k) the need, if any, for confidentiality and the reasons thereof; and
 - l) in the case of requests for restraint or forfeiture of proceeds or instruments of crime, where possible:
 - 1) a detailed description of the proceeds or instruments including their location;
 - 2) a statement describing the basis for belief that the monies or property are the proceeds or instruments of crime; and
 - 3) a statement describing the evidence that would be available for a proceeding in the Requested Party.
3. The Requested Party shall not refuse to execute the request solely because it does not include all of the information described under this article if it can otherwise be executed according to the law of the Requested Party.
4. If the Requested Party considers that additional information is needed to enable the request to be dealt with, that Party may request such additional information.

ARTICLE 5

Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the Requested Party, and may be executed in any manner specified in the request, if not incompatible with the law of the Requested Party.
2. The Requested Party shall inform the Requesting Party of any circumstances which are likely to cause a significant delay in execution of the request.
3. The Requested Party shall promptly inform the Requesting Party of the decision of the Requested Party not to comply in whole or in part with a request for assistance, or to postpone execution and shall give reasons for that decision.

ARTICLE 6

Refusal of Assistance

1. The Requested Party may refuse the assistance if:
 - a) the execution of the request would impair its sovereignty, security, public order or other essential interests;
 - b) the execution of the request would be contrary to the domestic law of the Requested Party;
 - c) the request seeking restraint, forfeiture or confiscation of proceeds or instruments of crime which had it occurred within the jurisdiction of the Requested Party, would not have been a crime in respect of which a confiscation order could have been made;
 - d) the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
2. Before refusing to grant a request for assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, it shall comply with them.

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, unless the Requesting Party expressly requests the originals.
2. 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.
3. Insofar as 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.

ARTICLE 8

Taking evidence in the Requested Party

1. A person, including a person in custody, requested to testify and produce documents, records or other articles in the Requested Party may be compelled by summons/warrants or any other order of a competent authority to appear and testify and produce such documents, records and other articles, in accordance with the law of the Requested Party.
2. Subject to the law of the Requested Party, Commissioners, other representatives of the Requesting Party and persons concerned in the proceedings in the Requesting Party shall be permitted to be present when evidence is taken in the Requested Party and to participate in the taking of such evidence.
3. The right to participate in the taking of evidence includes the right of legal representative present to pose questions. The persons present at the execution of a request may be permitted to make a verbatim transcript of the proceedings and the use of technical means to make such a verbatim transcript if allowed by the court or competent authority.

ARTICLE 9

Availability of Persons to give Evidence or Assistance

1. A Contracting Party may request that a person be made available to testify or to assist in an investigation.
2. The Requested Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

ARTICLE 10

Making Detained Persons available to give Evidence to Assist in Investigation

1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to assist in investigations or proceedings, provided that the person consents to that transfer and there are no overriding grounds against transferring the person. If the person objects to transfer, Article 8 applies.
2. Where the person transferred is required to be kept in custody under the law 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 sentence imposed expires, or 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 person present in the Requesting Party pursuant to a request seeking that person's attendance.
4. An imprisoned person may not be transferred, if such transfer shall have the effect of extending the duration of his imprisonment.

ARTICLE 11

Safe conduct

1. A person present in the Requesting Party in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in the territory of 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 other than the proceedings to which the request relates.
2. A person, who is present in the Requesting Party by consent as a result of a request for the person's attendance to answer before a judicial authority any acts of Commission or Omission shall not be prosecuted or detained or subjected to any other restriction of personal liberty for acts of omission or commission which preceded that person's departure from the Requested Party, 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 Party, has not left it within a period of 30 days after being officially notified that, his attendance is no longer required or, having left that territory, he has voluntarily returned.
4. Any person who fails to appear in the Requesting Party may not be subjected to any sanction or compulsory measure in the Requested Party.

ARTICLE 12

Proceeds and Instruments of Crime

1. The Requested Party shall, upon request endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested Party by whatever means appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting Party or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested Party.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds or instruments.
4. Proceeds or instruments forfeited or confiscated pursuant to this Agreement shall accrue to the Requesting Party, unless otherwise agreed.
5. Where action has been taken in the Requested Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in either of the Contracting Parties as the case may be by a person affected by the order, the relevant Party shall inform the other Party as soon as possible and shall also inform it promptly of the outcome of that representation.

ARTICLE 13

Confidentiality and Limitation of Use

1. The Requested Party may require, after consultation with the Requesting Party, 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 Party 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.
3. The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Requested Party.

ARTICLE 14

Authentication

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

ARTICLE 15

Language

Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested Party or into English.

ARTICLE 16

Costs

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 allowance or expenses payable to that person while in the Requesting Party pursuant to a request under Articles 9 or 10 of this Agreement; and
 - b) the expenses and fees of experts either in the Requested Party or the Requesting Party.
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 17

Entry into Force

This Agreement shall be subject to ratification in accordance with the constitutional procedures in force in both Contracting Parties. It shall become effective from the date of the last intimation, by which either Contracting Party shall inform the other that all the necessary legal procedures for the enforcement of the Agreement have been fulfilled.

ARTICLE 18

Termination

This Agreement has been concluded for an indefinite period of time. Either of the Contracting Parties may terminate this Agreement by giving six months' notice through diplomatic channels. Upon the expiry of such notice, the Agreement shall cease to have any force or effect.

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

DONE at New Delhi, this 25th day of August of the year Two Thousand and Four, in two originals each in Hindi, Arabic and English languages, all the texts being equally authentic. In the event of any differences the English text shall prevail.

For the Government of
The Republic of India

For the Government of
The State of Kuwait

**Treaty between the Government of the Republic of India and
the Government of the Kingdom of Thailand on
Mutual Legal Assistance in Criminal Matters**

**THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF
THE KINGDOM OF THAILAND**, hereinafter referred to as “the Contracting States”,

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 legal assistance in criminal matters,

Have agreed as follows:

Article 1

Scope of Application

1. The Contracting States agree, in accordance with the provisions of this Treaty, to provide each other the widest measure of mutual legal 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 India and Thailand investigations, prosecutions or other proceedings relating to any offence created by law.
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, including legal documents;
 - d. executing requests for searches and seizure;
 - 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 object of this Treaty.
4. Assistance shall be provided without regard to whether the conduct under investigation, prosecution or proceedings in the Requested State constitutes an offence in the Requested State or may be prosecuted by the Requested State.
5. This Treaty is intended solely for mutual legal 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 this Treaty.
7. This Treaty shall not apply to the arrest or detention of any person with a view to the extradition of that person.
8. This Treaty shall not apply to military offences. For the purpose of this Treaty, military offences are violations of military laws and regulations which do not constitute offences under ordinary criminal law.
9. This Treaty shall apply to any request presented after its entry into force even if the relevant acts of omissions occurred before that date.

Article 2

Central Authorities

1. A Central Authority shall be established by each Contracting State.
2. In the Republic of India, the Central Authority is the Ministry of Home Affairs. In the Kingdom of Thailand, the Central Authority is the Attorney General or an official designated by the Attorney General.
3. Requests under this Treaty shall be made by the Central Authority of the Requesting State to the Central Authority of the Requested State.

Article 3

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;
 - (b) the request relates to a political offence. For the purpose of considering whether a request relates to a political offence, the Requested State shall take into account the relevant facts, supporting documents provided by the Requesting State and provisions of international conventions to which the Contracting States are parties. The Requested State may particularly consider that the offences against life, physical integrity or freedom of person, or property are not political offences for the purpose of this Treaty; or
 - (c) the execution of the request would be contrary to the domestic law of the Requested State.
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 4

Contents of Requests for Mutual Legal 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 or other modern means of communication 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 mode of assistance; and
 - (d) the purpose for which the evidence, information, or other assistance is sought.
3. A request may also include:
 - (a) the identity, nationality and location of the person or persons who are the subject of the investigation, prosecution or proceedings 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 proceedings, 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 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 thereof;
 - (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 request 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 probable 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 5

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 6

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 13 and 16, for 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 States shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 7

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 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 8

Taking 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 objects in the requested State, that person may be required to do so in accordance with 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 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, in so far 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 9

Providing Records of Government Offices or Government Agencies

1. The Requested state shall provide copies of publicly available records of a government office or government agency.
2. The Requested State may provide any record or information in the possession of a government office or government 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.

Article 10

Transmission of records or Documents, Transfer of Objects and Authentication

1. When the request for assistance concerns the transmission of records or documents or transfer of objects, the Requested state may transmit or transfer the originals or certified true copies, as the case may be, as soon as possible.
2. The Requesting State shall return any original records, documents or objects furnished in execution of request as soon as possible.
3. Insofar as permitted by the law of the Requested State, the records, documents or objects shall be transmitted or transferred, as the case may be, in a form or accompanied by such authentication as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State.

4. Records, documents or objects transmitted or transferred pursuant to this Treaty shall not require any form of authentication, save as specified in paragraph 3 of this Article.

Article 11

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 within 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 the service, specifying the mode and state 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 12

Search and Seizure

A request for search and seizure and delivery of any object to the Requesting State shall be executed, provided that such action is justified under the laws of the Requested State.

Article 13

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 purpose of the transfer has been accomplished.
 - (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 14

Locating Persons or Objects

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

Article 15

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 restrain, freeze, seize and confiscate such proceeds and inform the Requesting State, of the result thereof.
3. Proceeds or instruments of crime forfeited or confiscated pursuant to this Treaty shall become the properties of the Requested State, unless otherwise agreed in a particular case.

Article 16

Appearance in the Requesting State

When the appearance of a person who is needed in the Requested 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 concurrence of a person shall be communicated promptly to the Requesting State.

Article 17

Safe Conduct

1. A person who is present in the territory of the Requesting State to testify or provide a statement in accordance with the provisions of this Treaty shall not be subject to service of process or be detained or subjected to any other restriction of personal liberty by reason of 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 fifteen (15) consecutive days after notification that the 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 18

Consular Officials

1. Consular officials may take evidence in the territory of the Receiving state from a witness on 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 an individual who appears voluntarily at the consular premises.

Article 19

Consultations

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

Article 20

Language

Requests shall be submitted in English language. Supporting documents, if not in English language, shall be accompanied by an English translation thereof.

Article 21

Compatibility with Other Treaties

This Treaty shall be without prejudice to other obligations between the Contracting States pursuant to other treaties or arrangements, including international conventions to which the Contracting States are parties.

Article 22

Entry into Force, Amendment and Termination

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force on the date of exchange of the instruments of ratification.
3. This Treaty may be amended by mutual consent.
4. Either Contracting State may terminate this Treaty. The termination shall take effect six (6) months from the date on which it was notified to the other Contracting State.
5. The contracting States may also by mutual consent terminate this Treaty on such terms and conditions as may be agreed to between the States.

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

DONE at Phuket, Thailand, this 8th day of February of the year Two Thousand and Four, in two originals, each in Hindi, Thai and English, each text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT
OF THE REPUBLIC OF INDIA

Sd/-

(Yashwant Sinha)

Minister for External Affairs

FOR THE GOVERNMENT
OF THE KINGDOM OF THAILAND

Sd/-

(Surakiart Sathirathai)

Minister of Foreign Affairs

Treaty between the Republic of India and the Republic of Belarus on Mutual Legal Assistance in Criminal Matters

The Republic of India and the Republic of Belarus, hereinafter referred to as Contracting Parties,
Guided by the traditional friendly relations between the two States,

Recognizing the need to facilitate the widest measures of mutual legal assistance in the service of
summons, execution of judicial orders and other judicial documents and commissions,

Desiring to improve the effectiveness of measures of both the States in 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. Under this Treaty, the Contracting Parties shall grant each other the widest measure of mutual legal assistance in criminal matters.
2. For the purpose of this Treaty mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a court or some other competent authority.
3. The mutual legal assistance includes:
 - a) identification and establishment of location of persons or property acquired by criminal means (proceeds of crime) and instruments of crime;
 - b) obtaining evidence and statements of persons;
 - c) providing documents and judicial records in the original or their certified copies, and other information, and delivering property and exhibits;
 - d) search and seizure;
 - e) activities directed at search and seizure of property, forfeiture of property acquired by criminal means (proceeds of crime) and of instruments of crime;
 - f) tracing of persons;
 - g) temporary transfer of persons in custody for the purpose of giving evidence or assisting in investigation;
 - h) delivery of documents;
 - i) any other legal assistance stipulated by the provisions of this Treaty and any assistance consistent with the law of the Requested Contracting Party.

4. The legal assistance related to the issues of arrest and detention of persons with the purpose of their extradition, transfer of convicts for the continuation of serving criminal punishment and criminal prosecution shall be settled by specific treaties between Contracting Parties.

ARTICLE 2

Definitions

For the purpose of this Treaty the terms used mean:

- (a) Criminal matters:

For the Republic of India- investigations, inquiries, trials and other proceedings relating to an offence as stated in its criminal law;

For the Republic of Belarus- individual proceedings conducted by the criminal prosecution authority and court in respect to the conducted act dangerous to society as stated in its criminal law;

- (b) property acquired by criminal means (proceeds of crime) – any property that is derived or realized directly or indirectly by any person from an offence or offences or the value of any such property;
- (c) property- as it is defined in the respective national laws of the Contracting Parties;
- (d) instruments of crime – any objects, including property used or intended to be used for committing an offence;
- (e) the restraint of property – any measure for the prevention of trading or transfer or any other disposal of property.

ARTICLE 3

Central Authorities

1. Requests for assistance under this Treaty shall be made through the Central Authorities of the Contracting Parties.
2. In the Republic of India the Central Authority is the Ministry of Home Affairs of the Government of India.

In the Republic of Belarus, the Central Authorities are the General Prosecutor's Office of the Republic of Belarus and the Supreme Court of the Republic of Belarus.

ARTICLE 4

Content and the Form of a Request for Legal Assistance

1. Requests for legal assistance under this Treaty shall be made in writing. In urgent circumstances, or where otherwise permitted by the Requested Contracting Party, a request and supporting documents, if any, may be sent by facsimile or other electronic channels followed by sending of originals immediately.

2. Requests for legal assistance shall include a statement of:
- (a) the name of the competent authority of the Requesting Contracting Party;
 - (b) the name of the competent authority of the Requested Contracting Party;
 - (c) the matters, including the relevant facts and provisions of laws and subordinate legislation, to which the investigation or proceedings relate and information about the extent of the loss caused by the crime;
 - (d) the purpose for which the request is made and the nature of assistance sought;
 - (e) details of any particular procedure or requirement that the Requesting Contracting Party wishes to be followed;
 - (f) any time limit within which compliance with the request is desired;
 - (g) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings, including witnesses and victims (occupation and as far as it is possible also the place and date of birth as for legal persons- their names, legal (registered) address and the location);
 - (h) in the case of requests for obtaining of evidence, search and seizure- the basis for belief that this evidence is within the jurisdiction of the Requested Contracting Party.
 - (i) in the case of requests to take evidence from a person- description of this subject matter in relation to which evidence required and a list of questions which a person should be asked;
 - (j) in the case of lending of exhibits, persons(s) who will have custody of the exhibit, the place to which the exhibit is to be removed and any examinations to be conducted and the date by which the exhibits shall be returned;
 - (k) in the case of making persons detained or in custody available, persons who will safeguard these persons during the transfer, the place to which this person is to be transferred and the date of this person's return;
 - (l) the need, if any, for confidentiality and the reasons therefore;
 - (m) in the case of requests for restraint or forfeiture of the property acquired by criminal means (proceeds of crime) or instruments of crime, where possible:
 - detailed description of the property acquired by criminal means (proceeds of crime) or instruments of crime including their location;
 - description of the basis for belief that the money or property is the property acquired by criminal means (proceeds of crime) or instruments of crime;
 - description of the evidence for a proceeding that would be available in the territory of the Requested Contracting Party.

3. Requests for legal assistance if it is necessary for execution of proceedings shall be accompanied by judicial orders or other orders of the competent authority (official) of the Requesting Contracting Party or other relevant documents.
4. The request for legal assistance shall be signed by the authorized person and officially sealed by the competent authority of the Requesting Contracting Party.
5. The Requested Contracting Party shall not refuse to execute the request solely because it does not include all of the information described under paragraph 2 of this Article, if it can otherwise be executed according to the law of the Requested Contracting Party.
6. If the Requested Contracting Party considers that additional information is needed to enable the request to be dealt with, that Contracting Party may request such additional information.

ARTICLE 5

Execution of Request

1. Requests for legal assistance shall be executed in accordance with the law of the Requested Contracting Party and may be executed in accordance with any requirements or in the manner specified in the request if not incompatible with the law of the Requested Contracting Party.
2. If the location of the person that is requested is unknown, the requested Contracting Party shall take all the appropriate measures for its establishment.
3. The presence of the representatives of the Requesting Contracting Party shall be permitted according to the national legislation of the Requested Contracting Party.
4. The Requested Contracting Party upon request shall inform the Requesting Contracting Party of any circumstances likely to cause a significant delay in execution of the request for legal assistance and about the period of the delay.
5. The Requested Contracting Party shall inform the Requesting Contracting Party of the decision of the Requested Contracting Party not to comply in whole or in part with a request for legal assistance, or to postpone its execution and shall give reasons for that decision.
6. On the completion of the execution of the request for legal assistance the Requested Contracting Party shall transfer the documents to the Requesting Contracting Party.

ARTICLE 6

Refusal of Legal Assistance

1. The Requested Contracting Party may refuse legal assistance if:
 - (a) the execution of the request would impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person;
 - (b) the execution of the request would be contrary to the domestic law of the Requested Contracting Party;

- (c) the request related to an offence in respect of which the accused person had been acquitted or pardoned.
2. Before refusing to grant a request for legal assistance, the Requested Contracting Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Contracting Party accepts the assistance subject to conditions, it shall comply with them.

ARTICLE 7

Transmission of Documents and Objects

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

ARTICLE 8

Summoning a Person for Obtaining Evidence and other Materials

1. A person, including a person detained or in custody, requested to testify and produce documents, records or other articles in the territory of the Requested Contracting Party may be compelled by subpoena or judicial order to appear and testify as well as produce such documents, records and other articles, in accordance with the law of the Requested Contracting Party.
2. The Requested Contracting Party, in accordance with its law, shall permit the presence of such persons as specified in the request during the execution of the request, and may allow them to pose questions to the person being questioned.
3. The persons present at the execution of a request for a legal assistance shall be permitted to make a verbatim transcript of the proceedings. To the extent not prohibited by the law of the Requested Contracting Party, the use of technical means to make such a verbatim transcript shall be permitted.
4. The Requesting Contracting Party may request the other Contracting Party that a person be made available to testify or to assist an investigation in the territory of the Requesting Contracting Party.
5. The Requested Contracting Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's voluntary concurrence thereto. That person shall be informed of any expenses and allowances payable. The Requested Contracting Party shall promptly inform the Requesting Contracting Party of the person's response.

ARTICLE 9

Making Persons Detained or in Custody Available to Give Evidence or Assist in Investigation

1. A person detained or in custody in the Requested Contracting Party shall, at the request of the Requesting Contracting Party, be temporarily transferred to the Requesting Contracting Party to assist in investigations or proceedings, provided that the person consents to this 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 Contracting Party, the Requesting Contracting Party shall hold that person in custody and shall return the person at the conclusion of the execution of the request.
3. Where the sentence imposed expires, or where the Requested Contracting Party advises the Requesting Contracting 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 present in the territory of the Requesting Contracting Party pursuant to a request seeking that person's attendance.
4. The temporary transfer of a person, mentioned in Paragraph 1 of this Article, shall be refused, if:
 - 1) there is no consent of the person for such transfer;
 - 2) his presence is necessary in the territory of the Requested Contracting Party for the purposes of investigation;
 - 3) it entails violation of the terms of custody of the Requested Contracting Party, stipulated by its law.
5. The request for a temporary transfer of a person mentioned in paragraph 1 of this Article shall be made pursuant to Article 4 of this Treaty, with the indication of the period of the requested person's presence in the territory of the Requesting Contracting Party. On the expiry of the period the transferred person shall be unconditionally returned to the territory of the Requested Contracting Party.

ARTICLE 10

Safe Conduct

1. A person present in the Requesting Contracting Party, including a person in custody, in response to a request seeking this person's attendance shall not be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of that Contracting Party for any acts or omissions which preceded that person's departure from the Requested Contracting Party, nor shall that person be obliged to give evidence in any criminal matter 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 territory of the Requesting Contracting Party, has not left it within a period of 30 days after being officially notified that the person's attendance is no longer required or, having left that territory, he has voluntarily returned.

3. Any person who fails to appear in the territory of the Requesting Contracting Party may not be subjected to any penalty or compulsory measure in the Requested Contracting Party.

ARTICLE 11

Property Acquired by Criminal Means (Proceeds of Crime) and Instruments of Crime

1. The Requested Contracting Party, upon request of the Requesting Contracting Party, shall endeavor to ascertain whether any property acquired by criminal means (proceeds of crime) or instruments of a crime are located within its jurisdiction and shall notify the Requesting Contracting Party of the results of its inquiries.
2. A request for legal assistance may be made for the purpose of the forfeiture or confiscation of property acquired by criminal means (proceeds of crime) or instruments of a crime. Such assistance shall be given in accordance with the law of the Requested Contracting Party by whatever means appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting Contracting Party or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested Contracting Party.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of property acquired by criminal means (proceeds of crime) or instruments of a crime.
4. Property acquired by criminal means (proceeds of crime) or instruments of crime forfeited or confiscated pursuant to this Treaty shall accrue to the Requested Contracting Party, unless otherwise agreed in a particular case.
5. Where action has been taken in the Requested Contracting Party pursuant to a request for legal assistance under paragraph 1 or 2 of this Article, and there is a representation in the Republic of India or in the Republic of Belarus, as the case may be, by a person affected by the order, the relevant Contracting Party shall inform the other Contracting Party as soon as possible and shall also inform it promptly of the outcome of that representation.
6. The property shall be transferred to the Requesting Contracting Party after adjudication of the claims of the third persons relating to this property subject to the relevant provisions in the law of the Contracting Party whose competent authority carries out the transfer.

ARTICLE 12

Confidentiality and Limitation of Use

1. The Requested Contracting Party may require, after consultation with the Requesting Contracting Party, 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 condition as it may specify.
2. The Requested Contracting Party shall, to the extent requested, keep confidential the request for legal assistance, its contents, supporting documents and any action taken pursuant to the request except to the extent necessary to execute it.

3. The Requesting Contracting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request for legal assistance without the prior consent of the Requested Contracting Party.

ARTICLE 13

Authentication

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

ARTICLE 14

Languages

While complying with this Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in English.

ARTICLE 15

Costs

1. The Requested Contracting Party shall meet the cost of executing the request for legal assistance, except that the Requesting Contracting Party shall bear:
 - the expenses associated with transferring any person to or from the territory of the Requested Contracting Party at the request of the Requesting Contracting Party, and any allowance or expenses payable to that person while in the Requesting Contracting Party pursuant to a request for legal assistance under Article 8 or 9 of this Treaty;
 - the expenses and fees of experts either in the Requested Contracting Party or the Requesting Contracting Party.
2. If it becomes apparent that the execution of the request for legal assistance 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 16

Delivery of documents

The competent authority of the Requested Contracting Party shall deliver documents in accordance with its national legislation. The delivery of documents shall be confirmed by a receipt with the signature of the person served and the person serving it, place and date of delivery or another testimony of the delivering authority which confirms the fact and date of delivery. Such a confirmation or another testimony shall be sealed with an official seal of the competent authority of the relevant Contracting Party.

ARTICLE 17

Consultations

The Contracting Parties shall consult promptly, at the request of either Contracting Party, concerning the interpretation and the application of this Treaty, either generally or in relation to a particular request for legal assistance.

ARTICLE 18

Compatibility with other Treaties

This Treaty shall not prejudice the obligations of the Contracting Parties arising from other international Treaties.

ARTICLE 19

Temporal Scope of Application

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

ARTICLE 20

Ratification and Termination

1. This Treaty shall be subject to ratification and it shall enter into force from the date of exchange of instruments of ratification.
2. Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channels. This Treaty shall cease to have effect six months after the receipt of the notice.

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

DONE at Minsk, this the 5th day of October, 2005, in duplicate, each in Hindi, Russian and English, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Republic of India

For the Republic of Belarus

**Agreement between the Government of the Republic of India and
the Government of the Republic of Mauritius on Mutual Legal
Assistance in Criminal Matters**

The Republic of India and Republic of Mauritius (hereinafter referred to as Contracting States);

Guided by the traditional friendly relations between the two countries;

Recognizing the need to facilitate the widest measures of mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

Desiring to improve the effectiveness of both countries in the suppression, investigation and prosecution of crime, including crime relating to terrorism and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

Article 1

Scope of Application

1. The Contracting States shall, in accordance with this Agreement, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings to the Requesting State in criminal matters, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.
3. Assistance includes -
 - (a) locating and identifying persons and objects;
 - (b) serving documents, including documents seeking the attendance of persons;
 - (c) providing information, documents and records;
 - (d) providing objects, including lending exhibits;
 - (e) search and seizure;
 - (f) taking evidence and obtaining statements;
 - (g) authorizing the presence of persons from the Requesting State at the execution of requests;
 - (h) making detained persons available to give evidence or assist investigations;
 - (i) facilitating the appearance of witnesses or the assistance of persons in investigations;
 - (j) taking measures to locate, restrain or forfeit the proceeds of crime; and
 - (k) any other form of assistance not prohibited by the law of the Requested State.

4. This Agreement shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.

Article 2

Definitions

For the purpose of this Agreement -

1. "Criminal matters" means, for the Republic of India, investigations, inquiries, trials or other proceedings relating to an offence created by Parliament or by the legislature of a state and for the Republic of Mauritius, 'criminal matters' means, subject to the laws of the Republic of Mauritius, investigations, inquiries or other proceedings relating to a statutory offence.
2. Criminal matters shall include investigations, prosecutions or proceedings relating to offences concerning taxation, duties, customs and foreign exchange.

Article 3

Central Authorities

The Central Authorities shall transmit and receive all requests for the purposes of this Agreement. The Central Authority for the Republic of India is the Ministry of Home Affairs and the Central Authority for the Republic of Mauritius shall be the Attorney General.

Article 4

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, in so far as not prohibited by that law, in the manner specified by the Requesting State.
2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
3. The Requested State shall not refuse to execute a request on the ground of bank secrecy, save as may be authorized by law.

Article 5

Contents of Requests

1. In all cases, requests for assistance shall indicate -
 - (a) the name of the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
 - (b) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;

- (c) the purpose of the request and the nature of the assistance sought;
 - (d) the degree of confidentiality required and the reasons therefor; and
 - (e) any time limit within which the request should be executed.
2. In the following cases, requests for assistance shall include:
- (a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
 - (b) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
 - (c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, 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;
 - (d) in the case of making detained persons available, an indication of 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 probable date of that person's return; and
 - (e) in case of requests in respect of proceeds of crime/ search and seizure, a statement describing the basis of belief that the money or property are the proceeds of crime or are liable for search and seizure.
3. If necessary, and where possible, requests for assistance shall include -
- (a) the identity, nationality and location of a person or persons who is/ are the subject of the investigation, prosecution or proceedings;
 - (b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.
4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.
5. A request for assistance shall be made in writing. However, 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 6

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, essential public interest or prejudice the safety of any person.

2. Assistance may be refused if the execution of the request would be contrary to the domestic law of the Requested State.
3. Assistance may be refused if the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
4. Assistance may be refused if the request seeking restraint, forfeiture or confiscation of proceeds of crime or seizure of property are in respect of conduct/ activity which cannot be made basis for such restraint, forfeiture, confiscation or seizure in the Requested State.
5. 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.
6. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
7. Before refusing a request for assistance or before postponing the execution of a Request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

Article 7

Service of Documents

1. The Requested State shall serve any document transmitted to it by the Requesting State 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.

Article 8

Provision of Information, Documents, Records and Objects

1. The Requested State shall provide copies of publicly available information, documents and records of government departments and agencies.
2. The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities, and to the extent that it is not prohibited under the law of the Requested State.
3. The Requested State may provide certified true copies of documents of records, unless the Requesting State expressly requests originals.

4. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible upon request.
5. In so far as not prohibited by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

Article 9

Search and Seizure

1. The Requested State shall execute a request for a search and seizure.
2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions as would be authorized for its own law enforcement and judicial authorities, to the extent that the same is not prohibited under the law of the Requested State.
3. The competent authority that has executed a request for a search and seizure 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 objects seized and the circumstances of the seizure.

Article 10

Taking Evidence in the Requested State

1. A person including a person in custody, requested to testify and produce documents, records or objects in the Requested State may be compelled by subpoena or order to appear, testify and produce such documents, records or objects, in accordance with the law of the Requested State.
2. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State.
3. The right to participate in the taking of evidence includes the right to pose questions. 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 11

Presence of Persons at the Execution of Requests

To the extent not prohibited by the law of the Requested State, persons specified in the request shall be permitted to be present at the execution of the request.

Article 12

Making Detained Persons Available to give Evidence or Assist Investigations

1. Upon request, a person serving a sentence in the Requested State shall be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person consents.
2. When 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. When 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 13

Providing Evidence or Assisting Investigations in the Requesting State

The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

Article 14

Safe Conduct

1. Subject to Article 12(2), a person present in the Requesting State in response to a request 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 that 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 within thirty (30) days (in the case of the Republic of India) and within ten (10) days (in the case of the Republic of Mauritius) after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.
3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

Article 15

Proceeds and Instruments of Crime

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

2. When, pursuant to paragraph 1 of this Article, suspected proceeds or instruments of crime are found, the Requested State shall take such measures as are permitted by its law to restrain and forfeit those proceeds or instruments.
3. Proceeds or instruments forfeited or confiscated pursuant to this Agreement shall accrue to the Requested State, unless otherwise agreed.

Article 16

Restitution and Fine Enforcement

The Requested State shall, to the extent permitted by its law, provide assistance concerning restitution to the victims of crime and the collection of fines imposed as a sentence in a criminal prosecution.

Article 17

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, disclosed or used only subject to such terms and conditions as it may specify.
2. The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

Article 18

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 Requested State.

Article 19

Authentication

Documents, records or objects transmitted pursuant to this Agreement shall not require any form of authentication, except as specified in Article 8, or as required by the Requesting State.

Article 20

Language

1. Requests shall be submitted in the English language.
2. Supporting documents, if not in the English language, shall be accompanied by an English translation.

Article 21

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 expenses payable to that person while in the Requesting State pursuant to a request under Article 12 or 13 of this Agreement;
 - (b) the expenses and fees of experts either in the Requested State or the Requesting State;
 - (c) the expenses of translation, interpretation and transcription; and
 - (d) the expenses associated with the taking of evidence from the Requested State to the Requesting State via video, satellite or other technological means.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting States shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 22

Compatibility with other Treaties

Assistance and procedures set forth in this Agreement shall not prevent either State from granting assistance to the other State through the provisions of other applicable international conventions/agreements, or through the provisions of its domestic law. The States may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

Article 23

Consultation

The Central Authorities of the Contracting States shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Agreement. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Agreement.

Article 24

Entry into Force, Amendment and Termination

1. This Agreement is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Agreement shall enter into force from the date of exchange of instruments of ratification.
3. This Agreement may be amended by mutual consent.
4. Either Contracting State may terminate this Agreement. The termination shall take effect six (6) months from the date on which it was notified to the other Contracting State.
5. The States may also by mutual consent terminate this Agreement on such terms and conditions as may be agreed to between the States.

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

DONE at New Delhi on 24th day of October, Two Thousand and Five in two originals each, in Hindi and English, all texts being equally authentic. However, in case of divergence of interpretation, the English text shall prevail.

For the Republic of India

For the Republic of Mauritius

**Agreement between the Government of the Republic of India and
the Government of the Republic of Singapore Concerning Mutual Legal
Assistance in Criminal Matters**

The Government of the Republic of India and the Government of the Republic of Singapore hereinafter called the Contracting States;

Guided by the traditional friendly relations between the two countries;

Desiring to facilitate the widest measure of mutual assistance and to improve the effectiveness of both countries in the prevention and suppression of crime through co-operation in investigation and prosecution of criminal matters;

HAVE AGREED as follows:

Article 1

Scope of Assistance

- (1) The Contracting States shall, in accordance with the provisions of this Agreement and subject to their respective domestic laws, provide each other mutual assistance in criminal matters.
- (2) Assistance shall include:
 - (a) the location and identification of persons;
 - (b) the service of documents;
 - (c) the obtaining of voluntary statements or taking of evidence;
 - (d) the production of material or thing / object;
 - (e) the execution of requests for search and seizure;
 - (f) the making of arrangements for persons to give evidence or assistance in relation to criminal matters in the Requesting State;
 - (g) the restraining of dealing in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;
 - (h) the recovery, forfeiture or confiscation of property derived from the commission of an offence; and
 - (i) the provision of such other assistance as may be agreed and which is consistent with the objects of this Agreement and the laws of the Requested State.
- (3) Assistance shall not include:
 - (a) the extradition of any person

- (b) the execution or enforcement of final criminal judgments or sentences of a court in the Requesting State, except as contemplated by this Agreement and permitted by the laws of the Requested State; or
 - (c) the transfer of persons in custody to serve sentences.
- (4) This Agreement is intended solely for mutual assistance between the Contracting States and shall not give rise to any right on the part of any private person to make a request under this Agreement.

Article 2

Central Authorities

- (1) Each Contracting State shall, at all times, have an authority that is designated as the Central Authority to make and receive requests for the purposes of this Agreement.
- (2) At the commencement of this Agreement the Central Authority is:
 - (a) for the Republic of India, the Ministry of Home Affairs and
 - (b) for the Republic of Singapore, the Attorney-General or a person duly authorised by the Attorney-General.
- (3) Each Contracting State shall notify the other of any change of its Central Authority.
- (4) The Central Authorities shall normally communicate directly with each other but may, if they choose, communicate through diplomatic channels.

Article 3

Form and Contents of Requests

- (1) All requests shall be made in writing.
- (2) In urgent cases, a request may be made by any means that affords a record in writing and need not contain all the information set out in this Article. Where an urgent request is made, the Central Authority shall submit a request within 10 days unless the Requested State agrees in writing to a longer period.
- (3) Every request for assistance shall:
 - (a) specify the purpose of the request and the nature of the assistance sought;
 - (b) identify the person or authority that initiated the request;
 - (c) be accompanied by:
 - (i) a certificate that the request is made in respect of a criminal matter;
 - (ii) a description of the nature of the criminal matter and its current status, and a statement setting out a summary of the relevant facts and laws;

- (iii) a description of the offence to which the criminal matter relates including its maximum penalty;
 - (iv) details of any particular requirement that the Requesting State may have, or any procedure that it wishes to be followed in giving effect to the request, including details of the manner or form in which any information, evidence, document or material or thing/object should be provided to the Requesting State;
 - (v) a statement setting out the wishes, if any, of the Requesting State concerning the confidentiality of the request, and the reasons for those wishes;
 - (vi) details of the period within which the Requesting State wishes the request to be met; and
 - (vii) any other information that may assist in giving effect to the request.
- (4) Requests for assistance shall, where relevant, and to the extent possible, also include:
- (a) where a request for assistance would involve locating a particular person, the identity, nationality and any information regarding that person's current whereabouts;
 - (b) where the request relates to:
 - (i) the location of a person who is suspected to be involved in or to have benefited from the commission of an offence; or
 - (ii) the tracing of property that is suspected to be connected with an offence, the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in subparagraph (i) or (ii);
 - (c) where the request is for assistance in obtaining statements or taking of evidence under Article 6 or 7,
 - (i) a statement outlining the basis of the Requesting State's belief that the person whose statement or evidence is sought may be able to give evidence relevant to the criminal matter; and
 - (ii) a description of the matters about which the person is to be examined or questioned including, where appropriate, any questions that the Requesting State's wishes to be put to that person.
 - (d) where the request is for assistance in obtaining the production of material or a thing/object under Article 8,
 - (i) a description of the material or thing/object to be produced and, where relevant, a description of the appropriate person to be asked to produce them;
 - (ii) a statement outlining the basis of the Requesting State's belief that the material or thing/object may be relevant to the criminal matter.

- (e) if the request is for assistance involving a person travelling to the Requesting State under Article 9, details of allowances to which the person would be entitled, and of the arrangements for accommodation for the person while in the Requesting State pursuant to the request;
 - (f) where the request is for assistance relating to property derived from the commission of an offence under Article 11,
 - (i) a statement outlining the basis of the Requesting State's belief that property may be located in the Requested State;
 - (ii) the court order sought to be enforced (where applicable) and a statement regarding the current status of that order; and
 - (iii) where judicial proceedings to obtain an order for the confiscation or forfeiture of property derived from the commission of an offence have not been instituted in the Requesting State, a statement indicating when they are likely to be instituted.
 - (g) if the request is for assistance relating to search and seizure under Article 12,
 - (i) a description of the property sought and its likely location; and
 - (ii) a statement outlining the basis of the Requesting State's belief that the property may be located in the Requested State and its relevance to the criminal matter.
 - (h) if an official of the Requesting State intends to travel to the Requested State in connection with the request, information about the purpose of that person's visit, the proposed time frame and travel arrangements.
- (5) If the Requested State considers that the information contained in a request is not sufficient to enable the request to be dealt with in accordance with this Agreement, it may request additional information.

Article 4

Execution of Requests

- (1) Requests for assistance shall be carried out promptly by the competent authorities of the Requested State in accordance with its laws and, unless inconsistent with those laws, in the manner requested by the Requesting State.
- (2) The Requested State shall promptly inform the Requesting State of circumstances, when they become known to the Requested State, which are likely to cause a significant delay in carrying out the request.
- (3) The Requested State shall promptly inform the Requesting State of the outcome of the execution of the request. If the request cannot be executed in whole or in part, the Requested State shall, to the extent possible, inform the Requesting State of the reasons therefor.

Article 5

Refusal or Postponement of Execution of Requests

- (1) The Requested State shall refuse assistance if it is of the opinion that:
 - (a) the request relates to the investigation, prosecution or punishment of a person for an act or omission that, had it occurred in the Requested State, would have been an offence under the military law of that State but not under its ordinary criminal law;
 - (b) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or by reason of the circumstances in which it was committed or is alleged to have been committed, of a political character. For the purpose of considering whether a request relates to a political offence, the Requested State shall take into account the relevant facts, supporting documents provided by the Requesting State and provisions of international conventions to which the Contracting States are parties. The Requested State may in particular consider that serious offences against life, physical integrity or freedom of person, or property are not political offences for the purpose of this Agreement.
 - (c) there are substantial grounds for believing that the request has been made for the purpose of investigating, prosecuting or punishing, or otherwise causing prejudice to a person on account of that person's race, ethnic origin, sex, religion, nationality or political opinions;
 - (d) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had taken place within the jurisdiction of the Requested State would not have constituted an offence under its law;
 - (e) the request relates to the investigation, prosecution or punishment of a person for an offence where the person:
 - (i) has been convicted, acquitted or pardoned by a court or competent authority in the Requested State; or
 - (ii) has undergone the punishment provided by the laws of that State, in respect of that offence or of another offence constituted by the same act or omission.
 - (f) the request would impair the sovereignty, security or public order or is contrary to public interest of the Requested State;
 - (g) the request would prejudice a criminal matter in the Requested State; or
 - (h) the request is not made in conformity with this Agreement.
- (2) In addition to the grounds set out in paragraph 1, the Requested State may refuse assistance, if it is contrary to its laws for the request to be granted.
- (3) If the Requested State determines that the execution of the request, or any portion thereof, would interfere with an ongoing criminal investigation or proceeding, or any other matter before its courts, it may postpone execution or make execution subject to conditions determined necessary after consultations with the Requesting State. If the Requesting State accepts assistance subject to the conditions, it shall comply with the conditions.

Article 6

Obtaining Statements

Where a request is made to obtain a statement from a person for the purpose of a criminal matter in the Requesting State, the Requested State shall endeavour, with the consent of that person, to obtain that statement.

Article 7

Taking of Evidence

- (1) Where a request is made for the taking of evidence for the purposes of any criminal proceedings pending in a court of the Requesting State, the Requested State shall arrange to have such evidence taken in accordance with its domestic laws.
- (2) Where evidence is to be taken under this Article, the parties to the relevant criminal proceedings in the Requesting State or their legal representatives may, subject to the laws of the Requested State, appear and question the person giving that evidence.
- (3) A person who is required to give evidence under this Article may decline to give evidence where either:
 - (a) the laws of the Requested State would permit that person to decline to give evidence in similar circumstances in criminal proceedings which originated in the Requested State; or
 - (b) the laws of the Requesting State would permit that person to decline to give evidence in such criminal proceedings in the Requesting State.
- (4) If any person claims that there is a right to decline to give evidence under the laws of the Requesting State, and if so requested, the Requesting State shall provide a certificate to the Requested State as to the existence or otherwise of that right. In the absence of evidence to the contrary, the certificate shall be prima facie evidence of the matters stated in it.

Article 8

Production of Material or Thing/Object

- (1) Where a request is made for the production of any material or thing/object for the purposes of any criminal matter in the Requesting State, the Requested State shall, subject to its laws, arrange for such production and transmission.
- (2) A person who is required to produce any material or thing/object under this Article may decline where either:
 - (a) the laws of the Requested State would permit that person to decline to produce that material or thing/object in similar circumstances in criminal proceedings which originated in the Requested State; or
 - (b) the laws of the Requesting State would permit that person to decline to produce that material or thing/object in such criminal proceedings in the Requesting State.

- (3) If any person claims that there is a right to decline to produce that material or thing/object under the laws of the Requesting State, and if so requested, the Requesting State shall provide a certificate to the Requested State as to the existence or otherwise of that right. In the absence of evidence to the contrary, the certificate shall be prima facie evidence of the matters stated in it.
- (4) The Requesting State undertakes to return to the Requested State any particular material or thing/object transmitted under this Article when it is no longer needed, or at the conclusion of the criminal matter to which the request relates, whichever is the earlier.

Article 9

Attendance of Persons

- (1) The Requesting State may request assistance in arranging for the attendance of a person who is in the Requested State to give evidence or provide assistance in respect of a criminal matter in the Requesting State.
- (2) The Requested State shall, if permitted by its laws, and if satisfied that appropriate arrangements for that person's safety will be made by the Requesting State, invite the person to give or provide evidence or assistance in the Requesting State. The person shall be informed of any expenses or allowances payable.
- (3) The Requested State shall promptly inform the Requesting State of the person's response and, if the person consents, take necessary steps to facilitate the person's attendance in the Requesting State.

Article 10

Safe Conduct

- (1) Where a request for assistance under Article 9 is made, the Requesting State undertakes that the person:
 - (a) shall not be detained, prosecuted or punished for any offence against the laws of the Requesting State that is alleged to have been committed, or that was committed, before the person's departure from the Requested State;
 - (b) shall not be subject to any civil suit (being a civil suit to which the person could not be subject to if he or she were not in the Requesting State) in respect of any act or omission that is alleged to have occurred or that had occurred, before the person's departure from the Requested State;
 - (c) shall not be required to assist in any criminal matter other than the criminal matter to which the request relates;
 - (d) shall not be subject to any prosecution based on his or her testimony, other than for an offence of perjury or contempt of court; or
 - (e) be returned to the Requested State in accordance with arrangements agreed by both Contracting States.

- (2) Paragraph 1 shall not apply if the person, being free to leave the territory of the Requesting State, has not left within 30 days after he or she is personally notified in writing by the Requesting State that his or her presence is no longer required, or having left the territory of the Requesting State, has voluntarily returned.
- (3) A person who does not consent to travel to the Requesting State to give evidence or assistance shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to attend as requested.

Article 11

Property Used in or Derived from the Commission of an Offence

- (1) The Contracting States shall assist each other, to the extent permitted by their respective domestic laws, in relation to proceedings to confiscate property used in or derived from the commission of an offence.
- (2) Where property used in or derived from the commission of an offence is found in the Requested State and where the Requesting State so requests, the Requested State shall take such measures as are permitted by its laws to restrain the said property pending a final determination by a court of the Requesting State.
- (3) Upon request, the Requested State shall, to the extent permitted by its laws, give effect to a final order confiscating property made by a court of the Requesting State.
- (4) In the application of this Article, the rights of bona fide third parties shall be given effect to the extent permitted by the laws of the Requested State.
- (5) A request for assistance under this Article shall be made only in respect of such orders that are instituted or made after the coming into force of this Agreement.
- (6) Property confiscated pursuant to this Article shall accrue to the Requested State, unless otherwise agreed in a particular case.

Article 12

Search and Seizure

- (1) The Requested State shall, to the extent its laws permit, carry out requests for search, seizure and delivery of any material or thing/object to the Requesting State which is relevant to a criminal matter.
- (2) The Requested State shall provide such information as may be required by the Requesting State concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the material or thing/object seized.
- (3) The Requesting State shall observe any conditions as to the return and safe custody, imposed by the Requested State, of any seized material or thing/object which is delivered to the Requesting State, including any terms and conditions to protect third party interests in the material or thing/object.

Article 13

Location or Identification of Persons

The Requested State shall endeavour to ascertain the location or identity of any person specified in the request and who is believed to be in its territory.

Article 14

Service of Process

- (1) The Requested State shall, in accordance with its laws, endeavour to arrange for service of any process on a person in its territory.
- (2) The Requesting State shall transmit any request for the service of the process which requires a response or an appearance in the Requesting State, within a reasonable time before the response is due or the appearance scheduled.
- (3) A person on whom process is served pursuant to this Article shall not be subject to any penalty, liability or coercive measure pursuant to the laws of the Requesting State or the Requested State by reason only of that person's refusal or failure to accept or comply with such process.
- (4) The Requested State shall, subject to its laws, return a proof of service in the manner required by the Requesting State. If service cannot be effected, the Requesting State shall be so informed and advised of the reasons.

Article 15

Provision of Public and Official Documents

The Requested State shall on request, provide copies of publicly available documents or records in the possession of government departments and agencies.

Article 16

Confidentiality and Limitation on Use

- (1) The Requested State shall keep a request for assistance, the contents of the request and its supporting documentation, and the fact of the granting of such assistance, confidential. If the request cannot be executed without breaching confidentiality, the Requested State shall, before executing the request, so inform the Requesting State which shall then determine the extent to which it wishes the request to be executed.
- (2) The Requesting State shall:
 - (a) undertake not to disclose or use the information or evidence furnished pursuant to this Agreement for purposes other than those stated in the request without the prior written consent of the Requested State. The Requested State may consent for the information or evidence to be used for purposes other than those stated in the request subject to such terms and conditions as it may specify;

- (b) use its best efforts to ensure that the information or evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.

Article 17

Authentication

- (1) Each Contracting State shall, upon request, authenticate any document to be transmitted to the other State under this Agreement. A document is authenticated for the purposes of this Agreement if:
 - (a) it purports to be signed or certified by a judge, magistrate or official in or of the Contracting State sending the document; and
 - (b) either:
 - (i) it is verified by the oath or affirmation of a witness or official of the Contracting State sending the document; or
 - (ii) it purports to be sealed with an official seal of the Contracting State sending the document or a Minister or official of a Department of that State.

Article 18

Language

All requests and supporting documents submitted by the Requesting State shall be in English. Supporting documents, if not in the English language, shall be accompanied by an English translation.

Article 19

Representation and Expenses

- (1) The Requested State shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting State.
- (2) The Requested State shall assume all ordinary expenses of executing a request for assistance within its jurisdiction, except that the Requesting State shall bear:
 - (a) the expenses and fees of experts;
 - (b) the expenses of translation, interpretation and transcription;
 - (c) the fees of counsel retained at the request of the Requesting State;
 - (d) travel expenses and allowances of persons traveling at the request of the Requesting State; and
 - (e) other expenses, to the extent that these are of an extraordinary nature.
- (3) If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting States shall consult in advance to determine the terms and conditions under which the requested assistance can be provided.

Article 20

Consultation

- (1) The Contracting States shall consult promptly at the request of either Contracting State on any matter concerning the interpretation and implementation of this Agreement.
- (2) Any dispute arising out of the interpretation and implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are unable to reach an agreement.

Article 21

International Conventions and other Treaties

This Agreement shall not prevent the Contracting States from providing assistance in criminal matters to each other pursuant to any bilateral agreements, arrangements or applicable international conventions to which both Contracting States are parties.

Article 22

Entry into Force, Amendment and Termination

- (1) The Contracting States shall notify each other in writing of the completion of their respective requirements for the entry into force of this Agreement. This Agreement shall enter into force 30 days after the date of receipt of the last notification.
- (2) This Agreement shall apply to requests presented after its entry into force even if the relevant acts or omission occurred before that date.
- (3) This Agreement may be amended by mutual consent of the Contracting States.
- (4) Either Contracting State may terminate this Agreement by giving written notification to the other Contracting State. The termination shall take effect 6 months after the date on which the notification is received by the other Contracting State. Any request received prior to the notification of termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was in force.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at New Delhi this 29th day of June of the year Two Thousand and Five, in two originals each, in Hindi and English, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Sd/-

For the Government of the
Republic of India

Sd/-

For the Government of the
Republic of Singapore

Agreement between the Republic of India and the Kingdom of Spain on Mutual Legal Assistance in Criminal Matters

The Republic of India and the Kingdom of Spain (hereinafter referred to as Contracting Parties);

Guided by the traditional friendly relations between the two countries;

Recognising the need to facilitate the widest measures of mutual assistance in criminal matters;

Desiring to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime, including crime related to terrorism and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

ARTICLE 1

Scope of application

1. Under this Agreement, the Contracting Parties shall grant each other the widest measure of mutual legal assistance in criminal matters.
2. For the purpose of this Agreement mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided initially by a judicial authority or any other authority, if ultimately such a request or grant is issued by a judicial authority.
3. This Agreement shall be without prejudice to other obligations between the Parties pursuant to other treaties or arrangements or otherwise, and shall not prevent the Parties or their law enforcement agencies from providing assistance to each other pursuant to other treaties or arrangements.
4. This Agreement shall also apply to any requests for mutual legal assistance relating to acts or omissions committed before its entry into force.

ARTICLE 2

Definitions and Scope of the Assistance

1. Criminal matters mean, legal proceedings relating to investigations, inquiries or trials of the offences created by the law, including the fiscal crimes.
2. Assistance shall include :
 - i. measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime;
 - ii. taking of evidence and obtaining of statements of persons;

- iii. providing of information, documents and other records, including criminal and judicial records;
 - iv. location of persons and objects, including their identification;
 - v. search of persons and places and seizure of assets and documents;
 - vi. delivery of property, including lending of exhibits;
 - vii. making detained persons and others available to give evidence or assist investigations;
 - viii. service of documents, including documents seeking the attendance of persons; and
 - ix. any other assistance consistent with the objects of this agreement.
3. For the purpose of this agreement:
- a. “proceeds of crime” means any property that is derived or realised directly or indirectly by any persons from an offence or offences or the value of any such property;
 - b. “property” includes money and all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property;
 - c. “confiscation” means any measure resulting in the deprivation of property;
 - d. “instruments of crime” means any property which is, or is intended to be, used in connection with the commission of an offence; and
 - e. “the restraint of property” means any measure for the prevention of dealing in or transfer or disposal of property.

