

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE FEDERATIVE REPUBLIC OF BRAZIL ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Republic of India and the Federative Republic of Brazil, hereinafter referred to as the 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 both countries in the investigation, prosecution, prevention and suppression of crime, and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

Recalling the particular importance of combating serious criminal activities including corruption, money laundering, illicit trafficking in narcotic drugs and psychotropic substances, economic offences, firearms, ammunition, explosives, organized crime, cyber crimes, terrorism and the financing of terrorism;

ARTICLE 1

Scope of application

1. Under this Agreement, subject to their domestic law, 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 to be sought or provided by a court or some other authority as provided in paragraph 5.

3. This Agreement shall also apply to any requests for mutual legal assistance relating to acts or omissions committed before its entry into force.

4. Assistance shall be provided without regard as to whether the conduct that is the subject of investigation, prosecution or proceedings in the Requesting Party would constitute an offence under the domestic laws of the Requested Party with an exception to the request for assistance made under Article 15 and 16 of this Agreement wherein the assistance shall be provided only if the conduct constitutes an offence in the territory of the Requested Party.

5. For the purpose of this Agreement, the authorities who are competent to forward a request for mutual legal assistance to their Central Authority are those responsible or entitled to conduct investigation, prosecution or judicial proceedings, as defined in the domestic law of the Requesting Party.

6. This Agreement is intended solely for mutual legal assistance between the Parties. The provisions of this Agreement 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.

7. The Agreement shall not apply to:

- a) arrest or detention of any person with a view to extradite;
- b) a criminal judgment imposed in the Requesting Party and sent for enforcement in the Requested Party except to the extent permitted by the law of the Requested Party and Article 16, 17 and 18 of the present Agreement;
- c) transfer of persons in custody to serve sentence;
- d) transfer of proceedings in the criminal matter.

ARTICLE 2

Definitions

1. For the purpose of this Agreement:

- a) Criminal matters mean, investigations, inquiries, trials or other proceedings relating to an offence under domestic laws of a Party,

- b) Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments including those perpetuating terrorism and foreign exchange.

2. Assistance shall include:

- a) identifying, tracing, searching, locating, restraining, seizing, confiscating, forfeiting and disposal of proceeds and instrumentalities of crime including those related to terrorism, economic offences, cyber crime and assistance in related proceedings, as long as permitted by the laws of the Requested Party.
- 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) delivery of property including lending of exhibits;
- f) making detained persons and others available to give evidence or assist investigations, prosecutions or other criminal proceedings;
- g) service of documents, including documents seeking the attendance of persons;
- h) authorizing persons from the Requesting Party to be present during the execution of requests;
- i) facilitating the appearance of witnesses or the assistance of persons in investigations, prosecutions or other criminal proceedings;
- j) taking measures to reconstitute the embezzled public funds;
- k) protecting and preserving computer data; and
- l) any other assistance consistent with the objects of this Agreement and not contrary to the domestic law of Requested Party.

3. For the purposes of this Agreement:

- a) "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;
- b) "Property" includes 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 obtained through proceeds and instrumentalities of crime;

- 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;
- e) "The restraint of property" means any measure for the prevention of dealing in or transfer or disposal of property.
- f) "*Attachment*" means prohibition of transfer, conversion, disposition or movement of property by an order.
- g) "*Data*" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner and is intended to be processed is being processed or has been processed in a computer system or computer network and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.
- h) "*Personal data*" means data about or relating to a natural or legal person who is directly or indirectly identifiable, having regard to any characteristic, trait, attribute or any other feature of the identity of such natural person or legal, or any combination of such features, or any combination of such features with any other information; and
- i) "*Preservation of computer data*" means the protection of computer data which already exists in a stored form from modification or deletion, or from anything that would cause its current quality or condition to change or deteriorate.

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 Federative Republic of Brazil, the Central Authority is the Ministry of Justice and Public Security.

3. The Central Authorities shall communicate directly with each other for the purposes of this Agreement.

4. The Parties may at any time designate any other authority as a Central Authority for the purposes of this Agreement. Notification of such a designation will take place by exchange of diplomatic notes.

