

**TREATY ON MUTUAL LEGAL ASSISTANCE IN  
CRIMINAL MATTERS BETWEEN MONGOLIA AND THE REPUBLIC OF CUBA**

Mongolia and the Republic of Cuba (hereinafter jointly referred to as the "Parties");  
Recognizing the existing friendly relations and cooperation between the Parties;  
Desiring to strengthen the legal foundations of providing mutual legal assistance in criminal matters;

Desiring to improve the effectiveness of activity of both Parties in combating crime, through cooperation and mutual legal assistance in criminal matters;

Acting in accordance with their laws and also respecting generally recognized principles of international law, in particular principles of sovereign equality, territorial integrity and non-interference with internal affairs,

Have agreed as follows:

**Article 1**

**Scope of Application**

1. The Parties shall, in accordance with this Treaty and national legislation thereof, grant each other mutual legal assistance in criminal matters.

2. Legal assistance shall be provided in accordance with this Treaty if the offence, in connection with which the request was issued, is criminally punishable according to the laws of both Parties. The Requested Party may upon its own consideration grant legal assistance also in case the offence, in connection with which the request was received, is not criminally punishable under its legislation.

3. Criminal matters shall also include matters connected with offences against laws relating to taxation, customs duties, foreign exchange control, or any other revenue matters.

4. Legal 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) assisting in the availability of detained persons or others to give evidence or assist in investigations;
- (g) assisting in relation to proceeds of crime with such measures as search, seizure, confiscation and transfer; and

(h) any other form of legal assistance compatible with the object of this Treaty and not prohibited by the laws of the Requested Party.

5. This Treaty shall 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 laws of the Requested Party and this Treaty;
- (c) the transfer of prisoners to serve sentences; and
- (d) the transfer of proceedings in criminal matters.

## **Article 2**

### **Other Arrangements**

This Treaty shall not affect obligations existing between the Parties whether pursuant to other treaties, arrangements or otherwise, nor prevent the Parties from providing or continuing to provide mutual legal assistance to each other pursuant to such obligations.

## **Article 3**

### **Channels of Communication**

1. Requests for legal assistance made by the competent authorities of the Parties, as well as documents received during execution of such requests, articles of evidence and other materials shall be made and received for the purposes of this Treaty through the Central Authorities of the Parties.

The Central Authorities of Mongolia shall be the Prosecutor General's Office, which shall determine the modalities for their participation and the implementation of this Treaty in accordance with their competence.

The Central Authority of the Republic of Cuba shall be the Ministry of Justice, which shall determine the modalities for their participation and the implementation of this Treaty in accordance with their competence.

2. The Party shall promptly notify the other Party through diplomatic channels when the Central Authority is changed or its powers are transferred to another authority.

3. The Central Authorities shall communicate with each other directly or through the diplomatic channels for the purposes of this Treaty.

## **Article 4**

### **Language**

A request for legal assistance, its supporting documents and additional information forwarded in accordance with this Treaty shall be accompanied by a certified translation into the official languages of the Requested Party, or into the English language.

## **Article 5**

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

1. Legal assistance may be refused if, in the opinion of the Requested Party:
  - (a) the request relates to an offence of political character or nature or to an offence under military law which is not also an offence under ordinary criminal law;
  - (b) the execution of the request would endanger its sovereignty, territorial integrity, security, public order, or other essential public interest;
  - (c) there are substantial grounds to believe that the request for legal assistance has been made to prosecute or punish a person by reason of that person's race, religion, nationality, citizenship, sex, sexual orientation, or political opinions, disability, or that the person's position may be prejudiced for any of these reasons;
  - (d) the request relates to the prosecution of a person for an offence in respect of which the person has been finally convicted, acquitted, pardoned or has served the sentence imposed in the Requested Party; or
  - (e) the request relates to the prosecution of a person for an offence 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;
  - (f) the execution of the request would be contrary to the national legislation or international treaties of the Requested Party.
2. Legal assistance may be postponed by the Requested Party if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
3. In the event of necessity, before refusing a request or postponing its execution, the Requested Party shall consider whether legal assistance may be granted subject to such conditions as the Requested Party deems necessary. If the Requesting Party accepts legal assistance subject to these conditions, the Requested Party shall proceed with the request.
4. If the Requested Party refuses or postpones legal assistance, it shall inform the Requesting Party of the reasons for the refusal or postponement.