ARTICLE 3

Central Authorities

- 1. Requests for assistance under this Agreement shall be made through the Central Authorities of the Contracting Parties.
- 2. In the Republic of India the Central Authority is the Ministry of Home Affairs. In the Kingdom of Spain, the Central Authority shall be the Ministry of Justice.

ARTICLE 4

Form and Contents of Requests

- 1. Requests for assistance under this Agreement shall be made in writing. The requests may be made in advance by fax, e-mail or other equivalent mode, due to be confirmed by original document signed by the Requesting State within following thirty days of their formulation.
- 2. Requests for assistance shall include a statement of:
 - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;

- (b) the matters, including the relevant facts and laws, to which the investigation or proceedings relates;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (e) any time limit within which compliance with the request is desired;
 - (f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - (g) 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 Party;
 - (h) in the case of requests to take evidence from a person, the text of the questionnaire and the description of the method by which it should be done;
 - (i) in the case of landing 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;
 - (j) 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;
 - (k) the need, if any, for confidentiality and the reasons therefor; and
 - (l) in the case of requests for restraint or forfeiture of proceeds or instruments of crime, where possible:
 - i) a detailed description of the proceeds or instruments including their location;
 - ii) a statement describing the basis for belief that the monies or property are the proceeds or instruments of crime; and
 - iii) a statement describing the evidence that would be available for a proceeding in the Requested Party.
3. The Requested Party shall not refuse to execute the request solely because it does not include all of the information described under this article if it can otherwise be executed according to the law of the Requested Party.
4. If the Requested Party considers that additional information is needed to enable the request to be dealt with, that Party may request such additional information.

ARTICLE 5

Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the Requested Party and may be executed in accordance with any requirements or manner specified in the request if not incompatible with the law of the Requested Party.
2. The Requested Party shall, upon request, inform the Requesting Party of any circumstances which area likely to cause a significant delay in execution of the request.
3. The Requested Party shall promptly inform the Requesting Party of a decision of the Requested Party not to comply in whole or in part with a request for assistance or to postpone execution and shall give reasons for that decision.

ARTICLE 6

Refusal of Assistance

1. The Requested Party may refuse the assistance if:
 - (a) the execution of the request would impair its sovereignty, security, public order or other essential interests;
 - (b) the execution of the request would be contrary to the domestic law of the Requested Party;
 - (c) if the request seeking restraint, forfeiture or confiscation of proceeds or instruments of activity which, had it occurred within the jurisdiction of the Requested Party, would not have been an activity in respect of which a confiscation order could have been made; and
 - (d) the request relates to an offence in respect of which the accused person had been finally acquitted. However, the Requested Party shall provide information as may be required to establish that the accused has been finally acquitted.
2. Before refusing to grant a request for assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, it shall comply with them.

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 , unless the Requesting Party expressly requests the originals.
2. 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.
3. Insofar as 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.

ARTICLE 8

Taking Evidence in the Requested Party

1. A person, including a person in custody, requested to testify and produce documents, records or other articles in the Requested Party may be compelled by subpoena or order to appear and testify and produce such documents, records and other articles, in accordance with the law of the Requested Party.
2. Subject to the law of the Requested Party, commissioners, other officials of the Requesting Party and persons concerned in the proceedings in the Requesting Party shall be permitted to be present when evidence is taken in the Requested Party and to participate in the taking of such evidence.
3. Subject to the law of the Requested Party, the right to participate in the taking of evidence includes the right of counsel present to pose questions. 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 9

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

1. The Requesting Party may request that a person be made available to testify or to assist in an investigation.
2. The Requested Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

ARTICLE 10

Making Detained Persons Available to Give Evidence or Assist in Investigations

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 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 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 sentence imposed expires, or 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 person present in the Requesting Party pursuant to a request seeking that person's attendance.

ARTICLE 11

Safe conduct and Immunity

1. A person present in the Requesting Party in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in the territory of 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 other than the proceedings to which the request relates.
2. A person, who is present in the Requesting Party by consent as a result of a request for the person's attendance to answer before a judicial authority 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 Party, 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 Party, has not left it within a period of 30 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 Party may not be subjected to any sanction or compulsory measure in the Requested Party.

ARTICLE 12

Proceeds and Instruments of Crime

1. The Requested Party shall upon request endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. A request may be made for the assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested Party by whatever means are appropriate. This may include giving effect to an order made by a judicial authority or other competent authority whose actions may be appealed against to a judicial authority in the Requesting Party or submitting the request to one of the said authorities for the purpose of seeking a forfeiture or confiscation order in the Requested Party.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds or instruments.
4. The State Party which has under its custody the proceeds or instruments of crime shall make them available in conformity of the established norms in its internal legislation, unless otherwise agreed in a particular case.
5. Where action has been taken in the Requested Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in either of the Contracting Parties as the case may be by a third Party affected by the order, the relevant Party shall inform the other Party as soon as possible and shall also inform it promptly of the outcome of that representation.

ARTICLE 13

Confidentiality and Limitation of Usage of the Information

1. The Requested Party may require, after consultation with the Requesting Party, 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 Party 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.
3. The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Requested Party.

ARTICLE 14

Authentication

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

ARTICLE 15

Language

Requests and supporting documents shall be accompanied by a translation into the official language of the Requested Party or English.

ARTICLE 16

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 allowance or expenses payable to that person while in the Requesting Party pursuant to a request under Article 9 or 10 of this Agreement; 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 Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

ARTICLE 17

Entry into Force

This Agreement shall come into force on the last date of the month following in which the last communication through diplomatic channel between the parties is made conveying completion of all the internal legal requisites for its entry into force.

ARTICLE 18

Termination

Either of the Contracting Parties may terminate this agreement by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the agreement shall cease to have any force or affect.

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

DONE at New Delhi this the 3rd day of July 2006 (Two Thousand and Six) in two originals each, in Hindi, Spanish and English, all texts being equally authentic. However, in case of difference, the English text shall prevail.

For the Republic of India

For the Kingdom of Spain

Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of India and the Republic of Bulgaria

The Republic of India and Republic of Bulgaria (hereinafter referred to as Contracting States);

Guided by the traditional friendly relations between the two countries;

Recognizing the need to facilitate the widest measures of mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

Desiring to improve the effectiveness of both countries in the suppression of crime, investigation, prosecution and crime related to terrorism and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

Article 1

Scope of Application

1. The Contracting States undertake to afford each other, in accordance with the provisions of the present Treaty, the widest measures of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings to the Requesting State in criminal matters, irrespective of whether the assistance is sought or is to be provided by a court or some other authority and shall include:
 - a) locating and identifying persons and objects;
 - b) service of summons and other judicial documents;
 - c) taking of evidence, obtaining testimony from persons, including expert examination;
 - d) executing inspection, search and seizure;
 - e) providing material and documentary evidence;
 - f) making persons in custody and others, including experts, available to give evidence or assist in investigations;
 - g) location, restraining, seizure and confiscation of the proceeds and instruments of crime;
 - h) providing relevant judicial records and exchange of legal information.
3. Other forms of legal assistance may be executed if they are in accordance with the law of the Requested State.
4. Assistance and procedures set forth in this Treaty shall not prevent either State from granting assistance to the other State through the provisions of other applicable international conventions or agreements or through the provisions of its domestic laws. The States may also provide assistance pursuant to any bilateral arrangement or agreement that may be applicable.

5. The assistance under this Treaty shall not include:
 - a) extradition and detention of a person with a view of extradition of that person;
 - b) enforcement of criminal judgments rendered by the courts of the Requesting State on the territory of the Requested State;
 - c) transfer of persons in custody to serve sentences;
 - d) transfer of proceedings in criminal matters.
6. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting State would constitute an offence under the laws of the Requested State.
7. This Treaty shall apply to requests for legal assistance relating to offences committed before its entry into force.

Article 2

Definitions

For the purpose of this Treaty:

- a) 'Criminal matters' means investigations, inquiries, trials or other proceedings relating to an offence created by law including those relating to taxation, custom duties and international transfer of capital and payments.
- b) 'Property' means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime'.
- c) 'Proceeds of crime' means any property derived or obtained directly or indirectly, by any person as a result of criminal activity or the value of any such property'.
- d) 'Instruments' means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;
- e) 'Confiscation' means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property.
- f) 'Restraint of property' means any measure for the prevention of dealing in or transfer or disposal of property.

Article 3

Refusal or Postponement of Legal Assistance

1. Assistance may be refused if:
 - a) in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order or other essential public interest;
 - b) the Requested State has reasons to believe that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin, expression of opinion or that that person's position may be prejudiced for any of those reasons;
 - c) the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned in the Requested State.
2. Legal assistance may be postponed if the 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 its decision 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 a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

Article 4

Execution of Request for Legal Assistance

1. When executing the requested legal actions, the Requested State shall apply its national legislation. To the extent consistent with its law and practice the Requested State may carry out the request in the manner specified by the law of the Requesting State.
2. If the Requesting State makes a specific request, the Requested State shall communicate the date and place of execution of the requested assistance. In such case the authorities of the Requesting State and the parties to the proceedings may attend the execution of the request in conformity with the laws of the Requested State.
3. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

Article 5

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. If the service cannot be effected the reasons shall be communicated immediately to the Requesting State.

Article 6

Transmission of Documents and Objects

1. The Requested State shall provide copies of publicly available information and documents of government departments and agencies.
2. The Requested State may provide any information, documents and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.
3. The Requested State may provide certified copies of documents, unless the Requesting State expressly requests originals. The original documents shall be kept in the safe custody of the Requesting State till the end of the proceedings.
4. Original documents or objects provided to the Requesting State shall be returned to the Requested State as soon as possible upon request.
5. In so far as not prohibited by the law of the Requested State, documents or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.
6. Taxes or customs duties shall not be levied on objects that have been transmitted under this Treaty except in accordance with the domestic laws of the Contracting States.

Article 7

Availability of Persons to Give Evidence or Assist in Investigation or Criminal Proceedings in the Requested State

1. A person including a person in custody, requested to testify and produce documents or objects in the Requested State may be compelled by subpoena or order to appear, testify and produce such documents or objects, in accordance with the law of the Requested State.
2. Where appearance of persons is requested with respect to the execution of a request for assistance in the territory of the Requested State, it shall apply measures of compulsion and sanctions provided for by its domestic law.
3. Subject to the law of the Requested State officials or authorized persons of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State.
4. The right to participate in the taking of evidence includes the right to pose questions. 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 8

**Availability of Person to Give Evidence or
Assist in Investigations or Criminal Proceedings in the Requesting State**

1. The Requesting State may request that a person be made available to give evidence or assist investigations in its jurisdiction.
2. The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings in the Requesting State and seek that person's voluntary consent thereto. The Requested State shall promptly inform the Requesting State of that person's response.
3. The request shall indicate the approximate allowances and travel and subsistence expenses payable by the Requesting State. If a specific request is made, the Requested State may grant the person an advance, which shall be refunded by the Requesting State.

Article 9

**Transfer of Persons in Custody to Give Evidence
or to Assist in Investigations or Criminal Proceedings**

1. Upon the request of the Requesting State a person in custody in the Requested State shall, subject to that person's consent be temporarily transferred to the Requesting State to assist in investigations or give evidence unless there are overriding grounds against the transfer.
2. The transferred person shall be held in custody in the Requesting State and shall be returned in custody to the Requested State on the conclusion of the matter in relation to which the transfer was sought or at such earlier time as the person's presence is no longer required.
3. 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 referred to in article 8 of the present Treaty.

Article 10

Safe Conduct

1. A person present in the Requesting State pursuant to a request seeking that person's attendance shall not be detained, prosecuted, or subjected to any other restriction of personal liberty in the Requesting State in respect of offences or convictions that preceded that person's departure from the Requested State. That person shall not, without his consent, be required to give evidence in any proceedings or to assist in any investigations other than the proceedings and investigations to which the request relates.
2. The protection under paragraph 1 shall cease to apply, if that person being free to leave the Requesting State has not left after the expiration of 30 consecutive days after being officially notified that his presence is no longer required or, having left, has voluntarily returned.
3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

Article 11

Information on Judgments

1. The Requested State shall communicate extracts from and information relating to judicial records requested by Requesting State required in criminal proceedings, to the extent these may be made available to its own judicial authorities in like cases.
2. In cases other than those provided for in paragraph 1 of this Article, the request shall be complied with in accordance with the conditions provided for by the law or practice of the Requested State.

Article 12

Search and Seizure

1. The Requested State shall execute a request for a search and seizure.
2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions as to be got done for its own law enforcement and judicial authorities in accordance with its laws.
3. The competent authority that has executed a request for a search and seizure 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 or objects seized and the circumstances of the seizure.

Article 13

Proceeds and Instruments of Crime

1. The Requested State shall upon request endeavor to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
2. The Requested State shall upon request take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.
3. The Requested State shall upon request for confiscation concerning instruments or proceeds, situated in its territory, enforce a confiscation order made by a court of a Requesting State in relation to such instruments or proceeds; or submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.
4. The measures mentioned in this article should be carried out as permitted by and in accordance with the domestic law of the Requested State and, to the extent not incompatible with such law.
5. Proceeds or instruments forfeited or confiscated pursuant to this Treaty shall accrue to the Requested State, unless otherwise agreed on a case- to- case basis.

Article 14

Contents of a Request for Legal Assistance

1. The request for legal assistance shall include :
 - a) description of the competent authorities responsible for conducting the investigation or court proceedings to which the request relates;
 - b) purpose of the request and a brief description of the assistance sought;
 - c) description of the facts alleged to constitute the offence and a statement or texts of relevant laws, except in cases of a request for service of documents;
 - d) any other information necessary for the execution of the request, in particular information concerning the identity of the persons concerned in the request;
 - e) details of any particular procedure or requirements that the Requesting State wishes to be followed, and general information about the authorities and parties to the proceedings that are willing to participate;
 - f) if necessary, specification of any time limit within which compliance with the request is desired.
2. In case of requests to take evidence from a person, the request shall contain information about the subject matter of the evidence or statement sought, an interrogation questionnaire and other appropriate requirements.
3. In the following cases, requests for assistance shall include:
 - (a) in the case of requests to take evidence from a person, an indication as to the type of statements, whether sworn, affirmed or recorded/ authenticated by a judicial officer that are required and a description of the subject matter of the evidence or statement sought;
 - (b) in the case of providing of materials of evidence, the current location of such materials in the Requested State and an indication of the authority or persons who will be entrusted to keep such materials in the Requesting State, the place to which such materials are to be moved, any tests to be conducted and the date by which such materials will be returned;
 - (c) in the case of making detained persons available, an indication of the authority or persons who will have custody during the transfer, the place to which the detained person is to be transferred and the probable date of that person's return; and
4. If necessary, and where possible, requests for assistance shall include:
 - (a) the identity, nationality and location of a person or persons who is/are the subject of the investigation, prosecution or proceedings;
 - (b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.
5. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.

Article 15

Limitation on Use

The Requesting State shall not, without the consent of the Requested State use or transfer information or evidence provided by the Requested State for investigations and proceedings other than those stated in the request. However in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

Article 16

Confidentiality

1. The Requested State shall upon request keep confidential the request for assistance, its contents and the supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breach of confidentiality, the Requested State shall so inform the Requesting State, which shall then determine whether the request should nevertheless be executed.
2. The Requested State shall upon request keep confidential the evidence and information provided by the Requesting State except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

Article 17

Central Authorities

1. Central Authorities shall transmit and receive requests for legal assistance and responses thereto for the purposes of this Treaty. Transmissions may also take place through the International Police Organization/INTERPOL.
2. The Central authorities for the purposes of this Treaty shall be:
for the Republic of India - the Ministry of Home Affairs
and for the Republic of Bulgaria - the Ministry of Justice.

Article 18

Exchange of Legal Information

Upon request, the Contracting States shall inform each other of the provisions of their respective laws and legal practice.

Article 19

Certification

All records and documents, or certified copies thereof that are exchanged between the Contracting States shall not require any form of legislation within the meaning of this Treaty.

Article 20

Language

Requests for legal assistance and supporting documents shall be accompanied by a certified translation in English or in the language of the Requested State.

Article 21

Costs

1. The costs of executing the request for legal assistance shall be borne by the Requested State.
2. The Requesting State shall bear the expenses for the transfer of persons in custody to its territory and the expenses and fees of experts in the Requested State and the costs mentioned in paragraph 3 of Article 8.
 1. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting States shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 22

Ratification and Entry into Force

1. This Treaty shall be subject to ratification and shall enter into force on the 30th day after the exchange of the instruments of ratification.
2. Either contracting State may denounce the present Treaty by giving notice in writing to the other State through the diplomatic channel. Such denunciation shall take effect six months following the date on which it is received by the other State.
3. Under the initiative of either contracting State amendments may be made to this Treaty, which shall enter into force according to procedure described in paragraph 1 of this article.

Article 23

Interpretation

All matters with respect to the interpretation or implementation of this Treaty shall be settled by the Contracting States through consultations between the authorities mentioned in Article 17 of the Treaty.

In witness whereof the undersigned being duly authorized thereto by their respective Governments, have signed this treaty.

Done at New Delhi on September, 2007 in duplicate in Hindi, Bulgarian and English language all texts being equally authentic. In case of divergence, the English text shall prevail.

For the Republic of India

For the Republic of Bulgaria

Treaty between the Government of the Republic of India and the Government of United Mexican States on Mutual Legal Assistance in Criminal Matters

The Government of the Republic of India and the Government of the United Mexican States hereinafter referred to as “the Contracting Parties”;

GUIDED by the traditional friendly relations between both countries;

RECOGNISING the need to facilitate the widest measure of mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

DESIRING to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime, including terrorism and tracing, restraint, seizure and forfeiture of funds meant for financing acts of terrorism as also, the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

HAVE agreed as follows:

ARTICLE 1

SCOPE OF APPLICATION

1. The Contracting Parties shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by either Contracting Party in respect of investigations, prosecutions or proceedings to the other Contracting Party in criminal matters, irrespective of whether the assistance is sought or is to be provided by a Tribunal or Court or some other authority.
3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in one Contracting Party would constitute an offence under the laws of the other Contracting Party.
4. Assistance shall include:
 - a) locating and identifying persons and objects;
 - b) serving documents, including documents seeking the attendance of persons;
 - c) providing information, documents and records;
 - d) providing objects, including lending exhibits;
 - e) taking evidence and obtaining statements, including expert’s opinion;
 - f) authorizing the presence of persons from one Contracting Party at the territory of the other Contracting Party for the execution of a request;
 - g) making detained persons available to give evidence or assist investigations;

- h) facilitating the appearance of witnesses or the assistance of persons in investigations;
 - i) search and seizure;
 - j) taking measures to locate, restrain or forfeit the proceeds and instruments of crime;
 - k) providing of information by either Contracting Party suo moto to the other, which may be within its knowledge and can be of use of the other Contracting Party;
 - l) taking measures to locate, freeze, seize and forfeit any funds or finances meant for the financing of acts of terrorism in the territory of either Contracting Party;
 - m) any other form of assistance not prohibited by the national law of the Requested Party.
5. This Treaty shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.
6. This Treaty does not empower one Contracting Party's authorities to undertake, in the territorial jurisdiction of the other, the exercise and performance of the functions or authority exclusively entrusted to the authorities of that other Contracting Party by its national laws or regulations.

ARTICLE 2

DEFINITIONS

For the purpose of this Treaty:

1.
 - a) for the Republic of India, criminal matters mean, investigations, inquiries, trials or other proceedings relating to an offence created by law of Parliament or by the legislature of a State and for the United Mexican States, criminal matters mean investigations or proceedings relating to any offence under any Federal or State law.
 - b) criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs, foreign exchange and international transfer of capital or payments.
2. a) "proceeds of crime" means any property derived or obtained directly or indirectly by any person or organization as a result of an offence, including crime involving money laundering or the value of any such property.
- b) "property" means assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to or interest in such assets derived or used in the commission of an offence include the ones obtained through proceeds of crime;
- c) "forfeiture" means any legal measure resulting in the deprivation of property;
- d) "instruments of crime" means any property which is or is intended to be used in connection with the commission of an offence;
- e) "seizure of property" means any measure for the prevention of dealing in or transfer or disposal of property; and

- f) “assistance” means legal assistance under this Treaty.
- 3. a) “Requesting Party” means the Contracting Party that makes the request for mutual legal assistance in criminal matters.
- b) “Requested Party” means the Contracting Party to whom the request is made.

ARTICLE 3

CENTRAL AUTHORITIES

- 1. Requests for assistance under this Treaty shall be made through the Central Authorities of the Contracting Parties.
- 2. For the Republic of India the Central Authority shall be the Ministry of Home Affairs and in the United Mexican States the Central Authority shall be the Office of the Attorney General.
- 3. Any change or addition in the Central Authorities shall be notified by either Contracting Party through diplomatic channels.

ARTICLE 4

CONTENTS OF REQUESTS

- 1. Requests for assistance under this Treaty shall be made in writing. However, in urgent circumstances, or where otherwise permitted by the Requested Party, requests may be made orally or by any electronic means such as electronic e-mail or facsimile, with the understanding that it shall be formalized in writing within thirty (30) days, after the request was made.
- 2. Requests for assistance shall include a statement of:
 - a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - b) the matters, including the relevant facts and laws, to which the investigation or proceeding relates;
 - c) the purpose for which the request is made and nature of the assistance sought;
 - d) details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefor;
 - e) any time limit within which compliance with the request is desired;
 - f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - g) in the case of requests for the taking of evidence or search and seizure, or the location, restraint or forfeiture of proceeds of crime or funds meant for financing of acts of terrorism, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the Requested Party;

- h) 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;
 - i) in the case of lending of exhibits, the persons 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;
 - j) the person or class of person 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;
 - k) in case that request is intended to receive a statement from a person in the territory of the Requested Party, the Requesting Party shall send the respective questionnaire in writing;
 - l) the need, if any, for confidentiality and the reasons therefor; and
 - m) in the case of request for seizure or forfeiture of proceeds or instruments of crime, including seizure and forfeiture of funds meant for financing acts of terrorism where possible:
 - (i) a detailed description of the proceeds or instrument including their location
 - (ii) a statement describing the basis for belief that the monies or property are the proceeds or instruments of crime including seizure and forfeiture of funds meant for financing acts of terrorism; and
 - (iii) a statement describing the evidence that would be available for proceeding in the Requested Party.
3. If the Requested Party considers that additional information is needed to enable the request to be dealt with, that Contracting Party may request such additional information.
4. The Requested Party shall not refuse to execute the request solely because it does not include all of the information prescribed under this Article if it can otherwise be executed according to the national law of the Requested Party.

ARTICLE 5

EXECUTION OF REQUEST

1. Requests for assistance shall be executed in accordance with the national legislation of the Requested Party and may be executed in accordance with any requirements specified in the request if not incompatible with its national legislation.
2. The Requested Party shall, upon request, inform the Requesting Party of any circumstances, which are likely to cause a significant delay in the execution of the request.
3. The Requested Party shall, inform the Requesting Party of the date and place of execution of the request for assistance.
4. The Requested Party shall not refuse to execute a request on the ground of bank secrecy.
5. The Central Authority of the Requested Party shall communicate as soon as possible the result of its proceedings to the Central Authority of the Requesting Party.

ARTICLE 6

REFUSAL OR POSTPONEMENT OF ASSISTANCE

1. Assistance may be refused if, in the opinion of the Requested Party, the execution of the request would impair its sovereignty, security, public order, essential public interest or prejudice the safety of any person.
2. Assistance may be refused if the execution of the request would be contrary to the national law of the Requested Party.
3. Assistance may be refused if the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
4. Assistance may be refused if the request seeking seizure, forfeiture of proceeds of crime or seizure of property is in respect of any conduct/activity which cannot be made basis for such seizure or forfeiture in the Requested Party.
5. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
6. The Requested Party shall promptly inform the Requesting Party of the decision of the Requested Party not to comply in whole or in part the request for assistance or either to grant or postpone execution of the request and shall give reasons for that decision.
7. The request for assistance may be refused if it relates to a political offence or an offence of a political nature. For the purpose of this Treaty, the following offences shall not be regarded as offences of political character:
 - (a) offences under International Conventions to which both States are Parties;
 - (b) murder;
 - (c) manslaughter or culpable homicide;
 - (d) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
 - (e) the causing of an explosion likely to endanger life or cause serious damage to property;
 - (f) the making or possession of an explosive substance by a person to intend either himself or another person to endanger life or cause serious damage to property;
 - (g) the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
 - (h) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;
 - (i) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;

- (j) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
 - (k) incitement to murder;
 - (l) any other offence related to terrorism which at the time of the request is under the national legislation of the Requesting Party, not to be regarded as an offence of a political character; and
 - (m) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.
8. Before refusing a request for assistance or before postponing the execution of a request, the Requested Party shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to those conditions, it shall comply with them.

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.
2. The Requested Party may provide any information, copies of documents and records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own enforcement and judicial authorities.
3. The original 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.
4. Insofar as not prohibited by the national legislation 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 national legislation of the Requesting Party.

ARTICLE 8

TAKING EVIDENCE IN THE REQUESTED PARTY

1. Any person, including a person in custody or detention, requested to testify and produce documents, records or other articles in the Requested Party may be compelled by subpoena or order to appear and testify and produce such documents, records and other articles, in accordance with the national legislation of the Requested Party.
2. Subject to the national law of the Requested Party, commissions or other officials of the Requesting Party shall be permitted to be present when evidence is taken in the Requested Party and to participate in the manner as may be permissible.

3. The presence and participation of representatives shall have to be previously authorized by the Requested Party, which will inform the Requesting Party before the execution of the request.
4. The Requesting Party shall submit a list of the names, designation and reasons for the presence of its representative within a reasonable time frame before the execution of the request.

ARTICLE 9

VIDEO CONFERENCING

On request, the Requested Party may facilitate examination of a witness or an expert before its judicial authority or other competent authority, by means of video conferencing, in conformity with its national law and procedure.

ARTICLE 10

AVAILABILITY OF PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATION IN THE REQUESTING PARTY

The Requesting Party may request that a person be made available to testify or to assist in an investigation. The Requested Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence in writing thereto. That person shall be informed in advance, of any expenses and allowances payable by the Requesting Party.

ARTICLE 11

MAKING DETAINED PERSONS AVAILABLE TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS

1. A person in custody in the territory of the Requested Party shall, at request of the Requesting Party, be temporarily transferred to the Requesting Party to assist in investigations or 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 national legislation 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. The initial term of transfer shall not exceed ninety (90) days, which, upon justified request of the Requesting Party, may be extended by the Requested Party.
4. Where the sentence imposed expires, or 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 in the territory of the Requesting Party under Article 10 of this Treaty.
5. The time spent in the custody within the territory of the Requesting Party shall be computed towards the sentence, which was imposed by the Requested Party.

ARTICLE 12

SAFE CONDUCT

1. A person, including a person in custody or detention, present in the territory of the Requesting Party in response to a request seeking that person's presence shall not be prosecuted, detained or subjected to any other restrictions of personal liberty in that State 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 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 territory of the Requesting Party, has not left it within a period of thirty (30) days after being officially notified that that person's presence is no longer required or, having left that territory, has voluntarily returned.
3. Any person who fails to appear in the territory of the Requesting Party shall not be subject to any sanction or compulsory measure in the Requested Party.

ARTICLE 13

SERVICE OF DOCUMENTS

1. The Requested Party shall serve the documents sent by the Requesting Party. This service can be carried out by simple transmission of the documents to the addressee. If the Requesting Party expressly requests, the service shall be effected in accordance with the procedures established by its national legislation for similar documents or in any other manner compatible with its legislation.
2. The service shall be proved by a signed and dated receipt of the addressee or by a statement of the Requested Party certifying the fact, manner and date of service. The proof of service shall be transmitted immediately to the Requesting Party. If the Requested Party is unable to effect the service, it shall communicate the reasons for the same to the Requesting Party.
3. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting Party within a reasonable time, before the scheduled response or appearance.

ARTICLE 14

PROCEEDS AND INSTRUMENTS OF CRIME

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. The Requested Party shall, upon the request of the Requesting Party, execute a request for a search and seizure in accordance with its national laws.
3. Search and seizure shall be conducted by the Requested Party to the same extent and under the same conditions as to be got done for its own law enforcement and judicial authorities in accordance with its law.

4. The competent authority that has executed a request for a search and seizure shall provide such information as may be required by the Requesting Party concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.
5. Proceeds or instruments seized or forfeited pursuant to this Treaty shall accrue to the Requested Party, unless otherwise agreed.

ARTICLE 15

CONFIDENTIALITY

1. The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished or the source of such information or evidence be kept confidential, disclosed or used only subject to such terms and conditions as may be specified by the Requested Party.
2. The Requesting Party may require that the requests, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested Party shall so inform the Requesting Party prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

ARTICLE 16

LIMITATION OF USE

The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Requested Party.

ARTICLE 17

AUTHENTICATION

1. For the purposes of this Treaty, the documents acknowledged as official in the territory of one Contracting Party shall be acknowledged as official in the territory of the other Contracting Party.
2. Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 7, or as required by the Requesting Party.

ARTICLE 18

LANGUAGE

Requests, supporting documents and other communications made pursuant to this Treaty shall be in the language of the Requested Party or in English.

ARTICLE 19

EXPENSES

1. The Requested Party shall meet the expense of executing the request for assistance, nevertheless 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 allowance or expenses payable to that person while in the Requesting Party pursuant to a request under Article 10 or 11 of this Treaty; and
 - b) the expenses and fees of experts either in the Requested Party or the Requesting Party.
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 Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 21

OTHER INSTRUMENTS

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Contracting Party through the provisions of other applicable international conventions/ agreements, or through the provisions of its national law. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

ARTICLE 22

SETTLEMENT OF DISPUTES

Any difference or dispute arising out of the application, interpretation or implementation of this Treaty shall be resolved amicably by negotiations and mutual consultations.

ARTICLE 23
FINAL PROVISIONS

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force on the thirtieth (30th) day after the exchange of instruments of ratification.
3. This Treaty may be amended by mutual consent. Any such amendment shall enter into force thirty (30) days after the receipt of the later communication intimating the completion by the Contracting Parties of their internal procedure for the entry into force of the amendment through diplomatic channels.
4. Either Contracting Party may terminate this Treaty. The termination shall take effect six (6) months from the date on which it is notified through diplomatic channels to the other Contracting Party.
5. The requests for assistance made before termination of this Treaty shall be considered even if this Treaty has been terminated.

Signed at New Delhi this the 10th day of September 2007 (Two thousand and Seven) in three originals each, Hindi, Spanish and English, all texts being equally authentic. However, in case of divergence, the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA

FOR THE GOVERNMENT OF
THE UNITED MEXICAN STATES

Treaty between the Republic of India and the Socialist Republic of Vietnam on Mutual Legal Assistance in Criminal Matters

The Republic of India and the Socialist Republic of Vietnam (hereinafter referred to as “the Contracting Parties”),

GUIDED by the traditional friendly relations between the two countries;

DESIRING to improve the effectiveness of cooperation between the two countries in the field of mutual legal assistance in criminal matters on the basis of mutual respect for sovereignty, equality and mutual benefit,

HAVE AGREED as follows:

Article 1

Scope of Application

1. The Contracting Parties shall, in accordance with the provisions of this Treaty, grant each other the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested Party in respect of investigations, prosecutions or other proceedings to the Requesting Party in criminal matters, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.
3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting Party would constitute an offence under the laws of the Requested Party.
4. 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) serving documents;
 - (e) executing requests for search and seizure;
 - (f) authorizing the presence of persons from the Requesting Party at the execution of requests;
 - (g) making arrangements for persons to give evidence or assist in criminal investigations, prosecutions or proceedings in the Requesting Party;
 - (h) making detained persons available to give evidence or assist investigations;
 - (i) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities including those related to terrorism

- (j) any other assistance consistent with the object of this Treaty which is not inconsistent with the laws of the Requested Party.
- 5. Assistance granted under this Treaty does not include:
 - (a) the extradition, or the arrest or detention for that purpose, of any person;
 - (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party and this Treaty;
 - (c) the transfer of persons in custody to serve sentences;
 - (d) the transfer of proceedings in criminal matters.

Article 2

Definitions

1. For the purpose of this Treaty, criminal matters mean investigations (including inquiries), prosecutions or proceedings relating to any offence, including offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters, the punishment of which at the time of the request for assistance falls within the jurisdiction of the Requesting Party.
2. For the purpose of this Treaty, "Proceeds of Crime" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property.

Article 3

Central Authorities

1. The Contracting Parties shall, at all times, have a person or an authority designated as the Central Authority, to transmit and receive requests for the purposes of this Treaty.
2. The following shall be the Central Authorities at the commencement of this Treaty:
 - (a) For the Republic of India, the Central Authority shall be the Ministry of Home Affairs
 - (b) For the Socialist Republic of Vietnam, the Central Authority shall be the People's Supreme Procuracy;
3. Each Party shall notify the other of any change of its Central Authority referred to in paragraph 2 of this Article.
4. The Central Authorities shall normally communicate directly with one another, but may, if they choose, communicate through diplomatic channels.

Article 4

Execution of Requests

1. Requests for assistance shall be carried out promptly by the competent authorities of the Requested Party in accordance with the laws of that Party and, to the extent those laws permit, in the manner requested by the Requesting Party.
2. The Requested Party shall, upon request, inform the Requesting Party of the date and place of execution of the request for assistance.
3. The Requested Party may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in that Party. If this is the case, the Requested Party shall, upon request, provide certified copies of documents.
4. The Requested Party shall promptly inform the Requesting Party of circumstances, when they become known to the Requested Party, which are likely to cause a significant delay in carrying out the request.
5. The Requested Party shall not refuse to execute a request on the ground of bank secrecy.

Article 5

Contents of Requests

1. Requests for assistance shall:
 - (a) indicate the name of the competent authority conducting the investigation, prosecution or other proceedings to which the request relates;
 - (b) specify the purpose of the request and the nature of the assistance sought;
 - (c) identify the person, agency or authority that initiated the request;
 - (d) include a description of the nature of the criminal matter, including a summary of the relevant facts and laws and applicable penalties;
 - (e) include a Statement indicating the current status of the investigation or proceeding;
 - (f) include a Statement specifying any time frame within which compliance with the request is desired.
2. Requests for assistance, where relevant and so far as possible, shall also include:
 - (a) the identity, nationality and location of the person or persons who are the subject of, or who may have information relevant to, the criminal matter;
 - (b) where the request is for assistance under Article 11:-
 - (i) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed Statements are required and a description of the matter about which persons are to be examined including, where appropriate, any questions that the Requesting Party wishes to put to those persons;

- (ii) a description of any documents, records or articles of evidence to be produced and, where relevant, a description of the appropriate person to be asked to produce them;
 - (c) in the case of lending of exhibits, the current location of the exhibits in the Requested Party and an indication of the person or class of persons who will have custody of the exhibits in the Requesting Party, the place to which the exhibit is to be taken, any tests to be conducted and the date by which the exhibit will be returned;
 - (d) in the case of making persons in custody available, an indication of the person or class of persons who will have custody during the transfer, the place to which the person in custody is to be transferred and the probable date of that person's return;
 - (e) where the request is for assistance under Article 13 or 14, information about the allowances and expenses to which a person traveling to the Requesting Party would be entitled;
 - (f) where the request is for assistance under Article 10 or Article 16 or Article 17 a description of the material sought and, where relevant, its likely location;
 - (g) where the request is for assistance under Article 16 or Article 17:-
 - (i) a Statement outlining the basis of Requesting Party's belief that proceeds of crime may be located in its jurisdiction, and
 - (ii) the court order, if any, sought to be enforced and a Statement about the status of that order;
 - (h) where the request is for assistance that may lead to or result in the discovery or recovery of proceeds of crime, a Statement as to whether a special arrangement under Article 16 (4) is sought.
 - (i) a Statement outlining any particular requirement or procedure that the Requesting Party may have, or wish to be followed in giving effect to the request, including details of the manner or form in which any information, evidence, document or item is to be supplied;
 - (j) a Statement setting out the wishes, if any, of the Requesting Party concerning the confidentiality of the request, and the reasons for those wishes;
 - (k) where an official of the Requesting Party intends traveling to the Requested Party in connection with the request, information about the purpose of that person's visit, the proposed time frame and travel arrangements;
 - (l) any other supporting information, evidence or documents that is necessary to enable, or may assist, the Requested Party to give effect to the request.
3. If the Requested Party considers that the information contained in a request is not sufficient to enable the request to be dealt with in accordance with this Treaty, 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 within 45 days unless the Requested Party agrees otherwise.

Article 6

Refusal or Postponement of Assistance

1. Assistance shall be refused if, in the opinion of the Requested Party:
 - (a) the request relates to an offence that is regarded by the Requested Party as a purely military offence;
 - (b) the request relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party;
 - (c) the request, if granted, would impair the Requested Party's sovereignty, security, public order or essential interests.
2. Assistance may be refused if, in the opinion of the Requested Party,
 - (a) the execution of the request would be contrary to the domestic law of the Requested Party.
 - (b) the request seeking restraint, forfeiture or confiscation of proceeds of crime or seizure of property are in respect of conduct/ activity which cannot be made basis for such restraint, forfeiture, confiscation or seizure in the Requested Party.
3. Assistance may be postponed by the Requested Party if the request would interfere with an ongoing investigation or prosecution in the Requested Party.
4. Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority, shall:
 - (a) promptly inform the Requesting Party of the reason for considering denial or postponement; and
 - (b) consult the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.
5. If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph 4 (b), it shall comply with those terms and conditions.

Article 7

Service of Documents

1. The Requested Party shall, to the extent its laws permit, carry out requests for the service of documents in respect of a criminal matter.
2. A request for service of a summons requiring the appearance of a person as a witness in the Requesting Party shall be made to the Requested Party within 45 days before the scheduled appearance. In urgent cases, the Requested Party may waive this requirement.
3. The Requested Party shall forward to the Requesting Party proof of service of the documents. If service cannot be affected, the Requesting Party shall be so informed and advised of the reasons.

Article 8

Provision of Information

1. The Requested Party shall provide copies of publicly available documents, records or information that are open to public access.
2. The Requested Party may provide copies of any documents, records or information in the same manner and under the same conditions as they may be provided to its own law enforcement and judicial authorities. As and when requested by the Requested Party, the documents shall be certified as per the requirement of Law of the Requesting Party.
3. The Requested Party may provide certified true copies of documents of records, unless the Requesting Party expressly requests originals.

Article 9

Return of Material to the Requested Party

Where required by the Requested Party, the Requesting Party shall return material provided under this Treaty when it is no longer needed for the criminal matter to which the request relates.

Article 10

Search and Seizure

1. The Requested Party shall, to the extent its laws permit, carry out requests made in respect of a criminal matter in the Requesting Party for the search, seizure and delivery of material to that Party as is got done for its own law enforcement and judicial authorities.
2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the material seized.
3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party.

Article 11

Taking of Evidence

1. The Requested Party shall, to the extent its laws permit and upon request, take testimony, or otherwise obtain Statements of persons or require them to produce items of evidence for transmission to the Requesting Party.
2. The Requested Party, to the extent permitted by its law, 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 posed to the persons whose testimony or evidence is being taken. However, 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.

3. A person from whom evidence is to be taken in the Requested Party pursuant to a request under this Article may decline to give evidence where:
 - (a) the law of the Requested Party would permit or require that person to decline to give evidence in similar circumstances in criminal proceedings originating in the Requested Party; or
 - (b) the law of the Requesting Party would permit or require that person to decline to give evidence in such criminal proceedings in the Requesting Party.
4. If any person in the Requested Party claims that there is a right or obligation to decline to give evidence under the law of the Requesting Party, the Central Authority of the Requesting Party shall, upon request, provide a certificate to the Central Authority of the Requested Party as to the existence or otherwise of that right. In the absence of evidence to the contrary, the certificate shall be sufficient evidence of the matters stated in it.
5. For the purposes of this Article, the taking of evidence includes the production of documents or other articles.

Article 12

Presence of Persons at the Execution of Requests

To the extent not prohibited by the law of the Requested Party, persons specified in the request shall be permitted to be present at the execution of the request.

Article 13

Transfer of Persons in Custody to Give Evidence or Assist Investigations

1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party to give evidence in criminal proceedings or assist investigations in that Party. For the purposes of this Article, a person in custody also includes a person not detained in prison but who is subject to a sentence imposed for an offence, not being a sentence of a monetary nature.
2. The Requested Party shall transfer a person in custody to the Requesting Party only if:
 - (a) the person freely consents to the transfer; and
 - (b) the Requesting Party agrees to comply with any conditions specified by the Requested Party relating to the custody or security of the person to be transferred.
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 released.
4. A person who is transferred pursuant to a request under this Article shall be returned to the Requested Party in accordance with arrangements agreed by the Requested Party as soon as practicable after the evidence has been given or at such earlier time as the person's presence is no longer required.

Article 14

Availability of Other Persons to Give Evidence or Assist Investigations

1. The Requesting Party may request the assistance of the Requested Party in arranging for the transfer of a person (not being a person to whom Article 13 of this Treaty applies) to the Requesting Party to give or provide evidence or assistance in respect of a criminal matter in the Requesting Party.
2. The Requested Party shall, if satisfied that satisfactory arrangements for that person's safety will be made by the Requesting Party, invite the person to consent to give or provide evidence or assistance in the Requesting Party. The person shall be informed of any expenses or allowances payable. The Requested Party shall promptly inform the Requesting Party of the person's response and, if the person consents, take all steps necessary to facilitate the request.

Article 15

Safe Conduct

1. Subject to paragraph 2 of this Article, a person present in the Requesting Party pursuant to a request made under Article 13 or Article 14 of this Treaty, shall not:
 - (a) be detained, prosecuted or punished in the Requesting Party for any offence, nor be subject to any civil proceedings, being civil proceedings to which the person could not be subjected if the person were not in the Requesting Party, in respect of any act or omission which preceded the person's departure from the Requested Party; and
 - (b) without his/ her consent, be required to give evidence in any criminal proceeding or to assist any criminal investigation other than the criminal matter to which the request relates.
2. Paragraph 1 of this Article ceases to apply if that person, being free to leave, has not left Requesting Party within a period of 30 days after that person has been officially notified that his or her presence is no longer required or, having left, has returned.
3. A person who does not consent to give evidence pursuant to Article 13 or Article 14 of this Treaty shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.
4. A person who consents to give evidence pursuant to Articles 13 or Article 14 of this Treaty shall not be subject to prosecution based on his or her testimony, except for perjury or contempt of Court.

Article 16

Proceeds and Instruments of Crime

1. The Requested Party shall, upon request; endeavour to ascertain whether any proceeds or instruments of crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. Where, pursuant to paragraph 1, suspected proceeds or instruments of crime are found, the Requested Party shall take such measures as are permitted by its law to restrain or confiscate such proceeds or instruments of crime.

3. In the application of this Article, the rights of bona fide third parties shall be respected under the law of the Requested Party.
4. The Requested Party shall retain any proceeds or instruments of crime that are confiscated unless otherwise agreed in a particular case.

Article 17

Funds meant for financing acts of terrorism

Where either of the Contracting States have reasons to believe that any person or group of persons in their jurisdiction has collected or has been collecting or has contributed or has been contributing to any funds meant, directly or indirectly for the financing or furthering the acts of terrorism in the territory of the other State, it shall bring these facts to the notice of the other signatory State and shall take steps as permitted by its law for search, seizure and confiscation of such funds and the prosecution of the individual concerned.

Article 18

Confidentiality

1. The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished or the source of such information or evidence be kept confidential, disclosed or used only subject to such terms and conditions as it may specify.
2. The Requesting Party may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested Party shall so inform the Requesting Party prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.
3. The Requesting Party shall, if so requested, use its best efforts to ensure that the information or evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.

Article 19

Limitation of Use

The Requesting Party shall not use information or evidence obtained, nor anything derived from either, for purposes other than those stated in a request without the prior consent of the Requested Party.

Article 20

Certification and Authentication

1. Subject to paragraph 2 of this Article, a request for assistance, the documents in support thereof, and documents or materials furnished in response to a request, shall not require any form of certification or authentication.

2. Where, in a particular case, the Requested or Requesting Party requests that documents or materials be authenticated, the documents or materials shall be duly authenticated in the manner provided in paragraph 3.
3. Documents or materials are authenticated for the purposes of this Treaty if they purport to be signed or certified by an official or competent authority under the laws of the Party sending the document and to be sealed with an official seal of that authority.

Article 21

Language

A request, any supporting documentation and any communications made pursuant to this Treaty, shall be in the language of the Requesting Party and be accompanied by a translation into the language of the Requested Party or in the English language.

Article 22

Subsidiary Arrangements

The Central Authority of each Party may enter into subsidiary arrangements consistent with the purposes of this Treaty and with the laws of both Parties.

Article 23

Representation and Expenses

1. Unless otherwise provided in this Treaty, the Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
2. The Requested Party shall meet the cost of fulfilling 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, and the accommodation expenses of the person and any fees, allowances or other expenses payable to that person while in the Requesting Party pursuant to a request under Articles 7, 13 or 14 of this Treaty;
 - (b) the expenses associated with conveying custodial or escorting officers;
 - (c) fees and expenses of experts,
 - (d) expenses associated with interpretation and the translation of documents and taking of evidence from the Requested Party to the Requesting Party via video, satellite or other technological means;
 - (e) where required by the Requested Party, exceptional expenses incurred in fulfilling the request.

Article 24

Compatibility with other Treaties

This Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international conventions/ agreements, or through the provisions of its domestic law. The Contracting Parties may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

Article 25

Consultations

The Contracting Parties shall consult promptly, at the request of either, concerning any issue relating to the interpretation, application or implementation of this Treaty, either generally or in relation to a particular case.

Article 26

Entry into Force and Termination

1. This Treaty :
 - (a) is subject to ratification and the instruments of ratification shall be exchanged as soon as possible;
 - (b) shall enter into force from the date of exchange of instruments of ratification;
 - (c) applies to requests regardless of the fact whether the relevant acts or omissions occurred before or after its entry into force; and
 - (d) may be amended by mutual consent.
2. Either Contracting Party may terminate this Treaty. The termination shall take effect six (6) months from the date on which it is notified to the other Contracting Party.

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

DONE at Hanoi this the 8th day of October, 2007(Two Thousand and Seven) in two originals, each in Hindi, Vietnamese and English, all texts being equally authentic. However, in case of divergence of interpretation, the English text shall prevail.

For the Republic of India

For the Socialist Republic of Vietnam

Treaty between the Republic of India and Australia on Mutual Legal Assistance in Criminal Matters

The Republic of India and Australia (hereinafter referred to as the 'Contracting States');
Desiring to make more effective the cooperation between the two countries in combating crimes,
including offences related to terrorism, through mutual legal assistance;
Have agreed as follows:

ARTICLE 1

SCOPE OF APPLICATION

1. The Contracting States shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or other proceedings in criminal matters in the Requesting State, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.

ARTICLE 2

DEFINITIONS

For the purpose of this Treaty-

1. Criminal matters means investigations, inquiries, trials or other proceedings relating to statutory or common law offences, including those relating to forfeiture, confiscation and restraint of property and imposition of pecuniary penalties, in respect of such an offence.
2. Criminal matters shall include investigations, prosecutions or proceedings relating to offences concerning taxation, duties, customs, foreign exchange and other revenue matters.
3. Mutual legal assistance includes:-
 - a. taking of evidence and obtaining of statements of persons including the execution of letters rogatory;
 - b. provision of information, documents and other records;
 - c. location and identification of persons and objects;
 - d. execution of requests for search and seizure;
 - e. measures to locate, restrain and forfeit the proceeds and instruments of crime;
 - f. seeking the consent of persons to be available to give evidence or to assist in investigations in the Requesting State and, where such persons are in custody, arranging for their temporary transfer to that State;

- g. service of documents, including judicial documents; and
 - h. other assistance consistent with the objects of this Treaty which is not inconsistent with the laws of the Requested State.
4. Mutual legal assistance shall not include:-
- a. the extradition of any person;
 - b. the execution in the Requested State of criminal judgments imposed in the Requesting State except to the extent permitted by the law of the Requested State and this Treaty; and
 - c. the transfer of persons in custody to serve sentences.

ARTICLE 3

COMPATIBILITY WITH OTHER TREATIES

This Treaty shall not derogate from obligations subsisting between the Contracting States whether pursuant to other Treaties or arrangements or otherwise nor prevent the Contracting States providing assistance to each other pursuant to other treaties or arrangements or otherwise.

ARTICLE 4

CENTRAL AUTHORITIES

1. The Central Authorities shall transmit and receive all requests for the purposes of this Treaty.
2. The Central Authority for the Republic of India is the Ministry of Home Affairs, and the Central Authority for Australia is the Attorney-General's Department. Either Contracting State shall notify the other of any change of its Central Authority.
3. The Central Authorities shall arrange for the prompt execution of such requests. The Central Authorities may communicate with one another for the purposes of this Treaty.

ARTICLE 5

REFUSAL OR POSTPONEMENT OF ASSISTANCE

1. Assistance shall be refused if the request relates to the prosecution of a person for a military offence, which is not also an offence under the general criminal law.
2. Assistance may be refused if the request relates to the prosecution of a person for an offence that is regarded by the Requested State as an offence of a political character. For the purposes of this Treaty the following offences shall not be regarded as offences of a political character:
 - a. an offence in respect of which the Contracting States have an obligation to provide mutual legal assistance under a multilateral/international treaty or convention to which both Contracting States are parties;

- b. an offence in respect of the taking or attempted taking of the life of a Head of State, Head of Government, or a member of that person's family;
 - c. murder, culpable homicide or manslaughter;
 - d. an offence involving firearms, explosives, incendiaries, destructive devices or substances, causing death, grievous bodily harm or serious damage to property;
 - e. any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character; or
 - f. conspiracy or attempt to commit, or participation in any of the foregoing offences.
3. Assistance may be refused if:
 - a. the request relates to the prosecution of a person for an offence in respect of which the person has been tried and finally dealt with or pardoned;
 - b. the Requested State has substantial grounds to believe that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality or political opinion or that person's position may be prejudiced for any of those reasons;
 - c. in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order, essential public interest or prejudice the safety of any person; or
 - d. the request relates to the prosecution of a person for an offence in respect of which the punishment which might be imposed on the person may prevent the Requested State from complying under its domestic laws.
 4. The Requested State may consider granting assistance in the absence of dual criminality.
 5. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation, prosecution or other proceedings in the Requested State.
 6. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

ARTICLE 6

CONTENTS OF REQUESTS

1. Requests for assistance shall include:
 - (a) the purpose of the request and a description of the assistance sought;
 - (b) the name of the competent authority conducting the investigation or proceedings to which the request relates;

- (c) a description of the nature of the investigation, prosecution or proceedings, a summary of the facts and a copy of the applicable laws;
 - (d) the degree of confidentiality required and the reasons therefor;
 - (e) any time limit within which the request should be executed;
 - (f) details of any particular procedure or requirement that the Requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required and a description of the subject matter of the evidence or statements sought; and
 - (g) the court order, if any, sought to be enforced and a statement to the effect that it is a final order.
2. Requests for assistance, to the extent necessary and insofar as possible, shall also include;
- (a) the identity, nationality and location of the person or persons who are the subject of, or who may have information relevant to, the investigation, prosecution or other proceeding;
 - (b) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds or instruments of crime, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
 - (c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, 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;
 - (d) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled;
 - (e) in the case of making detained persons available, an indication of 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 probable date of that person's return; and
 - (f) in the case of requests in respect of proceeds of crime or search and seizure, a statement describing the basis of belief that the money or property are the proceeds of crime or are liable for search and seizure.
3. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.