ARTICLE 4

Contents of Requests

1. A request for assistance shall be in writing. However, in urgent circumstances, a request may be made by email or facsimile or any other agreed forms of electronic media or through INTERPOL but shall be confirmed in writing with all relevant documents within 15 days after making such request.

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 nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable 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) contact details of a person capable of responding to enquiries concerning request;
- (e) establishing link between criminal matter and assistance sought;
- (f) information available with the Requesting Party for the person under investigation or property under investigation;
- (g) the criminal history of alleged accused, if any;
- (h) details of any particular procedure or requirement that the Requesting Party wishes to be followed;
- (i) any time limit within which compliance with the request is desired;
- (j) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings, whenever possible the date and place of birth and names of parents shall also be included.

- (k) 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;
- (l) 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;
- (m) 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;
- (n) 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;
- (o) the need, if any, for confidentiality and the reasons therefore;
- (p) 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.
- (q) In case of request in respect of content of data, a statement regarding probable cause of link between offence and information sought has to be provided;
- (r) In case of request of preservation of data, the identity of the Internet Service Provider (ISP) or Telecommunication Service Provider (TSP) or an individual or institution whose data is to be preserved, or that person's telecommunications address has to be provided by the Requesting State along with a description of the data that has to be preserved and its relevance to the investigation or prosecution; and
- (s) In case of request for identification of bank information, the identity of the natural or legal person relevant for locating such accounts or transactions may be provided by the Requesting State along with a statement showing that the information sought relates to the criminal

investigation or proceeding and that the banks in the territory of the Requested State may have the information requested.

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. The Requested Party may ask the Requesting Party to provide any further information which appears to the Requested Party to be necessary for the purpose of executing the request.

ARTICLE 5

Execution of Request

1. The Central Authority of the Requested Party shall promptly execute the request, or get it executed through the appropriate authority, in accordance with the law of the Requested Party and, in so far as not prohibited by that law, in the manner specified by the Requesting Party.

2. The Court or the authority competent in this behalf of the Requested Party shall have authority to issue summons, subpoenas, search warrants, or other orders necessary to execute the request.

3. The Central Authority of the Requested Party shall make all necessary arrangements for the representation in the Requested Party of the Requesting Party in any proceedings arising out of a request for assistance.

4. Requested Party shall, upon request, inform the Requesting Party of the date and place of execution of the request for assistance.

5. The Requested Party shall not refuse to execute a request solely on the ground of bank secrecy.

ARTICLE 6

Refusal of Assistance

1. The Requested Party shall 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) the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned;
- (d) the request relates to a military offence which is not an offence under the ordinary criminal law.
- (e) There are substantial grounds to believe that the request for assistance has been made for the purpose of investigating and prosecuting a person on account of that person's race, sex, religion, nationality, origin or political opinions or that person's position may be prejudiced for any of those reasons.
- (f) The request is not made in consonance with the provisions of this Agreement.
- (g) If the request is made for the offence which is regarded by the Requested Party as being of a political nature. For the purposes of this Agreement, the following offences shall not be considered to be political offences:
 - i) Murder or other willful crime against the Person of a Head of State or Head of Government of one of the Parties.
 - ii) Aircraft hijacking offences, as described in the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;
 - iii) 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;
 - iv) 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;
 - v) Hostage-taking as described in the International Convention Against the Taking of Hostages, done at New York on December 17, 1979;
 - vi) Offences 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;

- vii) Investigation and proceedings relating to criminal offences concerning terrorism i.e. use of violence for political ends or for putting the public into fear;
- viii) Any other offence within the scope of multilateral terrorism, narcotic drugs, cyber-crime, corruption conventions and its protocol to which both Parties are a party;
- ix) Any offence defined under the United Nations Convention against Corruption (UNCAC);
- x) A conspiracy or attempt to commit any of the foregoing offences, or aiding or abetting a person who commits or attempts to commit such offences.

