

CERTIFIED BY
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CARIBBEAN COMMUNITY SECRETARIAT
Date: *9/01/06*

**CARIBBEAN TREATY ON
MUTUAL LEGAL ASSISTANCE
IN SERIOUS CRIMINAL MATTERS**

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IN SERIOUS CRIMINAL MATTERS

The States Parties:

CONSCIOUS that the escalation in serious crime, including transnational organised crime is posing a threat to effective governance in State Parties;

RECOGNISING the importance of enhanced co-operation among the States Parties in the suppression of crime;

AFFIRMING the importance of the principles of sovereign equality, mutual respect and friendly relations;

DESIRING to improve the effectiveness of the States Parties in the investigation, prosecution and suppression of crime through co-operation and mutual legal assistance in serious criminal matters;

DESIROUS of extending to States Parties the widest possible mutual legal assistance within the limits of the laws of their respective jurisdictions;

CONVINCED that the adoption of common rules in the field of mutual legal assistance in serious criminal matters will contribute to development and integration,

HAVE AGREED as follows:

Article 1

Definitions

For the purposes of this Treaty, the following definitions shall apply:

“Community” means the Caribbean Community including the CARICOM Single Market and Economy (CSME) established by the Revised Treaty of Chaguaramas signed at Nassau, The Bahamas on 5 July 2001;

“confiscation” includes where applicable forfeiture and the permanent deprivation of property, proceeds or instrumentalities of an offence by order of a court;

“criminal matters” means proceedings relating to any offence whether created by statute or at common law;

“freezing” or “seizure” means temporarily prohibiting the transfer, conversion, disposition, or movement of property or temporarily assuming custody or control of the property on the basis of an order issued by a court or a competent authority;

“interest” in relation to property means a:

(a) legal or equitable estate or interest in the property;

(b) right, power or privilege in connection with the property,

whether present, future, vested or contingent;

“person” means any natural or legal person;

“political offence” or “offence of a political character” means an offence committed in the course of and incidental to an uprising or other violent political disturbance;

“premises” includes the whole or any part of a structure, building, aircraft, or vessel;

“proceedings” means any procedure conducted by or under the supervision of a judge, magistrate, or judicial officer however described in relation to any alleged or proven offence, and includes an inquiry, investigation, or preliminary or final determination of facts;

“proceeds of crime” means any property suspected or found by a court to be derived or realized directly or indirectly from the commission of a serious crime and includes, on a proportional basis, property into which any property derived or realized directly from the offence was converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the commission of the offence;

“property” means real or personal property of every description, whether situated in the requested State or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property;

“requested State” means a State Party to which a request for assistance under this Treaty has been made;

“requesting State” means a State Party which has made a request for assistance under this Treaty;

“serious crime” means an act or omission under the laws of a State Party which constitutes a criminal offence punishable by at least twelve months imprisonment or more and includes an offence against the law relating to taxation;

“State Party” means a State for which this Treaty is in force;

“witness” means a person who has given, is obliged to give, or has agreed to give a written statement or oral testimony or both in relation to the commission or possible commission of a serious crime or in respect of which there are reasonable grounds to believe will be committed.

Article 2

Purpose and Scope

1. The purpose of this Treaty is to increase cooperation in mutual legal assistance among Caribbean countries in respect of serious criminal matters and to combat criminal activity.
2. States Parties shall afford each other, to the extent possible under their laws, the widest measure of mutual legal assistance at any stage of investigations, prosecutions, and judicial proceedings in relation to serious crimes.
3. Mutual legal assistance shall include, to the extent permitted by the law of the requested State:
 - (a) identifying and locating persons and objects;
 - (b) taking evidence or statements from persons;
 - (c) obtaining the production of judicial or other documents;
 - (d) serving judicial documents;
 - (e) examining objects, sites and premises;
 - (f) providing any available information and relevant exhibits;
 - (g) providing originals or certified copies of any documents and records;
 - (h) facilitating the personal appearances of witnesses;
 - (i) effecting a temporary transfer of persons in custody to appear as witnesses;

- (j) executing searches and seizures;
- (k) tracing, seizing, freezing and confiscating the proceeds or instrumentalities of crime; and
- (l) providing other assistance consistent with the objects of this Treaty as agreed to by the States Parties.