ARTICLE 7

LANGUAGE

1. Requests shall be submitted in the English language.
2. Supporting documents, if not in the English language, shall be accompanied by an English translation.

ARTICLE 8

EXECUTION OF REQUESTS

1. A request for assistance may be in writing. However in urgent circumstances a request may be made by any means capable of producing a written record under conditions allowing the Requested State to establish authenticity. In such cases the Requesting State shall confirm the request in writing promptly thereafter unless the Requested State agrees otherwise.
2. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as not prohibited by that law, in the manner specified by the Requesting State.
3. The Requested State may, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
4. The Requested State shall not refuse to execute a request on the ground of bank secrecy.
5. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
6. The Requested State may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in that State. The Requested State shall, upon request, provide certified copies of documents.
7. The Requested State shall promptly inform the Requesting State of circumstances, when they become known to the Requested State, which are likely to cause a significant delay in responding to the request.

ARTICLE 9

RETURN OF MATERIAL TO REQUESTED STATE

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items, including documents and records, furnished to it in execution of a request under this Treaty.

ARTICLE 10

CONFIDENTIALITY

1. The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.
2. The Requesting State, if so requested, shall keep confidential information and evidence provided by the Requested State, except to the extent that the evidence and information is needed for the investigation and proceeding described in the request.
3. 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 Requested State.

ARTICLE 11

SERVICE OF DOCUMENTS

1. The Requested State shall serve any document transmitted to it for the purpose of service.
2. A request to effect service of a document requiring the appearance of a person shall be made to the Requested State not less than forty five (45) days before the date on which the appearance is required. In urgent cases, the Requested State may waive this requirement.
3. The Requested State may effect service of any document by mail or, if the Requesting State so requests, in any other manner required by the law of the Requesting State which is not inconsistent with the law of the Requested State.
4. The Requested State shall return a proof of service in the manner required by the Requesting State. If service cannot be effected, the Requesting State shall be so informed and advised of the reasons.

ARTICLE 12

TAKING OF EVIDENCE

1. Where a request is made for the purpose of a proceeding in relation to a criminal matter in the Requesting State, the Requested State shall, upon request, take the evidence of witnesses, including from persons in custody, for transmission to the Requesting State. The Requesting State shall specify the subject matter about which the person is to be examined, including any questions to be asked.
2. For the purposes of this Treaty, the giving or taking of evidence shall include the production of documents, records or other material.
3. Subject to the law of the Requested State, officials of the Requesting State and persons concerned in the proceedings in the Requesting State may be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State.
4. Persons permitted to participate in the taking of evidence may suggest questions to be put to the person whose evidence is to be taken. The Requested State will endeavour, subject to its laws and procedures, to arrange for the production of a transcript or recording of the proceedings, using any technical means.
5. A person who is required to give evidence in the Requested State under this Article may decline to give evidence where either:
 - (a) the law of the Requested State permits that witness to decline to give evidence in similar circumstances in proceedings originating in the Requested State; or
 - (b) the law of the Requesting State permits that witness to decline to give evidence in such proceedings in the Requesting State.
6. If any person claims that there is a right to decline to give evidence under the law of the Requesting State, the Central Authority of that State shall, upon request, provide a certificate to the Central Authority of the Requested State as to the existence of that right. In the absence of evidence to the contrary, the certificate shall provide sufficient evidence as to the existence of that right.

ARTICLE 13

OBTAINING OF STATEMENTS OF PERSONS

1. The Requested State shall, upon request, endeavour to obtain statements of persons for the purpose of an investigation or proceeding in relation to a criminal matter in the Requesting State.
2. For the purposes of requests under this Article, the Requesting State shall specify the subject matter about which it seeks statements from persons including any questions which it seeks to put to the person.

ARTICLE 14

AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS

1. Upon request, a person serving a sentence or otherwise held in custody in the Requested State may be temporarily transferred to the Requesting State to assist investigations or to give evidence, provided that the person consents.
2. When 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 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 under Article 15.

ARTICLE 15

AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

1. The Requesting State may request the assistance of the Requested State in inviting a person to :
 - (a) appear as a witness in proceedings in relation to a criminal matter in the Requesting State unless that person is the person charged; or
 - (b) assist investigations in relation to a criminal matter in the Requesting State.
2. The Requested State shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting State, invite the person to consent to appear as a witness in proceedings or to assist in the investigations. That person shall be informed of any expenses and allowances payable.

ARTICLE 16

SAFE CONDUCT

1. Subject to paragraph 2 where a person is in the Requesting State pursuant to a request made under Articles 14 or 15:-
 - (a) that person shall not be detained, prosecuted or punished in the Requesting State for any offence, nor be subject to any civil suit, being a civil suit to which the person could not be subjected if

the person were not in the Requesting State, in respect of any act or omission which preceded the person's departure from the Requested State; and

- (b) that person shall not, without that person's consent, be required to give evidence in any proceeding or to assist 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 the Requesting State, has not left within thirty (30) days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.
 3. A person appearing in the Requesting State pursuant to a request made under Articles 14 or 15 shall be subject to the law of that State relating to contempt, perjury and the making of false declarations.
 4. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

ARTICLE 17

PROVISION OF PUBLICLY AVAILABLE DOCUMENTS AND RECORDS

1. The Requested State shall provide copies of publicly available documents and records of Government departments and agencies.
2. The Requested State may provide copies of any official document or record in the same manner and under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

ARTICLE 18

CERTIFICATION AND AUTHENTICATION

1. Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as required by the Requesting State.
2. Insofar as not prohibited by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 19

SEARCH AND SEIZURE

1. The Requested State shall, in so far as its law permits, execute a request for search and seizure and delivery of material to the Requesting State.
2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions as would apply to its own law enforcement and judicial authorities in accordance with its laws.

3. The Requested State 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 objects seized and the circumstances of the seizure.
4. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized material which is delivered to the Requesting State. Before imposing any such conditions, the Requested State shall consult the Requesting State.

ARTICLE 20

PROCEEDS AND INSTRUMENTS OF CRIME

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds or instruments of crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
2. Where pursuant to paragraph 1 suspected proceeds or instruments of crime are found, the Requested State shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds or instruments of crime, pending a final determination in respect of those proceeds by a court of the Requesting State.
3. The Requested State shall, to the extent permitted by its law, give effect to a final order forfeiting or confiscating the proceeds or instruments of crime made by a court of the Requesting State.
4. In the application of this Article, the rights of bona fide third parties shall be respected under the law of the Requested State.
5. Proceeds or instruments forfeited or confiscated pursuant to this Treaty shall accrue to the Requested State, unless otherwise agreed.

ARTICLE 21

REPRESENTATION AND EXPENSES

1. Unless otherwise provided in this Treaty the Requested State shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting State.
2. 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, and any fees, allowances or expenses payable to that person whilst in the Requesting State pursuant to a request under Articles 14 or 15;
 - (b) the expenses associated with escorting officers conveying a person including a person in custody; and
 - (c) the expenses associated with the taking of evidence from the Requested State via video, satellite or other technological means.

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

ARTICLE 22
CONSULTATION

The Contracting States shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either generally or in relation to a particular case. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 23
ENTRY INTO FORCE AND TERMINATION

1. The Contracting States shall inform each other in writing of the completion of their internal procedures required for entry into force of this Treaty. The Treaty shall enter into force thirty (30) days after the date of the latter communication.
2. This Treaty shall apply to requests whether or not the relevant acts or omissions occurred prior to this Treaty entering into force.
3. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through diplomatic channels; and if such notice is given the Treaty shall cease to have effect six (6) months after the receipt of the notice.

In witness whereof, the undersigned being duly authorized thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Canberra this the twenty third day of June, two thousand and eight, in Hindi and English, both texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the
Republic of India

For the Government of
Australia

**Agreement on Mutual Legal Assistance in Criminal Matters between
the Government of the Republic of India and the Government of
the Arab Republic of Egypt**

PREAMBLE

The Government of the Republic of India and the Government of Arab Republic of Egypt (hereinafter referred to as Contracting States);

Guided by the traditional friendly relations between the two countries;

Recognizing the need to facilitate the widest measures of mutual legal assistance in criminal matters; and

Desiring to improve the effectiveness of both countries in the prevention, investigation, prosecution and suppression of crime, including crime related to terrorism and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters.

Have agreed as follows:

ARTICLE 1

Scope of Application

1. Under this Agreement, the Contracting States shall grant each other the widest possible measure of mutual legal assistance in criminal matters, in respect of offences the punishment of which at the time of the request for assistance falls within the jurisdiction of the judicial authorities of the Requesting State.
2. This Agreement shall be without prejudice to other obligations between the Contracting States pursuant to other treaties or arrangements or otherwise, and shall not prevent them or their law enforcement agencies from providing assistance to each other pursuant to other treaties or arrangements.
3. This Agreement shall also apply to any request for mutual legal assistance relating to acts or omissions committed before its entry into force.
4. Assistance shall include, but not limited to:
 - (a) measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime;
 - (b) taking of evidence and obtaining of statements of persons;
 - (c) providing of information, documents and other records, including criminal and judicial records;
 - (d) location of persons and objects, including their identification;
 - (e) search and seizure;

- (f) delivery of objects, including lending of exhibits;
 - (g) assisting in the availability of detained persons or others to give evidence or assist in investigations;
 - (h) Service of documents, including documents seeking the attendance of persons; and
 - (i) other assistance consistent with the objects of this Agreement.
5. This Agreement does not apply to:
- (a) the arrest or detention of any person with a view to the extradition of that person;
 - (b) the enforcement in the Requested State of criminal judgments imposed in the Requesting State except to the extent permitted by the law of the Requested State;
 - (c) the transfer of persons in custody to serve sentences; and
 - (d) the transfer of proceedings in criminal matters.

ARTICLE 2

Definitions

For the purpose of this Agreement:

- (a) For India, “criminal matters” means investigations, inquiries, trials or other criminal proceedings relating to an offence created by a law of Parliament or by the legislature of a State and for Egypt, means any criminal proceeding relating to an offence created by a law in force;
- (b) “Criminal matters” shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments;
- (c) “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;
- (d) “property” includes money and all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property;
- (e) “confiscation” means any measure resulting in the deprivation of property;
- (f) “instruments of crime” means any property which is or is intended to be used in connection with the commission of an offence; and
- (g) “the restraint of property” means any measure for the prevention of dealing in or transfer or disposal of property.

ARTICLE 3

Central Authorities

1. Requests for assistance under this Agreement shall be made through the Central authorities of the Contracting States who will ensure that the request is prepared in accordance with this Agreement.
2. The Central Authority of the Requested State upon receipt of a request for assistance, shall examine whether it is in accordance with the provisions of this Agreement and other relevant laws; and if satisfied may process the request for its compliance.
2. In the Republic of India the Central Authority shall be the Ministry of Home Affairs. In the Arab Republic of Egypt, the Central Authority shall be the Ministry of Justice.

ARTICLE 4

Contents of Requests

1. Requests for assistance under this Agreement shall be made in writing. However, in urgent circumstances, or where otherwise permitted by the Requested State, requests may be made orally but shall be confirmed in writing thereafter.
2. Requests for assistance shall include a statement of:
 - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - (b) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting State wishes to be followed;
 - (e) any time limit within which compliance with the request is desired;
 - (f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - (g) in the case of request 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;
 - (h) in the case of request 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;
 - (i) 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;

- (j) 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;
 - (k) the need, if any, for confidentiality and the reasons therefor; and
 - (l) in the case of requests for restraint or forfeiture of proceeds or instruments of crime, where possible:
 - (i) a detailed description of the proceeds or instruments including their location;
 - (ii) a statement describing the basis for belief that the monies or property are the proceeds or instruments of crime; and
 - (iii) a statement describing the evidence that would be available for a proceeding in the Requested State.
3. The Requested State shall not refuse to execute the request solely because it does not include all of the information described under this article, if it can otherwise be executed according to the law of the Requested State.
4. If the Requested State considers that additional information is needed to enable the request to be dealt with, that State may request such additional information.

ARTICLE 5

Execution of Request

1. For the purpose of this Agreement, mutual legal assistance shall be granted irrespective of whether the assistance is sought or is to be provided by a court or some other competent authority.
2. Requests for assistance shall be executed in accordance with the law and practice of the Requested State and may be executed in accordance with any requirements/manner specified in the request if not incompatible with the law of the Requested State.
3. The Requested State shall, upon request, inform the Requesting State of any circumstances which are likely to cause a significant delay in execution of the request.
4. The Requested State shall promptly inform the Requesting State of its decision not to execute in whole or in part a request for assistance, or to postpone execution and shall give reasons for that decision.

ARTICLE 6

Refusal of Assistance

1. The Requested State may refuse the assistance if:
 - (a) the execution of the request would impair its sovereignty, security, public order or other essential interests or prejudice the safety of any person.
 - (b) the execution of the request would be contrary to its domestic law;

- (c) if the request seeking restraint, forfeiture or confiscation, of proceeds or instruments of activity which, had it occurred within the jurisdiction of the Requested State, would not have been an activity in respect of which a confiscation order could have been made;
 - (d) the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
 - (e) the offence is regarded by the Requested State as ex-facie being of a political nature, except serious offences against the life, the physical integrity or the freedom of person;
 - (f) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;
 - (g) the request relates to an offence that is subject to investigation or prosecution in the Requested State or the prosecution of which in the Requesting State would be incompatible with the Requested State's law on double jeopardy;
 - (h) the assistance requested requires the Requested State to carry out compulsory measures that would be inconsistent with its law and practice, had the offence been the subject of investigation or prosecution under its own jurisdiction; and
 - (i) the act is an offence under military law, which is also not an offence under general criminal law.
2. Assistance for banking or financial transactions shall be in accordance with the national legislation of the Requested State. The request for legal assistance for the crime, including crime related to terrorism, or transnational organized crime under any International or Regional Convention to which both the Contracting States are parties, shall not be refused.
 3. The Requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the Requested State.
 4. Before refusing or postponing the execution of a request for 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.
 5. Reasons shall be given for refusal or postponement of mutual assistance.

ARTICLE 7

Transmission of Documents and Objects

1. The Requested State shall provide copies of documents and records insofar as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.
2. The Requested State shall provide copies of any other document or record under the conditions as it may provide to its own law enforcement and judicial authorities.

3. Insofar as not prohibited by its law, the Requested State, shall transmit documents, objects and records 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. The original records, documents and objects so transmitted to the Requesting State, shall be returned to the Requested State as soon as possible.

ARTICLE 8

Obtaining of Evidence

1. The Requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons, including those in custody or require them to produce items of evidence for transmission to the Requesting State.
2. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons parties to the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State.
3. Persons parties to the proceedings have the right to be represented by their counsels, to pose questions through the representatives of the Competent Authority of the Requested State and to make a verbatim transcript of the proceedings. The use of technical means to make such a verbatim transcript may be permitted according to the law of the Requested State.
4. For the purpose of request under this Article, the Requesting State shall specify the questions to be put to the witnesses or persons giving evidence and the subject matter about which they are to be examined. If necessary, any questions in addition to those specified in the request, may be put through the representative of the Competent Authority of the Requested State to the witness or person giving evidence by the representatives of the Requesting State present at the time of recording of evidence.

ARTICLE 9

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

1. The Requesting State may request the assistance of the Requested State in making available a person:
 - (a) to appear in proceedings in relation to a criminal matter in the Requesting State unless that person is the person charged; or
 - (b) to assist in the investigations in relation to a criminal matter in the Requesting State.
2. The Requested State shall make available the person to appear as a witness or expert in proceedings or to assist in the investigations or to seek that person's concurrence. Where appropriate, the Requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.
3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the Requesting State.

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

ARTICLE 10

Making Detained Persons Available to Give Evidence or Assist in Investigations

1. If the Requested State agrees and its law so permits, a person in custody in the Requested State may, at the request of the Requesting State, be temporarily transferred to the Requesting State to give evidence or assist in investigations or proceedings, provided that the person consents to that transfer and there are no overriding grounds against transferring the person.
2. While 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 Requested State advises the Requesting State that transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as person referred to in Article 9.
4. The transfer of the person in custody may be postponed if the presence of that person is necessary in a criminal action pending in the territory of the Requested State.

ARTICLE 11

Safe Conduct

1. A person present in the Requesting State in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in the territory of 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 or assist in any investigation in any proceeding other than the proceedings to which the request relates.
2. A person, who is present in the Requesting State by consent as a result of a request for the person's attendance to answer before a judicial authority 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 30 days after being officially notified that that person's attendance is no longer required or, having left that territory, has voluntarily returned.
4. A person who does not consent to a request pursuant to Article 10 or accept an invitation pursuant to Article 9 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

ARTICLE 12

Proceeds and Instruments of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds or instruments 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 or instruments may be located within its jurisdiction.
2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested State by whatever means are appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting State or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested State.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds or instruments.
4. Where, pursuant to paragraph 1 of the present Article suspected proceeds of crime are found, the Requested State shall upon request take such measures as permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the Requesting State.
5. The Requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the Requesting State or take other appropriate action to secure the proceeds following a request by the Requesting state.
6. The Parties shall ensure that the right of bona fide third parties shall be respected in the application of the present Agreement.

ARTICLE 13

Protection of 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 terms and conditions as it may specify.
2. The Requested State shall use its best endeavour to keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.
3. The Requesting State shall keep confidential evidence and information provided by the Requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

ARTICLE 14

Limitation of use

The Requesting State shall not, without the consent of the Requested State, disclose, use or transfer information or evidence provided by the Requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used insofar as the offence is an offence in respect of which mutual assistance could be provided under this Agreement.

ARTICLE 15

Authentication

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

ARTICLE 16

Language

Requests and supporting documents shall be accompanied by a translation in English or in the language of the Requested State.

ARTICLE 17

Costs

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 9 or 10 of this Agreement; 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 States shall consult to determine the terms and conditions under which the requested assistance can be provided.

ARTICLE 18

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. A request to effect service of summons shall be made to a Requested State not less than ninety days before the date on which the appearance of a person is required. In urgent cases, the Requested State may waive the time requirement.

ARTICLE 19

Right or Obligation to Decline to Give Evidence

1. A person who is required to give evidence in the Requested or Requesting State may decline to give evidence where either:
 - (a) The law of the Requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the Requested State; or
 - (b) The law of the Requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the Requesting State.
2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of that right or obligation.

ARTICLE 20

Provision of Publicly available documents and other records

1. The Requested State shall provide copies of documents and records insofar as they are open to public access as part of a public register or otherwise, or insofar as they are available for purchase or inspection by the public.
2. The Requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

ARTICLE 21

Search and seizure

The Requested State shall, insofar as its law permits, carry out requests for search and seizure and delivery of any material to the Requesting State for evidentiary purposes, provided that the rights of bona fide third parties are protected.

ARTICLE 22

Entry into Force

The present Agreement shall enter into force from the date of receiving the last notification by either of the Contracting States through the diplomatic channels, concerning the execution of the necessary measures for the ratification, according to the domestic laws of either Contracting States.

ARTICLE 23

Termination

Either Contracting State may terminate this Agreement by giving notice in writing to the other State. Such termination shall take effect six months following the date on which it is received by the other State.

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

DONE at Cairo this the day of January, 2008 (Two Thousand and Eight) in two originals each, in Hindi, Arabic and English, all texts being equally authentic. However, in case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of India

For the Government of the Arab Republic of Egypt

**Agreement between the Government of the Republic of India and the
Government of the Islamic Republic of Iran on Mutual Legal
Assistance in Criminal Matters**

The Government of the Republic of India and the Government of the Islamic Republic of Iran (Hereinafter referred to as Parties);

Guided by the traditional friendly relations between the two countries;

Recognizing the need to facilitate the widest measures of mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

Desiring to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime, including crime related to terrorism and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

ARTICLE 1

Scope of application

1. Under this Agreement, the Parties shall grant each other the widest measure of mutual legal assistance in criminal matters.
2. For the purpose of this Agreement mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a Court or some other authority.
3. This Agreement shall also apply to any requests for mutual legal assistance relating to acts or omissions committed before its entry into force.

ARTICLE 2

Definitions

For the purpose of this Agreement:

1. (a) Criminal matters mean, investigations, inquiries, trials or other proceedings relating to an offence created by any law enforceable in the respective Parties.
(b) Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments.
(c) Assistance shall include:
 - (i) measures to locate, restrain, forfeit or confiscate the proceeds and instruments of crime and also funds or finance meant for the financing of acts of terrorism in the territory of either Party;
 - (ii) taking of evidence and obtaining of statements of persons;

- (iii) providing of information, documents and other records, including criminal and judicial records;
 - (iv) location of persons and objects, including their identification;
 - (v) Search and seizure;
 - (vi) Delivery of property, including lending of exhibits;
 - (vii) Making detained persons and others available to give evidence or assist investigations;
 - (viii) service of documents, including documents seeking the attendance of persons; and
 - (ix) other assistance consistent with the objects of this Agreement.
2. (a) “proceeds of crime” means any property that is derived or realized 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 movable or immovable, tangible or intangible property, and includes any interest in such property;
- (c) “confiscation” means any measure resulting in the deprivation of property;
- (d) “instruments of crime” means properties which are used or is intended to be used in connection with the commission of an offence; and
- (e) “the restraint of property” means any measure for the prevention of dealing in or transfer or disposal of property.

ARTICLE 3

Central Authorities

1. Requests for assistance under this Agreement shall be made through the Central authorities of the Parties.
2. In the Republic of India the Central Authority is the Ministry of Home Affairs. In the Islamic Republic of Iran, the Central Authority is the Judiciary.

ARTICLE 4

Contents of Requests

1. Requests for assistance under this Agreement shall be made in writing. However, in urgent circumstances, or where otherwise permitted by the requested party, requests may be made orally but shall be confirmed in writing thereafter.
2. Requests for assistance shall include a statement of:
 - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;

- (b) the matters, including the relevant facts and laws, to which the investigation or proceedings relates;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (e) any time limit within which compliance with the request is desired;
 - (f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
 - (g) 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 Party;
 - (h) 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;
 - (i) 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;
 - (j) 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;
 - (k) the need, if any, for confidentiality and the reasons therefor; and
 - (l) in the case of requests for restraint or forfeiture of proceeds or instruments of crime, where possible:
 - (i) a detailed description of the proceeds or instruments including their location;
 - (ii) a statement describing the basis for belief that the monies or property are the proceeds or instruments of crime; and
 - (iii) a statement describing the evidence that would be available for a proceeding in the Requested Party.
3. The Requested Party shall not refuse to execute the request solely because it does not include all of the information described under this article if it can otherwise be executed according to the law of the Requested Party.
4. If the Requested Party considers that additional information is needed to enable the request to be dealt with, that Party may request such additional information.

ARTICLE 5

Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the Requested Party and may be executed in accordance with any requirements/ manner specified in the request if not incompatible with the law of the Requested Party.
2. The Requested Party shall, upon request, inform the Requesting Party of any circumstances which are likely to cause a significant delay in execution of the request.
3. The Requested Party shall promptly inform the Requesting Party of a decision of the Requested Party not to comply in whole or in part with a request for assistance, or to postpone execution and shall give reasons for that decision.

ARTICLE 6

Refusal of Assistance

1. The Requested Party may refuse the assistance if:
 - (a) the execution of the request would impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person;
 - (b) the execution of the request would be contrary to the Constitution and domestic laws of the Requested Party;
 - (c) if the request seeking restraint, forfeiture or confiscation, of proceeds or instruments of activity which, had it occurred within the jurisdiction of the Requested Party, would not have been an activity in respect of which a confiscation order could have been made; and
 - (d) the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
2. Before, refusing to grant a request for assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, the Requesting Party shall comply with those conditions.

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, unless the Requesting Party expressly requests the originals.
2. 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.
3. Insofar as 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.

ARTICLE 8

Taking evidence in the Requested Party

1. A person, including a person in custody, requested to testify and produce documents, records or other articles in the Requested Party may be compelled by subpoena or order to appear and testify and produce such documents, records and other articles, in accordance with the law of the Requested Party.
2. Subject to the law of the Requested Party, commissioners, other officials of the Requesting Party and persons concerned in the proceedings in the Requesting Party shall be permitted to be present when evidence is taken in the Requested Party and to participate in the taking of such evidence.
3. The right to participate in the taking of evidence includes the right of counsel present to pose questions. 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 9

Availability of persons to give evidence or assist in investigation in the Requesting Party

1. The Requesting Party may request that a person be made available to testify or to assist in an investigation.
2. The Requested Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

ARTICLE 10

Making Detained Persons Available to Give Evidence or Assist in Investigations

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 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 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 sentence imposed expires, or 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 person present in the Requesting Party pursuant to a request seeking that person's attendance.

ARTICLE 11

Safe conduct

1. A person present in the Requesting Party in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in the territory of 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 other than the proceedings to which the request relates.
2. A person, who is present in the Requesting Party by consent as a result of a request for the person's attendance to answer before a judicial authority 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 Party, 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 Party, has not left it within a period of 30 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 Party may not be subjected to any sanction or compulsory measure in the Requested Party.

ARTICLE 12

Proceeds and Instruments of Crime

1. The Requested Party shall upon request endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested Party by whatever means are appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting Party or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested Party.
3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of proceeds or instruments.
4. Proceeds or instruments forfeited or confiscated pursuant to this agreement shall accrue to the Requested Party, unless otherwise agreed in a particular case.
5. Where action has been taken in the Requested Party pursuant to a request for assistance under paragraphs 1 or 2 of this Article, and there is a representation in either of the Parties as the case may be by a person affected by the order, the relevant Party shall inform the other Party as soon as possible and shall also inform it promptly of the outcome of that representation.

ARTICLE 13

Confidentiality and Limitation of Use

1. The Requested Party may require, after consultation with the Requesting Party, 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 Party 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.
3. The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Requested Party.

ARTICLE 14

Authentication

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

ARTICLE 15

Language

Requests and supporting documents shall be accompanied by a translation into one of the official language/ languages of the Requested Party or in English.

ARTICLE 16

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 expenses payable to that person while in the Requesting Party pursuant to a request under Article 9 or 10 of this Agreement;
 - (b) the expenses and fees of experts either in the Requested Party or the Requesting Party;
 - (c) the expenses of translation, interpretation and transcription: and
 - (d) the expenses associated with the taking of evidence from the Requested Party to the Requesting Party via video, satellite or other technological means.
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 17

Compatibility with other Treaties

Assistance and procedures set forth in this Agreement shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international conventions/agreements, or through the provisions of its domestic law. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

ARTICLE 18

Consultation

The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Agreement. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Agreement.

ARTICLE 19

Entry into Force, Amendment and Termination

1. This Agreement shall be ratified according to the legal formalities provided in the Constitution and domestic laws of both Parties and shall enter into force on the date of sending the last notice by one Party to the other on the fulfilment of all necessary legal formalities for enforcement of this Agreement.
2. This Agreement may be amended by mutual consent. Any such amendment will be subject to the same ratification procedures as in Clause 1 above.
3. Either Party may terminate this Agreement. The termination shall take effect six (6) months from the date on which it was notified to the other Party.
4. The Parties may also by mutual consent terminate this Agreement on such terms and conditions as may be agreed to between the Parties.

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

DONE at this the day of Two Thousand and Eight, according to Iranian Hizri calendar..... in two originals each, in Hindi, Persian and English, all texts being equally authentic. However, in case of difference, the English text shall prevail.

For the Republic of India

For the Islamic Republic of Iran

Treaty between the Republic of India and Bosnia and Herzegovina on Mutual Legal Assistance in Criminal Matters

The Republic of India and Bosnia and Herzegovina (hereinafter referred to as Contracting States);

Guided by the traditional friendly relations between the two countries;

Desiring to strengthen the legal foundation for providing widest measures of mutual legal assistance in criminal matters;

Respecting generally recognized principles of international law, above all principles of sovereign equality and desiring to improve the effectiveness of both countries in the prevention, investigation and prosecution of crime including crime related to terrorism and tracing, restraint, forfeiture or confiscation of funds meant for financing of terrorism as also the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

Article 1

Scope of Application

1. The Contracting States shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings to the Requesting State in criminal matters, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.
3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting State would constitute same kind of offence under the laws of the Requested State.
4. Assistance includes -
 - (a) locating and identifying persons and objects;
 - (b) serving documents, including documents seeking the attendance of persons;
 - (c) providing information, documents and records;
 - (d) providing objects, including lending exhibits;
 - (e) search and seizure;
 - (f) taking evidence and obtaining statements;
 - (g) authorizing the presence of persons from the Requesting State at the execution of requests;
 - (h) making detained persons available to give evidence or assist investigations;

- (i) facilitating the appearance of persons for evidence or for assistance in investigations;
 - (j) taking measures to locate, restrain or forfeit the proceeds of crime;
 - (k) taking measures to locate, freeze and confiscate any funds or finances meant for the financing of acts of terrorism in the territory of either party; and
 - (l) any other form of assistance not prohibited by the law of the Requested State.
5. This Treaty shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.

Article 2

Definitions

For the purpose of this Treaty -

1. Criminal matters means investigations, inquiries, trials or other proceedings relating to an offence under the laws of the Contracting States.
2. Criminal matters shall include investigations, prosecutions or proceedings relating to offences concerning taxation, duties customs and foreign exchange.

Article 3

Central Authorities

1. The Central Authorities shall transmit and receive all requests for the purposes of this Treaty. The Central Authority for the Republic of India is the Ministry of Home Affairs; and the Central Authority for Bosnia and Herzegovina is the Ministry of Justice of Bosnia and Herzegovina.
2. Any change in the Central Authority may be notified by the Contracting States.

Article 4

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, in so far as not prohibited by that law, in the manner specified by the Requesting State.
2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
3. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

Article 5

Contents of Requests

1. In all cases, requests for assistance will have to be attested by the competent authority and shall indicate -
 - (a) The name of the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
 - (b) the identity, nationality and location of a person or persons who is/are the subject of the investigation, prosecution or proceedings;
 - (c) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;
 - (d) the purpose of the request and the nature of the assistance sought;
 - (e) the degree of confidentiality required and the reasons therefor; and
 - (f) any time limit within which the request should be executed.
2. In the following cases, requests for assistance shall include:
 - (a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime, or of funds meant for financing of acts of terrorism, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
 - (b) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
 - (c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, 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;
 - (d) in the case of making detained persons available, an indication of 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 probable date of that person's return; and
 - (e) in case of requests in respect of proceeds of crime/search & seizure, a statement describing the basis of belief that the money or property are the proceeds of crime or are liable for search & seizure.
 - (f) In case of requests for seizure and confiscation of funds meant for financing acts of terrorism, the basis for belief that the funds are being so used.
3. If necessary, and where possible, requests for assistance shall include details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.
4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.

5. A request for assistance shall be made in writing. However, 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 6

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, essential public interest or prejudice the safety of any person.
2. Assistance may be refused if the execution of the request would be contrary to the domestic law of the Requested State.
3. Assistance may be refused if the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
4. Assistance may be refused if the request seeking restraint, forfeiture or confiscation of proceeds of crime or seizure of property are in respect of conduct/activity which cannot be made basis for such restraint, forfeiture, confiscation or seizure in the Requested State.
5. 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.
6. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
7. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

Article 7

Service of Documents

1. Pursuant to a request of the Requesting State, the Requested State shall serve any document transmitted to it to the subject thereof.
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.

Article 8

Provision of Information, Documents, Records and Objects related to Criminal Matters

1. The Requested State shall provide copies of publicly available information, documents and records of government departments and agencies.
2. The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.
3. The Requested State may provide certified true copies of documents of records, unless the Requesting State expressly requests originals.
4. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible upon request.
5. In so far as not prohibited by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

Article 9

Search and Seizure

1. The Requested State shall execute a request for a search and seizure.
2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions as to be got done for its own law enforcement and judicial authorities in accordance with its laws.
3. The competent authority that has executed a request for a search and seizure 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 objects seized and the circumstances of the seizure.

Article 10

Taking Evidence in the Requested State

1. A person including a person in custody, requested to testify and produce documents, records or objects in the Requested State may be compelled by subpoena or order to appear, testify and produce such documents, records or objects, in accordance with the law of the Requested State.
2. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State.

3. The right to participate in the taking of evidence includes the right to pose questions. 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 11

Presence of Persons at the Execution of Requests

To the extent not prohibited by the law of the Requested State, persons specified in the request shall be permitted to be present at the execution of the request.

Article 12

Making Detained Persons Available to give Evidence or Assist Investigations

1. Upon request, a person serving a sentence in the Requested State shall be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person consents.
2. When 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. When 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 13

Providing Evidence or Assisting Investigations in the Requesting State

The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

Article 14

Safe Conduct

1. Subject to Article 12(2), a person present in the Requesting State in response to a request 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 that 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 within thirty (30) days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.

3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

Article 15

Funds meant for financing acts of terrorism

Where either of the Contracting States have reasons to believe that any person or group of persons in their jurisdiction has collected or has been collecting or has contributed or has been contributing to any funds meant, directly or indirectly for the financing or furthering the acts of terrorism in the territory of the other State, it shall bring these facts to the notice of the other signatory State and shall take steps as permitted by its law for search, seizure and confiscation of such funds and the prosecution of the individual concerned.

Article 16

Proceeds and Instruments of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
2. When, pursuant to paragraph 1 of this Article, suspected proceeds or instruments of crime are found, the Requested State shall take such measures as are permitted by its law to restrain and forfeit those proceeds or instruments.
3. Proceeds or instruments forfeited or confiscated pursuant to this Treaty shall accrue to the Requested State, unless and otherwise agreed.

Article 17

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, disclosed or used only subject to such terms and conditions as it may specify.
2. The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

Article 18

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 Requested State.

Article 19

Authentication

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 8, or as required by the Requesting State.

Article 20

Language

Requests alongwith supporting documents shall be submitted in the English language, if required, accompanied by a translation in the language of the Requested State.

Article 21

Expenses

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 expenses payable to that person while in the Requesting State pursuant to a request under Article 12 or 13 of this Treaty;
 - (b) the expenses and fees of experts either in the Requested State or the Requesting State;
 - (c) the expenses of translation, interpretation and transcription: and
 - (d) the expenses associated with the taking of evidence from the Requested State to the Requesting State via video, satellite or other technological means.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting States shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 22

Compatibility with other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either State from granting assistance to the other State through the provisions of other applicable international conventions/ agreements, or through the provisions of its domestic law. The States may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

Article 23

Consultation

The Central Authorities of the Contracting States shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 24

Entry into Force, Amendment and Termination

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force from the date of exchange of instruments of ratification.
3. This Treaty may be amended by mutual consent.
4. Either Contracting State may terminate this Treaty. The termination shall take effect six (6) months from the date on which it was notified to the other Contracting State.
5. The States may also by mutual consent terminate this Treaty on such terms and conditions as may be agreed to between the States.

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

DONE at New Delhi this the 29th day of October, 2009 (Two Thousand and Nine) in two originals, each in Hindi, official languages in use in Bosnia and Herzegovina (Bosnian, Serbian, Croatian) and English all texts being equally authentic. However, in case of divergence of interpretation, the English text shall prevail.

For the Republic of India

For Bosnia and Herzegovina

The Exchange of instruments of ratification between the two sides has taken place on 22.12.2010 and accordingly the Treaty has come into force from 22.12.2010.

**Agreement between the Government of the Republic of India and
the Government of the Hong Kong Special Administrative Region of
the People's Republic of China Concerning
Mutual Legal Assistance in Criminal Matters**

The Government of the Republic of India and the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region"), having been duly authorised by the Central People's Government of the People's Republic of China, (hereinafter referred to as 'the Parties');

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution and prevention of crime and the confiscation of the proceeds and instruments of crime;

Have agreed as follows:

ARTICLE I

SCOPE OF ASSISTANCE

- (1) The Parties shall provide, in accordance with the provisions of this Agreement, the widest measures of mutual legal assistance in the investigation and prosecution of criminal offences falling within the jurisdiction of the Requesting Party and in proceedings related thereto.
- (2) Assistance shall include:
 - (a) identifying and locating persons;
 - (b) serving of documents;
 - (c) obtaining of information, statements, evidence, articles or documents;
 - (d) executing requests for search and seizure;
 - (e) facilitating the personal appearance of persons to provide assistance;
 - (f) effecting the temporary transfer of persons in custody to provide assistance;
 - (g) obtaining production of judicial or official records;
 - (h) tracing, restraining, forfeiting and confiscating the proceeds and instruments of crime;
 - (i) providing information, documents and records;
 - (j) delivery of property, including lending of exhibits; and
 - (k) other assistance consistent with the objectives of this Agreement which is not inconsistent with the law of the Requested Party.
- (3) Assistance under this Agreement may be granted in connection with criminal offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters but not if the primary purpose of the request for assistance is the assessment or collection of tax.

- (4) This Agreement shall not apply to:
 - (a) the execution of arrests or detention of any person with a view to that person being surrendered as a fugitive offender;
 - (b) the enforcement of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party;
 - (c) the transfer of persons in custody to serve sentences; and
 - (d) the transfer of proceedings in criminal matters.
- (5) This Agreement is intended solely for mutual legal assistance between the Parties. The provisions of this Agreement shall not give rise to any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.
- (6) For the purpose of this Agreement, mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a Court or some other authority.

ARTICLE II

CENTRAL AUTHORITY

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority for the Republic of India shall be the Ministry of Home Affairs. The Central Authority of the Hong Kong Special Administrative Region shall be the Secretary for Justice or his or her duly authorized officer.
- (3) Requests under this Agreement shall only be transmitted by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.
- (4) The Central Authority of the Requested Party shall promptly comply with requests or, as appropriate, forward them to its competent authorities for them to carry out.

ARTICLE III

OTHER ASSISTANCE

This Agreement shall not affect subsisting obligations between the Parties pursuant to other agreements, arrangements or practices or otherwise, nor prevent the Parties from providing assistance pursuant to such agreements, arrangements or practices.

ARTICLE IV

LIMITATIONS ON COMPLIANCE

- (1) The Requested Party shall refuse assistance if:
 - (a) the request for assistance impairs the sovereignty, security or public order of the Republic of India or, in the case of the Hong Kong Special Administrative Region, the People's Republic of China;

- (b) it is of the opinion that the granting of the request would seriously impair its essential interests;
 - (c) the request for assistance relates to an offence of a political character;
 - (d) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, religion, nationality or political opinions;
 - (e) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided;
 - (f) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party or for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the Requested Party;
 - (g) the request relates to an act or omission that would not, if it had occurred in the Requested Party, have constituted an offence; and
 - (h) the request for assistance relates to an offence only under military law.
- (2) For the purpose of paragraph (1)(b) the Requested Party may include in its consideration of essential interests whether the provision of assistance could prejudice the safety of any person or impose an excessive burden on the resources of the Requested Party.
- (3) For the purpose of paragraph (1)(c) in considering whether a request relates to a political offence, the Requested Party shall take into account the relevant facts, the supporting documents provided by the Requesting Party and provisions of international conventions which are applicable to both parties. The Requested Party shall particularly give due consideration to not regarding offences against life, physical integrity, property or freedom of persons as political offences.
- (4) A request shall not be refused under paragraph (1)(g) on the basis that it is not known at the time of making the request what offence will be charged.
- (5) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
- (6) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority:
- (a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and
 - (b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.
- (7) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (6)(b), it shall comply with those terms and conditions.

ARTICLE V
REQUESTS

- (1) Requests shall be made in writing except in urgent cases. In urgent cases or where otherwise permitted by the Requested Party, requests may be made orally, but shall be confirmed in writing within ten (10) days thereafter.
- (2) Requests shall include:
 - (a) the name of the authority on behalf of which the request is made;
 - (b) a description of the purpose of the request and the nature of the assistance requested;
 - (c) a description of the nature of the investigation, prosecution, offence or criminal matter;
 - (d) a summary of the relevant facts and laws;
 - (e) any requirements for confidentiality;
 - (f) details of any particular procedure the Requesting Party wishes to be followed; and
 - (g) details of the period within which the request should be complied with.
- (3) The Requested Party shall use its best efforts to keep confidential a request, its contents, supporting documents and any action taken pursuant to the request except when otherwise authorized by the Requesting Party.
- (4) Requests shall be in, or translated into, an official language of the Requested Party. All documents submitted in support of a request shall be accompanied, if so required by the Requested Party, by a translation into an official language of the Requested Party.

ARTICLE VI
EXECUTION OF REQUESTS

- (1) A request shall be executed in accordance with the law of the Requested Party and, to the extent not prohibited by the law of the Requested Party, in accordance with the requirements stated in the request so far as practicable.
- (2) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.
- (3) The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance and the reasons for that decision.

ARTICLE VII

REPRESENTATION AND EXPENSES

- (1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
- (2) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:
 - (a) fees of experts;
 - (b) expenses of translation;
 - (c) travel expenses and allowances of witnesses, experts, persons being transferred in custody and escorting officers; and
 - (d) fees of counsel retained at the request of the Requesting Party.
- (3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

ARTICLE VIII

LIMITATIONS OF USE

- (1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.
- (2) The Requesting Party 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 Party.

ARTICLE IX

ATTENDANCE OF PERSONS

For the purposes of requests under this Agreement, the Requested Party may, subject to its law, authorise persons affected by the relevant proceedings in the Requesting Party, their legal representatives and representatives of the Requesting Party to be present at the execution of the request.

ARTICLE X

OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

- (1) Where a request is made that evidence be taken, the Requested Party shall arrange to have such evidence taken.
- (2) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, records or other material.

- (3) For the purposes of requests under this Article, the Requesting Party shall specify the questions to be put to the witness or person giving evidence and the subject matter about which they are to be examined.
- (4) If necessary, any questions additional to those specified in paragraph (3) of this Article, may be put to the witness or person giving evidence by the competent authority of the Requested Party, either of its own volition or if requested by any of the persons referred to in Article IX.
- (5) A person who is required to give evidence in the Requested Party pursuant to a request for assistance may decline to give evidence where either:
 - (a) the law of the Requested Party would permit that witness to decline to give evidence in similar circumstances in proceedings which originated in the Requested Party; or
 - (b) where the law of the Requesting Party would permit him to decline to give evidence in such proceedings in the Requesting Party.
- (6) If any person claims that there is a right to decline to give evidence under the law of the Requesting Party, the Requested Party shall with respect thereto rely on a certificate of the Central Authority of the Requesting Party.

ARTICLE XI

SERVICE OF DOCUMENTS

- (1) The Requested Party shall effect service of judicial process and other documents which are transmitted to it for this purpose by the Requesting Party.
- (2) The Requesting Party shall transmit a request for the service of a document pertaining to a response in the Requesting Party within a reasonable time before the scheduled response.
- (3) The Requesting Party shall transmit a request for the service of a document pertaining to an appearance in the Requesting Party within a reasonable time, and if possible at least 40 days, before the scheduled appearance.
- (4) Service may be effected by mail. If the Requesting Party expressly so requests, service shall be effected by the Requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.
- (5) The Requested Party shall, insofar as its law permits, return a proof of service in the manner required by the Requesting Party.
- (6) A person who fails to comply with any process served on him shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or Requested Party.

ARTICLE XII

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

- (1) Subject to its law the Requested Party shall provide copies of publicly available documents.
- (2) The Requested Party may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own competent authorities.

ARTICLE XIII

CERTIFICATION AND AUTHENTICATION

Evidence, documents, records or other material transmitted pursuant to this Agreement shall not require any form of certification or authentication unless expressly requested by the Central Authority of the Requesting Party. Material shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

ARTICLE XIV

TRANSFER OF PERSONS IN CUSTODY

- (1) A person in custody in the Requested Party whose presence is requested in the Requesting Party for the purposes of providing assistance pursuant to this Agreement shall be transferred from the Requested Party to the Requesting Party, provided the Requested Party and the person consent and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.
- (2) Where the sentence of imprisonment of a person transferred pursuant to this Article expires while the person is in the Requesting Party, the Requested Party shall so advise the Requesting Party which shall ensure the person's release from custody.

ARTICLE XV

TRANSFER OF OTHER PERSONS

- (1) If the Requesting Party considers the personal appearance of a person for the purpose of providing assistance necessary it shall so inform the Requested Party. The Requested Party shall invite that person to appear and advise the Requesting Party of the reply from that person.
- (2) Where a request is made pursuant to this Article, the Requesting Party shall advise the approximate amount of allowances payable, including travelling and accommodation expenses.

ARTICLE XVI
SAFE CONDUCT

- (1) A person who consents to transfer pursuant to Articles XIV or XV shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence or be subject to civil suit, being a civil suit to which the person could not be subjected if the person were not in the Requesting Party for any act or omission which preceded his departure from the Requested Party.
- (2) A person who consents to transfer pursuant to Articles XIV or XV shall not be subject to prosecution based on his testimony, except for perjury.
- (3) A person who consents to transfer pursuant to Articles XIV or XV shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.
- (4) A person who does not consent to transfer pursuant to Articles XIV or XV shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.
- (5) A person who responds to a summons from the Requesting Party to answer for acts forming the subject of proceedings against him shall not be prosecuted or detained or restricted in his personal liberty in the Requesting Party for acts or omissions which preceded his departure from the Requested Party and which are not specified in the summons.
- (6) Paragraphs (1) and (5) shall not apply if the person, being free to leave, has not left the jurisdiction of the Requesting Party within a period of 30 days after being notified that his presence is no longer required, or having left the jurisdiction of the Requesting Party, has returned.

ARTICLE XVII
SEARCH AND SEIZURE

- (1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any material to the Requesting Party which is relevant to a proceeding or investigation in relation to a criminal matter.
- (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 property seized.
- (3) The Requesting Party shall observe any reasonable conditions imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

ARTICLE XVIII

PROCEEDS AND INSTRUMENTS OF CRIME

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments of crime against the law of the Requesting Party are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds or instruments may be located in its jurisdiction.
- (2) Where pursuant to paragraph (1) suspected proceeds or instruments of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds or instruments of crime, pending a final determination in respect of those proceeds or instruments by a Court of the Requesting Party.
- (3) Where a request is made for assistance in securing the confiscation of proceeds or instruments of crime such request shall be executed pursuant to the laws of the Requested Party.
- (4) Proceeds or instruments of crime confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.
- (5) Where action has been taken in the Requested Party pursuant to a request for assistance under paragraph (1) or (3) of this Article, and there is a representation to either of the Parties by a person affected by a court order, the Party receiving that representation shall inform the other Party of it as soon as possible and shall also inform the other Party promptly of the outcome of that representation.
- (6) For the purposes of this Agreement:
 - (a) “confiscation” means any measure resulting in the deprivation of property;
 - (b) “instruments of crime” means any property which is, or is intended to be, used in connection with the commission of an offence;
 - (c) “proceeds of crime” includes 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; and
 - (d) “property” includes money and all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property.

ARTICLE XIX

SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

ARTICLE XX

ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force thirty (30) days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.
- (2) This Agreement shall apply to requests whether or not the relevant acts or omissions occurred prior to its entering into force.
- (3) Either Party may terminate this Agreement by giving prior notice to the other in writing. In that event, the Agreement shall cease to have effect six (6) months after the date of the receipt of that notice. Requests for assistance which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

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

DONE at New Delhi, this 14th day of September, 2009 in two originals, each in Hindi, Chinese and English languages, all texts being equally authentic.

For the Government of the
Republic of India

For the Government of the
Hong Kong Special Administrative Region of the
People's Republic of China

Treaty on Mutual Assistance in Criminal Matters between the Republic of India and the Union of Myanmar

The Republic of India and The Union of Myanmar (hereinafter referred to as Contracting States);

Guided by the traditional friendly relations between the two countries;

Recognising the need to facilitate the widest measures of mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

Desiring to improve the effectiveness of both countries in the prevention, investigation and prosecution of crime, including crime related to terrorism and tracing, restraint, forfeiture or confiscation of funds meant for financing of terrorism as also the proceeds and instruments of crime, through cooperation and mutual assistance in criminal matters;

Have agreed as follows:

Article 1

Scope of Application

The Contracting States shall, in accordance with this Treaty, provide each other with the widest measure of mutual assistance in criminal matters.

Mutual assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings to the Requesting State in criminal matters, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.

Assistance shall be provided without regard to whether the conduct, which is the subject of the investigation, prosecution or proceedings in the Requesting State, would constitute an offence under the laws of the Requested State.

Assistance shall include -

- (a) locating and identifying persons and objects;
- (b) serving documents, including documents seeking the attendance of persons;
- (c) providing information, documents and records;
- (d) providing objects, including lending exhibits;
- (e) search and seizure;
- (f) taking evidence and obtaining statements;
- (g) authorizing the presence of persons from the Requesting State at the execution of requests;
- (h) making detained persons available to give evidence or assist investigations;
- (i) facilitating the appearance of witnesses or the assistance of persons in investigations;

- (j) taking measures to locate, restrain or forfeit the proceeds of crime;
- (k) taking measures to locate, freeze and confiscate any funds or finances meant for the financing of acts of terrorism in the territory of either party; and
- (l) any other form of assistance not prohibited by the law of the Requested State.

This Treaty shall also apply to any requests for mutual assistance relating to acts or omissions committed before its entry into force.

Article 2

Definitions

For the purpose of this Treaty -

1. "Criminal Matters" mean investigation, prosecution and judicial proceedings in respect of an offence, punishable with imprisonment for a term of one year and above, in accordance with the domestic law of either Contracting State, provided that the assistance shall not be denied in cases where the offender has been charged with multiple offences and at least one of these offences carries punishment as imprisonment for a period of at least one year.
2. Criminal matters shall include investigations, prosecutions or proceedings relating to offences concerning taxation, duties, customs and foreign exchange.

Article 3

Central Authorities

The Central Authorities shall transmit and receive all requests for the purposes of this Treaty. The Central Authority for the Republic of India is the Ministry of Home Affairs; and the Central Authority for the Union of Myanmar shall be the Ministry of Home Affairs.