## **Article 6**

### **Requests for Legal Assistance**

1. A request for legal assistance shall be made in writing. In urgent circumstances, the Requested Party may accept a request that was transmitted by any safe means using any written form, including through the National Central Bureau of the International Criminal Police Organization (INTERPOL). The original documents shall be sent as soon as possible.

2. A request for legal assistance shall include:

- (a) the name of the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
- (b) the purpose of the request and the description of the legal assistance sought and
- (c) a description of the subject matter and nature of the investigation or proceedings,
- (d) the text of the relevant law of the Requesting Party and a summary of relevant facts.

3. A request for legal assistance, to the extent necessary and possible, shall also include:

- (a) information on the identity, nationality, citizenship and location of any person or persons who are the subject of the investigation, prosecution or proceedings in the Requesting Party and/or 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 whereabouts of a person to be located;
- (d) a description of the person or the place to be searched as far as applicable and of the items to be seized;
- (e) the reasons and details of any particular procedure or requirements that the Requesting Party wishes to be followed in executing the request;
- (f) information as to the allowances and expenses to which a person summoned to appear in the Requesting Party shall be entitled;
- (g) the need for confidentiality and the reasons thereof; and
- (h) such other information as may be deemed necessary for the proper execution of the request.

4. If the Requested Party considers that the information contained in a request for legal assistance is not sufficient to deal with the request, it may seek additional information.

5. Requests for legal assistance, supporting documents and other communications made pursuant to this Treaty shall be certified by the signature of a competent official of the Requesting Party and the official seal of the competent authorities of the Requesting Party.

## **Article 7**

### **Execution of Request**

1. A request for legal assistance shall be executed promptly in accordance with the laws of the Requested Party and, insofar as it is not prohibited by those laws, in the manner requested by the Requested Party.

2. Upon the request of the Requesting Party, the representatives of the Requesting Party may, subject to the laws and procedures of the Requested Party, be present at the proceedings.

3. The Requested Party shall permit the presence of such persons as specified in the request during the execution of the request and, to the extent permitted by its laws, may allow such persons to participate in the proceedings.

## **Article 8**

### **Protection of Confidentiality**

1. The Requested Party, if so requested, shall use its best efforts to keep confidential a request for legal assistance, 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.

2. The Requesting Party, if so requested, shall keep confidential the information and evidence provided by the Requested Party, except to the extent that the information and evidence is needed for the investigation, prosecution and proceedings described in the request.

## **Article 9**

### **Limitation on Use**

The Requesting Party shall not use or transfer any information or evidence obtained under this Treaty in any investigation, prosecution or proceedings other than that described in a request for legal assistance without the prior written consent of the Requested Party.

## **Article 10**

### **Taking of Evidence**

1. The Requested Party shall, in conformity with its laws and upon request, take testimony and obtain statements of persons.

2. A person who is required to give evidence in the Requested Party pursuant to a request under this Article may decline to give evidence where the laws of the Requested Party permit that person not to give evidence in similar circumstances in proceedings originating in the Requested Party.

## **Article 11**

### **Return of Material to the Requested Party**

Where required by the Requested Party, the Requesting Party shall return as soon as possible the originals of the material provided under this Treaty.

## **Article 12**

### **Availability of Persons to Give Evidence or to Assist in Investigations**

1. The Requesting Party may request the legal assistance of the Requested Party in summoning a person to appear as a witness, a victim or an expert in proceedings or assist in investigations in the Requesting Party. That person shall be informed of the order to pay any expenses and/or allowances payable, related to his/her participation in the proceedings in the territory of the Requesting Party.

2. The Requested Party shall promptly inform the Requesting Party of the person's response.

## **Article 13**

### **Transfer of Persons in Custody or Serving Sentence of Imprisonment to Give Evidence or to Assist in Investigations**

1. A person in custody or serving sentence of imprisonment in the Requested Party, at the request of the Requesting Party in case of written consent of such person and consent of the Requested Party shall be temporarily transferred to the Requesting Party to assist in investigations or proceedings for the period of time determined by the Parties, which can be extended by a reasonable request of the Requesting Party.

2. Where the person transferred is required to be held 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 12 of this Treaty.

