

(Non-treaty)

**LETTER OF REQUEST BY CANADA
TO THE COMPETENT AUTHORITY OF**

REQUEST FOR ASSISTANCE

CAUTION

All requests for assistance must contain a general caution and an abbreviated footnote caution. The suggested wording for the cautions is as follows:

For pre-charge cases (Please use this paragraph as is)

This Letter of Request is made to assist an ongoing police investigation being undertaken by a Canadian investigative agency. All information contained in this request is provided from the police investigation and consists of unproved allegations, which the police investigators believe merit investigation. No charges have been laid and all persons named in this letter are presumed innocent under Canadian law. The consideration of charges will only take place at the conclusion of the investigation. All information in this request is confidential. All statements or information contained in this request must be read as a whole in the context of the investigative nature of this request.

The law enforcement officer submitting the request must identify all pre-charge requests as such in the request and the covering letter.

For post-charge cases (Please use this paragraph as is)

This Letter of Request is made to assist an ongoing police investigation by a Canadian investigative agency and/or to gather evidence for use in the corresponding criminal prosecution currently being conducted by the relevant Attorney General's Office. All information contained in this request is provided from the police investigation and consists of unproved allegations. While charges have been laid, under Canadian law, those charged are presumed innocent until proven guilty. All information in this request is confidential. All statements or information contained in this request must be read as a whole in the context of the investigative nature of this request.

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INTRODUCTION

The (set out the name of the competent prosecuting and/or investigating competent authority i.e. Attorney General of Canada, Attorney General of a province, Metropolitan Police Force, the RCMP, the Provincial Police, etc.) is investigating alleged violations of Canadian criminal laws, namely: (set out the offences, i.e. fraud, forgery, drug trafficking, money laundering, etc.), contrary to section(s) of the (identify the relevant legislation and provisions i.e. s. 354 of the Criminal Code of Canada, s. 5 of the Controlled Drugs and Substances Act). These violations are alleged to have been committed by (identify as precisely as possible the subjects of the investigation or prosecution, including: name, date of birth, address, etc.)

In relation to this investigation, (identify the competent authority) requires assistance (briefly describe nature of evidence requested i.e. obtaining certified copies of documents; taking statements; obtaining telephone toll records etc.) This assistance is required because (describe, generally, why evidence is needed i.e. as evidence for use in the anticipated prosecution, to identify alleged co-conspirators, to trace the proceeds of the alleged criminal activity, etc.)

ASSURANCE

On behalf of the Government of Canada, I give the assurance to the Competent Legal Authority of _____ that:

1. In similar criminal investigations or prosecutions Canada will extend to _____ reciprocal cooperation and is ready and willing to render assistance to _____ in accordance with the law of Canada; and
2. All information, documentation or other evidence provided to Canada by the Competent Legal Authority of _____ is requested solely for use in relation to the investigation or prosecution of alleged violations of Canadian criminal law by _____ (name of suspects) described in this request.

SUMMARY OF THE LAW

In this section, identify and set out the full text of all relevant provisions under investigation and/or prosecution.

For example: The relevant Canadian statutory provisions are set out below.

Fraud: Section 380 of the *Criminal Code* of Canada states that:

SUMMARY OF INVESTIGATION AND ALLEGATIONS

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This section should briefly describe the theory of the case, that is the nature of the investigation or proceedings and a summary of the relevant allegations.

The summary should clearly convey the investigative nature of the request. Care should be taken to ensure that the request does not contain statements that are inconsistent with the investigative nature of the request, in particular, statements that might erroneously suggest that conclusions or findings of guilt have been made by any Canadian authorities.

This section should include the following information:

- (a) *where possible, the identity, nationality and location of proposed witnesses;*
- (b) *in the case of requests to take evidence from a person, a clear indication of whether the person is a subject of the investigation or simply a witness;*
- (c) *in the case of requests to take evidence from a person, a clear indication of the reason the evidence is relevant to your investigation;*
- (d) *where documentary evidence is requested, a clear indication of the relevance of the evidence sought to your investigation;*
- (e) *when the execution of a search warrant is requested, the reason that this measure is required should be clearly conveyed; and*
- (f) *if you are asking for the restraint of funds you believe represent proceeds of crime, ensure that your reasonable basis for believing that these funds constitute proceeds of crime is set out in the request. For instance, it is not sufficient to simply ask for the restraint of all accounts related to a person who is under investigation; you must demonstrate a nexus between the foreign account/assets and the alleged criminal activity.*

REQUEST PORTION

The competent authority [*insert name of competent authority*] requires the following assistance:

This section should set out, in specific terms, exactly what you are seeking to obtain, including certification needs.