Article 4

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as not prohibited by that law, in the manner specified by the Requesting State.
2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
3. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

Article 5
Contents of Requests

1. In all cases, requests for assistance shall indicate -
 - (a) the name of the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
 - (b) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;
 - (c) the purpose of the request and the nature of the assistance sought;
 - (d) the degree of confidentiality required and the reasons therefor;
and
 - (e) any time limit within which the request should be executed.
2. In the following cases, requests for assistance shall include:
 - (a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime, or of funds meant for financing of acts of terrorism, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
 - (b) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
 - (c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, 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;
 - (d) in the case of making detained persons available, an indication of 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 probable date of that person's return;
 - (e) in case of requests in respect of proceeds of crime/search and seizure, a statement describing the basis of belief that the money or property are the proceeds of crime or are liable for search and seizure; and
 - (f) In case of requests for seizure and confiscation of funds meant for financing acts of terrorism, the basis for belief that the funds are being so used.
3. If necessary, and where possible, requests for assistance shall include-
 - (a) the identity, nationality and location of a person or persons who is/are the subject of the investigation, prosecution or proceedings;
 - (b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.

4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.
5. A request for assistance shall be made in writing. However, 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 6

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, essential public interest or prejudice the safety of any person.
2. Assistance may be refused if the execution of the request would be contrary to the domestic law of the Requested State.
3. Assistance may be refused if the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
4. Assistance may be refused if the request seeking restraint, forfeiture or confiscation of proceeds of crime or seizure of property are in respect of conduct/activity which cannot be made basis for such restraint, forfeiture, confiscation or seizure in the Requested State.
5. 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.
6. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
7. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

Article 7

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.

Article 8

Provision of Information, Documents, Records and Objects

1. The Requested State shall provide copies of publicly available information, documents and records of government departments and agencies.
2. The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.
3. The Requested State may provide certified true copies of documents of records, unless the Requesting State expressly requests originals.
4. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible upon request.
5. Insofar as not prohibited by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

Article 9

Search and Seizure

1. The Requested State shall execute a request for a search and seizure.
2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions as to be got done for its own law enforcement and judicial authorities in accordance with its laws.
3. The competent authority that has executed a request for a search and seizure 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 objects seized and the circumstances of the seizure.

Article 10

Taking Evidence in the Requested State

1. A person including a person in custody, requested to testify and produce documents, records or objects in the Requested State may be compelled by subpoena or order to appear, testify and produce such documents, records or objects, in accordance with the law of the Requested State.
2. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State.
3. The right to participate in the taking of evidence includes the right to pose questions. 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 11

Presence of Persons at the Execution of Requests

To the extent not prohibited by the law of the Requested State, persons specified in the request shall be permitted to be present at the execution of the request.

Article 12

Making Detained Persons Available to give Evidence or Assist Investigations

1. Upon request, a person serving a sentence in the Requested State shall be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person consents.
2. When 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. When 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 13

Providing Evidence or Assisting Investigations in the Requesting State

The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

Article 14

Safe Conduct

1. Subject to Article 12(2), a person present in the Requesting State in response to a request 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 that 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 within thirty (30) days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.
3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

Article 15

Funds meant for financing acts of terrorism

Where either of the Contracting States have reasons to believe that any person or group of persons in their jurisdiction has collected or has been collecting or has contributed or has been contributing to any funds meant, directly or indirectly for the financing or furthering the acts of terrorism in the territory of the other State, it shall bring these facts to the notice of the other signatory State and shall take steps as permitted by its law for search, seizure and confiscation of such funds and the prosecution of the individual concerned.

Article 16

Proceeds and Instruments of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
2. When, pursuant to paragraph 1 of this Article, suspected proceeds or instruments of crime are found, the Requested State shall take such measures as are permitted by its law to restrain and forfeit those proceeds or instruments.
3. Proceeds or instruments forfeited or confiscated pursuant to this Treaty shall accrue to the Requested State, unless and otherwise agreed.

Article 17

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, disclosed or used only subject to such terms and conditions as it may specify.
2. The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

Article 18

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 Requested State.

Article 19

Authentication

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 8, or as required by the Requesting State.

Article 20

Language

1. Requests shall be submitted in the English language.
2. Supporting documents, if not in the English language, shall be accompanied by an English translation.

Article 21

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 expenses payable to that person while in the Requesting State pursuant to a request under Article 12 or 13 of this Treaty;
 - (b) the expenses and fees of experts either in the Requested State or the Requesting State;
 - (c) the expenses of translation, interpretation and transcription; and
 - (d) the expenses associated with the taking of evidence from the Requested State to the Requesting State via video, satellite or other technological means.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting States shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 22

Compatibility with other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either State from granting assistance to the other State through the provisions of other applicable international conventions/agreements, or through the provisions of its domestic law. The States may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

Article 23

Consultation

The Central Authorities of the Contracting States shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 24

Entry into Force, Amendment and Termination

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force from the date of exchange of instruments of ratification.
3. This Treaty may be amended by mutual consent.
4. Either Contracting State may terminate this Treaty. The termination shall take effect six (6) months from the date on which it was notified to the other Contracting State.
5. The State may also by mutual consent terminate this Treaty on such terms and conditions as may be agreed to between the States.

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

DONE at New Delhi on the 27th day of July, 2010 (Two thousand and ten) in two originals each, in Hindi, Myanmar and English all texts being equally authentic. However, in case of divergence of interpretation, the English text shall prevail.

For the Republic of India

(P. Chidambaram)

Home Minister

For the Union of Myanmar

(Nyan Win)

Minister of Foreign Affairs

Treaty between the Republic of India and the Democratic Socialist Republic of Sri Lanka on Mutual Legal Assistance in Criminal Matters

The Republic of India and the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as Contracting States):

Guided by the traditional friendly relations between the two countries;

Recognizing the need to facilitate the widest measures of mutual assistance in criminal matters between the two countries;

Desiring to improve the effectiveness of both countries in the prevention, investigation, prosecution and suppression of crimes including crimes related to terrorism and tracing, restraint, forfeiture or confiscation of funds meant for financing of terrorism and the proceeds and instruments of crime through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

Article 1

Scope of Application

1. The Contracting States shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings to the Requesting State in criminal matters, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.
3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting State would constitute an offence under the laws of the Requested State.
4. Assistance includes:
 - a) locating and identifying persons and objects;
 - b) serving documents, including documents seeking the attendance of persons;
 - c) providing information, documents and records;
 - d) providing objects, including lending exhibits;
 - e) search and seizure;
 - f) taking evidence and obtaining statements;
 - g) authorizing the presence of persons from the Requesting State at the execution of requests;
 - h) making detained persons available to give evidence or assist investigations;

- i) facilitating the appearance of witnesses or the assistance of persons in investigations;
 - j) taking measures to locate, restrain or forfeit the proceeds of crime and instruments of crime; and
 - k) any other forms of assistance not prohibited by the law of the Requested State.
5. This Treaty shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.

Article 2

Definitions

For the purpose of this Treaty-

1. ‘Criminal Matter’ means investigations, inquiries, trials or other proceedings relating to an offence created by the legislature of the Requesting State and includes investigations, prosecutions and proceedings relating to economic or fiscal offences concerning taxation, duties, customs and foreign exchange.
2. ‘Proceeds of Crime’ means any property derived or obtained directly or indirectly by any person as a result of criminal activity including crime involving currency transfers or the value of any such property.
3. ‘Property’ means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime.

Article 3

Central Authorities

The Central Authorities shall transmit and receive all requests for the purposes of this Treaty. The Central Authority for the Republic of India shall be the Ministry of Home Affairs and the Central Authority for the Democratic Socialist Republic of Sri Lanka shall be the Ministry of Justice and Law Reforms.

Article 4

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, in so far as not prohibited by that law, in the manner specified by the Requesting State.
2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
3. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

Article 5

Contents of Requests

1. In all cases, requests for assistance shall indicate:
 - (a) the name of the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
 - (b) the nature of the investigation, prosecution or other proceedings, including a summary of the facts and copies of the provisions of relevant laws; and where applicable a description of the offence to which the request relates, and a description of the evidence;
 - (c) the purpose of the request and the nature of the assistance sought;
 - (d) the degree of confidentiality required and the reasons therefore; and
 - (e) any time limit within which the request should be executed.
2. In the following cases, requests for assistance shall include:
 - a. in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds or instruments of crime, a statement indicating the basis for belief that evidence, proceeds or instruments of crime may be found in the Requested State;
 - b. in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought ;
 - c. in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, 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;
 - d. in the case of making detained persons available, an indication of 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 probable date of that person's return; and
 - e. in the case of restraint or forfeiture of proceeds or instruments of crime where possible, the requests for assistance shall include:-
 - (i) detailed description of the proceeds and instruments including location;
 - (ii) statement describing the basis for belief that the monies or properties are the proceeds or instruments of crime;
 - (iii) a statement describing the evidence that will be available for proceedings in the Requesting Party.
3. If necessary, and when possible, requests for assistance shall include:-
 - (a) the identity, nationality and location of a person or persons who is/are the subject of the investigation, prosecution or proceedings;

- (b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefore.
4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.
 5. A request for assistance shall be made in writing. However, 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 6

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, and essential public interest or prejudice the safety of any person.
2. Assistance may be refused if the execution of the request would be contrary to the domestic law of the Requested State.
3. Assistance may be refused if the request relates to an offence in respect of which the accused person had been finally acquitted, convicted or pardoned in respect of that offence or another offence constituted by the same act or omission that constitutes the offence for which such person has been already acquitted, convicted or pardoned.
4. Assistance may be refused where the request seeking restraint, forfeiture or confiscation of proceeds or instruments of activity which, had it occurred within the jurisdiction of the Requested State, would not have been an activity in respect of which a confiscation order could have been made.
5. 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.
6. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
7. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

Article 7

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 accordance with its laws and procedures.

Article 8

Provision of Information, documents, Records and Objects

1. The Requested State shall provide copies of publicly available information, documents and records of government departments and agencies.
2. The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.
3. The Requested State may provide certified true copies of documents of records, unless the Requesting State expressly requests originals.
4. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible unless the latter waives its right of return thereof.
5. In so far as not prohibited by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

Article 9

Search and Seizure

1. The Requested State shall execute a request for a search and seizure where:-
 - (a) an investigation, prosecution or proceeding relating to a criminal matter has commenced in the Requesting State; and
 - (b) there are reasonable grounds to believe that the document or thing relevant to the proceeding or investigation is located in the Requested State.
2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions as would be applicable for its own law enforcement and judicial authorities in accordance with its laws.
3. The competent authority that has executed a requests for a search and seizure 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 objects seized and the circumstances of the seizure.

Article 10

Taking Evidence in the Requested State

1. Where a request is made that evidence be taken for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter in the jurisdiction of the Requesting State, the Requested State shall arrange to have such evidence taken.

2. For the purposes of this Treaty the giving or taking of evidence shall include the production of documents, articles or records.
3. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate to the extent possible as may be permissible in accordance with the law of the Requested State.
4. The right to participate in the taking of evidence includes the right to suggest questions to be posed. 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.
5. A person who is required to give evidence in the Requested State, pursuant to a request for assistance, may decline to do so, where either:-
 - (a) the law of the Requested State permits that person to decline to give evidence in similar circumstances in proceedings which may have originated in the Requested State; or
 - (b) the law of the Requesting State permits him to decline to give evidence in such proceedings in the Requested State.
6. If any person claims that there is a right to decline to give evidence under the laws of the Requesting State, the Requested State may with respect thereto rely on a certificate of the Central Authority of the Requesting State as prima facie evidence of the legal position of such a claim.

Article 11

Presence of Persons at the Execution of Requests

To the extent not prohibited by the law of the Requested State, persons specified in the request shall be permitted to be present at the execution of the request.

Article 12

Making Detained Persons Available to give Evidence or Assist Investigation

1. Upon request, a person serving a sentence in the Requested State shall be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person consents to such transfer.
2. When 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. When 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 13

Providing Evidence or Assisting Investigations in the Requesting State

1. The Requesting State may request that a person(s) be made available to give evidence or assist in an investigation.
2. The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

Article 14

Safe Conduct

1. Subject to Article 12(2), a person present in the Requesting State in response to a request 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 that 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 within fifteen (15) days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.
3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

Article 15

Proceeds and Instruments of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds or instruments of the alleged 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 or instruments of crime are located within its jurisdiction.
2. In pursuance of a request made under paragraph 1 of the present Article, the Requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds or instruments of crime.
3. Where pursuant to paragraph 1 of the present Article, suspected proceeds or instruments of crime are found, the Requested State shall, upon request, take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of those suspected proceeds or instruments of crime, pending a final determination in respect of those proceeds or instruments by the Requesting State.
4. Subject to the provisions of domestic laws of the Requested State, property forfeited or confiscated pursuant to the present Article shall accrue to the Requesting State unless otherwise agreed in each particular case.

5. The Requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds or instruments of crime made by the Requesting State or take other appropriate action to secure the proceeds or instruments of crime following a request by the Requesting State.
6. The Parties shall ensure that the rights of bona fide third parties shall be respected in the application of the present Article.

Article 16

Restitution and Fine Enforcement

The Requested State shall to the extent permitted by its law, provide assistance concerning restitution to the victims of crime and the collection of fines imposed as a sentence in a criminal prosecution.

Article 17

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, disclosed or used only subject to such terms and conditions as it may specify.
2. The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

Article 18

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 Requested State.

Article 19

Authentication

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 8, or as required by the Requesting State.

Article 20

Language

1. Requests shall be submitted in the English language.
2. Supporting documents, if not in the English language, shall be accompanied by an English translation.

Article 21

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 expenses payable to that person while in the Requesting State pursuant to a request under Article 12 or 13 of this Treaty;
 - (b) the expenses and the fees of experts either in the Requested State or the Requesting State;
 - (c) the expenses of translation, interpretation and transcription; and
 - (d) the expenses associated with the taking of evidence from the requested State to the Requesting State via video, satellite or other technological means.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting States shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 22

Compatibility with other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either State from granting assistance to the other State through the provisions of other applicable international conventions/agreements, or through the provisions of its domestic law. The States may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

Article 23

Consultation

The Central Authorities of the Contracting States shall consult, at times mutually agreed to by them on matters concerning interpretation and application of the provisions of this Treaty and to promote its effective implementation.

Article 24

Entry into Force, Amendment and Termination

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force from the date of exchange of instruments of ratification.
3. This Treaty may be amended by mutual consent.
4. Either Contracting State may terminate this Treaty. The termination shall take effect six (6) months from the date on which it was notified to the other Contracting State.
5. The States may also by mutual consent terminate this Treaty on such terms and conditions as may be agreed to between the States.

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

DONE at New Delhi on this day of June, 2010 (Two Thousand and Ten) in two originals each in Hindi, Sinhala and English Languages, all texts being equally authentic. In the event of any divergence of interpretation, the English text shall prevail.

For the Republic of India

For the Democratic Socialist Republic
of Sri Lanka

Treaty between the Republic of India and the Republic of Indonesia on Mutual Legal Assistance in Criminal Matters

The Government of the Republic of India and the Government of the Republic of Indonesia (herein after referred to as Contracting States)

Bearing in mind the existing friendly relations between the two countries.

Desiring to extend each other the widest possible measures of cooperation in investigation and prosecution of crimes as well as tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through mutual legal assistance in criminal matters.

HAVE AGREED as follows:

ARTICLE 1

SCOPE OF APPLICATION

1. The Contracting States shall, in accordance with this Treaty and subject to their domestic laws, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. For the purpose of this Treaty, mutual legal assistance in criminal matters shall mean assistance rendered by the Requested State with respect to investigations, prosecutions, trials or other proceedings relating to any offence, which at the time of request for assistance, fall within the jurisdiction of the Requesting State.
3. Mutual legal assistance may include:
 - (a) locating and identifying persons and objects;
 - (b) serving documents, including documents seeking the attendance of persons;
 - (c) providing information, documents and records;
 - (d) providing objects, including lending exhibits;
 - (e) search and seizure;
 - (f) taking evidence and obtaining statements;
 - (g) authorizing the presence of persons from the Requesting State in the execution of requests;
 - (h) making detained person available to give evidences or assist investigations, prosecutions, trial or proceedings in the Requesting State;
 - (i) facilitating the appearance of witnesses or the assistance of persons in investigations;

- (j) taking measures to trace, restrain, freeze, confiscate, forfeit and return the proceeds and or instrumentalities of crime; and
 - (k) any other form of assistance not prohibited by the law of the Requested State
4. This Treaty shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.
 5. Assistance may also be granted in connection with investigations, prosecutions, trial, or proceedings relating to offences concerning taxation, duties customs and foreign exchange control or any other revenue matters.
 6. This Treaty shall apply solely to the provisions of mutual legal assistance between the Contracting States. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress, or exclude any evidence or impede the execution of any request for assistance.

ARTICLE 2

EXCLUSION

1. This Treaty does not apply to:
 1. the arrest or detention of any person with a view to the extradition of that person;
 2. the transfer of persons in custody to serve sentences: and
 3. the transfer of proceedings in criminal matters.
2. Nothing in this Treaty entitles a Contracting State to undertake in the territory of another Contracting State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Contracting State by its domestic laws.

ARTICLE 3

CENTRAL AUTHORITIES

1. Each Contracting State shall designate a Central Authority for the purpose of the implementation of this Treat.
2. For the Government of the Republic of India, the Central Authority shall be the Ministry of Home Affairs and for the Government of the Republic of Indonesia, the Central Authority shall be the Ministry of Law and Human Right:.
3. A request for assistance and all communications relating thereto will be sent through diplomatic channel or directly by the Central Authority of a Contracting State to the Central Authority of the other Contracting State as may be necessary.

ARTICLE 4
CONTENTS OF REQUEST

1. In all cases, requests for assistance shall indicate:
 - (a) the name of the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
 - (b) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;
 - (c) the purpose of the request and the nature of the assistance sought;
 - (d) a description of nature of the criminal matter and its current status and statement setting out summary of relevant facts and law including the maximum penalty for the offence to which the request relates;
 - (e) the degree of confidentiality required and the reasons thereof;
 - (f) any time limit within which the request should be executed; and
 - (g) such other information or undertakings as may be required under the domestic law of the Requested State or which is otherwise necessary for the proper execution of the request.
2. In the following cases, requests for assistance shall include:
 1. in the case of requests for the taking of evidence, search and seizure, or the tracing, freezing, confiscation and forfeiture of proceeds and or instrumentalities of crime, a statement stating information or any other ground indicating the existence of such proceed and or instrumentalities of crime in the jurisdiction of the Requested State; and
 2. in the case of making detained persons available, an indication of 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 probable date of that person's return.
3. If necessary, and where possible, requests for assistance shall include:
 1. the identity, nationality and location of a person or persons who is/are the subject of the investigation, prosecution or proceedings;
 2. details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons thereof;
 3. in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought person to be asked to produce them: and
 4. description of the documents, records, or items of evidence to be produced.
4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.

5. A request for assistance shall be made in writing. However, 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 5

REFUSAL OF ASSISTANCE

MANDATORY GROUNDS

1. Request for legal assistance shall not be granted where:
 - a. in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order, or public interest;
 - b. the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned;
 - c. the Requested State has substantial grounds for believing that the request for mutual legal assistance has been made for the purpose of prosecuting a person on account of that person's race, religion, nationality, ethnic origin, political opinion, or that person may, for any of those reasons, be subjected to unfair treatment in judicial proceedings;
 - d. the Requesting State fails, to provide assurance that the assistance requested will not be used for the purposes other than those stated in the request without the prior consent of the Requested State;
 - e. the Requesting State fails to provide the assurance of the return of evidence obtained pursuant to the request of legal assistance under this Treaty;
 - f. the request relates to an offence only punishable under military law, which is not an offence under the ordinary criminal law;
 - g. the request relates to an offence of a political character.
2. For the purpose of this Treaty, the following shall not be considered as political offences:
 1. an offence against the life or person of the Head of State or the Head of Government or member(s) of their immediate family;
 2. an offence under any international convention to which the Contracting States have the obligation by virtue of becoming a State Party thereto, to provide mutual legal assistance in criminal matters;
 3. offence related to terrorism which at the time of the request is under the law of the Requested State, not to be regarded as an offence of a political character;
 4. an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.
3. Serious offences against the body, person, life and property, even if politically motivated shall not be considered as political offence for the purpose of this Treaty.

OPTIONAL GROUNDS

4. Request for assistance may not be granted where:
 - a. the provision of the assistance would, or would be likely to prejudice the safety of any person, whether that person is within or outside the territory of the Requested State;
 - b. the request seeking restraint forfeiture or confiscation of proceeds of crime or seizure of property are in respect of conduct/activity which cannot be made basis for such restraint, forfeiture, confiscation or seizure in the Requested State.
 - c. the request relates to the investigation, prosecution or punishment of a person with regard to a ground that may be used as a basis for refusal as per the domestic law of the requested State.
5. Assistance shall not be refused solely on the ground of bank secrecy or similar financial institution or that the offence is also considered to involve fiscal matters.

ARTICLE 6

EXECUTION OF REQUEST

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and in the manner specified by the Requesting State.
2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
3. 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.
4. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
5. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

ARTICLE 7

SERVICE OF DOCUMENTS

1. The Requested State shall carry out request for service of documents which are transmitted to it for this purpose by the Requesting State.
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 forward to the Requesting State proof of service of the documents. If service cannot be effected, the Requesting State shall be so informed of the reasons.

ARTICLE 8

PROVISION OF INFORMATION, DOCUMENTS, RECORDS AND OBJECTS

1. The Requested State shall, upon request, provide to the Requesting State copies of publicly available information, documents and records of government departments and agencies.
2. The Requested State may, upon request, provide to the Requesting State any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its law enforcement agencies and judicial authorities.
3. The Requested State may provide certified true copies of documents of records, unless the Requesting State expressly requests originals.
4. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible upon request.
5. In so far as not prohibited by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in-order to make them admissible according to the law of the Requesting State.

ARTICLE 9

SEARCH AND SEIZURE

1. The Requested State shall, to the extent its law permits, execute a request for a search and seizure in respect of a criminal matter to the Requesting State.
2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions in accordance with its laws.
3. The competent authority of the Requested State shall provide such information as may be required by the Requesting State concerning, but not limited to, the result of any search, the place, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure, and the subsequent custody of the material seized.

ARTICLE 10

TAKING OF EVIDENCE

1. The Requested State shall to the extent its law permits and upon request, take testimony and obtain documents of a person, including person in custody, or produce items for evidence for transmission to the Requesting State.
2. To the extent its law permits, the Requested State shall allow the presence of competent authorities of the Requesting State, persons concerned in the proceedings in the Requesting State and their

representatives when testimony or evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State.

3. The method of taking of evidence include the right to pose questions. The competent officials of the Requesting State present at the execution of a request may be permitted to make a verbatim transcript of the proceedings. The use of technical means such as video conferencing to make such a verbatim transcript may be permitted.
4. If any person in the Requested State claims that there is a right or obligation to decline to give evidence under the law of the Requesting State, that State shall, upon request, provide a formal notification to the Requested State as to the existence of that right. In the absence of evidence to the contrary, such formal notification shall be sufficient evidence of the matters stated in it.

ARTICLE 11

PRESENCE AT THE EXECUTION OF REQUESTS

To the extent not prohibited by the law of the Requested State, competent officials of the Requesting State shall be permitted to be present at the execution of the request.

ARTICLE 12

AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE OR PROVIDE ASSISTANCE

1. Upon request, a person in custody or serving a sentence in the Requested State may be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person gives his/her consents. The Requesting State shall agree to comply with any conditions as specified by the Requested State.
2. When 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. When 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 13

PROVIDING EVIDENCE OR ASSISTING INVESTIGATIONS IN THE REQUESTING STATE

The Requested State shall invite the person, subject to his/her prior consent, to assist in the investigation or to appear as a witness in the proceedings in the Requesting State. That person shall also be informed of protection, facilities and allowances that would be provided.

ARTICLE 14

SAFE CONDUCT

1. Subject to Article 13, a person present in the Requesting State in response to a request 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 that 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 within (30) thirty days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.
3. Any person who consents to give evidence pursuant to Article 12 and 13 of this Treaty shall not be subject to prosecution based on his or her testimony, except for perjury or contempt of court.
4. Any person who does not give his/her consent or fails to appear in the Requesting State may not be subjected to any coercive measure in the Requested State.

ARTICLE 15

PROCEEDS AND INSTRUMENTALITIES OF CRIME

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds and or instrumentalities of crime are located within the jurisdiction and shall notify the Requesting State of the results of its inquiries. The Requesting State shall also provide necessary information or any other ground indicating the existence of such proceeds and or instrumentalities of crime in the jurisdiction of the Requested State.
2. When, pursuant to paragraph 1 of this Article, suspected proceeds and/or instrumentalities of crime are found, the Requested State shall take such measures, as are permitted by its law to search, freeze, restrain and confiscate those suspected proceeds and/or instrumentalities of crime, pending a final determination in respect of those proceeds and/or instrumentalities of crime by a court of the Requesting State.
3. The Requested State in control of the forfeited or confiscated proceeds and or instrumentalities of crime shall, in giving effect to the order of the court of the Requesting State, take action on those proceeds and or instrumentalities of crime in accordance with its law. To the extent permitted by its laws, the Requested State shall transfer forfeited or confiscated proceeds and or instrumentalities of crime to the Requesting State.
4. In the application of this article, the rights of bona fide third parties shall be respected under the law of the Requested State. Where there is a claim from a third Country, the Requested State shall represent the interests of the Requesting State in seeking to retain the proceeds and or instrumentalities of crime until a final determination by competent court in the Requesting State.

ARTICLE 16

TRANSIT OF PERSONS IN CUSTODY

1. The Requested State may, subject to its domestic laws and practices, authorize the transit through its territory of a person/witness held in custody, by the Requesting State of a third Country, whose personal appearance has been requested by the Requesting State in a criminal matter.
2. Where the aircraft, vessel or train by which the person is being transported lands or calls or stops in the Requested State, the custodial or escorting officers of the Requesting State, or if applicable, the third Country that is assisting the Requesting State to facilitate the transfer shall continue to be responsible for the custody of the person being transported while he/she is on transit to the Requested State, unless otherwise agreed by the Requested State.
3. Without prejudice to Paragraph 2 and where the Requested State agrees, the person/witness being transported may be kept temporarily in the custody of a competent authority of the Requested State until his/her transportation continued.
4. Where the transit and or the person's transportation is not continued or has exceeded prescribed time limit of the request, the Requested State may direct that the person/witness be transported in custody to the State from which the person was first transported.

ARTICLE 17

CONFIDENTIALITY

1. The Requested State shall ensure to:
 - a. Keep information or evidence furnished or the source of such information confidential pursuant to the request for assistance;
 - b. Keep its contents, supporting documents and any action taken confidential pursuant to the request;
 - c. protect the information or evidence against loss, unauthorized access, modification, disclosure or misuse.
2. If the request pursuant to paragraph 1 of this Article cannot be executed without breaching the confidentiality requirement or to the extent that the evidence and information is needed for criminal matters to which the request, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

ARTICLE 18

LIMITATION OF USE

The Requesting State shall undertake not to disclose or use information or evidence furnished for purposes other than those stated in the request, without the prior consent of the Requested State.

ARTICLE 19
AUTHENTICATION

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 8(3), or as required by the Requesting State.

ARTICLE 20
EXPENSES

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 expenses payable to that person while in the Requesting State pursuant to a request under Article 13 of this Treaty;
 - (b) the expenses and fees of experts either in the Requested State or the Requesting State;
 - (c) the expenses of translation, interpretation and transcription: and
 - (d) the expenses associated with the taking of evidence from the Requested State to the Requesting State via video, satellite or other technological means.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting States shall consult to determine the terms and conditions under which the Requested assistance can be provided.

ARTICLE 21
INTERNATIONAL OBLIGATIONS

This Treaty shall not affect the rights and obligations of the Contracting States concerning mutual legal assistance in criminal matters pursuant to international conventions or other arrangements to which they are a party.

ARTICLE 22
CONSULTATION

The Contracting States shall consult each other, at times mutually agreed to by them, to promote the most effective implementation of this Treaty. Both Contracting States may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 23

SETTLEMENT OF DIFFERENCES

Any differences arising from the interpretation or application of this Treaty shall be settled by consultation between the Contracting States through diplomatic channels.

ARTICLE 24

AMENDMENT

This Treaty may be amended at any time by mutual consent of the Contracting States. Such an amendment shall enter into force by the same procedure as applicable for the entry into force of this Treaty.

ARTICLE 25

FINAL PROVISIONS

1. The Contracting States shall notify each other about the completion of their respective domestic requirements for the entry into force of this Treaty. The Treaty shall enter into force on the date of the receipt of the later notification.
2. Either Contracting State may terminate this Treaty by giving a notice in writing to the other Contracting State through diplomatic channels at any time. Termination shall take effect after six months of the receipt of such notice. Termination of this Treaty shall not affect the legal assistance requests submitted prior to the termination.

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

DONE at New Delhi on this 25th day of January, 2011, in two originals each, in the Hindi, Indonesian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF INDIA

FOR THE REPUBLIC OF INDONESIA

Treaty between the Republic of India and the Republic of Azerbaijan on Mutual Legal Assistance in Criminal Matters

The Republic of India and the Republic of Azerbaijan (hereinafter referred to as Contracting States);

Guided by the traditional friendly relations between the two countries;

Recognising the need to facilitate the widest measures of Mutual Assistance in the service of summons, execution of warrants and other judicial documents and commissions;

Desiring to improve the effectiveness of both countries in investigation, prosecution and suppression of crime including crime related to terrorism and tracing, restraint, forfeiture or confiscation of funds meant for financing of terrorism and also the proceeds and instruments of crime, through cooperation and mutual legal assistance criminal matters;

Have agreed as follows:

Article 1

Scope of Application

1. The Contracting States shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings to the Requesting State in criminal matters, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.
3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting State would constitute an offence under the laws of the Requested State.
4. Assistance includes;
 - (a) locating and identifying persons and objects;
 - (b) serving documents, including documents seeking the attendance of persons;
 - (c) providing information, documents and records;
 - (d) providing objects, including lending exhibits;
 - (e) search and seizure;
 - (f) taking evidence and obtaining statements;
 - (g) authorizing the presence of persons from the Requesting State at the execution of requests;

- (h) making detained persons available to give evidence or assist in investigations;
 - (i) facilitating the appearance of witnesses or the assistance of persons in investigations;
 - (j) taking measures to locate, restrain or forfeit the proceeds of crime;
 - (k) taking measures to locate, freeze and confiscate any funds or finances meant for the financing of acts of terrorism in the territory of either party; and
 - (l) any other form of assistance not prohibited by the law of the Requested State.
5. This Treaty shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.

Article 2

Definitions

For the purpose of this Treaty-

1. Criminal matters for the Republic of India means investigations, inquiries, trials or other proceedings relating to an offence created by Parliament or by the legislature of a state. Criminal matters for the Republic of Azerbaijan means investigations or proceedings relating to any offence enacted in their Criminal Legislation.
2. Criminal matters shall include investigations, prosecutions or proceedings relating to offences concerning taxation, duties, customs and foreign exchange.

Article 3

Central Authorities

The Central Authorities shall transmit, receive, examine and process for execution all requests for the purposes of this Treaty. The Central Authority for the Republic of India is the Ministry of Home Affairs and the Central Authority for the Republic of Azerbaijan shall be the Ministry of Justice.

Article 4

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, in so far as not prohibited by that law, in the way specified by the Requesting State.
2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
3. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

Article 5

Contents of requests

1. In all cases, requests for assistance shall indicate-
 - (a) the name of the Competent Authority conducting the investigation, prosecution or proceedings to which the request relates;
 - (b) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;
 - (c) the purpose of the request and the nature of the assistance sought;
 - (d) the degree of confidentiality required and the reasons therefor; and
 - (e) any time limit within which the request should be executed.
2. In the following cases, request for assistance shall include:
 - (a) in the case of requests for the taking of evidence, search and seizure or the location, restraint or forfeiture of proceeds of crime, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
 - (b) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
 - (c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, 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;
 - (d) in the case of making detained persons available, an indication of 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 probable date of that person's return;
 - (e) in the case of requests in respect of proceeds of crime/search & seizure, a statement describing the basis of belief that the money or property are the proceeds of crime or are liable for search & seizure; and
 - (f) In the case of requests for seizure and confiscation of funds meant for financing acts of terrorism, the basis for belief that the funds are being so used.
3. If necessary, and where possible, requests for assistance shall include-
 - (a) the identity, nationality and location of a person or persons who is/are the subject of the investigation, prosecution or proceedings;
 - (b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.

4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.
5. A request for assistance shall be made in writing. However, in urgent circumstances or where otherwise permitted by the Requested State, a request may be made by other means but shall be confirmed in writing promptly thereafter.

Article 6

Refusal or postponement of Assistance

- (a) Assistance may be refused if, in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order and essential public interest.
- (b) Assistance may be refused if the execution of the request would be contrary to the domestic law of the Requested State.
- (c) Assistance may be refused if the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
- (d) 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.
- (e) The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
- (f) Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

Article 7

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.

Article 8

Provision of Information, Documents, Records and Objects

1. The Requested State shall provide copies of publicly available information, documents and records of Government department and agencies.

2. The Requested State may provide any information, documents, records and objects in the possession of a Government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.
3. The Requested State may provide certified true copies of documents of records unless the Requesting State expressly requests originals.
 1. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible upon request.
 2. In so far as not prohibited by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State.

Article 9

Search and Seizure

1. The Requested State shall execute a request for a search and seizure.
2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions as to be got done for its own law enforcement and judicial authorities in accordance with its laws.
3. The competent authority that has executed a request for a search and seizure 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 objects seized and the circumstances of the seizure.

Article 10

Taking Evidence in the Requested State

1. A person including a person in custody, requested to testify and produce documents, records or objects in the Requested State may be compelled by subpoena or order to appear, testify and produce such documents, records or objects, in accordance with the law of the Requested State.
2. Subject to the law of the Requested State, Competent Authorities and other officials of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State.
3. The right to participate in the taking of evidence includes the right to suggest questions to be asked. Subject to domestic laws, the persons present at the execution of a request may be permitted to make a verbatim transcript of the proceedings and to use technical means to make such a verbatim transcript.

Article 11

Presence of Persons at the Execution of Requests

To the extent not prohibited by the law of the Requested State, persons specified in the request shall be permitted to be present at the execution of the request.

Article 12

Making Detained Persons Available to give Evidence or Assist Investigations

1. Upon request, a person serving a sentence in the Requested State shall be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person consents.
2. The person transferred will be kept in custody under the law of the Requested State. The Requesting State shall return such person in custody at the conclusion of the execution of the request.
3. Where the sentence imposed expires or where the Requested State advised 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 invited pursuant to Article-13 of this Treaty.

Article 13

Providing Evidence or Assisting Investigations in the Requesting State

The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceeding and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

Article 14

Safe Conduct

1. Subject to Article 12(2), a person present in the Requesting State in response to a request 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 that 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 within thirty (30) days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.
3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

Article 15

Funds meant for financing acts of terrorism

Where either of the Contracting States have reasons to believe that any person or group of persons in their jurisdiction has collected or has been collecting or has contributed or has been contributing any funds meant, directly or indirectly for the financing or furthering the acts of terrorism in the territory of the other State, it shall bring these facts to the notice of the other signatory State and shall take steps as permitted by its law for search, seizure and confiscation of such funds and the prosecution of the individual/group concerned.

Article 16

Proceeds and Instruments of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
2. When, pursuant to paragraph 1 of this Article, suspected proceeds or instruments of crime are found, the Requested State shall take such measures as are permitted by its law to restrain and forfeit those proceeds or instruments.
3. Proceeds or instruments forfeited or confiscated pursuant to this Treaty shall accrue to the Requested State, unless otherwise agreed.

Article 17

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, disclosed or used only subject to such terms and conditions as it may specify.
2. The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

Article 18

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 Requested State.

Article 19

Legalization

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of legalization, except as specified in Article 8, or as required by the Requesting State.

Article 20

Language

While complying with the present Treaty, the Contracting States shall use their national language attaching the translation in the national language of the other Contracting State or in the English language.

Article 21

Expenses

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 expenses payable to that person while in the Requesting State pursuant to a request under Article 12 or 13 of this Treaty;
 - (b) the expenses and fees of experts either in the Requested State or the Requesting State;
 - (c) the expenses of translation, interpretation and transcription; and
 - (d) the expenses associated with the taking of evidence from the Requested State to the Requesting State via video, satellite or other technological means.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting State shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 22

Compatibility with other Treaties

The present Treaty shall not affect the rights and obligations of the Contracting States arising from other International Conventions/Treaties to which the Contracting States are a Party.

Article 23

Consultation

The Central Authorities of the Contracting States shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 24

Amendment

1. This Treaty may be amended by mutual agreement of the Parties.
2. The amendment shall come in force by the procedure provided for the entry into force of this Treaty.

Article 25

Ratification and Termination

1. This Treaty shall be subject to ratification and it shall enter into force on the date of exchange of the instruments of ratification.
2. Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorized thereto by their respective Authorities, have signed this Treaty.

Done in duplicate at New Delhi this 4th day of April, 2013 in Hindi, Azerbaijani and English languages, each version being equally authentic. In case of any interpretational difference, the English text shall prevail.

For the Republic of India

For the Republic of Azerbaijan

**Treaty between the Government of the Republic of India and
the Government of the State of Israel on
Mutual Legal Assistance in Criminal Matters**

The Government of the Republic of India and the Government of the State of Israel (hereinafter referred to as Parties);

Guided by the traditional friendly relations between the two countries;

Desiring to improve the effectiveness of both countries in the suppression, prevention, investigation and prosecution of crime, and in proceedings related to the tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

ARTICLE 1

Scope of Application

- (a) The Parties shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
- (b) Mutual legal assistance is any assistance given by the Requested Party in respect of investigations, inquiries, prosecutions or proceedings in the Requesting Party in criminal matters, including for the purpose of the prevention of crime, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.
- (c) Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting State would constitute an offence under the laws of the Requested State.
- (d) Assistance includes -
 - (a) locating and identifying persons and objects;
 - (b) serving documents, including documents seeking the attendance of persons;
 - (c) providing information, documents and records;
 - (d) providing objects, including lending exhibits or articles of evidence;
 - (e) search and seizure;
 - (f) taking evidence and obtaining statements;
 - (g) authorizing the presence of persons from the Requesting State at the execution of requests;
 - (h) making detained persons available to give evidence or assist investigations;

- (i) facilitating the appearance of witnesses or the assistance of persons in investigations;
 - (j) taking measures to locate, restrain or forfeit the proceeds of crime; and
 - (k) any other form of assistance not prohibited by the law of the Requested State.
- (e) This Treaty is intended solely for mutual assistance between the Parties. The provisions of this Treaty shall not give rise to any right, that does not otherwise exist, on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request for assistance.
- (f) This Treaty shall also apply to any requests for legal assistance relating to acts or omissions committed before its entry into force.

ARTICLE 2

Definition of Criminal Matters

For the purpose of this Treaty, criminal matters means investigations, inquiries, trials or other proceedings relating to an offence created by the national legislature or by the state legislature of the Parties.

ARTICLE 3

Central Authorities

1. Each Party shall designate a Central Authority to transmit and receive all requests for the purpose of this treaty.
2. The Central Authority for the Republic of India is the Ministry of Home Affairs; and the Central Authority for the State of Israel shall be the Ministry of Justice, Any change in the designated Central Authority by any Party, shall be immediately communicated to the other Party.
3. The Central Authorities shall communicate and consult directly with one another for the purposes of the Treaty.

ARTICLE 4

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, in so far as not prohibited by that law, in the manner specified by the Requesting Party.
2. The Requested Party shall, upon request, inform the Requesting Party of the date and place of execution of the request for assistance.
3. The Central Authority of the Requested Party shall make all necessary arrangements for the representation in the Requested State in any proceedings arising out of a request for assistance.
4. Requests shall be executed in accordance with this Treaty and applicable law. The method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

5. The Central Authority of the Requested Party shall respond to reasonable requests by the Central Authority of the Requesting Party concerning progress toward execution of the request.
6. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request.

ARTICLE 5

Contents of Requests

1. In all cases, requests for assistance shall indicate -
 - (a) the name of the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
 - (b) the nature of the investigation, prosecution or proceedings a summary of the facts, and a copy of the applicable laws, including those related to the offences involved.
 - (c) the nature of the assistance sought, the purposes for which the evidence, information or other assistance is sought and the connection between the assistance and criminal matter to which it relates;
 - (d) degree of confidentiality required and the reasons therefore; and
 - (e) any time limit within which the request should be executed.
2. In the following cases, requests for assistance shall include:
 - a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State
 - b) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought:
 - c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting Party, the place to which the exhibit will be returned;
 - d) in the case of providing of articles of evidence, the current location of the articles in the Requested State, if known, and the circumstances and time in which the articles shall be returned;
 - e) in case of making detained persons available, an indication of 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 probable date of that person's return; and
 - f) in case of requests in respect of proceeds and instruments of crime or search and seizure, a statement describing the basis of belief that the money or property are the proceeds of crime or are liable for search & seizure.

3. If necessary, and where possible, requests for assistance shall include -
 1. the identity, nationality and location of the person/s who is or are the subject of the investigation, prosecution or proceedings;
 2. details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefore.
 3. any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.
4. If the Requested Party considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.
5. A request for assistance shall be in writing except that the Central Authority of the Requested Party may, in its discretion, accept a request in another form in urgent situations. In any such case, the request shall be confirmed in writing within the time period determined by the Central Authority of the Requested Party.

ARTICLE 6

Refusal or Postponement of Assistance

1. Assistance may be refused if, in the opinion of the Requested Party the execution of the request would impair its sovereignty, security, public order, fundamental public policy and public interest or prejudice the safety of any person.
2. Assistance may be refused if the execution of the request would be contrary to the domestic law of the Requested State.
3. Assistance may be refused if the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
4. Assistance may be refused if the request for legal assistance is for a military offence and which is also not an offence under the ordinary criminal law of the Parties.
5. The Requested Party shall not refuse to execute a request solely on the ground of bank secrecy. Requests for information concerning confidential bank records will have to be supported by factual and evidentiary bases to meet the requirements of the relevant laws of the Requested State.
6. Assistance may be refused where the request is not made in conformity with the Treaty.
7. Assistance may be refused if the request seeking restraint, forfeiture or confiscation of proceeds and instruments of crime or seizure of property are in respect of conduct or activity which cannot be made basis for such restraint, forfeiture, confiscation or seizure in the Requested State.
8. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

9. The Requested Party shall promptly inform the Requesting Party of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
10. Before refusing a request for assistance or before postponing the execution of a request, the Requested Party shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to those conditions, it shall comply with them.

ARTICLE 7

Service of Documents

1. The Requested Party shall use its best efforts to execute a request to effect service of a document, and to the extent possible, shall effect such service in the manner specified by the Requesting Party.
2. The Requesting Party shall transmit any request for the service of a document seeking the appearance of a person before any authority of the Requesting Party within a reasonable time, as agreed by the Central Authorities, before the scheduled appearance.
3. To the extent possible, the Requested Party shall return a proof of service in the manner specified in the request. If service cannot be effected in the manner specified, the Requesting Party shall be so informed and shall be advised of the reasons.

ARTICLE 8

Public or Official Information, Documents, Records and Objects

1. The Requested Party shall provide the Requesting Party with copies of publicly available records, including, documents or information in any form, in the possession of government departments and agencies of the Requested Party.
2. The Requested Party may provide any information, documents, records and objects in the possession of a Government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.
3. The Requested Party may provide certified true copies of documents of records. If the Requesting Party expressly requests originals, the Requested Party may provide them.
4. Original documents, records or objects provided to the Requesting Party shall be returned to the Requested Party as soon as possible upon request.
5. In so far as not prohibited by the law of the Requested State documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting Party in order to make them admissible according to the law of the Requesting State.

ARTICLE 9

Search and Seizure

1. Search and seizure shall be conducted by the Requested Party to the same extent, under the same conditions, and on the same basis as would be done for its own law enforcement and judicial authorities in accordance with its laws.
2. The competent authority that has executed a request for a search and seizure shall provide such information as may be required by the Requesting Party concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and circumstances of the seizure.

ARTICLE 10

Taking Evidence in the Requested State

1. The Requested Party shall, upon request, obtain a statement of a person, including a person in custody, for the purpose of an investigation, prosecution or other proceeding in the Requesting State.
2. The Requested Party if necessary, shall compel the appearance of a person for taking testimony and producing documents, records, and articles to the same extent as would be permitted in investigations, prosecutions and other proceedings in that State.
3. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the statement, testimony or evidence pursuant to this Article.
4. Subject to the law of the Requested State, commissioners, other officials of the Requesting Party and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken, in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested Party. The right to participate in the taking of evidence may include the right to pose questions.
5. At the request of the Requesting Party, a verbatim transcript of the proceedings shall be made. The use of technical means to make such a verbatim transcript may be permitted.
6. If the person referred to in paragraphs 1 or 2 asserts claim of immunity or privilege under the laws of the Requesting State, the statement, testimony or evidence shall nonetheless be taken and the claim shall be made known to the Central Authority of the Requesting Party for confirmation. The response of the Central Authority of the Requesting Party, in this regard, would be final.
7. Evidence provided by the Requested Party pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, or in another manner specified by the Requesting Party.

ARTICLE 11

Evidence by Video Conference

On request, the Requested Party may facilitate examination of a person before its judicial authority or other competent authority, by means of video conferencing, in conformity with its national law and procedure.

ARTICLE 12

Appearance of Persons in the Requesting State

When the Requesting Party requests the appearance of a person before its authorities, the Requested Party shall inform that person regarding the requested appearance before the authority of the Requesting Party. In its request, the Requesting Party shall indicate the extent to which the expenses will be paid. Such person shall be under no compulsion to accept such an invitation. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the response of the person.

ARTICLE 13

TRANSFER OF A PERSON IN CUSTODY

1. A person in the custody of the Requested State whose presence is required by the Requesting Party for purposes of assistance under this Treaty, shall be transferred from the Requested State to the Requesting State for that purpose if the person consents and if the Central Authorities of the Parties so agree.
2. For purposes of this Article:
 - a) The receiving Party shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending Party.
 - b) the receiving Party shall return the person transferred to the custody of the sending State as soon as the purpose for which that person was transferred is fulfilled or as otherwise agreed by both Central Authorities; and
 - c) the person transferred shall have the benefit of reduction of the period served in custody in the receiving State from the total period to be served by that person under his sentence imposed by the sending State.
3. If the sending State notifies the receiving 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 Article 12 of the Treaty. A person so set at liberty shall be entitled to the cost of his return travel to the sending State, if he returns to that State.
4. The Requesting Party shall be responsible for making all necessary arrangements for the transit of transferred persons through third countries.

ARTICLE 14

Safe Conduct

1. Subject to Article 13(2), a person present in the Requesting State in response to a request 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 that 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 within thirty (30) days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.
3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.
4. Where there is a mutual agreement between the Central Authorities of the Parties as to the maximum period in which a person appearing in the Requesting State pursuant to Articles 12 and 13, will be required to remain there, such an agreement will be complied with, unless there is a subsequent agreement to the contrary

ARTICLE 15

Controlled Delivery

- 1) Each Party undertakes to ensure that, at the request of the other Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations.
- 2) The decision to carry out controlled deliveries shall be taken in each individual case by competent authorities of the Requested Party, in accordance with its relevant national law. Controlled deliveries shall take place in accordance with the procedures of the Requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.

ARTICLE 16

Proceeds and Instruments of Crime

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. When, pursuant to paragraph 1 of this Article, suspected proceeds or instruments of crime are found, the Requested Party may upon request take such measures as are permitted by its law to restrain and forfeit those proceeds or instruments.
3. In application of this Article, the rights of the Requesting Party and of bona fide third parties shall be respected in accordance with the laws of the Requested Party.
4. Proceeds or instruments of crime forfeited or confiscated pursuant to this Treaty shall accrue to the Requested State, unless otherwise agreed.

ARTICLE 17

Restitution

The Requested Party shall, to the extent permitted by its law, provide assistance concerning restitution to the victims of crime.

ARTICLE 18

Confidentiality

1. The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished or the source of such information or evidence be kept confidential. Such information or evidence could be disclosed or used only subject to such terms and conditions as may be specified by the Requested Party and are agreed to by the Requesting Party.
2. The Requesting Party may request that the request for assistance, the contents of the request and its supporting documents, and the fact of granting such assistance be kept confidential. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested Party shall so inform the Central Authority of the Requesting Party, which shall then determine whether the request should nevertheless be executed. When such confidentiality has been requested, the Requested Party shall use its best efforts to ensure that the confidentiality is maintained.

ARTICLE 19

Limitation of Use

1. The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request, without prior consent of the Requested State.
2. Unless otherwise indicated by the Requested Party when executing the request, information or evidence, the contents of which have been disclosed in a public, judicial or administrative proceeding related to the request, may thereafter be used for any purpose.

ARTICLE 20

Authentication

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 8, or as requires by the Requesting State.

ARTICLE 21

Language

1. Requests shall be submitted in the English language.
2. Supporting documents, if not in the English language, shall be accompanied by an English translation.

ARTICLE 22

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 expenses payable to that person while in the Requesting State pursuant to a request under Article 12 or 13 of this Treaty;
 - (b) the expenses and fees of experts either in the Requested State or the Requesting State;
 - (c) the expenses of translation, interpretation and transcription; and
 - (d) the expenses associated with the taking of evidence from the Requested State to the Requesting State via video, satellite or other technological means.
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 23

Compatibility with other Treaties

Nothing in this Treaty shall prevent either Party from granting assistance to the other Party through the provisions of other applicable international conventions or agreements, or through the provisions of its domestic law. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

ARTICLE 24

Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 25

Final Provisions

1. This Treaty shall be subject to ratification. Each Contracting State shall notify the other as soon as possible, in writing, through the diplomatic channels, upon the completion of its legal procedure required for the entry into force of the Treaty. The Treaty shall come into force on the first day of the second month following the date of the last notification.

2. This Treaty may be amended by mutual consent. The amendments shall enter into force in the manner as stipulated in paragraph 1.
3. The Treaty shall remain in force for an indefinite period. It may, however, be terminated by either of the Contracting State by giving a written notice of termination to the other Contracting State. The termination shall take effect after six months of the date of such notice.
4. Notwithstanding the termination, the Treaty shall continue to apply to requests submitted before the date of the notice of termination.

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

DONE at New Delhi this the 27th day of February 2014 which corresponds to the 25 day of Adar B, 5774 in the Hebrew calendar, in two Originals each, in Hindi, Hebrew and English, all texts being equally authentic. However, in case of divergence of interpretation, the English text shall prevail.

For the Republic of India

For the State of Israel

**Agreement on Legal and Judicial Cooperation in Criminal
Matters between the Government of the Republic of India and
Government of the Sultanate of Oman**

The Government of the Republic of India and the Government of the Sultanate of Oman (hereinafter referred to as the “Two States”).