2. Assistance may be refused if:

- a) If the request made is *de minimis* in nature.
- b) The request seeking restraint, forfeiture or confiscation of proceeds and instrumentalities of crime or seizure of property are in respect of conduct/activity which cannot be made the basis for such restraint, forfeiture, confiscation or seizure in the Requested Party.
- c) If the Central Authority of the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that Party, it may postpone execution, or make execution subject to conditions determined necessary after consultations with the Central Authority of the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.
- d) The Requested Party shall promptly inform the Requesting Party of its decision not to execute in whole or in part with a request for assistance, or to postpone execution, and shall give reasons thereof.

3. Before, refusing 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
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 Requesting Party within a reasonable time, before the scheduled response or appearance.
3. The Requested Party shall return a proof of service whenever possible in the manner specified in the request.
4. If service could not be effected the reasons should be communicated promptly by the Requested Party to the Requesting Party.

ARTICLE 8
Transmission of Documents and Objects

1. The Requested Party shall provide copies of publicly available information, documents and records of government departments and agencies.
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 or records, unless the Requesting Party expressly requests originals.
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 Party, 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 Party.

ARTICLE 9

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.
3. The persons of the Requesting Party present while the evidence is taken, as long as permitted by the law of the Requested Party, may pose questions through the authorities of the Requested Party. 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. Subject to the law of Requested Party, a witness may also be examined in the Requested Party by the commission issued by the competent court of the Requesting Party.
5. On request for assistance under this Article, a person required to give evidence as a witness in the territory of the Requested Party may decline to give such evidence if the law of Requested Party so permits and such person shall not by the reason thereof be liable for any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

ARTICLE 10

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

1. The Requesting Party may seek the assistance of the Requested Party in inviting a person to:
 - a) appear or testify in proceedings in relation to a criminal matter in the Requesting Party provided that such person shall not be the person charged in the proceedings; or

- b) assist in the investigation in relation to a criminal matter in the Requesting Party.

2. If the Requesting Party considers that the personal appearance of a witness or expert for the purpose of giving evidence or providing assistance is needed, it shall so inform the Requested Party. The Requested Party shall inform the witness or expert of the request, and then report to the Requesting Party the reply received from the witness or expert. Where appropriate, the Requested Party shall satisfy itself that arrangements have been made for the person's safety.

3. The Requested Party may provide any mutually agreed amount in advance to such person which shall be refunded by the Requesting Party.

4. The allowance, travel and subsistence expenses of complainants, witnesses and experts shall be borne by the Requesting Party.

ARTICLE 11

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 a person present in the Requesting Party due to a request seeking that person's attendance.

4. 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.

5. The period of custody in the territory of the Requesting Party shall be deducted from the period of detention, which the person concerned is or will be obliged to undergo in the territory of the Requesting Party.

ARTICLE 12

Safe Conduct

1. A person present in the Requesting Party in response to a request shall not be detained, except for the custody pursuant to Article 11(2), prosecuted, 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 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 Party, 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 who does not consent to transfer, pursuant to Article 10 or Article 11, shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting State or Requested State.

Article 13

Transit of Persons in Custody

1. The Requested Party may authorize the transit through its territory of person held in custody, by the Requesting Party or a third State, whose personal appearance has been requested by the Requesting Party in an investigation, prosecution, or proceeding.

2. The Requested Party shall have the authority and the obligation to keep the person in custody during transit.

ARTICLE 14

Video Conferencing

On the request of the Requesting Party, the Requested Party may, as far as feasible, and subject to its domestic law, facilitate video conferencing for the purposes of Articles 9, 10 and 11.

ARTICLE 15

Search and Seizure

1. The Requested Party shall execute a request for a search and seizure and delivery of any material to the Requesting Party for evidentiary purposes provided that the rights of bonafide third parties are protected.
2. 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 laws.
3. 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.
4. The Central Authority of the Requested Party may require consent of the Requesting Party subject to such terms and conditions, which the Requested Party may deem necessary to protect third party interests in the item to be transferred.