4. A person transferred in accordance with this Article 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 14**

### **Safe Conduct**

1. A person present in the Requesting Party pursuant to a request made under Articles 12 or 13 of this Treaty shall not be detained, prosecuted, punished or subjected

to any other restrictions of personal liberty in that Party in respect of any acts, omissions or convictions 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 that person, being free to leave, has failed to leave the Requesting Party within a period of 15 (fifteen) consecutive days after that person has been officially notified that his/her presence is no longer required, except under circumstances beyond his/her control or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to Article 12 or 13 of this Treaty shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure.

## **Article 15**

### **Provision of Publicly Available Documents and Other records**

1. The Requested Party shall provide copies of documents and records that are open to public access as part of a public register or otherwise, or that are available to the public.

2. The Requested Party may provide copies of any other official document or record in the same manner and under the same conditions as may be provided to its own law enforcement and judicial authorities.

## **Article 16**

### **Service of Documents**

1. The Requested Party shall effect service of documents that are transmitted to it for this purpose by the Requesting Party.

2. A request for the service of documents requiring the appearance of a person shall be received by the Requested Party not less than 45 (forty-five) 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. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons thereof.

## **Article 17**

### **Search and Seizure**

1. The Requesting Party shall, to the extent its laws permit, execute a request for search and seizure and delivery of any material to the Requested 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 agrees to the terms and conditions deemed necessary to protect third party's interests in the items to be transferred.

## **Article 18**

### **Proceeds of Crime, Instruments and Means of Committing Crimes**

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of crimes, instruments and means of committing 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, instruments and means of committing crimes may be located in the jurisdiction of the Requested Party.

2. Where, pursuant to paragraph 1 of this Article, suspected proceeds, instruments and means of committing crimes are found, the Requested Party shall take such measures as are permitted by its law to seize, forfeit or confiscate such proceeds, instruments and means of committing crimes.

3. In the application of this Article, the rights of a bona fide party shall be respected under the law of the Requested Party.

4. The Requested Party in control of forfeited proceeds shall dispose of them in accordance with its laws. To the extent permitted by its laws and upon such terms as it deems appropriate, the Requested Party may transfer forfeited proceeds in whole or in part to the Requesting Party.

## **Article 19**

### **Certification and Authentication**

Documents or other material supplied in response to a request for legal assistance shall be signed by a competent official of the Requested Party and submitted with the official seal of the competent authorities of the Requested Party.

## **Article 20**

### **Expenses**

1. The Requested Party shall meet the costs of executing a request for legal assistance, except that the Requesting Party shall bear:

- (a) the expenses associated with the transfer of 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 made under Article 12 or 13 of this Treaty; and



(b) the expenses and fees of experts, witnesses, victims, who are summoned in accordance with Article 12 of this Treaty.

2. If it becomes apparent that the execution of a request requires expenses of an extraordinary nature, the Parties shall consult each other to determine the terms and conditions under which the requested legal assistance can be provided.

#### **Article 21**

##### **Consultations**

1. The Parties shall consult, at the request of either Party, concerning the interpretation and the application of this Treaty.

2. The Central Authorities of both Parties may consult each other directly concerning the interpretation, application or implementation of this Treaty either on general matters or in relation to a particular case.

#### **Article 22**

##### **Dispute Settlement**

1. Any dispute that may arise out of the interpretation or execution of this Treaty shall be settled by the Consultative Authorities of the Parties through diplomatic channels.

#### **Article 23**

##### **Entry into Force, Application, Amendment and Termination**

1. 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 constitutional requirements for the entry into force of this Treaty have been complied with.

2. This Treaty also apply to offences committed before its entry into force.

3. This Treaty shall remain in force indefinitely and may be amended with the mutual written consent of the Parties through diplomatic channels, and any such amendments shall enter into force thirty (30) days after the date on which the Parties have notified each other that their constitutional requirements for such amendments have been complied with.

4. Either Party may terminate this Treaty by notice in writing through the diplomatic channels at any time. Termination shall take effect one hundred and eighty (180) days after the date on which the notice is received.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed and sealed this Treaty.

DONE at \_\_\_\_\_ on \_\_\_\_\_ in two originals, in Mongolian, Spanish and English languages, all texts being equally authentic. In the event of any divergence of interpretation of this Treaty, the English text shall prevail.

FOR MONGOLIA

FOR THE REPUBLIC OF CUBA