Article 3

Effective Implementation

Each State Party shall take all necessary measures, including legislative and administrative measures, to ensure the effective implementation of the object and purpose of this Treaty within its territory.

Article 4

Central Authority

1. Each State Party shall designate a central authority who shall have the responsibility and power to execute requests for legal assistance or to transmit them to the competent authorities for execution.
2. States Parties shall notify each other on the designation of their respective central authorities.
3. Requests for legal assistance under this Treaty shall be made through the central authorities of the States Parties.

Article 5

Requests for Assistance

1. A request for assistance shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing within seven days of the oral request. The requested State shall acknowledge receipt of the request within fifteen days of the date of receipt.
2. Every request shall include where appropriate:
 - (a) the name of the competent authority conducting the proceedings to which the request relates;
 - (b) the purpose of the request and a description of the assistance sought;
 - (c) a description of the nature of the proceedings;
 - (d) a description of the facts alleged to constitute the offence and copies of the text of the relevant laws;
 - (e) the identity, nationality, and address of the person to be served, where necessary;
 - (f) 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;
 - (g) specifications of any time-limit within which compliance with the request is desired;

- (h) details of the property to be traced, frozen, seized or confiscated and the grounds for believing that the property is located in the requested State;
- (i) in the case of a request to freeze or confiscate assets believed on reasonable grounds to be located in the requested State, details of the offence in question and particulars of any proceedings commenced in respect of that offence accompanied by a copy of any relevant freezing or confiscation order;
- (j) a statement setting out any requirements of the requesting State concerning confidentiality relating to the request and reasons for those requirements;
- (k) in the case of lending of exhibits, the person or category of persons who will have custody of the exhibit, the place to which the exhibit is to be removed, any test to be conducted and the date by which the exhibit will be returned;
- (l) in the case of transferring persons in custody to give evidence or assist in investigations, the person or category of persons who will have custody during the transfer, the place to which the persons are to be transferred and the date of their return;
- (m) any other information that may assist in giving effect to the request.

3. Requests, supporting documents, and other communications made pursuant to this Treaty shall be transmitted in the language of the requesting State and accompanied by an official translation where necessary.

4. Requests for service shall be accompanied by a translation of the documents to be served into a language understood by the person to be served and the official language of the requested State.

5. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request that the requesting State supplies additional information within fifteen days.

Article 6

Execution of Requests

1. The requested State shall act on requests for assistance as expeditiously as practicable.

2. At the request of the requesting State, the requested State shall state the date and place of execution of the request.

Article 7

Refusal and Postponement of Request

1. Legal assistance may be refused if:

- (a) execution of the request would be contrary to the laws of the requested State or unreasonable on other grounds;
- (b) execution of the request would impair the sovereignty, security, public order or similar essential public interest of the requested State, prejudice the safety of any person or be contrary to its laws or be unreasonable on other grounds;

- (c) the request relates to an offence of a political character;
- (d) 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;
- (e) the request is in respect of offences related to military law which do not constitute offences under ordinary criminal law;
- (f) the request relates to an offence for which the requested person has been convicted or acquitted;
- (g) there are substantial grounds for believing that compliance with the request would facilitate the prosecution or punishment of a person affected by the request on account of the person's race, religion, nationality or political opinion, or for any of the foregoing reasons would cause prejudice to such persons; or
- (h) any confidentiality requested in relation to information or evidence furnished by the requested State would not be protected by the requesting State.

2. An offence shall not be an offence of a political character for the purposes of this Article if it is an offence within the scope of any international convention to which both the requesting and requested States are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence.

3. States Parties shall not decline to render legal assistance on the ground of secrecy of banks or similar financial institutions.

4. Dual criminality shall not be a pre-requisite for the rendering of assistance under this Treaty.

5. 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. In considering whether or not to postpone the execution of a request pursuant to this paragraph, the requested State shall determine whether assistance can be granted in part without postponement or subject to such conditions as it considers necessary.

6. Before refusing a request or postponing its execution, the requested State shall consider whether legal assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.