ARTICLE 16

Attachment, Confiscation and Forfeiture of Proceeds and Instrumentalities of Crime and Sharing thereof

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instrumentalities of the alleged crime are located within its jurisdiction, investigate financial dealings and obtain other information or evidence that may help to secure the recovery of proceeds and instrumentalities

of crime. The Requested Party shall convey the Requesting Party of the results of its inquiries.

2. Where, pursuant to sub-clause 1 of the present Article, suspected proceeds and instrumentalities of crime are found, the Requested Party shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds and instrumentalities of crime, pending a final determination in respect of those proceeds by a court of the Requesting Party.
3. The Requested Party shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds and instrumentalities of crime made by a court of the Requesting Party and take other appropriate action for restitution to the victims of crime and the collection of fines imposed by the court of Requesting Party in criminal prosecution.
4. The Parties shall ensure that the rights of bona fide third parties are respected in the application of the present Article.
5. The Parties shall consult for the final disposal of the proceeds and instrumentalities of crime after deducting reasonable expenses incurred in realizing such proceeds.
6. Where either Party have reasons to believe that any person or group of persons in its 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 Party, it shall bring these facts to the notice of the other Party and shall, upon request, take steps as permitted by its domestic law for search, seizure and confiscation of such funds and the prosecution of the individual concerned.

ARTICLE 17

Return of Assets

1. As a general rule, once a decision by a court of appeals or equivalent in the Requesting Party is issued, the return of assets shall be decided by the competent authorities.
2. The return shall occur, as a general rule based on final judgment in the Requesting Party.

ARTICLE 18
Return of Embezzled Public Funds

1. When the Requested Party ceases or confiscated assets which constitute public funds, whether or not these have been laundered, and which have been embezzled from the Requesting Party, the Requested Party shall return the seized or confiscated assets, less any operational costs incurred in the Requested Party. The return shall occur, as a general rule based on final judgment in the Requesting Party.
2. If the object of confiscation represents the cultural property of one Party, it will be returned to that Party as a whole.
3. The Parties agree that it may not be appropriate to share where the value of the realised assets or the assistance rendered by the Co-operating Party is *de minimis*.

Article 19
Protection and Preservation of Data

1. The request relating to assistance for providing digital or personal data under this Agreement shall take place in strict compliance with the domestic law of the Requested Party. Such data may also be provided for prevention of offences of considerable importance, prosecution of offences and to ward off a substantial danger to public security.
2. The Parties while seeking or providing assistance under para 1 shall take following reasonable safeguards as per their domestic laws:
 - a) data including personal data must be obtained and processed fairly and lawfully and must be appropriate, relevant and not excessive with regard to the purposes for which it is sought and transferred.
 - b) the Requesting Party shall inform the Requested Party the time period for which the data is required. Such time period shall be consented by the Requested Party. The transferred data shall be kept for no longer than the period required for the purpose for which it has been received and shall be returned to the Requested Party or deleted at the end of period specified. The Requesting Party shall inform the Requested Party in advance in case the data has to be kept for a longer period in Requesting Party.

- c) the Competent Authorities of the Parties shall take all reasonable measures to prevent the transfer of inaccurate, incomplete or out-of-date data. If it is established that inaccurate or non-transferable data has been transferred, the Requesting Party shall immediately inform the Requested Party and provide correct or accurate data. The Requesting Party shall delete or return any such inaccurate data received.
- d) no data transferred to the Requesting Party under this Agreement may be transferred to a third country, a private individual or an international body without the consent of the Requested Party which provided the data.
- e) the Parties shall take appropriate measures to ensure that the data transferred to them is protected from accidental or unauthorized destruction, accidental loss, and unauthorized access, modification or dissemination.
- f) Parties shall keep a record of the data transferred and its destruction.
- g) on request, the Requesting Party shall inform the Requested Party of how the data is being used.