Recognizing the need to provide the widest measure of cooperation in the service of summons, execution of warrants and other judicial documents and commissions,

Desiring to improve the effectiveness of both countries in the investigation, prosecutions and suppression of crime, including crime related to terrorism and tracing, restraint, forfeiture or confiscation of proceeds and instruments of crime through cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

Article (1)

Scope of Application

1. Each State shall provide the widest measure of reciprocal assistance in criminal matters to the other State in accordance with the provisions of this Agreement.
2. Legal and judicial assistance shall mean any assistance in the field of investigation, prosecution and proceedings in criminal matters provided by the Requested State to the Requesting State irrespective of whether the assistance is sought or to be provided by a court or some other official authority.
3. This Agreement shall without prejudice to other obligations between the States pursuant to other treaties or arrangements or otherwise, and shall not prevent the two States or their law enforcement agencies from providing assistance to each other pursuant to other treaties or arrangements.
4. This Agreement shall also apply to requests for assistance relating to acts of commission or omission committed prior to the entry into force of this Agreement.

Article (2)

Definitions

For the purposes of this Agreement:

1. a) “Criminal Matters” means research, investigation, trial or any other proceedings relating to a crime in accordance with the applicable laws of either of the two States;
b) Criminal Matters shall also include investigations or judicial records pertaining to crimes relating to taxation, duties, customs and international transfers of capitals or payment,
c) Assistance includes the following:
 - 1- Identifying persons and objects and determining their locations,
 - 2- Serving of documents including subpoenas.

- 3- Providing information, documentation, objects and records.
 - 4- Search and Seizure.
 - 5- Collecting evidence and taking statements.
 - 6- Permitting the coming of persons from the Requesting State to assist in the execution of request.
 - 7- Permitting the appearance of detained persons to give evidence or assist in investigations.
 - 8- Facilitating the attendance of witnesses to assist in investigations.
 - 9- Taking necessary action to locate, restrain or forfeit the proceeds and instruments of the crime.
 - 10- Any other form of assistance which is not contrary to the law of the State requested to provide assistance.
2. a) "Proceeds of Crime" means any property that is derived or obtained directly or indirectly by any person as a result of criminal activity or the value of any such property.
 - b) "Property" means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime.
 - c) "Forfeiture" means any measures resulting in the dispossession of ownership.
 - d) "Criminal Instrument" means any instrument used or intended to be used to perform a crime.
 - e) "Restricting Property" means any measure to prevent the dealing in those properties or transferring them or discarding them.

Article (3)

Competent Authorities

1. Requests for legal assistance shall be submitted through the Competent Authorities in the two States pursuant to this Agreement.
2. For the Republic of India, the Ministry of Home Affairs shall be the Competent Authority. For the Sultanate of Oman, the Royal Oman Police shall be the Competent Authority.

Article (4)

Content of Requests

1. Requests for assistance pursuant to the provisions of this Agreement shall be submitted in writing. In urgent situations requests may be made orally, if the Requested State accepts that. In such cases the request will subsequently be confirmed in writing.

2. Requests for assistance shall contain the following:
 - a) The name of the concerned authority conducting the investigation, prosecution or litigation in the Requesting State.
 - b) A description of the events relating to the request and the legal ground for the investigation, prosecution or litigation.
 - c) The purpose of the request and the nature of assistance requested.
 - d) Details and requirement of any procedure the Requesting State desires to follow.
 - e) Specifying the period for executing the request.
 - f) Identifying the person or persons who are the subject of investigation.
 - g) Where a request is made for taking evidence or conducting a search and seizure, or the location, restraint or forfeiture of proceeds of crime, or of funds meant for financing of acts of terrorism, the request should contain a statement indicating the basis that lead to the belief of the possibility finding evidence within the jurisdiction of the Requested State,
 - h) Where a request is made for taking testimony or a statement from a person, the request shall indicate whether or not the testimony or statement is to be taken under oath, describing the subject matter of the testimony or statement requested.
 - i) Where a request to borrow the seized items is made, the request should specify the name of the person or the names of the persons under whose custody the seized items shall be, the place the seized items shall be transferred to, any tests and examinations that will be carried out on them and the date they will be returned.
 - j) Where a request is made to surrender detained person or persons, the request should contain a statement identifying the name of the person or the names of the persons who will be responsible for them during their transfer, the place they will be transferred to and the date the person or persons shall be returned.
 - k) The level of confidentiality requested and the reasons for it.
 - l) Where request for the seizure or forfeiture of proceeds and instruments of crime is made, the request shall contain the following:
 - A detailed description of the proceeds and objects and their location.
 - A statement illustrating the basis that lead to the belief that the monies or the property reserved against are proceeds and instruments of crime.
 - A statement with the legal basis for prosecution in the Requesting State.
3. The Requested State should not refuse to execute the request for the sole reason that the request does not contain all the data detailed in this Article if it is legally possible to execute the request in accordance with the law of the Requested State.
4. If the Requested State considers that additional information needed to enable the request to be dealt with, that State may request such additional information.

Article (5)

Execution of Request

1. Requests for assistance shall be executed in accordance with the law of the Requested State. Requests may be executed in accordance with any requirement or method specified in the request if they are not contrary to the law of the Requested State.
2. The Requested State shall inform the Requesting State of any circumstances which may manifestly delay the execution of the request.
3. The Requested State shall promptly inform the Requesting State of its decision not to fully or partially respond to the request or its delay to execute it, specifying the reasons for that decision.
4. The Requested State shall not refuse to execute a request on the ground of bank secrecy as long as it is a judicial request.
5. 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.

Article (6)

Refusing Assistance

1. The Requested State may refuse the request for assistance in the following situation:
 - a) If the execution of the request would impair its sovereignty, security, public order or other essential interests.
 - b) If the execution of the request would be contrary to the law of the Requested State.
 - c) If the request seeking restraint, forfeiture or confiscation of proceeds or instruments of crime which, had it occurred within the jurisdiction of the Requested State, would not have been a crime in respect of which a confiscation order could have been made.
 - d) If the request relates to a crime where the accused was acquitted or pardoned.
2. Before refusing the request for assistance, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts such conditions, it should comply with the same.

Article (7)

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, as far as possible, in the manner required by the Requesting State,

Article (8)

Transfer of Documents, Records 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 the objects transmitted to the Requesting State shall be returned to the Requested State as soon as possible.
3. Without prejudice to the law of the Requested State, documents, objects and records shall be transmitted in the specified form or certified as may be requested by the Requesting State so that they can be acceptable according to the law of the Requesting State.

Article (9)

Taking evidence in the Requested State

1. Any person, including those in custody, may be obliged by virtue of subpoena to appear to testify and produce documents, records, or other objects as per laws of the Requested State.
2. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons concerned with proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence.
3. The right to participate in the taking of evidence includes the right of the attending officials to pose questions. The persons present at the execution of a request may be permitted - with the approval of the Requested State- to make a verbatim transcript of the proceedings and the use of technical means to make such a verbatim transcript.

Article (10)

Search and Seizure

1. The Requested State shall execute a request for a search and seizure.
2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions as to be got done for its own law enforcement and judicial authorities in accordance with its laws.
3. The competent authority 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 objects seized and the circumstances of the seizure.

Article (11)

**Availability of persons to give evidence or assist in investigation
in the Requesting State**

1. The Requesting State may request that a person be made available to testify or assist in the investigation.
2. The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceeding and seek that person's concurrence thereto. The person shall be informed of any expenses or payable allowances.

Article (12)

**Making Detained Persons available to Testify or Assist in
Investigations**

1. A person detained in the Requested State, at the request of the Requesting State, may be temporarily transferred to the Requesting State to assist in the investigation or proceeding, provided that the person consents to that transfer and there are no overriding grounds against the transfer. If the person refuses the transfer, Article (9) shall apply.
2. Where the person to be transferred is required to be kept in custody under the law of the Requested State, the Requesting State should hold that person in custody and return him in custody at the conclusion of the execution of the request.
3. If the sentence imposed expires, or if the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be released and be treated as a person present in the Requesting State pursuant to a request seeking his attendance from the Requesting State.

Article (13)

Safe Conduct

1. It is not permissible to prosecute, detain or restrict the personal freedom of a person who is present in the territory of the Requesting State by consent to appear before the judicial authorities to respond to any acts or omission that are not mentioned in the request. It is also not permissible to detain, or restrict the personal freedom of any person for any acts or omissions that that may have taken place prior to his departure from the Requested State.
2. Paragraph (1) of this Article shall cease to apply if a person, being free to leave the territory of the Requesting State, has not left it within a period of 30 days after being officially notified that his presence is no longer required, or if he has left that territory and returned back voluntarily.
3. Any person who fails to appear in the Requesting State may not be subjected to any penalty, or compulsory measures in the Requested State.

Article (14)

Funds meant for financing acts of terrorism

Where either of the States have reasons to believe that any person or group of persons in their jurisdiction has collected or has been collecting or has contributed or has been contributing to any funds meant, directly or indirectly for the financing or furthering the acts of terrorism in the territory of the other State, it shall bring these facts to the notice of the other signatory State and shall take steps as permitted by its law for search, seizure and confiscation of such funds and the prosecution of the individual concerned.

Article (15)

Proceeds and Instruments of Crime

1. The Requested State shall, upon request from the Requesting State, exert every possible effort to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
2. A request may be made for assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given through the suitable means in accordance with the law of the Requested State. It may include the execution of an order made by a court or other competent authority in the Requesting State or submitting the request to a competent authority for the purpose of seeking forfeiture or confiscation order in the Requested State.
3. Assistance may be requested to restrict property with the goal of confirming its availability to execute an order to recover the proceeds or instruments.
4. Proceeds or instruments forfeited or confiscated pursuant to this Agreement shall accrue to the Requesting State, unless otherwise agreed.
5. Where action has been taken in the Requested State pursuant to a request for assistance under paragraphs (1) and (2) of this Article, and there is a claim by a third party in any of the two States, the concerned State should notify the other with the claim and its outcome as soon as possible.

Article (16)

Confidentiality and Limitation of Use

1. The Requested State may after consultation with the Requesting State demand maintaining the confidentiality of information or evidence provided or their sources. It may also demand that such information or evidence be disclosed or used only in circumstances and conditions it defines.
2. The Requested State shall safeguard the confidentiality of the request, its contents, supporting documents and any procedure undertaken pursuant to the request except to the extent necessary for its execution.
3. The Requesting State shall not divulge or use the information or evidence provided for any other purpose than those stated in the request without prior consent of the Requested State.

Article (17)

Authentication

Save as provided in Article (8), evidence and documents transmitted pursuant to this Agreement shall not require any form of authentication.

Article (18)

Language

Requests and supporting documentation shall be accompanied by a translation pursuant to this Agreement into one of the official languages used in the Requested State.

Article (19)

Cost

1. The Requested State shall bear the costs of executing the request except for those borne by the Requesting State which are:
 - a) the expenses associated with transferring any person to or from the territory of the Requested State as well as any allowances or expenses payable to that person during his presence in the Requesting State pursuant to Article (11) and (12) of this Agreement.
 - b) The expenses and fees of experts whether they were 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 two States shall consult to determine the conditions under which the requested assistance could be provided.

Article (20)

Consultation

The Competent Authorities of the States shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Agreement. The Competent Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Agreement.

Article (21)

Entry into Force

This Agreement shall be ratified in accordance with the applicable legal measures in each of the States. It shall enter into force after one month of the date of the exchange of instruments of ratification.

Article (22)

Amendment

This Agreement can be amended by mutual consent of the two States through diplomatic channels.

Article (23)

Termination

Either of the two States may terminate this Agreement at any time by means of written six month notice to the other State through the diplomatic channels.

Done in New Delhi on 29/10/2014 in two originals, each in Hindi, Arabic and English languages, all texts being equally authentic. In case of discrepancy, the English text shall prevail.

**For the Government of
the Republic of India**

**For the Government of
the Sultanate of Oman**

TRANSFER OF OFFENDERS TREATIES

Agreement between the Government of the Republic of India and the Government of the Republic of Mauritius on the Transfer of Prisoners

The Government of the Republic of India and the Government of the Republic of Mauritius hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of prisoners into their own countries; and

Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

- (a) “judgment” means a decision or order of a court or tribunal imposing a sentence
- (b) “receiving State” means a State to which the prisoner may be, or has been, transferred in order to serve his sentence;
- (c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
- (d) “prisoner” means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
- (e) “transferring State” means the State in which the sentence was imposed on the person who may be, or has been transferred

ARTICLE 2

General Principles

1. A prisoner in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him.

2. Transfer may be requested by any prisoner who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

ARTICLE 3

Conditions for transfer

1. A prisoner may be transferred under this Agreement only on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) the death penalty has not been imposed on the prisoner;
 - (c) the judgment is final;
 - (d) no inquiry, trial or any other proceeding is pending against the prisoner in the transferring State;
 - (e) at the time of receipt of the request for transfer, the prisoner still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;
 - (f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
 - (g) the prisoner has not been convicted for an offence under the military law;
 - (h) transfer of custody of the prisoner to the receiving state shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;
 - (i) consent to the transfer is given by the prisoner or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - (j) the transferring and receiving States agree to the transfer.
2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the prisoner is less than six months.

ARTICLE 4

Obligation to furnish information

1. If the prisoner has expressed an interest in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - (a) the name and nationality, date and place of birth of the prisoner:
 - (b) his address, if any in the receiving State:

- (c) a statement of the facts upon which the conviction and sentence were based;
 - (d) the nature, duration and date of commencement of the sentence;
 - (e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the prisoner;
 - (f) a medical, social or any other report on the prisoner, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (g) any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the prisoner of the full consequences of transfer for him under its law;
 - (h) the request of the prisoner to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (i) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- (a) a statement or document indicating that the prisoner is a national of the receiving State;
 - (b) a copy of the relevant law of the receiving State constituting the acts or omissions, on account of which the sentence has been passed in the transferring State, as if such acts or omissions were an offence under the law of the receiving State or would constitute an offence if committed on its territory;
 - (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving state after prisoner transfer including, if applicable, a statement of ‘the effect of paragraph 2 of Article 8 of this Agreement on his transfer:
 - (d) the willingness of the receiving State to accept the transfer of the prisoner and an undertaking to administer the remaining part of the sentence of the prisoner; and
 - (e) any other information or document which the transferring State may consider necessary.

ARTICLE 5

Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed through the central authority of the requesting State through diplomatic channels to the central authority of the requested State. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the central authority shall be, in relation to India, the Ministry of Home Affairs: and in relation to the Republic of Mauritius, shall be the Prime Minister’s office.

3. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

Effect of transfer for the receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.
2. Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 8

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that 'State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

ARTICLE 9

Effect of completion of sentence for the transferring State

When the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been enforced, such notification shall have the effect of discharging that sentence in the transferring State.

ARTICLE 10

Review of judgment

The transferring State alone shall decide on any application for review of the judgment which may include grant of pardon, amnesty or commutation of the sentence or any other mode of review or remission in accordance with its Constitution or other laws.

ARTICLE 11

Termination of enforcement of sentence

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 12

Information or enforcement of sentence

1. The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed: or
 - (b) if the prisoner escapes from custody before enforcement of the sentence has been completed.
In such cases the receiving state shall make every effort to have the prisoner arrested so that he serves the remainder of his sentence and that the prisoner be prosecuted for committing an offence under the relevant law of the receiving State on escape of prisoner.
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 13

Transit

If either Contracting State enters into arrangements for the transfer of a prisoner with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the prisoner being transferred pursuant to such arrangements, except that it may refuse to grant to any prisoner who is one of its own nationals. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 14

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the costs of transfer from the prisoner or from some other source

ARTICLE 15

Language

Requests and supporting documents shall be in English or accompanied by a translation into English.

ARTICLE 16

Scope of application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 17

Amendments

Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect when confirmed by an Exchange of Diplomatic Notes.

ARTICLE 18

Final provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.
2. The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoner who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at New Delhi on the 24th day of October 2005, in the Hindi and English languages, all texts being equally authentic.

For the Government of
the Republic of India:

**SHIVRAJ V. PATIL
HOME MINISTER**

For the Government of the
Republic of Mauritius:

**MADAN MURLIDHAR DULLOO
MINISTER OF FOREIGN AFFAIRS,
INTERNATIONAL TRADE &
COOPERATION**

Treaty on the Transfer of Sentenced Persons between the Republic of India and the Republic of Bulgaria

The Republic of India and the Republic of Bulgaria hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving their nationals, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society;

Have agreed as follows:

ARTICLE 1 **DEFINITIONS**

For the purpose of this Treaty:

- (a) “administering State” means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (b) “judgment” means a decision or order of a court or tribunal imposing a sentence;
- (c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
- (d) “sentenced person” means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
- (e) “sentencing State” means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2 **General Principles**

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Treaty in order to serve the sentence imposed on him. To that end, he may express to the sentencing State or the administering State his willingness to be transferred under this Treaty.
2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

ARTICLE 3

Conditions for transfer

1. A sentenced person may be transferred under this Treaty only on the following conditions:
 - a) the person is a national of the administering State;
 - b) the death penalty has not been imposed on the sentenced person;
 - c) the judgment is final;
 - d) no inquiry, trial or any other proceeding is pending against the sentenced person in the Sentencing State;
 - e) at the time of receipt of the request for transfer, the sentenced person still has at least twelve months of the sentence to serve or is undergoing a sentence of life imprisonment;
 - f) that the acts or omissions for which that person was sentenced in the Sentencing State are those which are punishable as a crime in the administering State, or would constitute a criminal offence if committed on its territory;
 - g) the sentenced person has not been convicted for an offence under the military law;
 - h) transfer of custody of the sentenced person to the administering State shall not be prejudicial to the sovereignty, security or any other interest of the sentencing State;
 - i) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the contracting State; and
 - j) the sentencing and administering States agree to the transfer.
2. In exceptional cases, the sentencing and administering States may agree to a transfer even if the remaining period to be served by the sentenced person is less than twelve months.

ARTICLE 4

Obligation to furnish information

1. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Treaty, the sentencing State shall send the following information and documents to the administering State unless either the administering or the sentencing State has already decided that it will not agree to the transfer:
 - (a) the name and nationality, date and place of birth of the sentenced person;
 - (b) his address, if any, in the administering State;
 - (c) a statement of the facts upon which the sentence was based;
 - (d) the nature, duration and date of commencement of the sentence;

- (e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (g) any other information which the administering State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - (h) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the sentencing State; and
 - (i) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Treaty, the administering State shall send the following information and documents to the sentencing State unless either the administering or the sentencing State has already decided that it will not agree to the transfer:
- (a) a statement or document indicating that the sentenced person is a national of the administering State;
 - (b) a copy of the relevant law of the administering State constituting the acts or omissions, on account of which the sentence has been passed in the sentencing State, as if such acts or omissions were an offence under the law of the administering State or would constitute an offence if committed on its territory;
 - (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the administering State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this treaty on his transfer;
 - (d) the willingness of the administering State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - (e) any other information or document which the sentencing State may consider necessary.

ARTICLE 5

Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed through the central authorities of the contracting States or through diplomatic channels to the central authorities of the contracting States. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the central authority shall be, in relation to India, the Ministry of Home Affairs; and in relation to Bulgaria, it shall be the Ministry of Justice.
3. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its verification

1. The sentencing State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Treaty, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the sentencing State.
2. The sentencing State shall afford an opportunity to the administering State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

Effect of transfer for the administering State

1. The competent authorities of the administering State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Treaty.
2. Subject to the provisions of Article 10 of this Treaty, the enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions in this regard.

ARTICLE 8

Continued enforcement of sentence

1. The administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.
2. If, however, the sentence is by its nature or duration or both incompatible with the law of the administering State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the sentencing State. It shall however not aggravate, by its nature or duration, the sentence imposed in the sentencing State.

ARTICLE 9

Effect of completion of sentence for the sentencing State

When the administering State notifies the sentencing State under paragraph 1(a) of Article 12 of this Treaty that the sentence has been completed, such notification shall have the effect of discharging that sentence in the sentencing State.

ARTICLE 10

Pardon, amnesty or commutation and review of judgment

1. The sentencing State alone shall decide on any application for the review of the judgment.
2. Either of the Contracting States may grant pardon. Amnesty or commutation of the sentence in accordance with its Constitution or other laws.

ARTICLE 11

Termination of enforcement of sentence

The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 12

Information on enforcement of sentence

1. The administering State shall notify the sentencing State :
 - (a) when the enforcement of the sentence has been completed; or
 - (b) if the prisoner escapes from custody before enforcement of the sentence has been completed.
In such cases the administering State shall make every effort to have the prisoner arrested in its territory so that the prisoner be prosecuted for committing an offence under the relevant law of the administering State on escape of prisoner.
2. The administering State shall furnish a special report concerning the enforcement of the sentence, if so required by the sentencing State.

ARTICLE 13

Transit

If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 14

Costs

Any costs incurred in the application of this Treaty shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State. The administering State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 15

Language

Requests and supporting documents shall be accompanied by a translation into the language or one of the official languages of the requested State or English.

ARTICLE 16

Certification

Except for the document referred to in Article 4(1) (e), all other documents transmitted in application of this Treaty do not require certification.

ARTICLE 17

Scope of application

This Treaty shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Treaty.

ARTICLE 18

Amendments

Any amendments or modifications to this Treaty agreed by the Contracting States shall come into effect in the same manner as entering into force of this Treaty.

ARTICLE 19

Final provisions

1. This Treaty shall be subject to ratification and shall enter into force on the thirtieth day after which instruments of ratification are exchanged.
2. The Treaty shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.
3. Notwithstanding any termination, this Treaty shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Treaty before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

Done in duplicate at New Delhi on the 12th day of September, 2007 in the Hindi, English and Bulgarian languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

**For the Government of
the Republic of India**

**For the Government of
Republic of Bulgaria**

Agreement between the Government of Republic of India and the Royal Government of Cambodia on the Transfer of Sentenced Persons

The Government of the Republic of India and the Royal Government of Cambodia hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

- (a) “Judgement” means a decision or order of a court or tribunal imposing a sentence;
- (b) “receiving State” means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment on account of a criminal offence;
- (d) “sentenced person” means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
- (e) “transferring State” means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2

General Obligations

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.
2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

ARTICLE 3

Conditions for transfer

1. A sentenced person may be transferred under this Agreement only on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) the death penalty has not been imposed on the sentenced person;
 - (c) the judgment is final;
 - (d) no inquiry, trial or any other proceeding is pending against the sentenced person in the transferring State;
 - (e) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment or the sentence is indeterminate;
 - (f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
 - (g) the sentenced person has not been convicted for an offence under the military law;
 - (h) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;
 - (i) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - (j) the transferring and receiving States agree to the transfer.
2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 4

Obligation to furnish information

1. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - (a) the name and nationality, date and place of birth of the sentenced person;
 - (b) his address, if any, in the receiving State;
 - (c) a statement of the facts upon which the sentence was based;

- (d) the nature, duration and date of commencement of the sentence;
 - (e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (g) any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - (h) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (i) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- (a) a statement or document indicating that the sentenced person is a national of the receiving State;
 - (b) a copy of the relevant law of the receiving State constituting the act or omissions, on account of which the sentence has been passed in the transferring State as if such act or omissions were an offence under the law of the receiving State or would constitute an offence if committed on its territory;
 - (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this Agreement on his transfer;
 - (d) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - (e) any other information or document which the transferring State may consider necessary.

ARTICLE 5

Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any and addressed through the central authority of the transferring State through diplomatic channels to the central Authority of the receiving State. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the Central Authority shall be, in relation to India, the Ministry of Home Affairs; and in relation to Cambodia, shall be the Ministry of Interior, Kingdom of Cambodia, Phnom Penh.

3. The receiving State shall promptly inform the transferring State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1 (i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

Effect of transfer for the receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.
2. Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 8

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

ARTICLE 9

Effect of completion of sentence for the transferring State

When the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.

ARTICLE 10

Pardon, amnesty or commutation and review of judgment

1. The transferring State alone shall decide on any application for the review of the judgment.
2. Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

ARTICLE 11

Termination of enforcement of sentence

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 12

Information on enforcement of sentence

1. The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed; or
 - (b) If the sentenced person escapes from custody before enforcement of the sentence has been completed, in such cases the receiving State shall make every effort to have the prisoner arrested so that he serves the remainder of his sentence and that the prisoner be prosecuted for committing an offence under the relevant law of the receiving State on escape of prisoner.
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 13

Transit

If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 14

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 15

Territorial Application

1. This agreement shall apply:
 - (a) to the Republic of India, and
 - (b) to the Kingdom of Cambodiaand reference to the territory of a Contracting State shall be construed accordingly.
2. The application of this agreement to any territory, in respect of which extension has been made in accordance with paragraph 1 of this Article, may be terminated upon expiry of six months notice given by either Contracting State to the other through the diplomatic channels.

ARTICLE 16

Language

Requests and supporting documents shall be accompanied by a translation into the language or one of the official language of the requesting State or English.

ARTICLE 17

Scope of application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

ARTICLE 18

Amendments

Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect when confirmed by an Exchange of Diplomatic Notes.

ARTICLE 19

Final provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged. .
2. The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.
3. Notwithstanding any termination, this Agreement shall continue to apply to the sentenced persons who have been transferred under this agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at New Delhi on the 8th day of December 2007 in the Hindi, Khmer and English languages, all texts being equally authentic. In case of difference in interpretation the English text shall prevail

**For the Government of the
Republic of India**

**For the Government of the
Kingdom of Cambodia**

**Shivraj V. Patil
Home Minister**

**HOR Namhong
Deputy Prime Minister &
Minister of Foreign Affairs and
International Cooperation**

Agreement between the Government of the Republic of India and the Government of the Arab Republic of Egypt on the Transfer of Sentenced Persons

The Government of the Republic of India and the Government of the Arab Republic of Egypt hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Believing that in order to achieve the above mentioned goals it is necessary to give to persons who committed criminal offences and were sentenced to deprivation of liberty the opportunity to serve their sentence in the State of their Citizenship

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) “judgment” means a decision or order of a court or tribunal imposing a sentence;
- (b) “sentenced person” means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in contracting States;
- (c) “receiving state” means the State to which the convicted offender may be, or has been, transferred in order to serve his sentence;
- (d) “sentence” means any punishment or measure involving deprivation of liberty ordered by a judgment for a limited or unlimited period of time on account of a criminal offence;
- (e) “transferring State” means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2

General Obligations

1. The Contracting States shall mutually undertake to afford each other, according to the provisions of this Agreement, the widest measure of cooperation in respect of the transfer of sentenced persons to the State of their Citizenship in order to serve the remaining part of their sentences.
2. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.
3. Transfer may be requested either by the transferring State or the receiving State.

ARTICLE 3

Conditions for Transfer

1. A sentenced person may be transferred under this Agreement only on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) death penalty has not been imposed on the sentenced person;
 - (c) the judgment is final;
 - (d) no inquiry, trial or any other proceeding is pending against the sentenced person in the transferring State;
 - (e) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or the sentence is indeterminate;
 - (f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or, would constitute a criminal offence if committed on its territory;
 - (g) the sentenced person has not been convicted for an offence under the military law;
 - (h) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other essential interest of the transferring State;
 - (i) the consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf according to the laws of the Contracting State, and
 - (j) the transferring and receiving States agree to the transfer.
2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 4

Obligation to Furnish Information

1. If the sentenced person has expressed an interest to the sentencing State in being transferred under this agreement, the transferring State shall send the following information and documents to the receiving State, as soon as practicable after the judgment becomes final unless either the receiving State or the transferring State has already decided that it will not agree to the transfer:
 - (a) the name and nationality, date and place of birth of the sentenced person;
 - (b) his address, if any, in the receiving State;
 - (c) a statement of the facts upon which the sentence was based;
 - (d) the nature, duration and date of commencement of the sentence;

- (e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (f) a medical, social or any other report regarding the antecedents and character of the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (g) any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him/her under its law;
 - (h) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (i) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- (a) a statement or document indicating that the sentenced person is a national of the receiving State;
 - (b) a copy of the relevant law of the receiving State constituting the act or omission as the offence, on account of which the sentence has been passed in the transferring State as if such act or omission was an offence under the law of the receiving State or would constitute a criminal offence if committed on its territory;
 - (c) a statement of fact, or any law or regulation relating to the duration and enforcement of the sentence of the sentenced person in the receiving State upon his transfer including, if applicable, a statement of the effect of Article 9 (2) on the sentenced person;
 - (d) the willingness of the receiving State to accept the transfer of sentenced person and an undertaking to administer the remaining part of the sentence of sentenced person;
 - (e) any other information or document which the transferring State may consider necessary.
3. The sentenced person may be informed in writing of any decision taken on the request for transfer by either State.

ARTICLE 5

Requests and Replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed through the Central Authority of the transferring State through diplomatic channels to the Central Authority of the receiving State. Replies shall be communicated through the same channels.

2. For the purpose of paragraph 1 of this Article, the Central authority shall be, in relation to Republic of India, “the Ministry of Home Affairs”, and in relation to the Arab Republic of Egypt is the “Department of International cooperation, Ministry of Justice.”
3. The receiving State shall promptly inform the transferring State of its decision whether or not to agree to the requested transfer.
4. Either of the Contracting States may refuse the transfer of sentenced person without the need to provide any explanation.

ARTICLE 6

Consent and its Verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph (1)(i) of Article 3 of this agreement does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 above.

ARTICLE 7

Handing over of Sentenced Persons

The handing over of the transferred person by the transferring State to the receiving State shall occur at a place to be agreed upon between the transferring and receiving State. The receiving State shall be responsible for the transport of the prisoner from the transferring State and shall also be responsible for custody of the sentenced person outside the territory of the transferring State

ARTICLE 8

Effect of Transfer for the Receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under conditions set out in Article 9.
2. Subject to the provisions of Article 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 9

Enforcement of Sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State;
2. If, however, the sentence is by its nature or duration or both incompatible with the laws of the receiving State, or its laws so require, it may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.
3. A sentenced person transferred under this Agreement shall not be tried or sentenced in the receiving State for the acts or omissions on account of which the sentence was imposed in the transferring State and shall not be detained for those acts or omissions except in accordance with this Agreement.

ARTICLE 10

Effect of Completion of Sentence for the Transferring State

1. The taking into charge of the sentenced person by the authorities of the receiving State shall have the effect of suspending the enforcement of the sentence in the transferring State.
2. The transferring State may no longer enforce the sentence if the receiving State considers enforcement of the sentence to have been completed.

ARTICLE 11

Pardon, Amnesty or Commutation

1. Unless both the contracting states otherwise agree, the transferring State alone may grant pardon amnesty or commutation of the sentence in accordance with its constitution or other laws.
2. The transferring State alone shall decide on any application for review of the judgment.

ARTICLE 12

Termination of Enforcement

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 13

Information on Enforcement of Sentence

1. The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed; or
 - (b) if the sentenced person escapes from custody before enforcement of the sentence has been completed, in such cases the receiving State shall take the necessary action under its relevant law.
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 14

Transit

1. If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals. The Contracting State intending to make such a transfer shall give an advance notice to the other Contracting State of such transit.

ARTICLE 15

Costs

1. Any cost incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the cost of transfer from the sentenced person or from some other source.

ARTICLE 16

Language

1. Requests and supporting documents shall be accompanied by a translation into the language of the receiving State or into English.

ARTICLE 17

Temporal Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

ARTICLE 18

Amendments

Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect when confirmed by an Exchange of Diplomatic notes.

ARTICLE 19

Settlement of Disputes

1. Any dispute regarding the interpretation and application of this Agreement shall be resolved mutually by the Central Authorities through diplomatic channels.

ARTICLE 20

Final Provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.
2. The present Agreement shall continue to remain in force until six months from the date on which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.
3. This agreement shall, however, continue to apply to the sentenced persons who have been transferred in conformity with its provisions before the date of its termination.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Cairo this the Eighth day of January, 2008 (Two Thousand and Eight) in two originals each, in Hindi, Arabic and English, all texts being equally authentic. However, in case of any divergence of interpretation, the English text shall prevail.

**For the Government of the
Republic of India**

**For the Government of the
Arab Republic of Egypt**

Agreement between the Government of the Republic of India and the Government of the Republic of France on the Transfer of Sentenced Persons

The Government of the Republic of India and the Government of the Republic of France hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society:

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

- (a) “judgment” means a judicial decision or order imposing a sentence.
- (b) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a limited or unlimited period of time in the exercise of its criminal jurisdiction. For the implementation of the present Agreement, the expression “sentence” shall also cover final judicial decisions or orders of a court or a tribunal imposing capital punishment which have been subsequently commuted in the transferring State by amnesty or pardon into a sentence involving deprivation of liberty for a limited or unlimited period of time;
- (c) “sentenced person” means a person undergoing a sentence of imprisonment under a decision or order passed by a criminal court or tribunal;
- (d) “receiving State” means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (e) “transferring State” means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2

General Principles

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him or her. To that end, the sentenced person may express to the transferring State or the receiving State his or her willingness to be transferred under this Agreement.

2. Transfer may be requested either by the transferring State or the receiving State. The official request for transfer is sent to the requested State by the requesting State. If the sentenced person expresses his or her willingness to be transferred to the transferring State and if that State has a prescribed procedure, the application will be made according to the said procedure. The said application may also be made by any other person who is entitled to act on his behalf in accordance with the law of the transferring State.

ARTICLE 3

Conditions for transfer

1. A sentenced person may be transferred under this Agreement only on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) the judgment is final and no inquiry, trial or other criminal proceedings are pending against the sentenced person in the transferring State;
 - (c) at the time of receipt of the request for transfer, the remainder of the sentence to be served is at least six months.
 - (d) the enforceable sentence involves deprivation of liberty and not death penalty.
 - (e) that the acts or omissions for which that person was sentenced are those which are punishable as a criminal offence in the receiving State, or would constitute a criminal offence if committed on its territory.
 - (f) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;
 - (g) consent to the transfer is given by the sentenced person or, where in view of his or her age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his or her behalf in accordance with the law of the Transferring State; and
 - (h) the transferring and receiving States agree to the transfer.
2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 4

Obligation to furnish information

1. Any sentenced person to whom this Agreement may apply shall be informed by the transferring State of the substance of this Agreement.
2. For the purpose of enabling a decision to be made on a request under this Agreement, the transferring State shall send the following information and documents to the receiving State:
 - (a) the name and nationality, date and place of birth of the sentenced person;

- (b) his or her address, if any, in the receiving State;
 - (c) a statement of the facts upon which the sentence was based
 - (d) the nature, duration and date of commencement of the sentence;
 - (e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (f) whenever appropriate, any medical or social report of the sentenced person, information about his or her treatment in the transferring State, and any recommendation for his or her further treatment in the receiving State;
 - (g) any other information which the receiving state may specify as being necessary in a given case to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him or her under its law.
 - (h) the request of the sentenced person to be transferred or a declaration from him or her or, where in view of his or her age or physical or mental condition either Contracting State considers it necessary, any other person entitled to act on his or her behalf in accordance with the law of the transferring State, attesting his or her consent, and
 - (i) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
3. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- (a) a statement or document indicating that the sentenced person is a national of the receiving State;
 - (b) a copy of the relevant law of the receiving State establishing that the acts or omissions for which the sentenced person was sentenced in the transferring state are punishable as a criminal offence in the receiving State, or would constitute a criminal offence if committed on its territory;
 - (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this Agreement on his or her transfer;
 - (d) the statement of the willingness of the receiving State to accept the transfer of sentenced person and to administer the remaining part of the sentence of the sentenced person under the provision of this Agreement;
 - (e) any other information or document which the transferring State may consider necessary.

ARTICLE 5

Requests and replies

1. Requests for transfer shall be made in writing and addressed through the central authority of the requesting State through diplomatic channels to the central authority of the requested State. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the Central authority shall be, in relation to India, the Ministry of Home Affairs, and in relation to the France, the Ministry of Justice.
3. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1 (g) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

Effect of transfer for receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.
2. Subject to the provisions of Article 10 and 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving state and that State alone shall be competent to take all appropriate decisions.

ARTICLE 8

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If, however, the sentence is by its nature or duration incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

ARTICLE 9

Effect of completion of sentence for the transferring State

When the receiving State notifies the transferring State under paragraph 1(a) of Article 13 of this Agreement that the sentence has been completed, the sentence shall cease to be enforceable in the transferring State.

ARTICLE 10

Review of Judgment

The transferring State alone shall decide on any application for review of the judgment.

ARTICLE 11

Pardon, amnesty or commutation

Either of the contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

ARTICLE 12

Termination of enforcement of sentence

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 13

Information on enforcement of sentence

1. The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed; or
 - (b) If the sentenced person escapes from custody before enforcement of the sentence has been completed. In such cases the receiving State shall make every effort to have the sentenced person arrested so that he or she serves the remainder of his or her sentence, in addition to the criminal offence committed under the relevant law of the receiving State on escape of prisoner.
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 14

Transit

1. If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such an arrangement.

2. The State intending to make such a transfer shall give advance notice to the other State. This notification shall convey any necessary information, including information allowing the application of the following paragraph.
3. The State over whose territory the transfer is to be made may refuse to grant transit if the sentenced person is one of its nationals or if the offence for which the sentence was imposed is not an offence under its own law;
4. The State requested to grant transit may hold the sentenced person in custody for the period of time that is strictly necessary for the transit on its territory;
5. No request for transit is required where air transportation is being utilized over the territory of a State and if no landing is scheduled. However, the State which makes the transit shall inform the State over whose territory the flight is to be made.

ARTICLE 15

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 16

Language

Requests and supporting documents shall be accompanied by a translation into the language or one of the official languages of the requested State.

ARTICLE 17

Temporal Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 18

Final provisions

1. This Agreement shall be subject to ratification. Each Contracting State shall notify the other as soon as possible, in writing, through diplomatic channels, upon the completion of its constitutional procedures required to allow this Agreement to come into force.

This Agreement shall come into force on the first day of the second month following the date of the second notification.

2. The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at New Delhi on the 25 day of January 2008, in Hindi, English and French languages the three texts being equally authentic.

**For the Government of
the Republic of India:**

**For the Government of the
Republic of France:**

Agreement between the Republic of India and the Kingdom of Saudi Arabia on Transfer of Sentenced Persons

The Republic of India and the Kingdom of Saudi Arabia (hereinafter referred to as the Contracting States), in support of existing relationships, desiring to establish cooperation in the transfer of Sentenced Persons from nationals of the two States, for the purpose of rehabilitating them socially and psychologically, and realizing the benefits resulting from cooperation in said field, have agreed on the following:

Article 1

DEFINITIONS

In application of the provisions of this Agreement, the following terms shall have the meanings as assigned to them, unless the text requires otherwise:

1. **Transferring State:** The State in which the sentence was imposed on the person;
2. **Receiving State:** The state to which the sentenced person is to be transferred for serving his sentence or remainder thereof;
3. **Sentenced Person:** Any person undergoing a sentence of imprisonment under an order pursuant to a judgment passed by a court or a competent authority established under the law for the time being in force in either of the Contracting States;
4. **Sentence:** Any punishment or measure involving deprivation of liberty ordered by a court or a competent authority in the exercise of its criminal jurisdiction;
5. **Judgment:** Any final order or decision rendered by a court or a competent authority.

Article 2

GENERAL PRINCIPLES

1. Either Contracting State may transfer the Sentenced Persons to complete the sentence passed against nationals of the other State in the Country of their nationality in accordance with provisions of this Agreement.
2. Each of the Contracting States shall, as soon as possible, notify the other State of final and enforceable judicial judgments awarding Sentences passed within its territory against nationals of the other State.

Article 3

CENTRAL AUTHORITIES

1. Authorities in charge of the implementation of this Agreement for the Contracting States are:
 - For the Kingdom of Saudi Arabia: Ministry of Interior.
 - For the Republic of India: Ministry of Home Affairs.

In case either Contracting State changes its competent authorities, it shall notify the other State of the same through official channels.

2. Correspondence between the competent authorities of the Contracting States regarding the implementation of provisions of this Agreement; shall be in writing and through the official channels of the two countries.

Article 4

CONDITIONS FOR TRANSFER

Transfer of sentenced person of either Contracting State shall be subject to the following conditions:

1. The act or omission for which a sentence is imposed in the Transferring State is also punishable as a crime by way of deprivation of liberty under the legislation of the Receiving State;
2. The Sentenced Person is a national of the Receiving State at the time of submitting the request;
3. The judgment is final and enforceable;
4. No Criminal Proceedings are pending against the Sentenced Person in the Transferring State;
5. Both Contracting States consent to the transfer request;
6. The Sentenced Person consents, in writing, to be transferred. In case he is unable to express his willingness in writing, the consent could be given by his representative or one of his relatives entitled to act on his behalf;
7. The term of the remaining sentence shall not be less than six months at the time of submission of the request. Yet, the Contracting States may - as an exception- agree to the transfer if the remaining period of the sentence is less than six months;
8. Unless his insolvency is established, the Sentenced Person shall have paid off all sentenced financial obligations, private or public, or shall guarantee payment thereof as the Transferring State deems fit.

Article 5

TRANSFER REQUEST

Transfer requests may be submitted by any of the following:

1. Transferring State.
2. Receiving State.

3. The Sentenced Person, his representative, or relatives entitled to act on his behalf. The request, in this regard shall be submitted to either state.

Article 6

OBLIGATION TO FURNISH INFORMATION

The Transferring State shall provide the following information and documents:

1. The name and nationality, date and place of birth of the sentenced person, and his address, if any, in the Receiving State, along with a copy of his passport or any other personal identification documents, and Fingerprints of the Sentenced Person, as possible.
2. A brief statement on circumstances, time and venue of the crime as well as its characterization in accordance with its legislations.
3. A medical, social, or any other report on the Sentenced Person.
4. A certified copy of the final and enforceable judgment.
5. A statement of the duration, date of commencement of the sentence and remaining enforceable period of the punishment and the period of relevant preventive detention served.
6. A statement including the consent of the Sentenced Person or his legal representative to the transfer.
7. A statement from the Transferring State agreeing to the transfer of the Sentenced Person.

Article 7

CONSENT AND VERIFICATION

Upon the request of the Transferring State, the Receiving State shall submit the following:

1. An official document establishing that the Sentenced Person is a national of the Receiving State.
2. A copy of its legislations or laws which indicate that the acts or omissions leading to the sentence amounts to a crime at the Receiving State.
3. A statement from the Receiving State accepting the transfer of the Sentenced Person.

Article 8

SHARING OF INFORMATION

1. The competent authorities of the Contracting States shall inform the Sentenced Person of the decision taken with regard to his transfer request. The Sentenced Person has the right to be informed regarding the status of his request.
2. Either Contracting State may request the other State to provide supplementary information or documents related to the request for transfer.

Article 9

PHYSICAL TRANSFER & COSTS

1. Upon approval of the transfer of the Sentenced Person, the Transferring State shall transfer him to the Receiving State on the date and venue agreed upon by the competent authorities of the Contracting States.
2. The Receiving State shall bear costs of transporting the Sentenced Person, and expenses resulting from the enforcement of the sentence within its territory.

Article 10

CONTINUED ENFORCEMENT OF SENTENCE

Upon transfer of the Sentenced Person:

1. The Receiving State shall be bound by the legal nature and duration of the sentence as stipulated in the judgment determined by the court or the competent authority in the Transferring State.
2. The Competent authority of the Receiving State shall continue the enforcement of the sentence through a court order or administrative order as maybe required under its national law.
3. If the legislations of the Receiving State provide for maximum limit for the same offence and the term of the sentence rendered by the Transferring State exceeds such maximum limit, the Receiving State shall adapt the sentence to such maximum limit as provided for in its legislations.
4. The Receiving State shall be obliged not to increase the sentence as to its duration or replace the sentence with a fine.
5. The sentence shall be enforced in accordance with the applicable laws of the Receiving State, which shall solely have jurisdiction to take all decisions relating to such

Article 11

PARDON, AMNESTY OR COMMUTATION

1. Pardon, Amnesty or commutation granted only by the Transferring State shall be applicable to the Sentenced Person.
2. The Transferring State shall promptly notify the Receiving State of any decisions taken in its territory which entails terminating the enforcement of the sentence or part thereof. The competent authorities of the Receiving State shall immediately implement these decisions.

Article 12

REVIEW OF JUDGMENT

The Transferring State shall solely have the judicial and legal jurisdiction for review of the judgment.

Article 13

RE-TRIAL OF THE SENTENCED PERSON

A Sentenced Person transferred under the provisions of this Agreement may not be retried by the Receiving State for acts or omissions for which the Sentenced Person has already been sentenced by the competent authorities of the Transferring State.

Article 14

INFORMATION ON ENFORCEMENT OF SENTENCE

The Receiving State shall notify the Transferring State of the following:

1. When the enforcement of the sentence has been completed. Such notification shall have the effect of discharging that sentence in the Transferring State.
2. If the Sentenced Person escapes from custody, and the steps taken by the Receiving State to secure his arrest.
3. Any other matter relating to the enforcement of the sentence.

Article 15

LANGUAGE

The requests and supporting documents shall be in English or shall be accompanied by a translation into English.

Article 16

TRANSIT

If either of the Contracting States wishes to transfer one of its nationals from a third country through the territory of the other Contracting State, it shall submit a request to this effect to that State. The other Contracting State shall facilitate the transit through its territory if such transit does not conflict with its legislations.

Article 17

COOPERATION FOR IMPLEMENTATION

The competent authorities of the Contracting States shall conduct consultations to reach the most efficient means for the application of this Agreement. They may also agree on practical measures that may be necessary to facilitate the application of this Agreement.

Article 18

SETTLEMENT OF DISPUTES

The Contracting States shall settle any dispute that may arise regarding the interpretation or application of this Agreement through consultations between their competent authorities. In case of not reaching an agreement, the dispute shall be settled through diplomatic channels.

Article 19

SCOPE OF APPLICATION

This Agreement shall be applicable to the enforcement of the sentence issued by the competent authorities of the Two Contracting States before or after this Agreement's entry into effect.

Article 20

AMENDMENTS

This Agreement may be amended by an agreement of the Contracting States, which shall enter into force following the same procedure as is applicable for the entry into force of this Agreement.

Article 21

FINAL PROVISIONS

1. The Contracting States shall complete all the necessary legal and constitutional procedures for entry into force of this agreement. It shall enter into force after thirty days from the date of receipt of last communication through Diplomatic Channels regarding the completion of such procedures.
2. This Agreement shall remain in force for an indefinite period.
3. Either State may terminate this Agreement by a written notice submitted through diplomatic channels to the other State. This Agreement shall terminate after the lapse of six months from the date of receipt of such notice. This shall have no effect on requests submitted during the validity of the Agreement.

Done at Riyadh on 14 *Rabea Alawal*, 1431H, corresponding to February 28, 2010, in two originals in the Hindi, Arabic and English languages, all texts being equally authentic. In case of difference of interpretation of the provisions of this Agreement, the English text shall prevail.

For the Republic of India

**Ghulam Nabi Azad
Minister of Health &
Family Welfare**

For the Kingdom of Saudi Arabia

**Naif bin Abdulaziz
Second Deputy Prime Minister
Minister of Interior**

**Agreement between the Government of the Republic of India and
the Government of the Democratic Socialist Republic of Sri Lanka
on the Transfer of Sentenced Persons**

The Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka, hereinafter referred to as the “**Contracting States**”;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving nationals of a Contracting State, who have been convicted and sentenced in the other Contracting State as a result of the commission of a criminal offence, the opportunity to serve the sentence in their own country;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

- (a) “judgment” means a decision or order of a court or tribunal imposing a sentence;
- (b) “receiving State” means a State to which the sentenced person may be, or has been, transferred in order to serve the sentence;
- (c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
- (d) “sentenced person” means a person undergoing a sentence of imprisonment pursuant to a judgment by a criminal court including the courts established under the law for the time being in force in the transferring State;
- (e) “transferring State” means the State in which the sentence was imposed on the person who may be, or has been transferred; and
- (f) “national” means a citizen of either Contracting States.

ARTICLE 2

General Principles

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the laws of the Contracting States and the provisions of this Agreement, in order to serve the sentence imposed on him. To that end, he may express either to the transferring State or the receiving State, his willingness to be transferred under this Agreement.

2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf by making an application to either of the Contracting States, in accordance with the laws of the concerned Contracting States and in the manner so prescribed.

ARTICLE 3

Conditions for Transfer

A sentenced person may be transferred under this Agreement only on the following conditions:

- (a) the person is a national of the receiving State;
- (b) the death penalty has not been imposed on the sentenced person;
- (c) the judgment is final;
- (d) no inquiry, trial or any other proceeding is pending against the sentenced person in the transferring State;
- (e) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;
- (f) the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
- (g) the sentenced person has not been convicted for an offence under the military law;
- (h) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;
- (i) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf, in accordance with the laws of the Contracting State; and
- (j) the transferring and receiving States agree to the transfer.

ARTICLE 4

Obligation to furnish information

1. If the sentenced person has expressed an interest to the transferring State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - (a) the name, nationality, date and place of birth of the sentenced person;
 - (b) his address, if any, in the receiving State;

- (c) a statement of the facts upon which the sentence was based;
 - (d) the nature, duration and date of commencement of the sentence;
 - (e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (g) any other information which the receiving State may specify as required, to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of his transfer under its law;
 - (h) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (i) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission or any other factor relevant to the enforcement of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- a) a statement or document indicating that the sentenced person is a national of the receiving State;
 - b) a copy of the relevant legal provisions of the receiving State which provides that the acts or omissions on account of which the sentence has been imposed in the transferring State, also constitute a criminal offence in the receiving State or will constitute a criminal offence committed on its territory;
 - c) a statement to the effect of any law or regulation in relation to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement to the effect of paragraph 2 of Article 8 of this Agreement on his transfer;
 - d) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - e) any other information or document which the transferring State may consider necessary.

ARTICLE 5

Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed to the Central Authority of one Contracting State by the Central Authority of the other Contracting State through diplomatic channels. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the Central Authority shall be:
 - for the Republic of India, the Ministry of Home Affairs; and

- for the Democratic Socialist Republic of Sri Lanka, the Ministry of Justice and Law Reforms.
- 3. The requested Contracting State shall promptly inform the requesting Contracting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof.
2. The transferring state shall afford an opportunity to the receiving state to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

Effect of transfer for the receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a Court or by an administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.
2. Subject to the provisions in Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 8

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by an order of a Court or by an administrative order, with the consent of the transferring State, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration, the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall, however, not aggravate, by its nature or duration, the sentence imposed in the transferring State.

ARTICLE 9

Effect of completion of sentence for the transferring State

When the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.

ARTICLE 10

Pardon, amnesty or commutation and review of judgment

1. The transferring State alone shall decide on any application for the review of the judgment.
2. Unless the transferring State agrees otherwise, the transferring State alone may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

ARTICLE 11

Termination of enforcement of sentence

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 12

Information on enforcement of sentence

1. The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed ; or
 - (b) if the sentenced person escapes from custody before enforcement of the sentence has been completed.
2. In the event of the occurrence of 1(b) above, the receiving State shall take measures necessary to secure his arrest for the purposes of serving the remainder of the sentence and to render him liable to the relevant laws of the receiving State. The transferring State shall be informed of the results of such measures.
3. The receiving State shall furnish a report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 13

Transit

1. If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals.
2. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 14

Costs

Any costs incurred in the application and implementation of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 15

Language

Requests and supporting documents shall be in English or accompanied by translation into English.