7. Reasons shall be given by the requested State for any refusal or postponement of legal assistance.

Article 8

Limitation on Use

The requesting State shall not disclose or use information or evidence obtained for purposes other than those stated in the request without the prior consent of the central authority of the requested State.

Article 9

Protection of Confidentiality

1. The requesting State and the requested State shall use their best efforts to keep confidential the request for assistance, its contents, supporting documents, and the fact of granting such assistance. In the event that the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State which shall then determine whether the request should nevertheless be executed and inform the requested State of its decision.
2. The requesting State and the requested State shall keep confidential, evidence and information provided pursuant to a request, except where such evidence and information is required for the proceedings to which the request relates.

Article 10

Costs of Executing Requests

1. The costs of executing a request shall be borne by the requesting State, unless otherwise determined by the Parties and shall include:
 - (a) travel and other expenses related to the transportation of persons, including accompanying officials, to and from the territory of the requested State;
 - (b) fees and allowances as determined by the requesting and requested States;
 - (c) stenographic reports requested by the central authority of the requesting State other than reports prepared by a salaried government employee;
 - (d) fees payable to interpreters or translators; and
 - (e) payment in respect of any other matter incidental to the assistance rendered.
2. If, during the execution of a request, it becomes apparent that execution of the request will entail expenses of an extraordinary nature, the respective central authorities shall consult to determine the terms and conditions under which execution may continue.

Article 11

Identifying and Locating Persons and Objects

1. Requests may be made under this Treaty for assistance in identifying or locating persons and objects believed to be within the territory of the requested State.
2. In making such a request, the requesting State shall indicate in writing the purpose for which such assistance or cooperation is being sought and shall provide such information as is available to it as to the whereabouts of the person or object to which the request pertains and any other information which may facilitate the identification of the person or object.

Article 12

Service of Documents

1. The requested State shall effect service of any document relating to or forming part of any request for assistance properly made under the provisions of this Treaty transmitted to it for this purpose by the requesting State; provided that the requested State may, in its discretion, decline to serve any subpoena or other process requiring the attendance of any person before any authority or tribunal in the requesting State.
2. Any request under this Article for assistance in the service of a document requiring the appearance of a person before an authority in the requesting State shall be transmitted to the requested State within a reasonable time before the scheduled appearance.
3. The central authority of the requested State shall endeavor to have the documents served by any:
 - (a) method prescribed by the law of that State for the service of documents in criminal proceedings; or
 - (b) particular method stated in the request, unless such method is incompatible with the law of that State.
4. The requested State shall return proof of service in the manner required by the requesting State provided under the laws of the requested State, and if the law of the requesting State does not provide a manner for return of service, then in the manner required by the requested State.
5. If service cannot be effected, the reasons for this shall be communicated to the competent authority of the requesting State as soon as practicable.
6. A person served in compliance with a request with a summons to appear as a witness in the requesting State and who fails to comply with the summons shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or the requested State notwithstanding any contrary statement in the summons.

Article 13

Assistance in Gathering Evidence

1. The requested State may require a person from whom evidence is sought to appear and testify before, or produce documents, records and articles to, a judge, court, tribunal, or other appropriate authority in or of the requested State and, if necessary, shall compel that person by subpoena to do so.
2. The requested State shall, on request and insofar as may be practicable, furnish to the requesting State advance information of the date and the place of any proceedings pursuant to this Article.
3. Where evidence is being taken pursuant to this Article the requested State shall permit the presence of a defendant, his counsel, or any other person specified in the request.
4. The judge, court, tribunal, or other appropriate authority shall allow counsel for the requested State and for the requesting State, and the defendant or his counsel, the opportunity to question the person whose testimony is sought, and may permit any other person specified in the request to ask questions of the person whose testimony is sought.

5. Insofar as not prohibited by the law of the requested State, business records produced under this Article shall be authenticated in such manner as may be requested by the requesting State in order to make them admissible according to the law of the requesting State.

6. The persons present at proceedings pursuant to a request shall be permitted to make a verbatim transcript of the proceedings. Insofar as not prohibited by the law of the requested State, the use of technical means to make such a verbatim transcript shall be permitted.

Article 14

Transfer of Persons in Custody to Give Evidence or to Assist in Investigations

1. Upon request, a person in custody 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 under the law of the requested State it is required to keep the person transferred in custody, the requesting State shall hold that person in custody and shall return that person in custody at the conclusion of the execution of the request.