3. A party may request the other Party to issue a notice requiring any person or internet service provider in possession or control of computer data to which request applies to preserve the data where it appears to the Requesting Party that there are grounds to suspect that the requested data may contain information relevant to criminal activities. The Requested Party get the data preserved till the data is obtained and transferred by the Requested Party pursuant to the assistance sought.

Article 20

Identification of Bank Information

1. Upon request of the Requesting Party, the Requested Party shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts and any other detail thereof. The Requested Party shall promptly communicate such information to the Requesting Party.

2. The actions described in sub-clause 1 of this Article are also applicable for the purpose of identifying:

- a) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;

b) financial transactions unrelated to accounts.

3. The Parties shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the provisions of this Agreement.

Article 21 Joint Investigation

The Parties, as per the mutually agreed terms and conditions, may undertake joint investigations on case-by-case basis in relation to the investigations, prosecution or proceedings. The Parties shall mutually agree upon the procedures under which the joint investigation team has to operate, such as its composition, duration, location, organization, functions, purpose and terms or participation of team members of one of the Party in investigative activities taking place in the territory of the other Party.

Article 22 Compatibility with other Agreements / Treaties

Assistance and procedures set forth in this Agreement shall not prevent either Party from providing 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 23 Confidentiality and Limitation of Use

1. The Requested Party shall best endeavour to keep confidential the request for assistance, its contents and its supporting documents. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether and to what extent the request should nevertheless be executed.

2. Unless otherwise agreed, the Requesting Party shall not, without the consent of the Requested Party, use or transfer information or evidence provided by the Requested Party for investigations or proceedings other than those stated in the request. The Requesting Party shall request prior consent

from the Requested Party to use or disclose information or evidence obtained by means of assistance for purposes other than those stated in the request.

3. The Requesting Party shall comply with any other limitation imposed by the Requested Party on use or transmission of information or evidence provided.

ARTICLE 24

Spontaneous Information

1. The Central Authority of either Party may, without prior request, forward information to the Central Authority of the other Party, if it considers that the disclosure of such information might assist the other Party in initiating or carrying out investigations or proceedings, or it may lead to a request by that Party under this Agreement.

2. The Party providing information may, pursuant to its domestic law, impose conditions on the use of such information by the other Party.

ARTICLE 25

Certification or Authentication

Documents, records or objects transmitted pursuant to this Agreement shall not require any form of authentication, except as specified in Article 7 or as required by the Requesting Party.

ARTICLE 26

Language

Requests and supporting documents shall be accompanied by a translation in English for India and in Portuguese for Brazil.

ARTICLE 27

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 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 including any allowances and fees of experts either in the Requested Party or the Requesting Party; and
 - (c) the expenses relating to translation, interpretation and transcription.
2. The expenses associated with the taking of evidence from the Requested Party to the Requesting Party via video, satellite or other technological means will be borne by the respective parties.
3. 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 28

Consultations

1. The Central Authorities of the Parties shall consult promptly, 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.
2. Bilateral consultations between the Central Authorities of the Parties may take place annually for effective use of the provisions of this Agreement and monitoring the execution of requests under this Agreement.

ARTICLE 29

Dispute Settlement

The Parties shall endeavour to settle disputes concerning the interpretation or application of this Agreement through diplomatic channels.

ARTICLE 30

Entry into Force, Amendment & Termination

1. This Agreement is subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall come into force 30 (thirty) days after the date of exchange of instruments of ratification.
2. This Agreement may be amended by mutual consent.
3. Either Party may terminate this Agreement by giving six months written notice to the other through diplomatic channels. Upon the expiry of such notice, the Agreement shall cease to have any force or effect.
4. In the event of termination, the 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 authorized thereto by their respective Governments, have signed this Agreement.

Done in two originals at New Delhi on this 25..... day of January 2020 in Hindi, Portuguese and English languages. All texts being equally authentic, in case of any divergence in interpretation, the English text shall apply.



(S. Jaishankar)
External Affairs Minister
For the Republic of India



(Ernesto Henrique Fraga Araujo)
Minister of Foreign Affairs
For the Federative Republic of Brazil