ARTICLE 16

Scope of application

This Agreement shall be applicable to the enforcement of sentences imposed before or after the entry into force of this Agreement.

ARTICLE 17

Amendments

Any amendments or modifications to this Agreement mutually agreed by the Contracting States shall come into effect in the same manner as may be applicable for the entry into force of this Agreement.

ARTICLE 18

Final provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.
2. The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

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

DONE at New Delhi on this 9th day of June 2010 in two originals in the Hindi, Sinhala, and English languages, all texts being equally authentic. In the event of divergence of interpretation, the English text shall prevail.

**For the Government of the
Republic of India**

(GOPAL K. PILLAI)

Home Secretary

Govt. of India

New Delhi

**For the Government of the
Democratic Socialist**

Republic of Sri Lanka

Agreement on the Transfer of Sentenced Persons between the Republic of India and the Islamic Republic of Iran

The Government of Republic of India and the Government of Islamic Republic of Iran hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries;

Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society; and

Believing in the principles of national sovereignty and non-intervention in internal affairs of each other,

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

- (a) “judgment” means a decision or order of a court or any other judicial authority imposing a sentence;
- (b) “receiving State” means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court or any other judicial authority for a determinate period of time or for life imprisonment in the exercise of its criminal jurisdiction;
- (d) “sentenced person” means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
- (e) “transferring State” means the State in which the sentence was imposed on the person who may be, or has been transferred.

Article 2

General Principles

- (1) A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.

- (2) Transfer may be requested either by the transferring State or the receiving State or the sentenced person himself or any other person entitled to act on his behalf.

Article 3

Condition for transfer

- (1) A sentenced person may be transferred under this Agreement only on the following conditions:
- (a) the person is a national of the receiving State;
 - (b) the judgment is final and enforceable;
 - (c) no inquiry, trial or any other proceeding is pending against the sentenced person in the transferring State;
 - (d) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;
 - (e) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
 - (f) the sentenced person has not been convicted for an offence under the military law;
 - (g) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the Constitution, sovereignty, security, public order or any other interest of the transferring State;
 - (h) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - (i) the transferring and receiving States agree to the transfer.
- (2) In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

Article 4

Obligation to furnish information

- (1) If the sentenced person has expressed an interest to the transferring State in being transferred under this Agreement, the State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- (a) the name and nationality, date and place of birth of the sentenced person;
 - (b) his address, if any, in the receiving State;
 - (c) a statement of the facts upon which the sentence was based;

- (d) the nature, duration and date of commencement of the sentence;
 - (e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the conditions which may accordingly be required for his confinement;
 - (g) any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - (h) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (i) a Statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
- (2) For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- (a) a Statement or document indicating that the sentenced person is a national of the receiving State;
 - (b) a copy of the relevant law of the receiving State constituting the acts or omissions, on account of which the sentence has been passed in the transferring State as if such acts or omissions were an offence under the law of the receiving state or would constitute an offence if committed on its territory;
 - (c) a Statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State in respect of the offence for which the person concerned has been sentenced in the transferring state, particularly as to the effect of paragraph 2 of Article 9 of this Agreement;
 - (d) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - (e) any other information or document which the transferring State may consider necessary.

Article 5

Requests and replies

- (1) Requests for transfer shall be made in writing and addressed through the central authority of the requesting State through diplomatic channels to the central authority of the requesting State. Replies shall be communicated through the same channels.

- (2) For the purpose of paragraph 1 of this Article, the central authority shall be, in relation to India, the Ministry of Home Affairs; and in relation to Islamic Republic of Iran, the Ministry of Justice.
- (3) The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.
- (4) Either of the contracting States may refuse the transfer of sentenced person without the need for any explanation.

Article 6

Consent and its verification

- (1) The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
- (2) The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

Article 7

Handing over of sentenced persons

The handing over of the transferred person by the transferring State to the receiving State shall occur at a place to be agreed upon between the transferring and the receiving State. The receiving State shall be responsible for the transport of the prisoner from the transferring State and shall also be responsible for custody of the sentenced person outside the territory of the transferring State.

Article 8

Effect of transfer for the receiving State

- (1) The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 9 of this Agreement.
- (2) Subject to the provisions of Article 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

Article 9

Continued enforcement of sentence

- (1) The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
- (2) If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.
- (3) A sentenced person transferred under this Agreement shall not be tried or sentenced in the receiving state for the acts or omissions on account of which the sentence was imposed.

Article 10

Effect of completion of sentence for the transferring State

When the receiving State notifies the transferring State under paragraph 1(a) of Article 13 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.

Article 11

Pardon, amnesty or combination and review of judgment

- (1) Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.
- (2) The transferring State alone shall decide on any application for the review of the judgment.

Article 12

Termination of enforcement of sentence

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 13

Information on enforcement of sentence

- (1) The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed; or

- (b) if the prisoner escapes from custody before enforcement of the sentence has been completed. In such cases, the receiving State shall make every effort to have the prisoner arrested so that he serves the remainder of his sentence and take necessary action under its relevant law.
- (2) The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

Article 14

Transit

If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

Article 15

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, demand or seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

Article 16

Language

Requests and supporting documents shall be accompanied by a translation into the language of the requested State or into English.

Article 17

Scope of Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

Article 18

Amendments

Any amendments or modifications to this Agreement, agreed by the Contracting States shall come into effect following the same procedure as applicable for entry into force of the Agreement itself.

Article 19

Settlement of disputes

Any dispute regarding the interpretation and application of this agreement shall be resolved mutually by the Central authorities through diplomatic channels.

Article 20

Final provisions

- (1) This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of Ratification are exchanged.
- (2) The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.
- (3) Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoners who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at New Delhi on 9th July 2010 corresponding to 18th Tir 1389 of the Iranian Hijri-Shamsi calendar, in Hindi, Persian and English languages, the three texts being equally authentic. In case of differences in interpretation, the English text shall prevail.

**For the
Republic of India
Minister of External Affairs
Shri S.M. Krishna**

**For the
Islamic Republic of Iran
Minister of Economic Affairs & Finance
H.E. Dr. Seyed Shamseddin Hosseini**

Agreement on Transfer of Sentenced Persons between the Government of the Republic of India and the Government of the United Arab Emirates

The Government of the Republic of India and the Government of the United Arab Emirates (hereinafter referred to as the Contracting States);

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving citizens of Contracting States, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve the sentences within their own society;

ARTICLE 1

DEFINITIONS

- a) “judgment” means a decision or order of a court or tribunal imposing a sentence;
- b) “Administering State” means a State to which the sentenced person may be, or has been transferred, in order to serve his sentence;
- c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
- d) “sentenced person” means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Sentencing State;
- e) “Sentencing State” means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2

GENERAL PRINCIPLES

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the Sentencing State or the Administering State his willingness to be transferred under this Agreement.
2. Transfer may be requested by any sentenced person who is a national of the Administering State or by any other person who is entitled to act on his behalf by making an application in the manner prescribed.
3. Subject to the provisions of this Agreement, a request for transfer may also be made by the Sentencing State or the Administering State subject to the condition that the consent of the sentenced person has been obtained before a request for transfer is made.

ARTICLE 3

CONDITION FOR TRANSFER

A sentenced person may be transferred under this Agreement only on the following conditions:

- a) the person is a national of the Administering State;
- b) the death penalty has not been imposed on the sentenced person;
- c) the judgment is final and executable;
- d) no inquiry, trial or any other proceeding is pending against the sentenced person in the Sentencing State;
- e) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence life imprisonment, unless otherwise agreed mutually between the Contracting States;
- f) that the acts or omissions for which that person was sentenced in the Sentencing State are those which are punishable as a crime in the Administering State, or would constitute a criminal offence if committed its territory;
- g) the sentenced person has not been convicted for an offence under the military law;
- h) transfer of custody of the sentenced person to the Administering State shall not be prejudicial to the sovereignty, security or any other interest of the Sentencing State;
- i) consent to the transfer is given by the sentenced person or where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
- j) the Sentencing and Administering States agree to the transfer.

ARTICLE 4

OBLIGATION TO FURNISH INFORMATION

1. If the sentenced person has expressed an interest to the Sentencing State in being transferred under this Agreement, the Sentencing State shall send the following information and documents to the Administering State unless either the Administering or the Sentencing State has already decided that it will not agree to the transfer:
 - a) the name and nationality, date and place of birth of the sentenced -person;
 - b) his address, if any in the Administering State;
 - c) a statement of the facts upon which the sentence was based;
 - d) the nature, duration and date of commencement of the sentence;
 - e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person

- f) a medical or any other report concerning the sentenced person, if necessary, and any information regarding the treatment he has been Administering in the Sentencing State and any recommendation in respect of which such, treatment is followed in the Administering State, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - g) any other information which the Administering State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - h) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the Sentencing State; and
 - i) a statement indicating how much of the sentence has already been served, including information on-any pretrial detention, remission, or any other factor relevant to the enforcement, of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the Administering State shall send the following information and documents to the Sentencing State unless either the Administering or the Sentencing State has already decided that it will not agree to the transfer:
- a) a statement or document indicating that the sentenced person is a national of the Administering state
 - b) a copy of the relevant law of the Administering State constituting the act or omissions, on account of which the sentence has been passed in the Sentencing State, as if such acts or omissions were an offence under the law of the Administering State or would constitute an offence if committed on its territory;
 - c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the administering state after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this Agreement on his transfer;
 - d) the willingness of the administering state to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - e) any other information or document which the Sentencing State may consider necessary.

ARTICLE 5

REQUESTS AND REPLIES

1. Requests for transfer shall be made in writing in the prescribed proforma and supporting documents, if any, and addressed by the central authority of the requesting State through diplomatic channels to the central authority of the requested state. Replies shall be communicated through the same channels.

2. Transfer requests and supporting documents shall be accompanied by translation to the official language of the requested Contracting State or in English
3. For the purpose of paragraph 1 of this Article, the central authority shall be, in relation to India, the Ministry of Home Affairs; and in relation to the UAE shall be the Ministry of Justice.
4. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

CONSENT AND ITS VERIFICATION

1. The Sentencing State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the Sentencing State
2. The Sentencing State shall afford an opportunity to the Administering State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

EFFECT OF TRANSFER FOR THE ADMINISTERING STATE

1. The competent authorities of the Administering State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.
2. Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the Administering State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 8

CONTINUED ENFORCEMENT OF SENTENCE

1. The Administering State shall be bound by the legal nature and duration of the sentence as determined by the Sentencing State.
2. If, however, the sentence is by its nature or duration or both incompatible with the law of the Administering State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the Sentencing State. It shall however not aggravate, by its nature or duration, the sentence imposed in the Sentencing State.

ARTICLE 9

EFFECT OF COMPLETION OF SENTENCE FOR THE SENTENCING STATE

When the Administering State notifies the Sentencing State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the Sentencing State.

ARTICLE 10

**PARDON, AMNESTY OR COMMUTATION AND
REVIEW OF JUDGMENT**

1. The Sentencing State alone shall decide on any application for the review of the judgment.
2. Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws and with the consent of the Sentencing State.

ARTICLE 11

TERMINATION OF ENFORCEMENT OF SENTENCE

The Administering State shall terminate enforcement of the sentence as soon as it is informed by the Sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 12

INFORMATION ON ENFRCEMENT OF SENTENCE

1. The Administering State shall notify the Sentencing State:
 - a) when the enforcement of the sentence has been completed; or
 - b) if the prisoner escapes from custody before enforcement of the sentence has been completed. In such cases the Administering State shall make every effort to have the prisoner arrested so that he serves the remainder of his sentence and that the prisoner be prosecuted for committing an offence under the relevant law of the Administering State on escape of prisoner.
2. The Administering State shall furnish a special report concerning the enforcement of the sentence, if so required by the Sentencing State.

ARTICLE 13

TRANSIT

If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to

grant transit to any sentenced person who is one of its own nationals. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 14

COSTS

Any costs incurred in the application of this Agreement shall be borne by the Administering State, except costs incurred exclusively in the territory of the Sentencing State. The Administering State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some-other source.

ARTICLE 15

SETTLEMENT OF CONFLICTS

Any conflict regarding the interpretation or execution of this Agreement shall be settled by discussions between both Contracting States through diplomatic channels.

ARTICLE 16

SCOPE OF APPLICATION

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 17

AMENDMENTS

This Agreement may be amended or revised as deemed necessary by mutual written consent of the Contracting States. Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect when confirmed by an Exchange of Diplomatic Notes.

ARTICLE 18

ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force on the date of the last notification where one Party informs the other Party through diplomatic channels of the completion of its internal procedures necessary for its entry into force.
2. Either Party may at any time terminate this Agreement by giving six months advance written notice to the other Party indicating its intention to terminate the Agreement.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

The undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at New Delhi on 23 November 2011 in two originals each in Hindi, Arabic and English languages. All the three texts being authentic, in the case of any divergence in interpretation, the English text shall prevail.

Government of the Republic of India

Government of the United Arab Emirates

(P.Chidambaram)
Minister of Home Affairs

(Lt. Gen.Saif Bin Zayed Al Nabyan)
Deputy Prime Minister and
Minister of Interior

Agreement between the Government of the Republic of India and the Government of the Republic of Italy on the Transfer of Sentenced Persons

The Government of the Republic of India and the Government of the Republic of Italy, hereinafter referred to as “The Contracting States”,

DESIRING to develop their cooperation on the transfer of sentenced persons in order to facilitate their social rehabilitation;

HAVE AGREED as follows:

Article 1

Definitions

For the purpose of this Agreement:

- a) “sentence” shall be any punishment or measure involving deprivation of personal liberty ordered by a court for the commitment of a criminal offence for a determinate period of time or for life imprisonment;
- b) “judgment” shall be a decision of a court imposing a sentence;
- c) “Transferring State” shall be the State in which the sentence was imposed on the person who may be, or has been, transferred;
- d) “sentenced person” means a person undergoing a sentence of imprisonment under a judgement passed by a criminal court;
- e) “Receiving State” shall be the State to which the sentenced person may be, or has been, transferred in order to serve his sentence or remainder thereof.

Article 2

General principles

- 1) A person sentenced in the territory of one Contracting State may be transferred to the territory of the other, in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the Transferring or the Receiving State his willingness to be transferred under this Agreement.
- 2) Transfer may be requested by either the Transferring or the Receiving State.
- 3) Transfer may also be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State.

- 4) The present Agreement shall not apply if the sentenced person has been convicted for an offence under the military law.

Article 3

Central Authorities

- 1) Requests for transfer shall be sent through the Central Authorities of the Contracting States.
- 2) The Central Authority for the Government of the Republic of India shall be the Ministry of Home Affairs. The Central Authority for the Government of the Republic of Italy shall be the Ministero della Giustizia - Dipartimento per gli Affari di Giustizia - Direzione Generale della Giustizia Penale (Ministry of Justice - Department for Justice Affairs - Directorate General for Criminal Justice).
- 3) In case a Contracting State changes its Central Authorities, it shall notify the other through diplomatic channels.

Article 4

Conditions for transfer

A sentenced person may be transferred under this Agreement on the following conditions:

- a) the sentenced person is a national of the Receiving State;
- b) the judgment is final;
- c) no criminal proceedings are pending against the sentenced person in the Transferring State in which his presence is required.
- d) at the time of receipt of the request for transfer, the sentence still to be served by the sentenced person is at least one year;
- e) the transfer is consented to by the sentenced person or, where in view of his/her age or physical or mental condition, by any other person entitled to act on his behalf;
- f) the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the Receiving State or would constitute a criminal offence if committed on its territory; and
- g) the Transferring and Receiving States agree to the transfer.

Article 5

Obligation to provide information

Any sentenced person to whom this Agreement may apply shall be informed by the Transferring State of the substance of this Agreement and of the legal consequences of transfer.

Article 6

Request and supporting documents

- 1) Any sentenced person may request to be transferred under this Agreement submitting a written request to the authorities of either the Transferring or Receiving State.
- 2) If the request is submitted by the sentenced person to the Receiving State that State shall transmit it to the Transferring State.
- 3) The Transferring State shall transmit to the Receiving State the following:
 - a) in case the request is submitted to the Transferring State, a copy of that request;
 - b) name, date and place of birth and address in the Receiving State, if any, of the sentenced person, along with a copy of his passport or any other personal identification documents and fingerprints, as possible;
 - c) information on the nature, duration and date of commencement of the sentence;
 - d) a statement of the facts upon which the sentence was based;
 - e) a certified true copy of the final judgment;
 - f) a copy of the law provisions on which the sentence is based;
 - g) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission of sentence or any other relevant element to the enforcement of the sentence;
 - h) whenever appropriate, any medical or social report on the sentenced person, any information on his/her treatment in the Transferring State and any recommendation for continuing his/her treatment in the Receiving State.
 - i) a statement from the Transferring State agreeing to the transfer of the sentenced person.
- 4) For the purpose of enabling a decision to be made on a request under this Agreement, the Receiving State shall send the following information and documents to the Transferring State unless either the Receiving or the Transferring State has already decided that it will not agree to the transfer:
 - a) a statement or document indicating that the sentenced person is a national of the Receiving State;
 - b) a copy of the relevant law of the Receiving State which provides that the acts or omissions on account of which the sentence has been imposed in the Transferring State constitute a criminal offence according to the law of the Receiving State, or would constitute a criminal offence if committed on its territory;
 - c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the Receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 3 of Article 9 of this Agreement on his transfer;

- d) the willingness of the Receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence still to be served;
 - e) any other information or document which the Transferring State may consider necessary.
- 5) Any request and any reply shall be made in writing and addressed to the Central Authorities of the Contracting States.

Article 7

Consent and its verification

- 1) The Transferring State shall ensure that the person required to give consent to the transfer does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the Transferring State.
- 2) If the Receiving State makes express request, before the transfer is carried out, the Transferring State shall grant the other an opportunity to verify, through an official appointed in compliance with the law of the Receiving State, that the consent of the sentenced person is given voluntarily and with full knowledge of the legal consequences thereof.

Article 8

Decision

The authorities of the Contracting States, before deciding on the transfer of a sentenced person in compliance with the aims of this Agreement, in order to favour and facilitate the social rehabilitation of the convicted person shall consider, among other factors, the sovereignty, security and any other essential interest of the State, as well as the seriousness of the offence committed, any previous conviction, the social and family bonds with the environment of origin and health conditions.

Article 9

Continued enforcement of sentence

- 1) Save as provided under Article 11 of this Agreement, the Authorities of the Receiving State shall continue to enforce the sentence complying with the nature and duration of the sentence inflicted by the judgment of the Transferring State.
- 2) The enforcement of the sentence shall be governed by the law of the Receiving State and that State alone shall be competent to take all appropriate decisions.
- 3) If the sentence is by its nature or duration or both, incompatible with the law of the Receiving State, that State may, with the prior consent of the Transferring State, adapt the sentence to a sentence prescribed by its own law for a similar offence. As to its nature and duration, the adapted sentence shall, as far as possible, correspond with that imposed by the judgement of the Transferring State. It shall, however, not aggravate, by its nature or duration, the sentence imposed by the Transferring State.

Article 10

Review of judgment

The Transferring State alone shall have the right to decide on any application for review of the judgment.

Article 11

Pardon, Amnesty or Commutation

- 1) Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its domestic law, giving immediate communication thereof to the other State.
- 2) The Receiving State, after being informed of one of the above measures of clemency, shall immediately enforce it in compliance with its own laws.

Article 12

Termination of enforcement

The Receiving State shall terminate enforcement of the sentence as soon as it is informed by the Transferring State of any decision or measure as a result of which that sentence ceases to be enforceable.

Article 13

Information on enforcement of sentence

The Receiving State shall inform the Transferring State:

- a) when the enforcement of the sentence has been completed;
- b) if the sentenced person has escaped from custody before enforcement of the sentence has been completed. In such cases, the Receiving State shall take measures to secure his arrest for the purpose of serving the remainder of his sentence and render him also liable for escaping from prison under the relevant law of the Receiving State.
- c) if the Transferring State requests a special report.

Article 14

Transit

- 1) If either Contracting State enters into arrangements for the transfer of a sentenced person with any third State, the other shall cooperate in order to facilitate the transit of the said sentenced person through its territory. The State where the person transferred is directed shall submit to the other State a request for transit in advance.
- 2) A State may refuse to grant transit if the sentenced person is one of its nationals.
- 3) Requests for transit and relevant replies shall be communicated as per Article 3 of this Agreement.

Article 15

Costs

- 1) Any cost deriving from the enforcement of this Agreement shall be borne by the Receiving State, except for costs incurred exclusively on the territory of the Transferring State.
- 2) The Receiving State may, however, demand or seek to recover all or part of costs of transfer from the sentenced person or from any other source.

Article 16

Language

Requests and supporting documents shall be in English or accompanied by a translation into English.

Article 17

Scope of Application

This Agreement shall apply to the enforcement of sentences imposed before or after its entry into force.

Article 18

Settlement of Disputes

- 1) The Central Authorities shall endeavour to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement.
- 2) If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels.

Article 19

Handing Over of Sentenced Persons

The handing over of the transferred person by the Transferring State to the Receiving State shall occur at a place to be agreed upon between the Transferring and Receiving States. The Receiving State shall be responsible for the transport of the prisoner from the Transferring State and shall also be responsible for custody of the sentenced person outside its territory.

Article 20

Final Provisions

- 1) This Agreement shall be subject to ratification. Each Contracting State shall notify the other as soon as possible, in writing, through diplomatic channels, upon the completion of its legal procedures required for the entry into force of this Agreement. The Agreement shall come into force on the first day of the second month of the date of the last notification.

- 2) Any amendment or modification to this Agreement agreed upon by the Contracting States shall come into force as the Agreement itself.
- 3) The Agreement shall remain in force for an indefinite period. It may, however, be terminated by either Contracting State by giving a written notice of termination to the other. The termination shall take effect after six months from the date of such notice.
- 4) Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of persons who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Rome (Italy) on the 10th day of August 2012, in the Hindi, English and Italian languages, all texts being equally authentic. In case of differences in interpretation, the English text shall prevail.

**For the Government of
the Republic of India**

**For the Government of
the Republic of Italy**

Agreement between the Government of India and the Government of State of Israel on the Transfer of Sentenced Persons

The Government of Republic of India and the Government of State of Israel hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences in their own society;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

- (a) “judgment” means a decision or order of a court or tribunal imposing a sentence;
- (b) “receiving State” means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment in the exercise of its criminal jurisdiction;
- (d) “sentenced person” means a person undergoing a sentence of imprisonment under a judgment passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
- (e) “transferring State” means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2

General Principles

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.
2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

ARTICLE 3

Conditions for transfer

1. A sentenced person may be transferred under this Agreement on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) the death penalty has not been imposed on the sentenced person;
 - (c) the judgment is final;
 - (d) no criminal proceedings are pending against the sentenced person in the transferring State in which his presence is required;
 - (e) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment.
 - (f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
 - (g) the sentenced person has not been convicted for an offence under the military law;
 - (h) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other essential interest of the transferring State;
 - (i) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - (j) the transferring and receiving States agree to the transfer.
2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 4

Obligation to furnish information

1. If the sentenced person has expressed an interest to the transferring State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - (a) the name and nationality, date and place of birth of the sentenced person;
 - (b) his address, if any, in the receiving State;
 - (c) a statement of the facts upon which the sentence was based;
 - (d) the nature, duration and date of commencement of the sentence;

- (e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (g) any other information which the receiving State may specify as required, to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - (h) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (i) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- (a) a statement or document indicating that the sentenced person is a national of the receiving State;
 - (b) a copy of the relevant law of the receiving State which provides that the acts or omissions on account of which the sentence has been imposed in the transferring State constitute a criminal offence according to the law of the receiving State, or would constitute a criminal offence if committed on its territory;
 - (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this Agreement on his transfer;
 - (d) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - (e) any other information or document which the transferring State may consider necessary.

ARTICLE 5

Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed by the central authority of the transferring State through diplomatic channels to the Central Authority of the receiving State. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the Central Authority shall be, in relation to India, the Ministry of Home Affairs; and in relation to the State of Israel, the Ministry of Justice.
3. The receiving State shall promptly inform the transferring State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

Effect of transfer for the receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.
2. Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 8

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

ARTICLE 9

Effect of completion of sentence for the transferring State

When the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging the sentence in the transferring State.

ARTICLE 10

Review of judgment and pardon, amnesty or commutation

- (1) The transferring State alone shall decide on any application for review of the judgment.
- (2) Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

ARTICLE 11

Termination of enforcement of sentence

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 12

Information on enforcement of sentence

1. The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed; or
 - (b) If the sentence person escapes from custody before enforcement of the sentence has been completed, in such cases the receiving State shall take measures to secure his arrest for the purposes of serving the remainder of his sentence and to render him/her liable for committing an offence under the relevant law of the receiving State.
2. The receiving State shall furnish a special report concerning the enforcement of the sentence if so required by the transferring State.

ARTICLE 13

Transit

1. If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit.
 - (a) If the sentenced person is one of its own nationals.
 - (b) If the request may infringe upon the sovereignty, safety, public order or any other essential interest of the Contracting State.
2. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit

ARTICLE 14

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, demand or seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 15

Language

Requests and supporting documents shall be in English or shall be accompanied by a translation into English.

ARTICLE 16

Scope of Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 17

Amendments

Any amendments or modifications to this Agreement agreed by the Contracting States shall come into force in the same manner as the Agreement itself.

ARTICLE 18

Final provisions

1. This Agreement shall be subject to ratification. Each Contracting State shall notify the other as soon as possible, in writing, through diplomatic channels, upon the completion of its legal procedures required for the entry into force of this Agreement. The Agreement shall come into force on the first day of the second month of the date of the last notification.
2. The Agreement shall remain in force for an indefinite period. It may, however be terminated by either of the Contracting State by giving a written notice of termination to the other Contracting State. The termination shall take effect after six months of the date of such notice.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoner who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Jerusalem on the 10th day of January 2012, which correspond to the 15 day of Tevet, 5772, in the Hebrew, Hindi and English languages, all texts being equally authentic. In case of differences in interpretation the English text shall prevail

For the Government of
the Republic of India:

For the Government of
the State of Israel:

Agreement between the Republic of India and Bosnia and Herzegovina on the Transfer of Sentenced Persons

The Republic of India and Bosnia & Herzegovina hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences in their own society;

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

- (a) “judgement” means a decision or order of a court or tribunal imposing a sentence;
- (b) “receiving State” means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (c) “transferring State” means the State in which the sentence was imposed on the person who may be, or has been transferred;
- (d) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
- (e) “sentenced persons” means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States.

Article 2

General Principles

- (1) A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence or remainder of the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.
- (2) Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on this behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

Article 3

Central Authorities

- (1) Authorities in charge for decision making and the implementation of this Agreement for the Contracting States are:
 - For the Republic of India: Ministry of Home Affairs
 - For the Bosnia and Herzegovina: Ministry of Justice of Bosnia and Herzegovina
- (2) In case either Contracting State changes its competent authorities, it shall notify the other State of the same through official channels.

Article 4

Conditions for Transfer

- (1) A sentenced person may be transferred under this Agreement only on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) the death penalty has not been imposed on the sentenced person;
 - (c) the judgement is final;
 - (d) no inquiry, trial or any other proceeding is pending against the sentenced person in the transferring State;
 - (e) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;
 - (f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
 - (g) the sentenced person has not been convicted for an offence under the military law;
 - (h) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;
 - (i) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - (j) the transferring and receiving States agree to the transfer.
- (2) In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

Article 5

Obligation to furnish information

- (1) If the sentenced person has expressed an interest to the sentencing State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - (a) the name and nationality, date and place of birth of the sentenced person;
 - (b) his address, if any, in the receiving State;
 - (c) a statement of the facts upon which the sentence was based;
 - (d) the nature, duration and date of commencement of the sentence;
 - (e) a certified copy of the judgement and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (g) any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - (h) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (i) a statement indicating how much of the sentence has already been served, including information on any pretrial detention, remission, or any other factor relevant to the enforcement of the sentence.

- (2) For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - (a) a statement or document indicating that the sentenced person is a national of the receiving State;
 - (b) a copy of the relevant law of the receiving State constituting the acts or omissions, on account of which the sentence has been passed in the transferring State, as if such acts or omissions were an offence under the law of the receiving State or would constitute an offence if committed on its territory;
 - (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 9 of this Agreement on his transfer;
 - (d) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - (e) any other information or document which the transferring State may consider necessary.

Article 6

Request and replies

- (1) Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed through the central authority of the requesting State through diplomatic channels to the central authority of the requested State. Replies shall be communicated through the same channels.
- (2) The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

Article 7

Consent and its verification

- (1) The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1 (i) of Article 4 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
- (2) The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

Article 8

Effect of transfer for the receiving State

- (1) The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 9 of this Agreement.
- (2) Subject to the provisions of Article 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

Article 9

Continued enforcement of sentence

- (1) The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
- (2) If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgement of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

Article 10

Effect of completion of sentence for the transferring State

When the receiving State notifies the transferring State under paragraph 1 (a) of Article 13 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.

Article 11

Review of Judgement and Pardon, amnesty or commutation

- (1) The transferring State alone shall decide on any application for the review of the judgement.
- (2) Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

Article 12

Termination of enforcement of sentence

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 13

Information on enforcement of sentence

- (1) The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed; or
 - (b) if the prisoner escapes from custody before enforcement of the sentence has been completed. In such cases the receiving State shall make every effort to have the prisoner arrested so that he serves the remainder of his sentence and that the prisoner be prosecuted for committing an offence under the relevant law of the receiving State on escape of prisoner.
- (2) The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

Article 14

Transit

If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

Article 15

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, if permitted by their domestic law/rules, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

Article 16

Language

Requests and supporting documents shall be accompanied by a translation into the language or one of the official languages of the requesting State.

Article 17

Scope of Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

Article 18

Amendments

Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect from confirmed by an Exchange of Diplomatic Notes.

Article 19

Final Provisions

- (1) This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.
- (2) The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.
- (3) Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective authorities, have signed this Agreement.

Done in duplicate at Sarajevo on the 13th day of December 2012, in Hindi, English and official languages of Bosnia and Herzegovina (Bosnian, Croatian and Serbian), all texts being equally authentic. In case of differences in interpretation, the English text shall prevail.

For the Republic of India

(GAURI SHANKAR GUPTA
AMBASSADOR OF INDIA)

For Bosnia and Herzegovina

(BARISA COLAK
MINISTER OF JUSTICE)

Agreement on the Transfer of Sentenced Persons between the Republic of India and the Republic of Turkey

The Republic of India and the Republic of Turkey hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving foreign nationals, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

1. “judgment” means a decision or order of a court or tribunal imposing a finalized sentence;
2. “receiving State” means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence or remainder thereof;
3. “sentence” means any final punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time, or for life imprisonment, in the exercise of its criminal jurisdiction;
4. “sentenced person” means a person undergoing a sentence of imprisonment under a judgment passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
5. “transferring State” means the State in which the sentence was imposed on the person who may be or has been transferred.

ARTICLE 2

General Principles

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.
2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf or by his/her legal representative in accordance with the laws of the Contracting State or by making an application to the Contracting State and in the manner prescribed by the laws of the Contracting State.

ARTICLE 3

Central Authorities

1. Authorities in charge of the implementation of this Agreement for the Contracting State are:
For the Republic of India: the Ministry of Home Affairs;
For the Republic of Turkey: the Ministry of Justice
2. In case either Contracting State changing its competent authorities, it shall notify the other Contracting State of the same through official channels.

ARTICLE 4

Conditions for Transfer

1. A sentenced person may be transferred under this Agreement only on the following conditions:
 - a) the person is a national of the receiving State;
 - b) the judgment is final;
 - c) no criminal proceedings are pending against the sentenced person in the transferring State in which his presence is required;
 - d) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;
 - e) that the acts or omissions for which that person was sentenced in the transferring state are those which are punishable as a crime in the receiving state or would constitute a criminal offence if committed on its territory;
 - f) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other essential interest of the transferring State;
 - g) if the transfer is consented to by the sentenced person or, where in view of his/her age or physical or mental condition one of the two Contracting States considers it necessary, by the sentenced persons' legal representative or by any other person who is entitled to act on his/her behalf; and
 - h) the transferring and receiving States agree to the transfer.
2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 5

Obligation to Furnish Information

1. If the sentenced person has expressed an interest to the transferring State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving state unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - a) the name and nationality, date and place of birth of the sentenced person and his address, if any, in the receiving State along with a copy of his passport or any other personal identification documents, and fingerprints of the sentenced person, as possible;
 - b) a statement of the facts upon which the sentence was based;
 - c) the nature, duration and date of commencement of the sentence;
 - d) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - e) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - f) any other information which the transferring State may specify as required to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him/her under its law;
 - g) the request of the sentenced person to be transferred or of a person entitled to act on his/her behalf in accordance with the law of the transferring State or of the sentenced person's legal representative;
 - h) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence, and
 - i) After furnishing of the requisite information, a statement from the transferring State agreeing to the transfer of the Sentenced Person shall be provided to the receiving State.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - a) a statement or document indicating that the sentenced person is a national of the receiving State;
 - b) a copy of the relevant law of the receiving State which provides that that the acts or omissions on account of which the sentence has been imposed in the transferring State constitute a criminal offence according to the law of the receiving State, or would constitute a criminal offence if committed on its territory;
 - c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 9 of this Agreement on his transfer;

- d) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
- e) any other information or document which the transferring State may consider necessary.

ARTICLE 6

Requests and Replies

1. Requests for transfer shall be made in writing by the central authority of the transferring State through diplomatic channels to the central authority of the receiving State. Replies shall be communicated through the same channels.
2. The receiving State shall promptly inform the transferring State of its decision whether or not to agree to the requested transfer.

ARTICLE 7

Consent and its Verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1 (g) of Article 4 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify through a consul or other official appointed in compliance with the law of the receiving State, that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 8

Effect of Transfer for the Receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 9 of this Agreement.
2. Subject to the provisions of Article 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 9

Continued Enforcement of Sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.

2. If the sentence is by its nature or duration, or both, incompatible with the law of the receiving State, that State may, with the prior consent of the transferring State, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or ensure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed by the transferring State.

ARTICLE 10

Effect of Completion of Sentence for The Transferring State

When the receiving State notifies the transferring State under paragraph 1(a) of Article 13 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.

ARTICLE 11

Review of Judgment and Pardon, Amnesty or Commutation of Sentence

1. The transferring State alone shall have the right to decide on any application for the review of the judgment.
2. Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

ARTICLE 12

Termination of Enforcement of Sentence

1. The transferring State shall promptly notify the receiving State of any decisions taken in its territory which entails terminating the enforcement of the sentence or part thereof.
2. The receiving State shall terminate enforcement of the sentence or part thereof as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 13

Information on Enforcement of Sentence

1. The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed; or
 - (b) If the sentenced person escapes from custody before enforcement of the sentence has been completed, in such cases, the receiving State shall take measures to secure his arrest for the purposes of serving the remainder of his sentence and to render him/her liable for committing an offence under the relevant laws of the receiving State.
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 14

Transit

1. If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit;
 - a) if the sentenced person is one of its own nationals, or,
 - b) if the request may infringe upon the sovereignty, safety, public order or any other essential interest of the Contracting State.
2. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 15

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, demand or seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 16

Language

Requests and supporting documents shall be in the official language of each Contracting State and shall be accompanied by an English translation.

ARTICLE 17

Scope of Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 18

Settlement of Disputes

1. The Central Authorities shall endeavor to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement.
2. If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels.

ARTICLE 19

Handing Over of Sentenced Persons

The handing over of the transferred person by the transferring State to the receiving State shall occur at a place to be agreed upon between the transferring and receiving State. The receiving State shall be responsible for the transport of the prisoner from the transferring State and shall also be responsible for custody of the sentenced person outside the territory of the transferring State.

ARTICLE 20

Amendments

Any amendments or modifications to this Agreement agreed to by the Contracting States shall come into force in the same manner as the Agreement itself.

ARTICLE 21

Final Provisions

1. This Agreement shall enter into force on the 30th day after the last notification of either of the Contracting States in writing is received that their respective constitutional requirements for entry into force of this Agreement have been complied with.
2. Each Contracting State may terminate this Agreement by giving a written notice of termination to the other Contracting State. The termination shall take effect after six months of the date of receipt of such notice.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Ankara on the 30 day of October, 2012, in the Hindi, Turkish and English languages, all texts being equally authentic. In case of differences in interpretation, the English text shall prevail.

**FOR
THE REPUBLIC OF INDIA**

**FOR
THE REPUBLIC OF TURKEY**

**SUSMITA GONGULEE THOMAS
AMBASSADOR EXTRAORDINARY AND
PLENIPOTENTIARY OF THE
REPUBLIC OF INDIA**

**SADULLAH ERGIN
THE MINISTER OF JUSTICE**

Agreement between the Republic of India and the Federative Republic of Brazil

The Republic of India and the Federative Republic of Brazil hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced person into their own countries;

and

Considering that his objectives should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society

Have agreed as follows:

ARTICLE 1 **DEFINITIONS**

For the purpose of this agreement:

- a) “Judgment” means a decision or order of court or tribunal imposing a sentence;
- b) “Receiving State” means a state to which the sentence person may be or has been, transferred in order to serve his sentence;
- c) “Sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time, in the exercise of its criminal jurisdiction;
- d) “Sentenced person” means a person who is serving a definitive and enforceable sentence in the transferring state under a judgment passed by a criminal court in a Contracting States;
- e) “Transferring State” means the state in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2 **GENERAL PRICIPLES**

1. The Sates agree to maintain highest possible mutual cooperation in all matters related to the transfer to sentenced persons pursuant to the terms and provisions of this Agreement;
2. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him and to that end. may express to the transferring State or to the receiving State his or her wish to be transferred under the terms of this Agreement;

3. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State (s).

ARTICLE 3

CONDITIONS FOR TRANSFER

1. A sentenced person may be transferred under this Agreement only on the following conditions:
 - a) the sentenced person is a national of the receiving State;
 - b) the death penalty has not been imposed on the sentenced person;
 - c) the judgment is final;
 - d) no inquiry, trial or any other proceeding is pending against the sentenced person in the transferring State;
 - e) at the time of receipt of the request for transfer, the sentenced person still has at least has one year of the sentence to serve;
 - f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
 - g) the sentenced person has not been convicted for an offence under the military law;
 - h) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;
 - i) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State: and
 - j) Both the transferring and the receiving State agree to the transfer.
2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than one year.

ARTICLE 4

OBLIGATION TO FURNISH INFORMATION

1. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - a) the name and nationality, date and place of birth of the sentenced person;

- b) his address or his relative (s) address, if any, in the receiving State;
 - c) a statement of the facts upon which the sentence was based;
 - d) the nature, duration and date of commencement of the sentence;
 - e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - g) any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - h) the written request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State;
- and
- i) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
2. Documents presented by the Contracting States pursuant to the provisions of this Agreement shall be exempt from Consular Authentication.
 3. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - a) a statement or document indicating that the sentenced person is a national of the receiving State;
 - b) a copy of the relevant law of the receiving State constituting the acts or omissions, on account of which the sentence has been passed in the transferring State, as if such acts or omissions were an offence under the law of the receiving State or would constitute an offence if committed on its territory;
 - c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this Agreement on his transfer;
 - d) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - e) any other information or document which the transferring State may consider necessary.
 4. The convicted person shall be informed of any decision made by the Contracting States.

ARTICLE 5

THE CENTRAL AUTHORITIES

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed through the central authority of the Requesting State through diplomatic channels to the central Authority of the Requested State. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the Central Authority shall be, in relation to the Republic of India, the Ministry of Home Affairs; and in relation to the Federative Republic of Brazil, the Ministry of Justice.
3. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

CONSENT AND ITS VERIFICATION

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

EFFECT OF TRANSFER FOR THE RECEIVING STATE

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.
2. A Sentenced person who has been transferred under the provisions of this Agreement shall not be arrested or put on trial or sentenced by the receiving State for the same offence for which he has already been sentenced in the transferring State.
3. Subject to the provisions of Article 10 & 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 8

CONTINUED ENFORCEMENT OF SENTENCE

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

ARTICLE-9

PHYSICAL TRANSFER & COSTS

1. Upon approval of the transfer of the sentenced person, the transferring State shall handover the sentenced person to the Receiving State on the date and venue agreed upon by the competent authorities of the Contracting States.
2. Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 10

PARDON, AMNESTY OR COMMUTATION AND REVIEW OF JUDGMENT

1. The transferring State alone shall decide on any application for the review of the judgment.
2. Only the transferring State may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

ARTICLE 11

TERMINATION OF ENFORCEMENT OF SENTENCE

1. The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.
2. On being notified of any changes in the sentence, the receiving State shall immediately adopt the necessary measures to put them into effect.

ARTICLE 12

INFORMATION ON ENFORCEMENT OF SENTENCE

1. The receiving State shall notify the transferring State:
 - a) when the enforcement of the sentence has been completed; or
 - b) If the prisoner escapes from custody before enforcement of the sentence has been completed. In such cases the receiving State shall make every effort to have the prisoner arrested so that he serves the remainder of his sentence.
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 13

EFFECT OF COMPLETION OF SENTENCE FOR THE TRANSFERRING STATE

When the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.

ARTICLE 14

TRANSIT

1. If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals.
2. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.
3. The advance notice as mentioned in 14(2) above, for transit of sentenced persons will not be necessary, in case of an unforeseen landing in the territory of the transit State, except in the case of military aircraft.
4. The transit State may or may not permit the passage of the sentenced person through its territory, and so inform the other Contracting State.

ARTICLE 15

LANGUAGE

Requests and supporting documents shall be accompanied by a translation into the language or one of the official languages of the requesting State. For the Federative Republic of Brazil, the official language shall be Portuguese and for the Republic of India, it shall be English.

ARTICLE 16
SCOPE OF APPLICATION

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 17
SETTLEMENT OF DISPUTES

Any dispute between the Contracting States regarding the interpretation of the provisions set forth in this Agreement shall be settled by means of negotiations between the respective Central Authorities. In case of not reaching an agreement, the dispute shall be settled through diplomatic channels.

ARTICLE 18
AMENDMENTS

Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect in the same manner as the Agreement itself.

ARTICLE 19
FINAL PROVISIONS

1. This Agreement shall be subject to ratification and shall enter into force thirty days after the date on which instruments of ratification are exchanged.
2. The Agreement shall remain in force an indefinite period. It may, however be terminated by either of the Contracting States by giving a written notice of termination. The termination shall take effect six months after the date of such notice.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at **Brasilia** on this 15 day of **October of the two thousand and thirteen** in the Hindi, Portuguese and English languages, all texts being equally authentic.

For the Republic of India

For the Federative Republic of Brazil

Treaty between the Republic of India and the Russian Federation on Transfer of Sentenced Persons

THE REPUBLIC OF INDIA and THE RUSSIAN FEDERATION, hereinafter referred to as the “Contracting States”,

ASPIRING to facilitate the process of social rehabilitation of sentenced persons,

CONSIDERING that this objective should be fulfilled by giving foreign nationals, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences in their country of nationality;

HEREBY have agreed as follows:

Article 1

Scope of the Treaty

1. The Contracting States shall, in accordance with the terms and conditions of this Treaty, provide each other with the widest measure of assistance in matters related to transfer of sentenced persons.
2. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Treaty in order to serve the sentence imposed. For that end such person or his/her legal representative may apply to either Transferring State or Receiving State for his/her transfer in accordance with the provisions of this Treaty.
3. The request, for transfer may be submitted by either Transferring State or Receiving State.

Article 2

Definitions

For the purposes of this Treaty, the following terms shall mean:

- 1) “judgment” - a final court decision imposing sentence for a crime committed. The term “judgment” shall also include final court decisions imposing death penalty, later substituted for a fixed term of deprivation of liberty or for life imprisonment in Transferring State;
- 2) “sentence” - any punishment including deprivation of liberty, imposed by judgment of criminal court;
- 3) “sentenced person” - a person serving a sentence in the form of deprivation of liberty, imposed by a judgment of criminal court;
- 4) “Transferring State” - a State, the court of which has sentenced a person that may be transferred or has been transferred;
- 5) “Receiving State” - a State, to which the sentenced person may be transferred or has been transferred in order to serve the sentence.

Article 3

Conditions for Transfer

1. A sentenced person may be transferred under this Treaty only on the following conditions:
 - 1) the sentenced person is a national of the Receiving State ;
 - 2) the judgment is final, and there are no proceedings pending in respect of this person;
 - 3) at the time of receipt of request for transfer, the part of sentence to be served by the sentenced person is not less than six months. In exceptional cases, the Contracting States may agree on transfer if the remaining term of sentence is less than that specified above;
 - 4) there is a written consent by the sentenced person for his/her transfer for execution of sentence in the territory of the Receiving State and in case of his/her inability to freely express his/her will due to age, physical or mental condition - a written consent by his/her legal representative. The Transferring State shall provide a consular officer or any other official of the Receiving State with an opportunity to verify that the consent for transfer or rejection thereof was given voluntarily and with understanding of legal consequences of such transfer;
 - 5) the crimes for which the sentence was imposed are punishable by deprivation of liberty according to criminal laws of the Receiving State;
 - 6) Transferring State and Receiving State have clearly given their consent for transfer.
2. The transfer may be rejected if:
 - 1) the Transferring State considers that transfer of the person would impair its sovereignty, security, public order or other essential interests;
 - 2) the sentenced person cannot be transferred according to the laws of either of the Contracting States;
 - 3) the sentenced person has not fulfilled any financial obligations arising from a court judgment, or if, in the opinion of the Transferring State, the guarantees of fulfillment such obligations are insufficient;
 - 4) the death sentence has been imposed on the sentenced person
 - 5) the sentence cannot be executed in the Receiving State due to reasons stipulated in the laws of such State.

Article 4

Central Authorities

1. The Central Authorities in charge of the implementation of this Treaty are:
For the Republic of India - Ministry of Home Affairs of the Republic of India,
For the Russian Federation - Ministry of Justice of the Russian Federation

2. When implementing this Treaty, the Central Authorities shall communicate directly.
3. The Contracting State shall immediately notify the other Contracting State of any changes connected with its respective Central Authority through diplomatic channels.

Article 5

Obligation to Provide Information

1. Any sentenced person to whom this Treaty may be applied shall be informed by the Transferring State of the contents of this Treaty as well as of legal consequences of such transfer.
2. If the sentenced person applies to the Transferring State for his/her transfer, that State shall promptly inform the Receiving State.
3. Such notice shall include:
 - 1) surname, name (patronymic), date and place of birth, nationality of the sentenced person;
 - 2) information about permanent place of residence of the sentenced person in the Receiving state, if known;
 - 3) a statement of the facts, upon which the sentence was based;
 - 4) the nature, duration and date of commencement of the sentence;
 - 5) a certified copy of the judgment;
 - 6) the text of applicable provisions of the criminal laws;
 - 7) report of the medical condition of the sentenced person and other relevant information.
4. If the sentenced person applies to the Receiving State for transfer pursuant to the provisions hereof, the Transferring State shall provide the Receiving State on request with the information specified in paragraph 3 of this Article.
5. The sentenced person shall be informed in writing of any action taken by the Receiving State or by the Transferring State under the preceding paragraphs as well as of any decision taken by either of the Contracting States on request for transfer.

Article 6

Requests and Responses

1. Requests for transfer and responses to them shall be made in writing and forwarded to the Central Authorities appointed in accordance with this Treaty.
2. The Requested State shall promptly inform the Requesting State of its decision to accept or reject the request of transfer.
3. The request shall contain information about the sentenced person (surname, name (patronymic), date and place of birth), and shall be accompanied by the documents indicating the nationality of the sentenced person and his/her permanent place of residence.

4. The Central Authority of the Transferring State shall also accompany the request with:
 - 1) certified copies of the judgment and all relevant court decisions and a document confirming that the judgment has become final;
 - 2) the document pertaining to enforcement of the judgment including the part of sentence served in the form of deprivation of liberty and the part of sentence to be served as well as the document indicating sentenced person's behavior while serving the sentence;
 - 3) the text of provisions of the criminal law on account of which the person was sentenced;
 - 4) a written consent of the sentenced person for his/her transfer for execution of a sentence in the territory of the Receiving State and in case of his/her inability to freely express his/her will due to age, physical or mental condition - a written consent of his/her legal representative;
 - 5) the document indicating the financial implications imposed by the judgment on the sentenced persons;
 - 6) a report on the medical condition of the sentenced person and on the ability of the sentenced person to be transferred to the territory of the Receiving State.
5. The Central Authority of the Receiving State in case of agreeing to the transfer request, may provide the following information:-
 - 1) a written consent to receive the sentenced person to serve the remaining sentence;
 - 2) authenticated copy of decision by the court or any other Competent Authority regarding applicable laws relating to the duration and enforcement of sentence in the Receiving State after the sentenced persons transfer;
 - 3) certified extracts from the laws on the basis of which the sentenced person will serve the sentence;
 - 4) a document confirming the nationality of the sentenced person.
6. If necessary, the Central Authorities of the Contracting States may request any additional documents or information.

Article 7

Expenses

Expenses incurred in the transfer of the sentenced person, including the expenses on transit, shall be borne by the Receiving State, except expenses incurred in the territory of the Transferring State.

Article 8

Procedure of Transfer

1. The Central Authority of either Contracting State after receipt of all necessary documents shall promptly inform the Central Authority of the other Contracting State of its consent/rejection to transfer or receive the sentenced person, subject to the terms and conditions of this Treaty.
2. Place, time and procedure of transfer of the sentenced person shall promptly be determined by the Central Authorities of the Contracting States.

Article 9

Enforcement of Sentence

1. The Receiving State shall ensure the continuing of enforcement of sentence in accordance with its laws and is bound by the legal nature and duration of the sentence as determined by the Transferring State.
2. The court or any other competent authority of the Receiving State, on the basis of the judgment of the Transferring State, shall, subject to and in accordance with the laws of its State, impose the same term of imprisonment as far as possible as that imposed in the judgment and shall not aggravate the sentence.

If, according to the laws of the Receiving State, the maximum term of imprisonment for the crime committed is less than that imposed by the judgment, the court or any other competent authority of the Receiving State shall impose the maximum term of imprisonment provided for by the laws of the Receiving State for committing the same crime.

3. The part of the sentence served in the territory of the Transferring State shall be deducted from the total term of the sentence.
4. Decision on enforcing any other punishment along with deprivation of liberty impose by the judgment shall be taken by the court or any other competent authority of the Receiving State, if such punishment for the crime committed is provided for by the law of such State.

Article 10

Pardon, Amnesty, Commutation of Sentence and Review of Judgment

1. Either of the Contracting States may grant pardon, amnesty or commutation of sentence in accordance with its Constitution or other laws.
2. Only the Transferring State shall have the jurisdiction to decide an appeal or review of the judgment.

Article 11

Non bis in idem

After transfer, the sentenced person shall not be prosecuted or proceeded against in the Receiving State for the same criminal acts as the ones on account of which the sentence was imposed in the Transferring State.

Article 12

Modification and Termination of Enforcement of Sentence

1. The Transferring State shall promptly notify the Receiving State of any decision which entail modification or termination of the enforcement of sentence.
2. The Receiving State shall terminate enforcement of the sentence or part thereof as soon as it is informed by the Transferring State of any relevant decision.