3. The period during which the person transferred is in custody in the requesting State shall be deemed to be service in the requested State of an equivalent period of custody in that State for all purposes.

4. 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.

5. The fact that the person transferred is a national of the requesting State shall not affect any obligation of that State under this Treaty to return that person to the requested State.

6. The return to the requested State pursuant to this Article of a person transferred under this Article shall not require extradition proceedings.

7. A person in custody whose transfer is the subject of a request and who does not consent to the transfer shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or the requested State.

Article 15

Facilitating the Personal Appearance of Witnesses or Other Persons to Give Evidence or Assist in Investigations

1. The requesting State may request that a person who is in the requested State be made available to testify or to assist in an investigation in the requesting State.

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. The requested State shall promptly notify the requesting State of the response to the invitation.

3. A person whose appearance as a witness is the subject of a request and who does not agree to appear shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting State or the requested State.

Article 16

Immunity of Persons

1. A person present in the requesting State pursuant to a request under this Treaty seeking that person's attendance shall not be subject to:

- (a) civil process in respect of any act or omission that occurred or is alleged to have occurred before the person's departure from the requested State pursuant to the request; or
- (b) service of process or be prosecuted or detained or subjected to any other restriction of his 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. Paragraph 1 shall cease to apply if a person, being free to leave the requesting State, has not left it within a period of fifteen days after being officially notified that that person's attendance is no longer required or, having left that State, has voluntarily returned.

Article 17

Search and Seizure

1. A request for search and seizure and the transfer of any item to the requesting State shall be carried out in accordance with and to the extent permitted under the laws of the requested State.

2. Insofar as not prohibited by the law of the requested State, that State shall provide any item seized upon execution of a request under this Article in a form, or accompanied by such certification as may be required by the requesting State in order to render the seized item admissible in proceedings in the requesting State.

3. The central authority of the requested State may require that the requesting State agrees to terms and conditions for the protection of third party interests in any item to be transferred.

Article 18

Proceeds of Crime

1. The requested State shall, upon request, take measures to locate proceeds of crime believed to be located within its territory and shall notify the requesting State of the results of such measures.

2. When, pursuant to paragraph 1, suspected proceeds of crime are found, the requested State shall take such measures as are permitted by its law to seize, freeze, and confiscate these proceeds.

Article 19

Enforcement of Orders made in States Parties in relation to the Proceeds of Crime

1. The requesting State may request assistance of the requested State in securing the enforcement of an order made by a court of competent jurisdiction relating to the proceeds of crime within the jurisdiction of the requested State.
2. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds of crime following a request by the requesting State.
3. The request shall be accompanied by a copy of any order made in the requesting State and shall contain, so far as reasonably practicable, all information available to the central authority of the requesting State which may be required in connection with the procedures to be followed in the requested State.
4. The law of the requested State shall apply to the determination of the circumstances and manner in which an order may be enforced.

Article 20

Protection of Third Parties

The States Parties shall ensure that the rights of bona fide third parties and victims are respected in all requests relating to the freezing and confiscation of the proceeds of crime.

Article 21

Disposal of Assets

1. When acting on a request made by another State Party in accordance with this Treaty, States Parties shall give priority consideration to returning the confiscated assets to the requesting State so that it can give compensation to the victims of the crime or return such assets to their legitimate owners.
2. The proceeds of crime confiscated by a State Party pursuant to a request under this Treaty or the funds derived from the sale of such proceeds shall be shared among the:
 - (a) requested State; and
 - (b) requesting State.
3. Both the requesting State and the requested State may donate to the CARICOM Secretariat a proportion of the proceeds of crime confiscated pursuant to a request under this Treaty or the funds derived from the sale of such proceeds.
4. The proportions in respect of paragraphs 2 and 3 shall be determined by agreement between the requested State and the requesting State.

Article 22

Treaty not to cover extradition

Nothing in the Treaty is to be construed as authorizing the extradition, or the arrest or detention with a view to extradition, of any person.