- (a) *where documentary evidence is requested, to the extent possible, identify the*

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particular documents sought (i.e.: signature cards, account opening statements, etc.);

- (b) *where necessary, set out the details of any particular procedure or requirement that the you wish to be followed and reasons i.e. if you would like the foreign authority to authenticate/certify the copies of the bank records in accordance with the requirements of s. 30 of the Canada Evidence Act, you **must** append a draft "fill-in-the-blank" affidavit/certificate for their use;*
- (c) *in the case of requests to take evidence from a person, clearly*
- describe the subject matter of the evidence or statement sought (please feel free to provide a list of specific questions); and*
 - include instructions as to whether sworn or affirmed statements are required.*
 - specify whether Canadian investigators/prosecutors wish to be in attendance and participate in the questioning, to the extent permitted, and set out why their attendance is necessary and/or desired.*
- (d) *if you are asking to have search warrants executed, identify precisely the location to be searched and the evidence to be seized;*
- (e) *if you are asking for the transfer of a detained prisoner, your request should clearly identify the prisoner's place of incarceration, provide some detail about the sentence being served, identify any security concerns, set out the logistics of the prisoner's entry and exit from Canada and specify the length of the prisoner's stay in order that the Minister of Justice can prepare the Ministerial approval for entry into Canada required under the Immigration Act.*

In making your request, allow for the time required both in Canada and the foreign State to arrange the logistics of transfer and obtain the necessary orders, i.e. 4-5 weeks notice. In setting out the anticipated time frame for the prisoner's attendance in Canada, please keep in mind the exigencies of the trial process and give yourself a little leeway: altering the return date creates the need for new Ministerial approvals in Canada and new authorizations for absences in some foreign jurisdictions. As well, keep in mind that you must provide the foreign State with the prisoner's written consent; this should accompany the request. Please note that young offenders cannot be transferred.

- (f) *where the restraint of assets is sought, please restrict yourself to asking for the restraint of assets demonstrated (... with respect to which there is a reasonable basis to believe...) to represent the proceeds of crime;*

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- (g) *where you ask for real evidence, please specify if any analysis will be done and specify commitment, if any, to returning the evidence;*
- (h) *if you are asking a foreign State to lend you exhibits from their judicial proceedings; please provide as much detail as possible concerning the current location of the exhibits (i.e. the address of the courthouse or police station) and the proceedings in which they were used (i.e. court file number).*

CERTIFICATION
(Include if necessary)

The *Canada Evidence Act* permits the introduction into evidence before a Canadian court of records created in the usual and ordinary course of business of an entity located in a foreign jurisdiction under certain conditions. Although original records are preferable, copies may be produced if the originals cannot, or cannot practicably, be produced. Computer-generated records are also admissible under the *Canada Evidence Act*. The records must be accompanied by explanatory documents (forms of which are attached for completion) setting out certain basic information about the institution at which the record was generated and about the record itself. The person completing the form must either swear as to the truth of the contents of the form or state that his or her statement is made in conformity with the laws of the requested state. The following factors must be taken into account.

1. In the case of original records, the attached form entitled “Affidavit with respect to Original Records” must be completed;
2. Where it is not possible or reasonably practicable to produce original records, the *Canada Evidence Act* permits copies of records to be introduced into evidence when the copies are accompanied by two documents. One document is to be signed by a person who can attest to the fact that the copies are of documents made or data entered in an electronic documents system in the usual and ordinary course of business. The second document is to be signed by a person who can attest to the authenticity of the copies or the fact that the documents are printouts of the data stored in the electronic documents system. Blank forms of those two documents, one entitled “Affidavit with Respect to Computer Print-outs and/or Copies of Original Records (explaining unavailability)” and one entitled “Affidavit with Respect to Computer Print-outs and/or Copies of Original Records (attesting to authenticity)” are attached for completion;
3. In the event that the law of the requested state allows for the swearing of affidavits, the person who completes the form should swear the affidavits before a judicial official in the requested state. The title, geographic jurisdiction and capacity of the judicial official to swear the affidavit should be set out;

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4. In the event that the law of the requested state does not allow for the swearing of affidavits, the attached forms may be completed as certificates or statements, stating that the certificates or statements are made in conformity with the laws of the requested state.

TIME CONSTRAINTS

Please identify any time limit within which compliance with the request is desired and the reason for the time constraints. If you face limitation periods, please set out the precise dates and indicate this in the cover letter, as well.

CONFIDENTIALITY

The need and the reasons for confidentiality should be expressly set out.

All requests for assistance to and from Canada are confidential State-to-State communications. However, practically speaking, it is recognized that the process of executing the request in the foreign country may require its disclosure. For instance, a copy of the request may be filed in open court in support of an application to gather evidence or the request may be provided to those from whom evidence is requested. Particularly sensitive requests should be identified when submitted to the International Assistance Group, so that confidentiality concerns can be discussed.

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CONTACT NAMES

(The signature should always be on the same page as this part of the request)

In order to expedite the execution of your request, you should include the names and contact numbers for key Canadian and foreign law enforcement/prosecution authorities familiar with the file. You should include your name and contact number in the event the foreign authority wishes to contact you for the purpose of clarification or obtaining additional information.

Dated at Ottawa, Ontario, this day of

Counsel
International Assistance Group
For the Minister of Justice of Canada

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