Article 13

Revision and Remission of Judgment

1. If, after the transfer of the sentenced person for serving the sentence, the judgment is revised by the court of the Transferring State, a copy of the judgment and other necessary documents shall be promptly submitted to the Central Authority of the Receiving State. The Receiving State shall resolve the issue of enforcing such decision as specified in Article 9 of this Treaty.
2. If, after the transfer of the sentenced person for serving the sentence, the sentence is remitted in the Transferring state, a copy of the decision shall be promptly submitted to the Central Authority of the Receiving State.

Article 14

Exchange of Information

1. The Central Authority of the Receiving State shall inform the Central Authority of the Transferring State of the decision taken by a court or competent authority in order to enforce the sentence, of granting pardon, amnesty or parole and in case of escape or death of the sentenced person.
2. The Central Authority of the Receiving State on request of the Central Authority of the Transferring State shall provide information on the process of serving the sentence after the sentenced person's transfer.
3. The Receiving State shall also inform the Transferring State when the enforcement of the sentence has been completed.

Article 15

Transit

1. A Contracting State shall in accordance with its law satisfy a request for transit of a sentenced person through its territory if such request is made by the other Contracting State, which has agreed with a third State to the transfer of that person.
2. A Contracting State may refuse to permit transit if:
 - 1) the sentenced person is its national;
 - 2) the crime for which the sentence was imposed is not considered as such under its law.
3. The request for transit shall include the information specified in Paragraph 3 of Article 6 and shall be accompanied by the documents specified in Paragraph 1 and subparagraphs 1 and 3 of Paragraph 4 of Article 6 of this Treaty.
4. The Contracting State requested to permit transit may hold the sentenced person in custody only for such time as transit through its territory requires.
5. A request for transit is not required if such transit is carried out by air and no landing in the territory of the other Contracting State is expected. However, that Contracting State has to be notified of any such transit over its territory.

Article 16

Languages

The request and supporting documents, notifications and information shall be in the language of the requesting Contracting State and shall be accompanied with translation into the language of the requested Contracting State or into the English language and shall not be subject to legalization .

Article 17

Temporal Application

This Treaty shall be applicable to enforcement of sentences imposed both before and after its entry into force.

Article 18

Settlement of Disputes

Any disputes, arising between the Contracting States regarding interpretation and implementation of this Treaty, shall be settled through consultations and negotiations by the Central Authorities of the Contracting States.

Article 19

Amendments to the Treaty

This Treaty may be amended by mutual consensus of the Contracting States.

Article 20

Final Provisions

1. This Treaty shall remain in force for an indefinite period of time. The Treaty become binding upon expiry of 30 days from the date of receipt of the last written notice from the Contracting States through diplomatic channels on completion of all internal procedure as required for its commencement.
2. This Treaty terminates upon expiry of 180 days from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it through diplomatic channels.
3. The termination of this Treaty shall not impede finalization of requests for transfer, received prior to the date of termination.
4. Notwithstanding any termination, the provisions of this treaty shall continue to apply to persons who have already been transferred in accordance with this Treaty.

Done in Moscow this 21st day of October 2013 in duplicate, each in English, Hindi and Russian languages, all texts being equally authentic. In case of discrepancies in interpretation, the English text shall prevail.

For the Republic of India

For the Russian Federation

Agreement between the Government of the Republic of India and the Government of the State of Kuwait on the Transfer of Sentenced Persons

The Government of the Republic of India and the Government of the State of Kuwait hereinafter referred to as the “Contracting States”,

Desiring to facilitate the social rehabilitation of the sentenced persons into their own countries;
and

Considering that this objective should be fulfilled by giving citizens/ nationals of the Contracting States, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences in their own society;

Have agreed as follows:

ARTICLE 1 **DEFINITIONS**

For the purpose of this Agreement;

- (a) “judgment” means a decision or order of a court or tribunal imposing a sentence;
- (b) “Administering State” means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence or remainder thereof;
- (c) “Transferring State” means the State in which the sentence was imposed on the person who may be, or has been transferred.
- (d) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
- (e) “sentenced person” means a person undergoing a sentence of imprisonment under a judgment passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;

ARTICLE 2 **GENERAL PRINCIPLES**

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the Transferring State or the Administering State his willingness to be transferred under this Agreement.

2. Transfer may be requested by any sentenced person who is a citizen/national of the Administering State or by any other person who is entitled to act on his behalf by making an application in the manner prescribed.
3. Subject to the provisions of this Agreement, a request for transfer may also be made by the Transferring State or the Administering State subject to the condition that the consent of the sentenced person has been obtained before a request for transfer is made.

ARTICLE 3

CENTRAL AUTHORITIES

1. Authorities in charge of the implementation of this Agreement for the Contracting States are:
 - For the Republic of India: Ministry of Home affairs
 - For the State of Kuwait: International Relations Department, Ministry of Justice.
2. In case either Contracting State changes its competent authorities, it shall notify the other state of the same through diplomatic channels.

ARTICLE 4

CONDITIONS FOR TRANSFER

1. A sentenced person may be transferred under this Agreement on the following conditions:
 - (a) the person is a national of the Administering State;
 - (b) the death penalty has not been imposed on the sentenced person;
 - (c) the judgment is final and executable;
 - (d) no criminal proceedings are pending against the sentenced person in the Transferring State in which his presence is required;
 - (e) the sentenced person has not been convicted for an offence under the military law;
 - (f) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment.
 - (g) that the acts or omissions for which that person was sentenced in the Transferring State are those which are punishable as a crime in the Administering State, or would constitute a criminal offence if committed on its territory;
 - (h) transfer of custody of the sentenced person to the Administering State shall not be prejudicial to the sovereignty, security or any other essential interest of the Transferring State;

- (i) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition, either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - (j) the Transferring and Administering States agree to the transfer.
2. In exceptional cases, the Transferring and Administering States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 5

OBLIGATION TO FURNISH INFORMATION

1. If the sentenced person has expressed an interest to the Transferring State in being transferred under this Agreement, the Transferring State shall send the following information and documents to the Administering State unless either the Administering or the Transferring State has already decided that it will not agree to the transfer:-
- (a) the name and nationality, date and place of birth of the sentenced person and his address, if any, in the Administering State along with a copy of his passport or any other personal identification documents, and fingerprints of the sentenced person, as possible;
 - (b) a statement of the facts upon which the sentence was based;
 - (c) the nature, duration and date of commencement of the sentence;
 - (d) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (e) a medical, social or any other report regarding the antecedents and character of the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (f) any other information which the Administering State may specify as required, to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - (g) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the Transferring State; and
 - (h) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
 - (i) a statement from the Transferring State agreeing to the transfer of the sentenced person.

2. For the purposes of enabling a decision to be made on a request under this Agreement, the Administering State shall send the following information and documents to the Transferring State unless either the Administering or the Transferring State has already decided that it will not agree to the transfer:
 - (a) a statement or document indicating that the sentenced person is a citizen/ national of the Administering State,
 - (b) a copy of the relevant law of the Administering State which provides that the acts or omissions on account of which the sentence has been imposed in the Transferring State constitutes a criminal offence according to the law of the Administering State, or would constitute a criminal offence if committed on its territory;
 - (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the Administering State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 9 of this Agreement on his transfer;
 - (d) the willingness of the Administering State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - (e) any other information or document which the Transferring State may consider necessary.

ARTICLE 6

REQUESTS AND REPLIES

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed by the Central authority of the Transferring State through diplomatic channels to the Central Authority of the Administering State. Replies shall be communicated through the same channel.
2. The Administering State shall promptly inform the Transferring State of its decision whether or not to agree to the requested transfer.

ARTICLE 7

CONSENT AND ITS VERIFICATION

1. The Transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 4 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the Transferring State.
2. The Transferring State shall afford an opportunity to the Administering State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 8

EFFECT OF TRANSFER FOR THE ADMINISTERING STATE

1. The competent authorities of the Administering State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 9 of this Agreement.
2. Subject to the provisions of Article 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the Administering State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 9

CONTINUED ENFORCEMENT OF SENTENCE

1. The Administering State shall be bound by the legal nature and duration of the sentence as determined by the Transferring State.
2. If the sentence is by its nature or duration, or both, incompatible with the law of the Administering State, that State may, with the prior consent of the Transferring State, by court or administrative order, adapt the sentence to a sentence prescribed by its own law for a similar offence. As to its nature and duration, the adapted sentence shall, as far as possible, correspond with that imposed by the judgment of the Transferring State. It shall, however, not aggravate, by its nature or duration, the sentence imposed by the Transferring State.

ARTICLE 10

EFFECT OF COMPLETION OF SENTENCE FOR THE TRANSFERRING STATE

When the Administering State notifies the Transferring State under paragraph 1(a) of Article 13 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging the sentence in the Transferring State.

ARTICLE 11

REVIEW OF JUDGMENT AND PARDON, AMNESTY OR COMMUTATION

1. The Transferring State alone shall decide on any application for review of the judgment.
2. Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its constitution or other laws.
 - (a) if the sentenced person is one of its own citizen/ nationals.
 - (b) if the request may infringe upon the sovereignty, safety, public order or any other essential interest of the Contracting State.

3. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 15

COSTS

Any costs incurred in the application of this Agreement shall be borne by the Administering State, except costs incurred exclusively in the territory of the Transferring State. The Administering State may, however, demand or seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 16

LANGUAGE

Requests and supporting documents shall be in English or shall be accompanied by a translation into English.

ARTICLE 17

SCOPE OF APPLICATION

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 18

SETTLEMENT OF DISPUTES

- (1) The Central Authorities shall endeavor to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement.
- (2) If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels.

ARTICLE 19

HANDING OVER OF SENTENCED PERSONS

The handing over of the transferred person by the Transferring State to the Administering State shall occur at a place to be agreed upon between the Transferring and Administering States. The Administering State shall be responsible for the transport of the prisoner from the Transferring State and shall also be responsible for custody of the sentenced person outside the territory of the Transferring State.

ARTICLE 20
AMENDMENTS

Any amendments or modifications to this Agreement agreed to by the Contracting States shall come into force in the same manner as the Agreement itself.

ARTICLE 21
FINAL PROVISIONS

1. This Agreement shall be subject to ratification in accordance with the Constitutional procedures in force in both Contracting States. It shall become effective after thirty (30) days from the date of last notification by which either Contracting State shall inform the other Contracting State in writing, through diplomatic channels, that all the necessary legal procedures for entry into force of the Agreement have been completed.
2. This Agreement shall continue to remain valid after it enters into force in accordance with paragraph 1 of this Article, unless either Contracting State gives the other a written notice, through the diplomatic channels, of its intention to terminate it. Such termination shall be effective after six (6) months from the date of notice.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoner who have been transferred under this Agreement before the date on which such termination takes effect.

Done at New Delhi on this Eighth (8th) day of November 2013 in two originals, each in Hindi, Arabic and English languages, all texts being equally authentic. In case of differences in interpretation the English text shall prevail.

**For the Government of
the Republic of India**

**(Sushil Kumar Shinde)
Minister of Home Affairs**

**For the Government of
the State of Kuwait**

**(Sabah Khaled Al-Hamad Al-Sabah)
Deputy Prime Minister and
Minister of Foreign Affairs**

Agreement between the Government of the Republic of India and the Government of Australia Concerning Transfer of Sentenced Persons

The Government of the Republic of India and the Government of Australia (“the Contracting States”);

Taking into consideration the laws and regulations in force regarding law enforcement of the Contracting States and the desirability of enhancing their co-operative efforts in law enforcement and the administration of justice;

Desiring to co-operate in the enforcement of penal sentences; and

Desiring to facilitate the rehabilitation and reintegration of sentenced persons into society;

Have agreed as follows:

ARTICLE-1

DEFINITIONS

For the purposes of this Agreement:

- a) “judgement” means a decision or order of a court or tribunal imposing a sentence;
- b) “receiving State” means the State to whose jurisdiction the sentenced person may be, or has been, transferred in order to serve his or her sentence or remainder thereof;
- c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court, tribunal or otherwise for a determinate period of time or for life imprisonment in the exercise of its criminal jurisdiction;
- d) “sentenced person” means a person undergoing a sentence of imprisonment under a judgment passed by a criminal court including the courts established under the law for the time being in force in the jurisdiction of the Contracting States, and also includes a person who has been conditionally released or on whom a suspended sentence has been imposed; and
- e) “transferring State” means the State from whose jurisdiction the sentenced person may be, or has been, transferred.

ARTICLE- 2

GENERAL PRINCIPLES

- 1) The Contracting States undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Agreement.
- 2) A sentenced person may be transferred from the territory of the transferring State to the territory of the receiving State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him or her.

ARTICLE- 3
COMPETENT AUTHORITIES

- 1) The Competent Authorities in charge of the implementation of this Agreement for the Contracting States are:

For Australia: Australian Government Attorney-General's Department

For the Republic of India: Ministry of Home Affairs.
- 2) The Competent Authorities of the Contracting States shall process requests for transfer in accordance with the provisions of this Agreement.
- 3) The Competent Authorities may communicate directly with each other for the purposes of this Agreement.
- 4) Either Contracting State shall notify the other of any change of its Competent Authority in writing through diplomatic channels.

ARTICLE-4
CONDITIONS FOR TRANSFER

A sentenced person may be transferred under this Agreement only on the following Conditions:

- a) the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the receiving State, or would constitute such a criminal offence if committed within the jurisdiction of the receiving State on the day of receipt of the request for transfer. If both Contracting States agree, this requirement may be waived in a specific case;
- b) where India is the receiving State the sentenced person is a citizen of India;
- c) where Australia is the receiving State, the sentenced person is an Australian citizen. An Australian citizen, for the purposes of this Agreement, is deemed to include a person who is permitted to travel to, enter and remain indefinitely in Australia in accordance with Australian law and has community ties with a State or Territory of Australia provided he or she is not an Indian citizen;
- d) on the day of receipt of the request for transfer, the sentenced person has at least six months of the sentence remaining to be served. This requirement may be waived in a particular case if both Contracting States agree;
- e) the judgment is final;
- f) no other legal proceedings are pending against the sentenced person in the transferring State in which his or her presence is required;
- g) the transferring and receiving States agree to the transfer;

- h) the sentenced person agrees to the transfer. Where the sentenced person is incapable of giving consent under the law of either Contracting State, consent may be given by a person entitled to act on his or her behalf in accordance with the law of that Contracting State; *Compendium of Bilateral and Regional Instruments for South Asia*
- i) the death penalty has not been imposed on the sentenced person, except that the death penalty has been commuted to a term of imprisonment or to life imprisonment;
- j) the sentenced person has not been convicted of an offence under military law, except in circumstances where the Contracting States agree otherwise; and
- k) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State

ARTICLE-5

RELATIONSHIP WITH MULTILATERAL CONVENTIONS

This Agreement shall not affect any obligations of the Contracting States arising under multilateral conventions to which one or both Contracting States are party.

ARTICLE-6

PROCEDURE FOR TRANSFER

- 1) The Contracting States shall take reasonable steps to inform sentenced persons of the substance of this Agreement after their conviction.
- 2) If the sentenced person wishes to be transferred, he or she, or someone on their behalf, may express such a wish to the transferring State or the receiving State, either of whom shall inform the other Contracting State in writing.
- 3) Upon receiving an application from a sentenced person, either the transferring or the receiving State may make a request for transfer in writing through diplomatic channels.
- 4) Requests for transfer shall be in writing and shall include the following information:
 - a) the name, date and place of birth of the sentenced person;
 - b) a statement of the citizenship, nationality or residence status of the sentenced person; and
 - c) The location of the sentenced person and the current address.
- 5) Where a request for transfer has been made, the transferring State shall provide the receiving State with the following information unless either the receiving or transferring State has already decided that it will not agree to the transfer:
 - a) a statement of the facts upon which the conviction and sentence were based;
 - b) a statement of the relevant law creating the offence;
 - c) the commencement and termination dates of the sentence, if applicable and the nature of the sentence;
 - d) the length of time already served by the sentenced person;

- e) any remissions to which he or she is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
 - f) the first possible date on which the sentenced person became or will become eligible for release or is to be considered for release, and any conditions or supervision the sentenced person is subject to or will be subject to on release, if applicable;
 - g) a copy of the certificate or record of conviction and sentence and, if available, copies of any judgments and sentencing remarks;
 - h) any correctional facility, medical or social reports on the sentenced person and, if applicable, information about the sentenced person's medical treatment in the transferring State and any recommendation for further treatment in the receiving State; and
 - i) as far as possible, any other information which the receiving State may specify as required, to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him or her under its law.
- 6) The receiving State shall provide the transferring State with the following information before transfer, if requested by the transferring State, unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- a) a document or statement indicating that the sentenced person complies with the conditions in Article 4(b) or 4(c);
 - b) a copy of the relevant law and a statement that the acts or omissions on account of which the sentence has been imposed constitute the essential elements of a criminal offence according to the law of the receiving State, or would constitute such essential elements of a criminal offence if committed within the jurisdiction of the receiving State, on the day of receipt of the request for transfer, unless the condition in Article 4(a) has been waived;
 - c) a statement describing how the sentenced person's sentence would be enforced by the receiving State in accordance with the continued enforcement method (Article 10), including any adaptation made to the sentence and potential entitlements to remissions or early release;
 - d) a statement that the sentenced person will not be tried or sentenced in the receiving State for the acts or omissions on account of which the sentence was imposed in the transferring State and shall not be detained for those acts or omissions except in accordance with this Agreement; and
 - e) as far as possible, any other additional information relevant to the potential transfer requested by the transferring State.
- 7) Delivery of the sentenced person by the authorities of the transferring State to those of the receiving State shall occur on a date and at a place within the territory of the transferring State as agreed upon by both Contracting States. The receiving State shall be responsible for the transport of the sentenced person from the transferring State and shall also be responsible for custody of the sentenced person outside the territory of the transferring State.

ARTICLE-7

CONSENT OF THE SENTENCED PERSON

- 1) The transferring State shall take reasonable steps to ensure that the sentenced person consents to the transfer voluntarily and with full knowledge of the legal consequences. The procedure for giving such consent shall be governed by the law of the transferring State.
- 2) Prior to transfer, the transferring State shall afford an opportunity to the receiving State, if the receiving State so desires, to verify that the sentenced person's consent to the transfer in accordance with Article 4(h) is given voluntarily and with full knowledge of the legal consequences, including recovery of costs in accordance with Article 14(1).

ARTICLE-8

CONSENT OF CONTRACTING STATES

The Contracting States shall consent in writing to the transfer of the sentenced person.

ARTICLE-9

JURISDICTION

- 1) The transferring State shall retain exclusive jurisdiction for the review, revision, modification or cancellation of convictions imposed by its courts.
- 2) Following transfer, either Contracting State may grant pardon, amnesty, commutation of, or reductions or remissions to, convictions and sentences in accordance with its Constitution or other laws and shall notify the other Contracting State in writing of this decision.

ARTICLE-10

CONTINUED ENFORCEMENT OF SENTENCE

- 1) The receiving State shall enforce the sentence as if the sentence had the same duration or termination date as imposed by the transferring State and as if the sentence had been imposed in the receiving State.
- 2) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving State, including those governing conditions for service of imprisonment, confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.
- 3) If the sentence is by its nature or duration incompatible with the law of the receiving State, the receiving State may, in proposing terms to the transferring State, adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. When adapting the sentence, the appropriate authorities of the receiving State shall be bound by the findings of fact, insofar as they

appear from the conviction, judgment, or sentence imposed by the transferring State. The adapted sentence shall be no more severe than that imposed by the transferring State in terms of nature or duration.

- 4) The receiving State shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring State in accordance with Article 9.
- 5) The Contracting States shall take reasonable steps to inform the sentenced person in writing of any action or decisions taken by the transferring State or the receiving State under this Article or Article 9.

ARTICLE-11

INFORMATION ON ENFORCEMENT OF SENTENCE

The receiving State shall provide information to the transferring State concerning enforcement of the sentence:

- a) if the sentenced person is granted conditional release;
- b) when it considers enforcement of the sentence to have been completed;
- c) if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or
- d) if the transferring State requests a report.

ARTICLE-12

TRANSIT OF SENTENCED PERSON

- 1) If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall, subject to its domestic law, co-operate in facilitating the transit through its territory except that it may refuse to grant transit if the:
 - a) sentenced person is one of its own nationals; or
 - b) request may infringe upon the sovereignty, safety, public order or any other essential interest of the Contracting State.
- 2) The Contracting State intending to make such a transfer shall give advance notice in writing to the Competent Authority of the other Contracting State.
- 3) Contracting State intending to make such a transfer may ask the other Contracting State to give an assurance that the sentenced person will not be prosecuted or detained, other than for the purpose of facilitating transit, or otherwise subjected to any restriction on his or her liberty for any offence committed or sentence imposed prior to his or her departure from the territory of the third State in which the sentence was imposed.

ARTICLE-13
LANGUAGE

Requests and supporting documents shall be in English or shall be accompanied by a translation into English.

ARTICLE-14
EXPENSES

- 1) The receiving State shall bear the expenses of:
 - a) the transfer of the sentenced person, except the expenses incurred exclusively in the territory of the transferring State; and
 - b) the continued enforcement of the sentence after transfer.

The receiving State may, however, seek to recover all or part of the cost of transfer from the sentenced person.

- 2) The costs of translation of requests, documents or information referred to under Article 13 shall be borne by the Contracting State sending the request, document or information.

ARTICLE-15
CONSULTATION

The Competent Authorities of the Contracting States may consult with each other to promote the most effective use of this Agreement and to agree upon such practical measures as may be necessary to facilitate the implementation of this Agreement.

ARTICLE-16
SETTLEMENT OF DISPUTES

- 1) The Competent Authorities shall endeavour to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement.
- 2) If the Competent Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels.

ARTICLE-17
AMENDMENTS

Any amendments or modifications to this Agreement agreed to by the Contracting States shall come into force in the same manner as the Agreement itself.

ARTICLE-18

ENTRY INTO FORCE AND TERMINATION

- 1) This Agreement shall be subject to ratification. Each Contracting State shall notify the other as soon as possible, in writing, through diplomatic channels, upon the completion of its legal procedure required for the entry into force of this Agreement. The Agreement shall come into force thirty days after the date of last notification.
- 2) This Agreement shall be applicable to the enforcement of sentences imposed before or after the entry into force of this Agreement.
- 3) The Agreement shall remain in force for an indefinite period. It may, however, be terminated by either of the Contracting States by giving written notice of termination through diplomatic channels. The termination shall take effect after six months of the date of such notice.
- 4) Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons transferred under this Agreement before the date on which termination takes effect.

In witness whereof the undersigned, being duly authorised by their respective Governments have signed this Agreement.

Done in duplicate at Canberra, this 18th day of November, two thousand and fourteen, in English and Hindi, each text being equally authentic. In case of differences in interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA**

**FOR THE GOVERNMENT OF
AUSTRALIA**

**Biren Nanda
High Commissioner**

**Michael Keenan
Minister for Justice**

**Agreement between the Government of the Republic of India and
the Government of the Hong Kong Special Administrative Region of
the People's Republic of China on the Transfer of Sentenced Persons**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region") having been duly authorised to conclude this Agreement by the Central People's Government of the People's Republic of China, and the Government of the Republic of India (hereinafter referred to as "the Contracting Parties");

Desiring to facilitate the social rehabilitation of sentenced persons; and

Considering that this objective should be fulfilled by giving sentenced persons, who have been convicted and sentenced as a result of their commission of criminal offences, the opportunity to serve their sentences within their own society;

Have agreed as follows:

**ARTICLE 1
DEFINITIONS**

For the purposes of this Agreement:

- (a) "judgment" means a decision or order of a court or tribunal imposing a sentence;
- (b) "receiving Party" means the Contracting Party to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (c) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
- (d) "sentenced person" means a person undergoing a sentence of imprisonment under a judgment passed by any court or tribunal established under the law for the time being in force in the Contracting Parties;
- (e) "transferring Party" means the Contracting Party in which the sentence was imposed on the sentenced person who may be, or has been, transferred.

**ARTICLE 2
GENERAL PRINCIPLES**

- (1) A person sentenced in the jurisdiction of one Contracting Party may be transferred to the jurisdiction of the other Contracting Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him.

- (2) A request for transfer may be made by the transferring Party or the receiving Party to the other Party. A sentenced person may express to the transferring Party or the receiving Party his willingness to be transferred under this Agreement by making an application for transfer to that Party. The application for transfer may be made by the sentenced person or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting Party to which the application is made. The application shall be made in accordance with the law of that Contracting Party and in the manner prescribed by the government authorities of that Contracting Party.

ARTICLE 3

CONDITIONS FOR TRANSFER

- (1) A sentenced person may be transferred under this Agreement only on the following conditions:
- (a) where the Hong Kong Special Administrative Region is the receiving Party the sentenced person is a permanent resident of the Hong Kong Special Administrative Region as defined in Article 24 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China;
 - (b) where the Republic of India is the receiving Party the sentenced person is a national of the Republic of India;
 - (c) the death penalty has not been imposed on the sentenced person or, if imposed, has been commuted;
 - (d) the judgment is final;
 - (e) no inquiry, trial or any other criminal proceeding is pending against the sentenced person in the transferring Party;
 - (f) the acts or omissions for which that person was sentenced in the transferring Party constitute an offence under the law of the receiving Party or would constitute an offence according to the law of the receiving Party if it had been committed in its jurisdiction;
 - (g) at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve or is undergoing a sentence of life imprisonment.
 - (h) the sentenced person has not been convicted for an offence under the military law where the Republic of India is the transferring Party;
 - (i) the transfer of the sentenced person is not prejudicial to, in the case of the Hong Kong Special Administrative Region, the sovereignty, security or any other interest of the People's Republic of China, and, in the case of the Republic of India, the sovereignty, security or any other interest of the Republic of India;
 - (j) consent to the transfer has been given by the sentenced person, or, where in view of his age or physical or mental condition either Contracting Party considers it necessary, consent may

be given by any other person entitled to act on his behalf in accordance with the law of that Contracting Party; and

(k) the transferring and receiving Parties agree to the transfer.

(2) In exceptional cases, the transferring Party and receiving Party may agree to a transfer even if the remaining period to be served by the sentenced person is less than one year.

ARTICLE 4

OBLIGATION TO FURNISH INFORMATION

(1) If the sentenced person has expressed an interest in being transferred under this Agreement, the transferring Party shall send the following information and documents to the receiving Party unless either the receiving Party or the transferring Party has already decided that it will not agree to the transfer:

(a) the name, nationality and residence status, date and place of birth of the sentenced person;

(b) his address, if any, in the receiving Party;

(c) a statement of the facts upon which the sentence was based;

(d) the nature, duration and date of commencement of the sentence;

(e) a certified copy of the judgment and a copy of the relevant provisions or statement of the law under which the sentence has been passed against the sentenced person;

(f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;

(g) any other information which the receiving Party may specify as required to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;

(h) the application for transfer by the sentenced person or by a person entitled to act on his behalf in accordance with the law of the Contracting Party to which the application is made; and

(i) the termination date of the sentence, if applicable, and a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.

(2) For the purposes of enabling a decision to be made on a request under this Agreement, the receiving Party shall send the following information and documents to the transferring Party unless either the receiving Party or the transferring Party has already decided that it will not agree to the transfer:

(a) a statement or document indicating that the sentenced person is a permanent resident of the Hong Kong Special Administrative Region where the Hong Kong Special Administration Region is the receiving Party or a national of the Republic of India where the Republic of India is the receiving Party;

- (b) a copy of the relevant provisions or statement of the law of the receiving Party under which the acts or omissions on account of which the sentence has been passed in the transferring party constitute an offence under the law of the receiving Party or would constitute an offence if committed in its jurisdiction;
- (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving Party after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 9 of this Agreement on his transfer;
- (d) the willingness of the receiving Party to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
- (e) any other information or document which the transferring Party may consider necessary.

ARTICLE 5

CENTRAL AUTHORITIES

AND CHANNELS OF COMMUNICATION

- (1) For the purpose of this Agreement, the Central Authority for the Hong Kong Special Administrative Region shall be the Secretary for Justice or an officer authorised by him and, for the Republic of India, it shall be the Ministry of Home Affairs. Either Contracting Party may change its Central Authority after notifying the other Contracting Party of the change.
- (2) Requests for transfer shall be made in writing and forwarded by the Central Authority of the requesting Party to the Central Authority of the requested Party.
- (3) The requested Party shall promptly inform the requesting Party of its decision whether or not to agree to the requested transfer.
- (4) The Central Authorities shall communicate with each other either directly or through the Consulate General of the Republic of India in the Hong Kong Special Administrative Region.

ARTICLE 6

CONSENT AND ITS VERIFICATION

- (1) The transferring Party shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(j) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring Party.
- (2) The transferring Party shall afford an opportunity to the receiving Party to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

HANDING OVER OF SENTENCED PERSON

The handing over of the sentenced person by the competent authorities of the transferring Party to those of the receiving Party shall occur on a date and at a place to be agreed upon between the Contracting Parties.

ARTICLE 8

EFFECT OF TRANSFER FOR THE RECEIVING PARTY

- (1) The competent authorities of the receiving Party shall continue the enforcement of the sentence through a court or administrative order, as may be required under its domestic law, under the conditions set out in Article 9 of this Agreement.
- (2) Subject to the provisions of Articles 10 and 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving Party and that Party alone shall be competent to take all appropriate decisions in this regard.

ARTICLE 9

CONTINUED ENFORCEMENT OF SENTENCE

- (1) Subject to paragraph 2 of this Article and Article 13 of this Agreement, the receiving Party shall be bound by the legal nature and duration of sentence as determined by the transferring Party.
- (2) If the sentence is by its nature or duration, or both, incompatible with the law of the receiving Party, that Party may, with the prior consent of the transferring Party, by court or administrative order, adapt the sentence to a sentence prescribed by its own law for a similar offence. As to its nature and duration, the adapted sentence shall, as far as possible, correspond with that imposed by the judgment of the transferring Party. It shall, however, not aggravate, by its nature or duration, the sentence imposed by the transferring Party.

ARTICLE 10

PARDON, AMNESTY OR COMMUTATION OF SENTENCE

Either of the Contracting Parties may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

ARTICLE 11

REVIEW OF JUDGMENT

The transferring Party alone shall decide on any application for the review of the judgment.

ARTICLE 12
EFFECT OF COMPLETION OF SENTENCE
FOR THE TRANSFERRING PARTY

When the receiving Party notifies the transferring Party under paragraph 1(a) of Article 14 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging the sentence in the transferring Party.

ARTICLE 13
MODIFICATION OR TERMINATION
OF ENFORCEMENT OF SENTENCE

The receiving Party shall modify or terminate enforcement of the sentence as soon as it is informed by the transferring Party of any decision or measure taken in accordance with the provisions of this Agreement as a result of which the sentence is reduced or ceases to be enforceable.

ARTICLE 14
INFORMATION ON ENFORCEMENT OF SENTENCE

- (1) The receiving Party shall notify the transferring Party:
 - (a) when the enforcement of the sentence has been completed; or
 - (b) if the sentenced person escapes from custody before enforcement of the sentence has been completed. In such cases the receiving Party shall make every effort to have the sentenced person arrested so that the sentenced person serves the remainder of his sentence, and that he may be prosecuted for committing an offence under the law of the receiving Party for unlawful escape from custody.
- (2) The receiving Party shall furnish a report concerning the enforcement of the sentence, if so required by the transferring Party.

ARTICLE 15
TRANSIT

- (1) If either Contracting Party has arrangements for the transfer of sentenced persons with any third party or state, the other Contracting Party shall co-operate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements.
- (2) The Contracting Party intending to make such a transfer shall give advance notice to the other Contracting Party of such transit.
- (3) A Contracting Party may refuse to permit transit if in the case of the Hong Kong Special Administrative Region, the sentenced person is a permanent resident of the Hong Kong Special

Administrative Region or, in the case of the Republic of India, the sentenced person is a national of the Republic of India.

- (4) A Contracting Party may also refuse to permit transit if the transit is prejudicial to, in the case of the Hong Kong Special Administrative Region, the sovereignty, security or any other interest of the People's Republic of China, and, in the case of the Republic of India, the sovereignty, security or any other interest of the Republic of India.

ARTICLE 16

LANGUAGE

Requests and supporting documents shall be in English, or shall be accompanied by a translation into English.

ARTICLE 17

COSTS

Any costs incurred in the application of this Agreement shall be borne by the receiving Party, except for costs incurred exclusively in the jurisdiction of the transferring Party. The receiving Party may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 18

SCOPE OF APPLICATION

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 19

SETTLEMENT OF DISPUTES

- (1) The Central Authorities shall endeavour to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement.
- (2) If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels.

ARTICLE 20

AMENDMENTS

Any amendments to this Agreement agreed by the Contracting Parties shall come into effect in the same manner as for the entry into force of this Agreement.

ARTICLE 21

FINAL PROVISIONS

- (1) Each Contracting Party shall notify the other Contracting Party in writing as soon as possible upon completion of its internal procedures required for entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the date of the second notification.
- (2) This Agreement shall continue to remain in force for an indefinite period. It may, however, be terminated by either of the Contracting Parties by giving written notice to the other Contracting Party of its intention to terminate it. Notwithstanding such notice, this Agreement shall continue to remain in force until six months from the date of such notice.
- (3) Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Hong Kong, on the 20th day of January Two Thousand and Fifteen in the Chinese, English and Hindi languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF
REPUBLIC OF INDIA:

Prashant Agrawal
Consul General of India

FOR THE GOVERNMENT OF THE
THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA:

Lai Tung-kwok
Secretary for Security

Agreement between the Government of the Republic of India and the Government of the State of Qatar on the Transfer of Sentenced Persons

The Government of the Republic of India and the Government of the State of Qatar hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving nationals of the Contracting States, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences in their own society;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement the words and expressions shall have the following meaning unless otherwise explained by the text:

- a) “judgment” means a decision or order of a court or tribunal imposing a sentence;
- b) “Receiving State” means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence or remainder thereof;
- c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a determinate period of time or for life imprisonment in the exercise of its criminal jurisdiction;
- d) “sentenced person” means a person undergoing a sentence of imprisonment under a judgment passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
- e) “Transferring State” means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2

General Principles

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.

2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

ARTICLE 3

Central Authorities

1. Authorities in charge of the implementation of this Agreement for the Contracting States are:
 - a) For the Republic of India: Ministry of Home Affairs.
 - b) For the State of Qatar: The Attorney General
2. In case either Contracting State changes its competent authorities, it shall notify the other State of the same through diplomatic channels.

ARTICLE 4

Conditions for transfer

1. A sentenced person may be transferred under this agreement on the following conditions :
 - a) the person is a national of the receiving State;
 - b) the death penalty has not been imposed on the sentenced person;
 - c) the judgment is final
 - d) no criminal proceedings are pending against the sentenced person in the transferring State in which his presence is required;
 - e) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;
 - f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the Receiving State, or would constitute a criminal offence if committed on its territory;
 - g) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or in violation of domestic laws or any other interest of the transferring State;
 - h) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - i) the transferring and receiving States agree to the transfer.

2. In exceptional cases, the Transferring and Receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 5

Obligation to furnish information

1. If the sentenced person has expressed an interest to the transferring State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the Receiving or the transferring State has already decided that it will not agree to the transfer:
 - a) the name and nationality, date and place of birth of the sentenced person and his address, if any, in the receiving State along with a copy of his passport or any other personal identification documents, and Fingerprints of the Sentenced Person, as possible;
 - b) a statement of the facts upon which the sentence was based;
 - c) the nature, duration and date of commencement of the sentence;
 - d) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - e) a medical, social or any other report regarding the antecedents and character of the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - f) any other information which the receiving State may specify as required, to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - g) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - h) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence;
 - i) A statement from the transferring State agreeing to the transfer of the Sentenced Person.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - a) a statement or document indicating that the sentenced person is a national of the receiving State;
 - b) a copy of the relevant law of the receiving State which provides that the acts or omissions on account of which the sentence has been imposed in the transferring State constitute a criminal offence according to the law of the Receiving State, or would constitute a criminal offence if committed on its territory;

- c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 9 of this Agreement on his transfer;
- d) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
- e) any other information or document which the transferring State may consider necessary.

ARTICLE 6

Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed by the Central authority of the transferring State through diplomatic channels to the Central Authority of the receiving State. Replies shall be communicated through the same channels.
2. The receiving State shall promptly inform the transferring State of its decision whether or not to agree to the requested transfer.

ARTICLE 7

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(h) of Article 4 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 8

Effect of transfer for the Receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 9 of this Agreement.
2. Subject to the provisions of Article 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State also shall be competent to take all appropriate decisions.

ARTICLE 9

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If the sentence is by its nature or duration, or both, incompatible with the law of the receiving State, that State may, with the prior consent of the transferring State, by court or administrative order, adapt the sentence to a sentence prescribed by its own law for a similar offence. As to its nature and duration, the adapted sentence shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall, however, not aggravate, by its nature or duration, the sentence imposed by the transferring State.

ARTICLE 10

Effect of completion of sentence for the transferring State

When the Receiving State notifies the transferring state under paragraph 1(a) of Article 13 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging the sentence in the transferring state.

ARTICLE 11

Review of judgment and Pardon, amnesty or commutation

1. The transferring State alone shall decide on any application for review of the judgment.
2. Either of the contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its constitution or other laws.

ARTICLE 12

Termination of enforcement of sentence

1. The Transferring State shall promptly notify the Receiving State of any decisions taken in its territory which entails terminating the enforcement of the sentence or part thereof.
2. The receiving State shall terminate enforcement of the sentence or part thereof as soon as it is informed by the Transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 13

Information on enforcement of sentence

1. The Receiving State shall notify the Transferring State:
 - a) when the enforcement of the sentence has been completed; or

- b) If the sentenced person escapes from custody before enforcement of the sentence has been completed. In such cases the receiving State shall take measures to secure his arrest for the purposes of serving the remainder of his sentence and to render him/ her liable for committing an offence under the relevant law of the receiving State.
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 14

Transit

1. If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit
 - (a) if the sentenced person is one of its own nationals.
 - (b) if the request may infringe upon the sovereignty, safety, public order or any other essential interest of the Contracting State.
2. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 15

Costs

Any costs incurred in the application of this Agreement shall be borne by the Receiving State, except costs incurred exclusively in the territory of the transferring state. The receiving State may, however, demand or seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 16

Language

Requests and supporting documents shall be in English or shall be accompanied by a translation into English.

ARTICLE 17

Scope of Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 18

Settlement of Disputes

1. The Central Authorities as per Article 3 shall endeavor to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement.
2. If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels.

ARTICLE 19

Handing Over of Sentenced Persons

The handing over of the transferred person by the transferring State to the receiving State shall occur at a place to be agreed upon between the transferring and receiving State. The receiving State shall be responsible for the transport of the prisoner from the transferring State and shall also be responsible for custody of the sentenced person outside the territory of the transferring State.

ARTICLE 20

Amendments

Any amendments or modifications to this Agreement agreed to by the Contracting States in writing shall come into force as per procedure applicable to each contracting State.

ARTICLE 21

Final Provisions

This Agreement shall take effect from the date of exchanging the Instruments of ratification in accordance with the legal procedures applicable in each country and shall remain valid for a period three years to be renewed automatically to similar term or terms, unless one party notifies the other in writing of its intention to terminate it, at least six months before the date of its expiration or termination, through the diplomatic channels.

Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentence of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at New Delhi on the 25 March day of 2015. in the Hindi, Arabic and English languages, all texts being equally authentic. In case of differences in interpretation the English text shall prevail.

**For the Government of
the Republic of India**

**For the Government of
the state of Qatar**

Treaty between the Government of the Republic of India and the Government of Mongolia on the Transfer of Sentenced Persons

The Government of Mongolia and the Government of the republic of India (hereinafter referred to as “the Contracting States”).

On the basis of mutual respect for sovereignty, equality and mutual benefit.

In order to have sentenced persons to serve their sentences in their country of nationality to facilitate their social rehabilitation.

Have agreed as follows:

Article 1

DEFINITIONS

For the purpose of this Treaty:

- (a) “Transferring State” means the State which may transfer or has transferred a sentenced person out of its territory;
- (b) “Receiving State” means the state which may receive or has received a sentenced person into its territory;
- (c) “Sentenced Person” means a person who has been sentenced to imprisonment by a court in the Transferring State;
- (d) “Judgment” means a decision or order of court or tribunal imposing a sentence;
- (e) “Sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment in the exercise of its criminal jurisdiction;

Article 2

GENERAL PRINCIPLES

Each state may, in accordance with the provisions of this Treaty and subject to its domestic law, transfer a sentenced person to the other State to enforce the sentence imposed on the person by the court of the Transferring State in the territory of the Receiving State. To that end, the sentenced person or any other person who is entitled to act on the sentenced person’s behalf may express the sentenced person’s willingness to be transferred under this Treaty.

Article 3

CENTRAL AUTHORITIES

1. For the purpose of implementing this Treaty, the Contracting States shall communicate with each other through the Central Authorities designated therefore.
2. The Central Authorities referred to in Paragraph 1 of this Article shall be the Ministry of justice for Mongolia and the Ministry of Home Affairs for the Republic of India.
3. Should either State change its designated Central Authority, it shall notify the other State of such a change in writing through diplomatic channels.

Article 4

CONDITIONS FOR TRANSFER

1. A sentenced person may be transferred under this Agreement on the following conditions:
 - (a) The sentenced person is a national of the Receiving State;
 - (b) Death penalty has not been imposed on the sentenced person;
 - (c) No criminal proceedings are pending against the sentenced person;
 - (d) The conduct on account of which the sentenced was imposed on the sentenced person also constitutes a criminal offence under the laws of the Receiving state;
 - (e) The judgment imposed on the sentenced person is effective without any possibility of further appeals;
 - (f) At the time of the receipt of request for transfer, the sentence person has at least one year left of the sentence to serve;
 - (g) The transfer is consented to in writing by the sentenced person, or by the person's legal representative when either State considers it necessary in view of the person's age, physical condition
 - (h) Both parties agree to the transfer; and
 - (i) Transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State.
2. In exceptional case, the Contracting States may agree to a transfer even if the period of time left to be served by the sentenced person is less than as specified in Paragraph 1(d) of this Article.

Article 5

REQUIRED DOCUMENTS

1. If a transfer is requested, the transferring state shall provide the following documents or statements to the Receiving State, unless the requested state has already indicated that it will not agree to transfer;
 - a) a certified copy of the judgment, including the relevant provisions of law on which the judgment is based;
 - b) a statement indicating the nature, duration and date of commencement of sentence;
 - c) a statement describing the behavior of the person during the service of the sentence and the period of time already served and remaining to be served as well as time spent in pre-trial detention, any reduction of sentence and other factors relevant to enforcement of the sentence;
 - d) a written declaration of the consent to the transfer as referred to in Paragraph 1 (e) of Article 4 of this Treaty; and
 - e) a statement indicating the physical and mental conditions of the sentenced person.
- (2) The Receiving State shall provide the Transferring -State with the following documents
 - (a) documents or statements certifying that the sentenced person is a national of the Receiving State;
 - (b) relevant provisions of the law of the Receiving party stipulating that the conduct for which the sentence was imposed on the sentenced person also constitutes a criminal offence; and
 - (c) information on the procedures of Receiving State, under its domestic law, to enforce the sentence imposed by the Transferring State.

Article 6

REQUEST AND REPLIES

1. A sentenced person may apply to either State for transfer under this Treaty. The State to which the sentenced person has made an application for transfer must notify the other State in writing, of the application.
2. A request for transfer may be made by either State. The requested State shall promptly inform the requesting State of its decision as to whether or not to agree to the requested transfer.
3. Requested for and replies to transfers shall be made in writing and transmitted through the channels as provided for in Paragraph 1 of Article 3 of this Treaty.

Article 7

NOTIFICATION TO THE SENTENCED PERSONS

1. Each State shall, within its territory, notify the sentenced persons, to whom this Treaty is applicable, that they may be transferred in accordance with provisions of this Treaty.
2. Each State shall inform in writing the sentenced persons concerned within its territory of the measures taken or decisions made by the Transferring State or the Receiving State upon request for transfer in accordance with Articles 5 and 6 of this Treaty.

Article 8

CONSENT OF THE SENTENCED PERSON AND ITS VERIFICATION

1. The Transferring State shall in accordance with its law or the procedures thereof ensure that the sentenced person or his or her legal representative voluntarily gives consent to the transfer with full knowledge of the legal consequences of the transfer and confirms such knowledge in a declaration indicating consent to the transfer.
2. Where the Receiving State requests, the Transferring State shall afford the opportunity to the Receiving State to verify, through a designated official, that the sentenced person has expressed consent in accordance with the conditions set out in the paragraph above.

Article 9

DELIVERY OF THE TRANSFERRED PERSON

Where an agreement is reached on a transfer, Parties shall determine the time, place and procedure for transfer, by means of consultation through the channels as provided for in Paragraph 1 of the Article 3 of the this Treaty.

Article 10

CONTINUED ENFORCEMENT OF THE SENTENCE

1. After receiving the sentenced person, the Receiving State shall continue to enforce the sentence pursuant to the nature and duration of the sentence determined by the Transferring State.
2. If, the sentence as determined by the Transferring State is by its nature or duration incompatible with the domestic law of Receiving State, the Receiving State with the prior consent of Transferring State may adapt the sentence to a sentence prescribed in accordance with the sentence prescribed by its own domestic law for a similar offence. When adapting the sentence:
 - a) The Receiving State shall be bound by the findings of facts insofar as they appear from the judgment imposed by the Transferring State;
 - b) The Receiving State shall not adapt a penalty of imprisonment to a pecuniary penalty;

- c) The adapted sentence shall, as far as possible, correspond with the sentence imposed by the courts of the Transferring State.
 - d) The adapted sentence shall be no more severe than that imposed by the Transferring State in terms of the nature or duration, nor exceed the maximum duration of penalty applicable to a similar criminal offence prescribed by the law of the Receiving State;
 - e) The adapted sentence is not bound by the minimum duration of penalty applicable to a similar criminal offence prescribed by the law of Receiving State; and
 - f) The period of time already served by the sentenced person under a sentence of imprisonment in the territory of the Transferring State shall be deducted.
3. The continued enforcement of the sentence after the transfer shall be governed by the laws and procedures of the Receiving Parry, including those providing for the reduction of sentence and parole and those governing other measures adopted during the enforcement of sentence.

Article 11

EFFECT ON COMPLETION OF SENTENCE FOR THE TRANSFERRING STATE

When the Receiving State notifies the Transferring State under Article 13 (a) of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.

Article 12

REVIEW OF JUDGEMENT AND PARDON, AMNESTY OR COMMUTATION

1. The Transferring State alone should decide on any application for review of the judgment.
2. Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its constitution or other laws.

Article 13

INFORMATION ON THE ENFORCEMENT OF THE SENTENCE

The Receiving State shall provide information to the Transferring State concerning the enforcement of the sentence when:

- a) The enforcement of the sentence has been completed
- b) The sentenced person has escaped from custody or died before the enforcement of the penalty has been completed; or
- c) The Transferring State requests a specific statement.

Article 14

TRANSIT

1. When one party is to implement an agreement with a third country on the transfer of sentenced persons through the territory of the other State, the former State shall request permission from the State such a transit.
2. Such permissions are not required where air transportation is used and no landing in the territory of the other party is scheduled.
3. The requested State shall, insofar as it is not contrary to its domestic law, grant the request for transit made by the requesting State.

Article 15

LANGUAGES

For the purpose of this Treaty, the Central Authorities of the Contracting States may communicate with each other in English. However, supporting materials shall be provided in the official language of one State, and translated into the official language of the other State.

Article 16

EXEMPTION FROM LEGALIZATION

For the purpose of this Treaty, any document made by competent authorities of the Contracting States and transmitted through the channels provided for in paragraph 1 of Article 3 of this Treaty, affixed with the signature or seal of the competent authorities of one State, may be used in the territory or the Other State without any form of legalization.

Article 17

COSTS

1. The Receiving State shall bear the costs of:
 - (a) The transfer of the sentenced person, except the costs incurred exclusively in the territory of the Transferring State, and
 - (b) The continued enforcement of the sentence after the transfer.
2. The Receiving party has the right to recover all or part of the costs from the sentenced person.

Article 18

SETTLEMENT OF DISPUTES

Any disputes arising out of the interpretation, application, or implementation of this Treaty shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach an agreement.

Article 19

ENTRY INTO FORCE AND TERMINATION

1. This Treaty is subject to ratification. The instrument of ratification shall be exchanged at New Delhi. This shall enter into force on the thirtieth day after the date of the exchange of the instrument of ratification.
2. Either State may terminate this Treaty at any time by notice in writing to the other State through diplomatic channels. Termination shall take effect on the one hundred and eighteen is day after the date on which the notification is given.
3. This Treaty applies to any requests for transfer presented after its entry into force even if the relevant criminal offence before the entry into force of this Treaty.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Ulaanbaatar on this 17th day of May 2015, in Hindi, Mongolian and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

**ON THE BEHALF OF THE GOVERNMENT
OF THE REPUBLIC OF INDIA**

**(SOMNATH GHOSH)
AMBASSADOR EXTRAORDINARY &
PLENIPOTENTIARY OF THE
REPUBLIC OF INDIA TO MONGOLIA**

**ON BEHALF OF THE GOVERNMENT
OF MONGOLIA**

**(D. DORLIGJAV)
MINISTER FOR JUSTICE
OF MONGOLIA**

COUNTER TERRORISM COOPERATION TREATIES

Agreement between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning the Investigation and Prosecution of Crime and the Tracing, Restraint and Confiscation of the Proceeds and Instruments of Crime (Including Crimes Involving Currency Transfers) and Terrorist Funds

The Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to provide the widest measure of mutual assistance in the investigation and prosecution of crime and the tracing, restraint and confiscation of the proceeds and instruments of crime (including crimes involving currency transfers) and terrorist funds;

Have agreed as follows:

ARTICLE 1

Scope of Application

- (1) The Parties shall, in accordance with this Agreement, grant to each other assistance in the investigation and prosecution of crime and the tracing, restraint and confiscation of the proceeds and instruments of crime (including crimes involving currency transfers), and terrorist funds.
- (2) This Agreement shall be without prejudice to other obligations between the Parties pursuant to other treaties or arrangements or otherwise, and shall not prevent the Parties or their law enforcement agencies from providing assistance to each other pursuant to other treaties or arrangements.