Article 23

Settlement of Disputes

1. In the case of a dispute between two or more States Parties relating to the interpretation or application of this Treaty, the States Parties shall consult together with a view to the settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, judicial process, or other peaceful means of their own choice.
2. Notwithstanding paragraph 1 the States Parties may submit the dispute to the Caribbean Court of Justice for determination provided all the States Parties to the dispute agree to do so.

Article 24

Other Arrangements

States Parties may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Treaty for the purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Article 25

Signature and Ratification

1. The Treaty shall be open for signature to all Member States of the Community including Associate Members as well as States having territories in or bordering on the Caribbean Sea.
2. This Treaty is subject to ratification by the States that are signatories to this Treaty in accordance with their respective constitutional procedures.

Article 26

Territorial Application

If a State Party has two or more territorial units in which different systems of law govern matters addressed in this Treaty, it shall state at the time of signature or ratification whether this Treaty will apply to all of its territorial units or only to one or more of them.

Article 27

Amendment

1. This Treaty may be amended by the States Parties.
2. Every amendment shall be subject to ratification by the States Parties in accordance with their respective constitutional procedures and shall enter into force on the date on which the fifth instrument of ratification is deposited with the Secretary General of the Community (hereinafter referred to as the Depository).

Article 28

Entry into Force

1. This Treaty shall enter into force upon the deposit of instruments of ratification or accession by at least five States in accordance with their respective constitutional procedures.
2. This Treaty and all the instruments of ratification or accession shall be deposited with the Depository who shall forward certified true copies to all States Parties, notifying them of the dates of deposit of the instruments of ratification or accession, and shall be registered with the Secretary General of the United Nations.

Article 29

Denunciation and Withdrawal

1. A State Party may denounce and withdraw from this Treaty at any time by a written notification addressed to the Depository.
2. Such denunciation and withdrawal shall take effect for the State Party concerned one year after the date of receipt of the notification by the Depository.
3. If this Treaty is terminated either in relation to all or any of the States Parties the treatment of claims by any State Party or the financial obligations of any State Party, shall remain in force until all outstanding matters are resolved.

Article 30

Accession

1. After its entry into force any Member State of the Community or Associate Member State as well as States having territories in or bordering on the Caribbean Sea may accede to this Treaty.
2. Instruments of accession shall be deposited with the Depository who shall forward certified true copies to all States Parties notifying them of the dates of deposit of the instruments of accession.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective governments, hereby sign the present Treaty.

DONE at *Gros Islet, Saint Lucia* on the *6th* day of *July 2005*

Signed by

for the Government of Anguilla on the

at

Signed by

[Signature]
for the Government of Antigua and Barbuda on the *6th* day of *July 2005*

at *Gros Islet, Saint Lucia*

Signed by

for the Government of Bahamas on the

at

Signed by

[Signature]
for the Government of Barbados on the *6th* day of *July 2005*

at *Gros Islet, Saint Lucia*

Signed by

[Signature]
for the Government of Belize on the *30* August *2005*

at

Belmopan

Signed by

for the Government of Bermuda on the

at

Signed by

for the Government of the British Virgin Islands on the

at

Signed by

for the Government of the Cayman Islands on the

at

Signed by

for the Government of the Commonwealth of Dominica on the

at

Signed by

for the Government of Grenada on the

at

Signed by

SR Inmanally

for the Government of the Co-operative Republic of Guyana on the

5th January 06

at

Georgetown, Guyana

Signed by

for the Government of Haiti on the

at

Signed by

[Signature]

for the Government of Jamaica on the

6th day of July 2005

at

Lyons Islet, Saint Lucia

Signed by

for the Government of Montserrat on the

at

Signed by

for the Government of Saint Lucia on the 6th day of July 2005
at Gros Islet, Saint Lucia

Signed by

for the Government of St. Kitts and Nevis on the 6th day of July 2005
at Gros Islet, Saint Lucia

Signed by

for the Government of St. Vincent and the Grenadines on the
at

Signed by

for the Government of The Republic of Suriname on the 7th day of December 2005
at Bridgetown, Barbados

Signed by

for the Government of The Republic of Trinidad and Tobago on the 6th day of July 2005
at Gros Islet, Saint Lucia

Signed by

for the Government of The Turks and Caicos Islands on the
at