ARTICLE 2

Definitions

For the purpose of this Agreement:

- (a) “confiscation” means any measure resulting in the deprivation of property;
- (b) “instruments of crime” means any property which is, or is intended to be , used in connection with the commission of an offence;
- (c) proceedings are instituted:
 - (i) In the United Kingdom, when an information has been laid before a justice of the peace, or when a person is charged with an offence or when a bill of indictment is preferred, or when a petition warrant is granted

- (ii) In the Republic of India, when information relating to commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law, or when any allegation is made orally or in writing to a court of law that a person has committed an offence or when a person is charged with an offence, or when any investigation or inquiry into the commission of any offence is directed by a court of law.
- (d) “proceeds of crime” means any property derived or realised, directly or indirectly, by any person as a result of criminal activity (including crimes involving currency transfers), or the value of any such property;
- (e) “property” includes money and all kinds of moveable or immovable and tangible or intangible property, and includes any interest in such property;
- (f) “the restraint of property” means any measure for the prevention of dealing in or transfer or disposal of property;
- (g) “terrorist funds” means any property which may be applied or used for the commission of, or in furtherance of or in connection with, acts of terrorism concerned with the affairs of Northern Ireland, or acts of terrorism of any other description except such acts connected solely with the affairs of the United Kingdom or any part of the United Kingdom other than Northern Ireland;
- (h) “acts of terrorism” means any act of terrorism done or to be done which constitutes or would constitute an offence under the law of both the United Kingdom and the Republic of India, but does not include acts connected solely with the affairs of the United Kingdom or any part of the United Kingdom other than Northern Ireland;
- (i) “terrorism” means the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear.

ARTICLE 3

Central Authorities

- (1) Requests for assistance under this Agreement shall be made through the central authorities of the Parties.
- (2) In the United Kingdom the central authority is the Home Office. In the Republic of India the central authority is the Ministry of Home Affairs.

ARTICLE 4

Contents of Requests

- (1) Requests shall be made in writing. In urgent circumstances, or where otherwise permitted by the Requested Party, requests may be made orally but shall be confirmed in writing thereafter.
- (2) Requests for assistance shall include a statement of:
 - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;

- (b) the matters, including the relevant facts and laws to which the investigation or proceedings relates;
 - (c) the purpose for which the request is made and the nature of the assistance sought;
 - (d) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (e) any time limit within which compliance with the request is desired;
 - (f) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings
- (3) If the Requested Party considers that additional information is needed to enable the request to be dealt with, that Party may request such additional information.

ARTICLE 5

Execution of Requests

- (1) A request shall be executed as permitted by and in accordance with the domestic law of the Requested Party and to the extent not incompatible with such law, in accordance with any requirements specified in the request.
- (2) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.
- (3) The Requested Party shall promptly inform the Requesting Party of a decision of the Requested Party not to comply in whole or in part with a request for assistance and the reason for that decision.
- (4) The Requesting Party shall promptly inform the Requested Party of any circumstances which may affect the request or its execution or which may make it inappropriate to proceed with giving effect to it.

ARTICLE 6

Refusal of Assistance

- (1) Assistance may be refused if:
 - (a) the Requested Party is of the opinion that the request, if granted, would seriously impair its sovereignty, security, national interest or other essential interest; or
 - (b) provision of the assistance sought could prejudice an investigation or proceedings in the territory of the Requested party or would constitute a substantial risk to the physical safety of any person; or
 - (c) the action sought is contrary to the domestic law of the Requested party; or
 - (d) the request concerns restraint 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 a confiscation order could have been made; or

- (e) the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
- (2) Before refusing to grant a request for assistance, the Requested party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, it shall comply with them.

ARTICLE 7

Confidentiality and restricting use of evidence and information

- (1) The Requested Party shall, to any extent requested, keep confidential a request for assistance, its contents and any supporting documents, and the fact of granting such assistance except to the extent that disclosure is necessary to execute the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine the extent to which it wishes the request to be executed.
- (2) The Requesting Party shall, if so requested, keep confidential any evidence and information provided by the Requested party, except to the extent that its disclosure is necessary for the investigation or proceeding described in the request.
- (3) The Requesting Party shall not use for purposes other than those stated in a request evidence or information obtained as a result of it, without the prior consent of the Requested Party.

ARTICLE 8

Information and Evidence

- (1) The Parties may make requests for information and evidence for the purpose of identifying or tracing:
 - (a) proceeds and instruments of crime (including crimes involving currency transfers), and
 - (b) terrorist funds, which may become liable to restraint or confiscation.
- (2) Assistance which may be given under this Article includes but is not limited to:
 - (a) providing information and documents or copies thereof;
 - (b) taking evidence or statements of witnesses or other persons and producing documents, records, or other material for transmission to the Requesting Party;
 - (c) searching for, seizing and delivering to the Requesting Party any relevant material, and providing such information as may be the place of seizure, the circumstances of seizure and the subsequent custody of the material seized prior to delivery.
- (3) The Requested party may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in its territory. The Requested Party shall, upon request provide certified copies of documents.

- (4) Where required by the Requested party, the Requesting Party shall return material provided under this Article when no longer needed for the purposes for which it was supplied.

ARTICLE 9

Restraint

- (1) In accordance with the provisions of this Article, a Party may request the restraint of property in order to ensure that it is available for the purpose of enforcement of a confiscation order which has been or may be made.
- (2) A request made under this Article shall include:
- (a) information establishing that proceedings have been or are to be instituted as a result of which a confiscation order has been or may be made;
 - (b) where applicable, a statement of when proceedings are to be instituted;
 - (c) either;
 - (i) a summary of the facts of the case including a description of the offence, the time and place of its commission, a reference to the relevant legal provisions, the grounds on which the suspicion is based and a copy of any relevant restraint order;
 - or
 - (ii) where a confiscation order has been made, a copy of that order;
 - (d) to the extent possible, a description of the property in respect of which restraint is sought or which is believed to be available for restraint, and its connection with the person against whom the proceedings have been or are to be instituted;
 - (e) where appropriate, a statement of the amount which it is desired to restrain and the grounds on which this amount is estimated;
 - (f) where applicable and possible a statement of the estimated time expected to elapse before the case is committed for trial and before a final judgement may be given.
- (3) The Requesting Party shall advise the Requested Party of any alteration in an estimate of time referred to in paragraph 92) (f) above and in doing so shall also give information about the stage of proceedings reached. Each Party shall advise the other promptly of any appeal or variation made in respect of restraint action requested or taken.
- (4) Where a court in the Requested Party imposes a condition limiting the duration of the restraint, the Requested Party shall notify the Requesting party promptly of any such condition, and the reason for it.

ARTICLE 10

Enforcement of Confiscation Orders

- (1) This Article applies to an order, made by a court of the Requesting Party, intended to confiscate:
 - (a) the proceeds and instruments of crime (including crimes involving currency transfers); or
 - (b) terrorist funds.
- (2) A request for assistance in enforcing such an order shall be accompanied by a copy of the order, certified by an officer of the court that made the order or by the central authority, and shall contain information indicating:
 - (a) that neither the order nor any conviction to which it relates is the subject of an appeal;
 - (b) that the order is enforceable in the territory of the Requesting Party;
 - (c) where appropriate, particulars of the property available for enforcement or the property in respect of which assistance is sought, stating the relationship between that property and the person against whom the order has been made;
 - (d) where appropriate, and where known, the interests in the property of any person other than the person against whom the order has been made;
 - (e) where appropriate, the amount which it is desired to realise as a result of such assistance.
- (3) Where the law of the Requested Party does not permit effect to be given to a request in full, the Requested party shall give effect to it in so far as it is able to do so.
- (4) If a request under this Article relates to an amount of money, that amount shall be converted into the currency of the Requested Party in accordance with its domestic law and procedures
- (5) Property obtained by the Requested Party in the enforcement of an order to which Article applies shall remain with that Party, unless otherwise agreed between the Parties.

ARTICLE 11

Mutual Legal Assistance

In addition to the assistance provided for in Articles 1 to 10 of this Agreement, each party shall, on request and to the extent permitted by its law, also offer the widest measure of mutual assistance in investigations and prosecutions in relation to criminal offences including

- (a) the service of judicial documents
- (b) the search for and seizure of evidence
- (c) the taking of evidence or statements from persons;
- (d) the transfer of persons, including persons in custody, for the purpose of assisting in investigations or giving evidence in proceedings.

ARTICLE 12

Costs

The Requested Party shall bear any costs arising within its territory as a result of action taken upon request of the Requesting Party. Extraordinary costs may be subject to special agreement between the Parties. Where the Requested Party considers that the execution of a request would impose an excessive burden on the resources of that Party, the request shall proceed only after consultation with, and with the agreement of, both parties.

ARTICLE 13

Language

Except where otherwise agreed between the Parties in a particular case, requests in accordance with Articles 8,9,10 and 11 and supporting documents shall be drawn up in the language of the Requesting Party and shall be accompanied by a translation into that of the Requested State.

ARTICLE 14

Authentication

Unless otherwise required under national law, and without prejudice to Article 10(2), documents certified by a central authority shall not require further certification, authorisation or legalisation for the purposes of this Agreement.

ARTICLE 15

Territorial Application

This agreement shall apply

- (1) in relation to the UK, in respect of requests concerning the investigation and prosecution of crime and the tracing, restraint and confiscation of the proceeds and instruments of crime (including crimes involving currency transfers),
 - (a) to England and Wales and Northern Ireland
 - (b) subject to any necessary modifications, by agreement between the Parties embodied in exchange of Notes through the diplomatic channel;
 - (c) to any territory for the international relations of which the United Kingdom is responsible and to which this Agreement shall have been extended, subject to any necessary modifications, by agreement between the Parties embodied in exchanges of Notes. Either Party may terminate such extension by giving six months' written notice to the other through the diplomatic channel;
- (2) in relation to the UK, in respect of requests concerning terrorist funds,
 - (a) to the United Kingdom; and

- (b) subject to any necessary modifications, by agreement between the Parties embodied in exchanges of Notes through the diplomatic channel, to the Channel Islands and Isle of Man;
 - (c) to any territory for the international relations of which the United Kingdom is responsible and to which this Agreement shall have been extended, subject to any necessary modifications, by agreement between the Parties embodied in exchanges of Notes. Either, party may terminate such extension by giving six months written notice to the other through the diplomatic channel;
- (3) to the Republic of India.

ARTICLE 16

Final Provisions

- (1) Each Government shall notify the other Government as soon as possible in writing through the diplomatic channel of the completion of their respective Agreement shall enter into force on the first day of the month following the expiration of one calendar month after the date of the latter of these notifications
- (2) It may be terminated by either Party by giving notice to the other Party through the diplomatic channel
- (3) The Agreement shall come to be effective six months after the date of receipt of such notice

In witness whereof the undersigned being duly authorised thereto by their respective Governments, have signed this Agreement

Done in duplicate at London this the twenty-second day of September, 1992 in the Hindi and English languages. In case of any doubt, the English text shall prevail.

For the government of The Republic of India

For the Government of The United Kingdom of Great Britain
And Northern Ireland

Moscow Declaration between India and the Russian Federation on International Terrorism

India and the Russian Federation affirm that international terrorism is a threat to peace and security, a grave violation of human rights and a crime against humanity. The struggle against international terrorism has become one of the priority tasks of the world community. This evil can be vanquished only by combining the efforts of all States.

Whatever be the motive of their perpetration - political, ideological, philosophical, racial, ethnic, religious or any other, terrorist acts are unjustifiable.

India and the Russian Federation support the adoption on the basis of international law of decisive measures against all States, individuals, and entities which render support, harbour, finance, instigate or train terrorists or promote terrorism. It is essential that all States, without exception, should pay particular attention to the prevention of access of terrorists and extremist organisations and groups to financial resources on the basis of international law.

In multi-ethnic and democratic countries such as India and the Russian Federation, violent actions being perpetrated under the slogan of self-determination, in reality represent acts of terrorism which in most cases have strong international links. In addition, all acts and methods and practices of terrorism constitute a grave violation of the purposes and the principles of the United Nations, jeopardise friendly relations amongst States and are aimed at destruction of human rights, fundamental freedoms and democratic basis of society. Multi-ethnic and democratic societies are especially vulnerable to acts of terrorism which are an attack against the values and freedoms enshrined in such societies.

Fully resolved to developing cooperation in the struggle against new challenges in international terrorism including in the nuclear, chemical, biological, space, cybernetics and other spheres, both Sides noted the presence of close nexus between terrorism and illegal trafficking in narcotics, trade in arms and organised crime and pointed to the significance of the need for close interaction at the bilateral, as also at the multilateral level in combating these challenges to international stability and security.

India and the Russian Federation are closely following the development of the situation in and around Afghanistan and emphasise the necessity to avert the spilling over of the conflict beyond the boundaries of one region, to prevent further extension of terrorism. The Sides accorded highest priority to the continuation of effective interaction on Afghanistan in the framework of the Indo- Russian Joint Working Group on Afghanistan established between the two countries in October 2000.

India and the Russian Federation reaffirmed the central role of the United Nations in the efforts of the international community in the struggle against terrorism. They agreed that such a struggle must be conducted on the basis of international law including the United Nations Charter. In this connection,

the Sides called for early completion of negotiations under U.N. auspices on the draft Comprehensive Convention on International Terrorism and the Convention for the suppression of acts of Nuclear Terrorism. Adoption of these Conventions would assist in strengthening the international legal basis for effectively combating the global menace of terrorism.

Signed on 6th November 2001 at Moscow in two originals, each in Hindi, Russian and English languages.

Prime Minister
of the
Republic of India

President
of the
Russian Federation

**Agreement between the Government of the Republic of India and
the Government of the Republic of Kazakhstan on
Setting up of a Joint Working Group for Combating International
Terrorism and other types of Crimes**

The Government of the Republic of India and the Government of the Republic of Kazakhstan (hereinafter referred to as “Parties”);

Bearing in mind the close friendly relations between the two countries;

Mindful of the dangers posed by the spread of terrorism and its harmful effects on peace, cooperation, and friendly relations between States which may also jeopardize the sovereignty and territorial integrity of States;

Recognising the need to prevent, eliminate and unequivocally condemn all acts, methods and practices of terrorism and deplore the impact of terrorism on the life, property, socio-economic development and political stability of countries and on international peace and Cooperation;

Realising that the goal of combating international terrorism can be enhanced by mutual cooperation in a spirit of reciprocity within the framework of their respective domestic laws and legislation;

Recognizing further the importance and the purpose of the UN Security Council Resolution 1373 (2002) on combating international terrorism;

Have agreed as follows:

Article 1

OBJECTIVES

The Parties shall establish a Joint Working Group on combating international terrorism, organized crime and illicit drug trafficking with a view to:

- (i) Share experience concerning international terrorism, organized crime and illicit trafficking in narcotic drugs and psychotropic substances and their linkages;
- (ii) Coordinate approaches to combat international terrorism, organized crime and illicit drug trafficking, psychotropic substances and their linkages, weapons, ammunition, explosives and poisonous substances.
- (iii) Exchange information on the activities of terrorist and organized criminal groups and their associates that may operate from or use the territories of the Parties;

- (iv) Curb activities of terrorist groups, including cover groups engaged in planning promotion or execution of acts of terrorism against India and Kazakhstan;
- (v) Establish an institutional framework for such cooperation in the stated areas.

Article 2

SCOPE

The Joint Working Group shall:

- (i) Work out the ways and means to enhance mutual cooperation in combating international terrorism including under the framework of the Security Council Resolution 1373;
- (ii) Seek to identify international linkages between groups that support terrorist activities and involved in illicit trafficking in narcotic drugs and psychotropic substances;
- (iii) Improve procedures for exchange of operational intelligence in this area;
- (iv) Suggest ways of enhancing mutual cooperation specially through:
 - a) Investigation, arrest, extradition and prosecution of terrorists and their associates;
 - b) Mutual technical assistance, inter alia, through exchange of professional expertise, training for police/security and drug law enforcement personnel involved in combating illicit drug trafficking;
 - c) Identifying, monitoring and preventing the flow of financial resources to individuals and organizations engaged in terrorist activities.
- (v) Examine ways of facilitating legal action to combat international terrorism, organized crime and trafficking in narcotic drugs and psychotropic substances;
- (vi) Share experiences in areas of hijack termination, hostage rescue and protection of VIPs;
- (vii) Joint efforts aimed at preventing easy access of terrorist organizations operating from either country from acquiring arms, explosives, radioactive and poisonous substances;
- (viii) Monitor and prevent money laundering indulged in by such organizations, individuals and groups;
- (ix) Monitor the activities of Taliban, Al Qaeda or any other terrorist or organized criminal group in Afghanistan and in Central Asia with a view to implement the relevant UN Security Council Resolutions;
- (x) Discuss ways of enhancing cooperation with the Interpol;
- (xi) Address any other matter mutually agreed upon by the parties related to fighting against identified types of crimes.

Article 3

COOPERATION IN MULTILATERAL FORA

- (i) The Joint Working Group shall work towards coordinating and extending cooperation on matters relating to global campaign against terrorism in the framework of United Nations and other specialized institutions.
- (ii) Both sides in the Joint Working Group shall also try to facilitate and assist each other in keeping the other side informed of the important developments on this subject.
- (iii) Coordinate efforts with a view to early adoption of the Comprehensive Convention on International Terrorism.

Article 4

COMPOSITION

The Ministry of External Affairs will be the nodal agency on Indian side representing the relevant agencies of the Republic of India.

The Ministry of Foreign Affairs will be the nodal agency on Kazakh side representing the relevant agencies of the Republic of Kazakhstan.

Article 5

MODALITIES

- (i) The Working Group shall meet at least once every year on mutually convenient dates. The venue of the meetings shall alternately be in the Republic of India and the Republic of Kazakhstan;
- (ii) The Joint Working Group shall observe complete confidentiality in the conduct of its work;
- (iii) Any confidential information provided by one Party pursuant to this Agreement shall not be passed on or disclosed to a third party without the express consent of the former Party.

Article 6

CHANGES AND AMENDMENTS

Under the mutual agreements of the Parties, changes will be introduced to the present Agreement, which can be made by separate Protocols to be integral parts of the present Agreement.

Article 7

DURATION

This Agreement shall come into force from the date of its signature and shall remain in force for a period of three years. Thereafter the Agreement shall be extended automatically for a similar period unless either Party gives to the other a written notice of its intention to terminate the Agreement at least six months before the expiry of its duration.

Signed at Almaty on the 3rd day of June, 2002 in two originals each in Kazak, Hindi, Russian and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government
of Republic of India

For the Government
of Republic of Kazakhstan

Agreement Between the Government of the Republic of India and the Government of the Republic of Tajikistan for setting up of A Joint Working Group on combating International Terrorism

The Government of the Republic of India and the Government of the Republic of Tajikistan, hereinafter referred to as “Parties”,

Bearing in mind the close and friendly relations between the two countries;

Mindful of the dangers posed by the spread of terrorism and its harmful effects on peace, cooperation and friendly relations between States which may also jeopardize the sovereignty and territorial integrity of States;

Recognising the need to prevent, eliminate and unequivocally condemn all acts, methods and practices of terrorism and deplore the impact of terrorism on the life, property, socio-economic development and political stability of countries and on international peace and security;

Recognising further the importance and the purpose of the UN Security Council Resolution 1373 (2001) on combating international terrorism;

Realising that the objectives of the Security Council Resolution 1373 can be achieved by mutual cooperation in a spirit of reciprocity within the framework of their respective domestic laws and regulations;

Have agreed as follows:

Article 1 Objectives

The Parties shall establish a Joint Working Group on International Terrorism with a view to:

- (i) Share experience on combating international terrorism, organized crime and illicit trafficking in narcotic drugs and psychotropic substances (hereinafter referred to as “drug trafficking”) and their linkages ;
- (ii) Coordinate approaches to combat international terrorism, organized crime and drug trafficking;
- (iii) Exchange information on the activities of terrorist and organized criminal groups and their associates that may operate from or use the territories of the Parties;
- (iv) Curb activities of terrorists and organized criminal groups and their associates, including those providing front or cover to individuals or groups engaged in the planning, promotion or execution of acts of terrorism against the Republic of India and /or the Republic of Tajikistan;
- (v) Establish an institutional framework for such cooperation.

Article 2

Scope

The Joint Working Group shall;

- (i) Consider the ways and means to enhance mutual cooperation in combating international terrorism pursuant to the Security Council Resolution 1373;
- (ii) Seek to identify international linkages between groups that support terrorist activities and illicit trafficking in narcotic drugs and psychotropic substances. It will cover both State and non State actors;
- (iii) Examine procedures for exchange of operational intelligence in this area
- (iv) Suggest ways of enhancing mutual cooperation specially through ;
 - (a) Arrest, extradition and prosecution of terrorists and their associates;
 - (b) Mutual technical assistance, inter alia, through training for police / security personnel and exchange of professional expertise ;
 - (c) Identifying, monitoring and preventing the flow of financial resources to individuals and organizations engaged in terrorist activities.
- (v) Examine ways of facilitating legal action to combat international terrorism, organized crime and trafficking in narcotic drugs and psychotropic substances;
- (vi) Share experiences in areas of hijack termination, hostage rescue and protection of VIPs;
- (vii) Join efforts aimed at preventing easy access to terrorist organizations, operating from either country of weapons of mass destruction ;
- (viii) Monitor and prevent money laundering indulged in by such individuals and groups;
- (ix) Coordinate efforts with a view to early adoption of the Comprehensive Convention on International Terrorism;
- (x) Monitor the activities of Taliban, Al Qaida or any other terrorist or organized criminal group in Afghanistan and in Central Asia with a view to implement the relevant UN Security Council Resolutions and in particular SCR 1267, 1333 and 1373;
- (xi) Discuss ways of enhancing cooperation with the Interpol;
- (xii) Address any other matter mutually agreed upon by the Parties.

Article 3

Cooperation in Multilateral Fora

- (i) The Joint Working Group shall work towards coordinating and extending cooperation on matters relating to global campaign against terrorism in the United Nations and other specialized institutions;
- (ii) Both Sides in the Joint Working Group shall also try to facilitate and assist each other in keeping the other Side informed of the important developments on this subject.

Article 4

Composition

- (i) The Ministry of External Affairs will be the nodal agency on the Indian side responsible for the implementation of this agreement.
- (ii) Similarly, The Ministry of Foreign Affairs will be the nodal agency on the Tajik side.
- (iii) The nodal agencies of the respective Parties may have representatives from their Ministry of Home Affairs and other relevant agencies involved in counter-terrorism activities as well as those dealing with prevention of drug trafficking and money laundering.

Article 5

Modalities

- (i) The Working Group shall meet at least once every year on mutually convenient dates. The venue of the meetings shall alternatively be in the Republic of India and the Republic of Tajikistan;
- (ii) The Joint Working Group shall observe complete confidentiality in the conduct of its work;
- (iii) Any confidential information provided by one Party pursuant to this Agreement shall not be passed on or disclosed to a third party without the express consent of the former Party;

Article 6

Duration

This Agreement shall come into force from the date of its signature and shall remain in force for a period of three years. Thereafter the Agreement shall be extended automatically for a similar period unless either Party gives to the other a written notice of its intention to terminate the Agreement at least six months before the expiry of its duration.

IN WITNESS WHEREOF the following representatives being duly authorized thereto by their respective Governments have signed this Agreement.

DONE at *Dushanbe on Thursday the 30th day of January 2003* in two originals each in Hindi, Tajik and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government of the
Republic of India

For the Government of the
Republic of Tajikistan

Agreement Between the Government of the Republic of India and the Government of the Republic of Uzbekistan for Setting up of A Joint Working Group on Combating International Terrorism

The Government of the Republic of India and the Government of the Republic of Uzbekistan, hereinafter referred to as “Parties”,

Bearing in mind the close and friendly relations between the two countries;

Mindful of the dangers posed by the spread of terrorism and its harmful effects on peace, cooperation and friendly relations between States which may also jeopardize the sovereignty and territorial integrity of States;

Recognising the need to prevent, eliminate and unequivocally condemn all acts, methods and practices of terrorism and deplore the impact of terrorism on the life, property, socio-economic development and political stability of countries and on international peace and security;

Recognising further the importance and the purpose of the UN Security Council Resolution 1373 (2001) on combating international terrorism;

Realising that the objectives of the Security Council Resolution 1373 can be achieved by mutual cooperation in a spirit of reciprocity within the framework of their respective domestic laws and regulations;

Have agreed as follows:

Article 1 **Objectives**

The Parties shall establish a Joint Working Group on Combating International Terrorism with a view to:

- (i) Share experience on combating international terrorism, organized crime and illicit trafficking in narcotic drugs and psychotropic substances (hereinafter referred to as “drug trafficking”) and their linkages ;
- (ii) Coordinate approaches to combat international terrorism, organized crime and drug trafficking ;
- (iii) Exchange information on the activities of terrorist and organized criminal groups and their associates that may operate from or use the territories of the Republic of India and / or the Republic of Uzbekistan;
- (iv) Curb activities of terrorists and organized criminal groups and their associates, including those providing front or cover to individuals or groups engaged in the planning, promotion or execution of acts of terrorism against the Republic of India and /or the Republic of Uzbekistan;
- (v) Establish an institutional framework for such cooperation.

Article 2

Scope

The Joint Working Group in accordance within its competence and the obligations of the Parties under other international agreements of which they are parties and the framework of the legislation of the States of the Parties shall;

- (i) Consider the ways and means to enhance mutual cooperation in combating international terrorism pursuant to the Security Council Resolution 1373;
- (ii) Seek to identify international linkages between groups that support terrorist activities and drug trafficking. It will cover both State and non State actors;
- (iii) Examine procedures for exchange of operational intelligence in this area:
 - (iv) Suggest ways of enhancing mutual cooperation specially through ;
 - (a) Arrest, extradition and prosecution of terrorists and their associates;
 - (b) Mutual technical assistance, inter alia, through training for police / security personnel and exchange of professional expertise ;
 - (c) Identifying, monitoring and preventing the flow of financial resources to individuals and organizations engaged in terrorist activities.
 - (v) Examine ways of facilitating legal action to combat international terrorism, organized crime and drug trafficking.
 - (vi) Share experiences in areas of hijack termination, hostage rescue and protection of VIPs; as well as providing security for airports, railroad stations, subways and other public places;
 - (vii) Join efforts aimed at preventing easy access to terrorist organizations, operating from either country of weapons of mass destruction;
 - (viii) Monitor and prevent money laundering indulged in by such individuals and groups;
 - (ix) Coordinate efforts with a view to early adoption of the Comprehensive Convention on International Terrorism ;
 - (x) Monitor the activities of Taliban, Al Qaida or any other terrorist or organized criminal group in Afghanistan and in Central Asia with a view to implement the relevant UN Security Council Resolutions and in particular SCR 1373;
 - (xi) Discuss ways of enhancing cooperation with the Interpol;
 - (xii) Address any other matter mutually agreed upon by the Parties.

Article 3

Cooperation in Multilateral Fora

- (i) The Joint Working Group shall work towards coordinating and extending cooperation between parties on matters relating to global campaign against terrorism in the United Nations and other specialized institutions;
- (ii) Both Sides in the Joint Working Group shall also try to facilitate and assist each other in keeping the other Side informed of the important developments on this subject.

Article 4

Composition

- (i) The Ministry of External Affairs will be the nodal agency on the Indian side responsible for the implementation of this agreement;
- (ii) The National Security Service will be the nodal agency on the Uzbek side responsible for the implementation of this Agreement.
- (iii) The delegations of the Republic of India and the Republic of Uzbekistan to the meetings of the Joint Working Group on International Terrorism will be led by the officials of the Indian Ministry of External Affairs and the Uzbek Ministry of Foreign Affairs respectively;
- (iv) The nodal agencies of the respective Parties may have representatives from their other relevant agencies involved in counter terrorism activities as well as those dealing with prevention of drug trafficking activities and money laundering.

Article 5

Modalities

- (i) The Working Group shall meet at least once every year on mutually convenient dates. The venue of the meetings shall alternatively be in the Republic of India and Republic of Uzbekistan;
- (ii) The Joint Working group shall observe complete confidentiality in the conduct of its work;
- (iii) Any confidential information provided by one Party pursuant to this Agreement shall not be passed on or disclosed to a third party without the express consent of the former Party;
- (iv) The rank of delegates, agenda and dates of meetings shall be agreed through diplomatic channels preferably 30 days before the scheduled date of the meeting.

Article 6

International Conventions/Treaties

The present Agreement shall not affect the rights and obligations of the Parties arising from other international Conventions/Treaties to which the Parties are signatories.

Article 7

Changes and amendments

- (i) This Agreement may be amended or supplemented by the mutual written consent of the Parties, through separate protocols which will be considered as its integral parts.
- (ii) The protocols shall come into force on the basis of the procedure envisaged for the coming into force of this Agreement.

Article 8

Settlement of disputes

Any dispute arising from the application or interpretation of the provisions of this agreement shall be resolved by the Parties through consultations and negotiations.

Article 9

Duration

This Agreement shall come into force from the date of its signature and shall remain in force for a period of three years. Thereafter the Agreement shall be extended automatically for a similar period unless either Party gives to the other a written notice of its intention to terminate the Agreement at least six months before the expiry of its duration.

IN WITNESS WHEREOF the following representatives being duly authorized thereto by their respective Governments have signed this Agreement.

DONE at New Delhi the 3rd day of February 2003 in two originals each in Hindi, Uzbek and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

**For the Government of the
Republic of India**

**For the Government of the
Republic of Uzbekistan**

Protocol between the Ministry of External Affairs of the Republic of India and the Ministry of Foreign Affairs of the Republic of Turkey for Setting up of A Joint Working Group on Combating Terrorism.

The Ministry of External Affairs of the Republic of India and the Ministry of Foreign Affairs of the Republic of Turkey, hereinafter referred to as “Parties”,

Bearing in mind the close friendly relations between the two countries;

Mindful of the dangers posed by the spread of terrorism and its harmful effects on peace, cooperation and friendly relations between States which may also jeopardize the sovereignty and territorial integrity of States;

Recognising the need to prevent, eliminate and unequivocally condemn all acts, methods and practices of terrorism and deplore the impact of terrorism on the life, property, socio-economic development and political stability of countries and on international peace and security;

Recognising further the importance and the purpose of the UN Security Council Resolution 1373 (2001) and all other relevant UNSC Resolutions and international conventions on terrorism;

Realising that the objectives of the Security Council Resolution 1373 and all other relevant UNSC Resolutions and international conventions on terrorism; can be achieved by mutual cooperation in a spirit of reciprocity within the framework of their respective domestic laws and regulations;

Have agreed as follows:

Article 1 **Objectives**

The Parties shall establish a Joint Working Group on Terrorism with a view to:

- (i) Share experience concerning terrorism, organized crime and illicit trafficking of humans, narcotic drugs and psychotropic substances as well as their linkages;
- (ii) Coordinate approaches to combat terrorism, organized crime, human and drug trafficking;
- (iii) Exchange information on the activities of terrorist and organized criminal groups and their associates that may operate from or use the territories of the Parties;
- (iv) Examine possible ways and means to curb activities of terrorists and organized criminal groups and their associates, including those providing finance, safe haven, front or cover to individuals or groups engaged in the planning, promotion or execution of acts of terrorism against the Republic of India and /or the Republic of Turkey in their respective countries;
- (v) Establish an institutional framework for such cooperation.

Article 2

Scope

The Joint Working Group shall;

- (i) Consider the ways and means to enhance mutual cooperation in combating terrorism pursuant to the Security Council Resolution 1373; and other relevant UNSC Resolution and international conventions;
- (ii) Seek to identify international linkages between groups that support terrorist activities and illicit trafficking of humans, narcotic drugs and psychotropic substances. It will cover both State and non State actors;
- (iii) Examine procedures for exchange of operational intelligence in this area;
- (iv) Suggest ways of enhancing mutual cooperation specially through
 - (a) Arrest, extradition and prosecution of terrorists and their associates;
 - (b) Mutual technical assistance, inter alia, through training for police / security personnel and exchange of professional expertise;
 - (c) Identifying, monitoring and preventing the flow of financial and other resources and assets to individuals and organizations engaged in terrorist activities.
- (v) Examine ways of facilitating legal action to combat terrorism, organized crime and trafficking in narcotic drugs and psychotropic substances;
- (vi) Share operational and practical experiences in areas of hijack termination, hostage rescue and protection of VIPs;
- (vii) Join efforts aimed at preventing easy access to terrorist organizations, operating from either country, to small arms transfers and weapons of mass destruction;
- (viii) Monitor and prevent money laundering indulged in by such individuals and groups;
- (ix) Coordinate efforts with a view to early adoption of the Comprehensive Convention on Terrorism;
- (x) Monitor the activities of terrorist or organized criminal groups in their respective regions with a view to implement the relevant UN Security Council Resolutions;
- (xi) Discuss ways of enhancing cooperation with the Interpol;
- (xii) Address any other matter mutually agreed upon by the Parties.

Article 3

Cooperation in Multilateral Fora

- (i) The Joint Working Group shall work towards coordinating and extending cooperation on matters relating to global campaign against terrorism in the United Nations and other specialized institutions ;
- (ii) Both Sides in the Joint Working Group shall also try to facilitate and assist each other in keeping the other Side informed of the important developments on this subject.

Article 4

Composition

- (i) The Ministry of External Affairs will be the nodal agency on the Indian side responsible for the implementation of this Agreement.
- (ii) Similarly, The Ministry of Foreign Affairs will be the nodal agency on the Turkish side.
- (iii) The nodal agencies of the respective Parties may have representatives from their Ministry of Home Affairs and other relevant agencies involved in counter-terrorism activities as well as those dealing with prevention of drug trafficking and money laundering.

Article 5

Modalities

- (i) The Joint Working Group shall meet at least once every year on mutually convenient dates. The venue of the meetings shall alternatively be in the Republic of India and the Republic of Turkey;
- (ii) The Joint Working Group shall observe complete confidentiality in the conduct of its work;
- (iii) Any confidential information provided by one Party pursuant to this Protocol shall not be passed on or disclosed to a third party without the express consent of the other Party.(sic)

Article 6

Duration

This Protocol shall enter into force on the first day of the subsequent month following the second notification by the Parties that they have complied with the respective domestic requirements for its entry into force and shall remain in force for a period of one year. Thereafter the Protocol shall be extended automatically for a similar period unless either Party gives to the other a written notice of its intention to terminate the Protocol at least three months before the expiry of its duration.

IN WITNESS WHEREOF the following representatives being duly authorized thereto by their respective Governments have signed this Protocol.

DONE at *Ankara this 17th day of September 2003* in two originals each in Hindi, Turkish and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government of the
Republic of India

For the Government of the
Republic of Turkey

Memorandum of Understanding between the Government of the Republic of India and the Government of the Republic of Indonesia on Combating International Terrorism

The Government of the Republic of India and the Government of the Republic of Indonesia (hereinafter referred to as “parties”),

Realizing the need to establish a framework to facilitate cooperation between the two countries to address security incidents and transnational crimes occurring within the territory of either country;

Recognizing the need to strengthen international cooperation at all levels in combating terrorism in a comprehensive manner;

Desiring to enhance counter-terrorism cooperation between the officials of security, defence, intelligence and law-enforcement agencies of the two Parties;

Have agreed on the following:

Article 1

Objective

This Memorandum of Understanding shall provide a framework for cooperation in preventing, suppressing and combating international terrorism and other related transnational organized criminal activities through the exchange and flow of information and intelligence.

Article 2

Scope and areas of cooperation

Each Party undertakes to implement this Memorandum of Understanding, in accordance with its respective domestic laws, in any or all of following activities:

- (i) Intelligence information sharing;
- (ii) Further enhancing cooperation between the two countries’ law enforcement agencies;
- (iii) Strengthening capacity building and capabilities through networking and programs of training and education; exchange of visits of high officials, analysts and field operators; seminars, conferences and joint operations, as appropriate.

Article 3

Participation

The Ministry of External Affairs shall be the focal point on the Indian side responsible for the implementation of this Memorandum of Understanding. Similarly the Ministry of Foreign Affairs shall be the concerned focal point on the Indonesian side.

Article 4

Settlement of Disputes

Any dispute arising out of the interpretation or implementation of this Memorandum of Understanding shall be settled amicably through consultations or negotiations between the two Parties through diplomatic channels.

Article 5

Joint Working Group

For effective implementation of the objectives of this Memorandum of Understanding, the Parties shall establish a Joint Working Group. The Working Group shall meet at least once a year on mutually convenient dates, alternatively in India and Indonesia, and shall report to the India-Indonesia Joint Commission.

Article 6

Amendment

This Memorandum of Understanding may be amended or revised, as deemed necessary, by mutual written consent of the two Parties.

Article 7

Confidentiality

Any confidential information provided by one Party pursuant to this Memorandum of Understanding shall not be passed on or disclosed to a third party without the expressed consent of the former Party.

Article 8

Duration

- (i) The Memorandum of Understanding shall come into force on the date of its signature and shall remain in effect for three years. Subsequently, unless otherwise indicated by either Party, the Memorandum of Understanding shall be automatically renewed for further period of three years at a time

- (ii) Either Party may at any time terminate this Memorandum of Understanding by giving three months advance written notice to the other Party.

In witness whereof, the undersigned have signed this Memorandum of Understanding.

Done at Jakarta on the second day of July in the year two thousand four, in two originals in English, both texts being equally authentic.

For the Government of
the Republic of India

K. Natwar Singh
Minister of External Affairs

For the Government of
the Republic of Indonesia

Dr. N. Hassan Wirajuda
Minister of Foreign Affairs

India-Philippines Joint Declaration for Cooperation to Combat International Terrorism

The Governments of the Republic of India and the Republic of the Philippines, hereinafter referred to collectively as “the participants”;

REAFFIRMING their commitment to counter, prevent and suppress all forms of terrorist acts in accordance with the Charter of the United Nations, international law and all the relevant United Nations resolutions, including the United Nations Global Counter Terrorism Strategy, and in particular United Nations Security Council Resolutions 1373, 1267 and 1390;

VIEWING acts of terrorism in all its forms and manifestations committed wherever, whenever and by whomsoever, as a profound threat to international peace and security, which require concerted action to protect and defend all peoples and the peace and security of the world;

REAFFIRMING their commitment to protect human rights, ensure fair treatment, uphold the rule of law and due process while countering terrorism;

REAFFIRMING also that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group;

RECOGNISING the principles of sovereign equality, territorial integrity and non-intervention in the domestic affairs of other States;

RECOGNISING the transnational nature of terrorist activities and the need to strengthen international cooperation at all levels in combating terrorism in a comprehensive manner;

DESIRING to enhance counter-terrorism cooperation between the relevant agencies of the participants’ governments;

Solemnly declare as follows:

Objectives:

1. The participants reaffirm the importance of having a framework for cooperation to prevent and combat international terrorism through the exchange and flow of information, intelligence and capacity-building.
2. The participants emphasize that the purpose of this cooperation is to enhance the efficacy of those efforts to combat terrorism.

Scope and Areas of Cooperation:

3. The participants stress their commitment to seek to implement the principles laid out in this Declaration, consistent with their national security policies, domestic laws and international law, in any or all of the following activities:
 - i. Continue and enhance information sharing between their relevant security and intelligence agencies, particularly on best practices in counter terrorism regimes that may include developments of more effective counter-terrorism mechanisms, policies and laws;

- ii. Enhance information sharing and intelligence sharing and intelligence cooperation among their relevant intelligence and security organizations from operational level to strategic level geared towards combating international terrorism, particularly terrorist financing, and in the process, additional necessary measures shall be instituted to protect the shared classified information;
- iii. Enhance liaison relationships amongst their law enforcement agencies to engender practical counter-terrorism regimes.
- iv. Strengthen capacity-building efforts through training and education; consultations between officials, analysts and field operators; and seminars, conferences and joint operations as appropriate.
- v. Provide, using best efforts, assistance on transportation, border and immigration control challenges, including document and identity fraud to stem effectively the flow of terrorist-related material, money and people.
- vi. Prevent and suppress the financing of terrorist acts
- vii. Strengthen capability and readiness, including training and technical assistance, to deal with chemical, biological, radiological, nuclear terrorism (CBRN), cyber terrorism and any new form of terrorism.
- viii. Commit to continue working together in the fight against cyber crime and terrorist misuse of cyber space, by enhancing confidence among the national Computer Security Incident Response Teams of the Philippines and India, including, when and where appropriate, providing hardware and software to prevent cyber attacks and terrorist misuse of cyber space.
- ix. Providing, where and when possible, technical assistance and capacity-building programs in developing laws, extending training (in forensics, law enforcement, legal and technical matters), and when and where appropriate, hardware and software to prevent cyber attacks and terrorist misuse of cyber space.
- x. Promote public awareness and participation in efforts to counter terrorism, as well as enhance inter-faith and intra-faith dialogue and dialogue among civilizations.
- xi. Assist in facilitating extradition and extending mutual legal assistance in cases involving terrorism related offences.
- xii. Cooperate in combating organized crimes which have linkages with terrorist acts.
- xiii. Explore on a mutual basis additional areas of cooperation.

Participation:

4. Participants are called upon to become parties to all universal instruments on counter terrorism.
5. The participants are each called upon to designate an agency to coordinate with law enforcement agencies, authorities dealing with countering terrorism financing and other concerned government agencies, and to act as the central point of contact for the purposes of implementing this Declaration.

Disclosure of Information:

6. The participants expect that no participant would disclose or distribute any confidential information, documents or data received in connection with this Declaration to any third party, at any time except to the extent agreed in writing by the participant that provided the information.

Implementation:

7. All the participants are urged to promote and implement in good faith and effectively the provisions of the present Declaration in all its aspects.

Signed in New Delhi on the Fifth Day of October, 2007 in two versions, English and Hindi, both texts being equally authentic. In case of divergence in the interpretation, English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA

PRANAB MUKHERJEE
Minister of External Affairs

FOR THE GOVERNMENT OF
THE REPUBLIC OF
THE PHILIPPINES

ALBERTO G. ROMULO
Secretary of Foreign Affairs

India-U.S. Counterterrorism Cooperation Initiative

1. India and the United States are transforming their relationship to reflect their shared principles, approaches and global interests. As the world's two largest democracies, the two countries recognize the vital importance of politics and economic freedom, individual rights, democratic institutions and the rule of law.
2. In recent years, changes in the international security environment have challenged the two countries and the rest of the world. Terrorism and transnational crimes are threats to our two countries and the world community. India and the United States reaffirm their determination to fight terrorism and transnational crime in all their forms and manifestations and prevent the continued growth of terrorist organizations. The Governments of India and the United States seek to further enhance their cooperation in counterterrorism as an important element of their bilateral strategic partnership. In pursuit of this shared objective, the two countries intend to:
 - A. strengthen capabilities to effectively fight against terrorism, and promote exchanges regarding modernization of techniques to combat terrorism;
 - B. share best practices on issues of mutual interest such as effective use of technology and policing in mega-cities;
 - C. develop investigative skills related to sensitive site exploitation;
 - D. promote cooperation between their forensic science laboratories, and training institutions;
 - E. establish procedures to provide mutual investigative assistance and to share expertise when requested in the aftermath of terrorist incidents;
 - F. exchange best practices on mass transit and rail security;
 - G. strengthen cooperation towards enhancing capabilities to act against money laundering, counterfeit currency and financing of terrorism;
 - H. implement requests under the existing mutual legal assistance and extradition treaties in a more timely and streamlined fashion;
 - I. increase exchanges between coast guards and navies on maritime security and to promote cooperation in addressing maritime threats, including piracy and terrorism;
 - J. exchange experience and expertise on port and border security;
 - K. enhance the liaison and training between specialist counterterrorism units, including the National Security Guard (NSG) and appropriate U.S. counterparts;
 - L. share best practices and further develop capabilities to prevent weapons of mass destruction from falling into the hands of terrorist groups and other illegal networks;
 - M. expand joint research and development in the area of security technology;

- N. enhance information collection, intelligence sharing and analysis capabilities, including provision for more robust exchanges on activities of terrorist and extremist groups;
 - O. strengthen cooperation in the field of cyber security; and
 - P. exchange best practices on cooperation among security stakeholders.
3. Consistent with the goals of the Strategic Dialogue, India and the United States reaffirm their intention to promote greater mutual understanding and cooperation between their Governments to combat terrorism. The Counterterrorism Joint Working Group (CTJWG) within the Strategic Dialogue process should continue to serve as the primary mechanism to guide the India-U.S. counterterrorism relationship.

Signed at New Delhi in duplicate, July 23, 2010.

Gopal K. Pillai
Home Secretary
FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA

Timothy J. Roemer
Ambassador to India
FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA

OTHERS

Agreement between the Government of the Republic of India and the Government of the State of Qatar on Co-Operation in Security and Law Enforcement Matters

The Government of the Republic of India and the Government of the State of Qatar;

Desirous to enhance and strengthen the effectiveness of mutual co-operation between the two countries in combating all criminal activities;

Convinced of the Importance of international co-operation in combating criminal activities of common concern;

Recognizing the necessity to establish a framework of mutual co-operation and co-ordination in the fields of security and law enforcement;

Have agreed as follows:

Article (1)

The parties shall take all measures to prevent giving:

- (a) Shelter to those who committed criminal acts related to the security or interests of the other Party.
- (b) Access to arms or funds or training in acts of violence, sabotage or terrorism or access to any facilities thereof.

The Parties also engage themselves to combat the criminal acts and hostile activities of those who commit the criminal acts.

Article (2)

1. Subject to their national laws and regulations, the Parties shall provide assistance to combat all forms and types of crimes and especially the following crimes:
 - (a) Terrorism
 - (b) Serious crime including hijacking, taking of hostages and abduction
 - (c) Organized crime
 - (d) Falsification of documents and forgery of currencies
 - (e) Illicit acts concerning arms, ammunition and explosives.

- (f) Illicit economic activities
 - (g) Smuggling of objects of historical or cultural value, jewels, precious metals or other valuable objects
 - (h) Illicit passage of frontiers and falsification of travel documents
 - (i) The properties and revenues derived from organized crime and terrorism and their tracking, restriction and confiscation.
2. The assistance shall include but not to be limited to:
- (a) Measure to locate, restrain, forfeit or confiscate the means and resources of financing terrorism or the proceeds of the crime
 - (b) Taking of evidence and obtaining statements of persons
 - (c) Providing information, documents and other records including criminal and judicial records
 - (d) Communication information available with each Party about criminal acts either committed or being planned to be committed within the territory of the other Party
 - (e) Executing request for search and seizure
 - (f) Delivery or lending of exhibits
 - (g) Serving of documents seeking attendance of persons
 - (h) Exchanging of the names of the persons criminally convicted in serious crimes
 - (i) Locating and identifying persons and objects
 - (j) Any other assistance consistent with the objective of this Agreement.
3. For the purposes of this Agreement:
- (a) 'Proceeds of crime' means any property that is derived or realized directly or indirectly by any persons from an offence or the value of any such property.
 - (b) 'Property' includes money of all kinds of moveable or immovable, tangible or intangible, and includes any interest in such property.
 - (c) 'Confiscation' means any measure resulting in the deprivation of property by conclusive decision.

Article (3)

The Parties shall provide all necessary assistance and take all coordination measures, according to their national laws and regulations to establish measures, according to their national laws and regulations to establish effective procedures to prevent and combat criminal activities through the following:-

(a) Exchange of information:-

The Parties shall exchange all necessary information about the crimes stated in Article 1 and 2 above that identify the suspected persons, the persons searched by the security authorities in each country and those convicted by the competent authorities. The Parties shall exchange information about the new techniques and means of committing those crimes.

(b) Exchange of experience and field visits:-

The Parties shall cooperate and exchange studies and researches related to the combating of crimes stated in this Agreement, provide mutual assistance in the preparation of the training courses or exchange field's visits.

Article (4)

For the suppression of illicit trafficking in narcotic drugs, psychotropic substances and precursors, the Parties shall :-

- (a) Exchange and share information about persons involved in narcotic drug trafficking, their modus operandi as well as other relevant details of such crimes, in so far these are necessary for the prevention or suppression of crimes
- (b) Exchange the results of their criminal and criminological research on narcotic drug trafficking and abuse of narcotic drugs
- (c) Share and exchange of samples of narcotic drugs and psychotropic substances of natural or synthetic origin usable for abuse; and
- (d) Subject to their national laws and regulations and their international obligations, facilitate the controlled delivery of illicit narcotic drugs and psychotropic substances in order to render possible the arrest of the persons to whom they will be delivered as well as any persons involved in the trafficking provided that the necessary information is submitted at least 48 hours prior to the request.

Article (5)

The Parties shall take mutual measures and provided the necessary assistance as per the requirements of police investigation (i.e. all the measures taken by the police to establish evidence before presenting the accused in the competent court).

Article (6)

Assistance may be refused if it would impair the sovereignty, security and state interests of the requested Party or if the subject of assistance is contrary to the national laws and regulations of the requested Party.

Article (7)

The Parties shall maintain the secrecy of the mutually exchanged information and no third party shall be informed of it without the written approval of the Party that provided the information.

Article (8)

Each Party shall bear the special expenses resulting from the implementation of the provisions of this Agreement or any other form of expenses as may be agreed upon.

Article (9)

A Joint Committee shall be established to follow up and assure the implementation of this Agreement. The Joint Committee may hold its meeting on the request of either Party to take the appropriate decisions. The Joint Committee shall observe complete confidentiality in the conduct of its works.

Article (10)

The Joint Committee shall lay down the detailed modalities of cooperation and specify the law enforcement agencies of each side that exchange intelligence information in the fields of terrorism and drug trafficking and shall specify the office addresses of those agencies, their contact telephone numbers, faxes and other relevant details to facilitate contact on priority basis.

Similarly, it shall determine also the nodal authorities that cooperate with each other and exchange mutual assistance in various fields of crime.

Article (11)

The authorities responsible for the following up and implementation of this Agreement are-

In the Republic of India-the Ministry of Home Affairs.

In the State of Qatar- the Ministry of Interior.

Article (12)

This Agreement does not prejudice the rights and obligations of the Parties arising from any other Agreement entered into by either of the Parties. In case of there being any differences between the provisions of this Agreement and the provisions of any such other Agreement, the provisions that

realize more security cooperation, shall be applied with the consent of the Parties.

Article (13)

Any dispute arising out of the interpretation of this Agreement shall be settled through negotiations between the Parties.

Article (14)

This Agreement may be amended by the written consent of the Parties. Such amendment shall be applicable from the date of the last notice of one Party to the other Party of the completion of all the legal requirements applicable in its country.

Article (15)

This Agreement shall be ratified/approved according to the legal procedures followed in the country of each Party. This Agreement shall enter into force after one month following the exchange of the documents of its approval by the Parties through diplomatic channels. This Agreement shall remain valid for a period of five years from the date of its entry into force; it shall be renewed automatically unless either Party may give the other Party a written notification of its desire to terminate the Agreement. In such a case, the Agreement shall be terminated after three months from the date of the receipt of such notification.

In witness whereof, the undersigned, being duly authorized thereto by their respective governments have signed this Agreement.

This Agreement is written in two originals each in the Hindi, Arabic and English languages; all the texts being authentic, in case of any divergent interpretation, the English text shall prevail.

Done in the city of _____ on ____ of ____ 1429 AH, corresponding to ____ of _____ 2008 AD.

For the Government of the
Republic of India

(E. Ahamed)
Minister of State for
External Affairs

For the Government of the
State of Qatar

(Sheikh Abdullah Bin
Nasser bin Khalifa al-Thai)
Minister of State for Internal Affairs



UNODC

United Nations Office on Drugs and Crime

United Nations Office on Drugs and Crime

Regional Office for South Asia

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