

Treaty Between the Government of Canada and the Government of the United Mexican States on Mutual Legal Assistance in Criminal Matters

E101629 - CTS 1990 No. 34

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES, (the Parties),

DESIRING to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through co-operation and mutual assistance in criminal matters,

HAVE AGREED as follows:

Article I

Scope of the Treaty

1. The Parties shall co-operate with each other by taking all appropriate measures that they have legal authority to take, in order to provide mutual assistance in criminal matters, in accordance with the terms of this Treaty and subject to the limitations of their respective domestic legal provisions. Such assistance shall deal with the prevention, investigation and prosecution of offences or any other criminal proceedings arising from acts which are within the competence or jurisdiction of the Requesting Party at the time the assistance is requested, and in connection with ancillary proceedings of any other kind related to the criminal matters in question.
2. This Treaty does not empower one Party's authorities to undertake, in the territorial jurisdiction of the other, the exercise and performance of the functions or authority exclusively entrusted to the authorities of the other Party by its national laws or regulations.
3. Criminal matters for the purpose of paragraph 1 mean, for Canada, investigations or proceedings relating to any offence created by a law of Parliament or by the legislature of a province and, for the United Mexican States, investigations or proceedings relating to any offence under federal or state law.
4. Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments.
5. Assistance shall include:
 - a. taking of evidence and obtaining of statements of persons;
 - b. provision of information, documents and other records, including extracts from criminal records;
 - c. location of persons and objects, including their identification;
 - d. search and seizure;
 - e. delivery of property, including lending of exhibits;
 - f. making detained persons and others available to give evidence or assist investigations;

- g. service of documents, including documents seeking the attendance of persons; and
- h. other assistance consistent with the objects of this Treaty, which is not inconsistent with the law of the Requested Party.

Article II

Refusal or Postponement of Assistance

1. Assistance may be refused if, in the opinion of the Requested Party:
 - a. the execution of the request would impair its sovereignty, security, public order or similar essential public interest, prejudice the safety of any person or be unreasonable on other grounds;
 - b. the execution of the request would require the Requested Party to exceed its legal authority or would otherwise be prohibited by the legal provisions in force in the Requested Party, in which case the Co-ordinating Authorities referred to in Article XII of this Treaty shall consult with each other to identify lawful means for securing assistance; or
 - c. there is a possibility of the death penalty being imposed or executed in the proceedings in respect of which assistance is sought.
2. Assistance may be postponed by the Requested Party on the ground that the immediate granting of the assistance may interfere with an ongoing investigation or proceeding.
3. Before refusing to grant a request for assistance or before postponing the grant of such assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.
4. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

Article III

Dual Criminality

Requests for assistance requiring the use of compulsory measures may be refused if the alleged acts or omissions giving rise to the request would not constitute an offence known to law in the Requested Party.

Article IV

Delivery of Property for Use in Investigations or Proceedings

1. In response to a request for assistance, property which may be used in investigations or serve as evidence in proceedings in the Requesting Party, shall be delivered to that Party upon such terms and conditions as the Requested Party sees fit.

2. The delivery of property pursuant to paragraph 1 shall not affect the rights of bona fide third parties.

Article V

Return of Property

Any property, including original records or documents, handed over in execution of a request, shall be returned as soon as possible, unless the Requested Party waives the obligation to return that property.

Article VI

Proceeds of Crime

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.
2. Where, pursuant to paragraph 1, suspected proceeds of crime are found, the Requesting Party may ask the Requested Party to take such measures as are permitted by its law to freeze, seize and confiscate such proceeds.
3. In the application of this Article, the rights of bona fide third parties shall be respected.

Article VII

Attendance of Witnesses and Experts in the Requesting Party

1. A request may be made for assistance in making a person available to testify or to assist an investigation in the Requesting Party.
2. The Requested Party shall forward to the Requesting Party proof of execution of such requests.

Article VIII

Testimony in the Requested Party

1. A person in the Requested Party whose testimony is requested shall be compelled, by subpoena if necessary, by a competent authority of the Requested Party to appear and testify or produce documents, records, and objects.
2. The Requested Party shall, upon request, inform the Requesting Party of the time and place of execution of the request for assistance.
3. The Requested Party shall authorize the presence at the taking of the testimony of such persons as specified by the Requesting Party in its request.
4. Any claim of immunity, incapacity or privilege under the laws of the Requesting Party shall be decided by the competent authorities of the Requesting Party.

Article IX

Making Detained Persons Available to Give Evidence or Assist 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 investigations or proceedings, provided that the person consents to that transfer, and there are no overriding grounds for refusing the request.
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 either upon fulfilment of the request, or at such earlier time stipulated by the Requested Party.
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 in the Requesting Party pursuant to a request under Article VII seeking that person's attendance.

Article X

Safe Conduct

1. A witness or expert present in the Requesting Party in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that Party for any acts or omissions which preceded that person's departure from the Requested Party, nor shall that person be obliged to give evidence in any proceeding other than the proceeding to which the request relates.
2. Paragraph 1 shall cease to apply if a person, being free to leave the Requesting Party, has not left it within a period of thirty (30) days after being officially notified that that person's attendance is no longer required or, having left, has voluntarily returned.
3. A person, who does not respond to a request seeking that person's attendance, shall not, even if the request refers to a notice of penalty, be subjected to any punishment or measure of constraint.

Article XI

Contents of Requests

1. In all cases, requests for assistance shall include:
 - a. the name of the competent authority conducting the investigation or proceedings to which the request relates and the authority making the request;
 - b. the purpose for which the request is made and the nature of the assistance sought;
 - c. where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings; and
 - d. except in cases of requests for service of documents, a description of the acts or omissions alleged to constitute the offence and a statement of the relevant law and jurisdiction.

2. In addition, requests for assistance shall include:
 - a. in the case of requests for service of documents, the name and address of the person to be served;
 - b. in the case of requests for compulsory measures, a statement indicating the reasons for which it is believed that evidence is located in the Requested Party, unless this appears from the request itself;
 - c. in the case of search and seizure, a declaration by a competent authority that seizure could be obtained by compulsory measures, if the property were situated in the Requesting Party;
 - d. in the case of requests to take evidence from a person, the subject matter about which the person is to be examined, including where possible, a list of questions, and details of any right of that person to decline to give evidence;
 - e. 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;
 - f. 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 and the date by which the exhibit will be returned;
 - g. details of any particular procedure the Requesting Party wishes to be followed, and the reasons therefore;
 - h. any requirements for confidentiality.
3. Additional information shall be furnished if it appears necessary to the Requested Party for the execution of the request.

Article XII

Channels of Communication

Requests for assistance may be made on behalf of courts, prosecutors and authorities responsible for investigations or prosecutions related to criminal matters. Requests and responses thereto shall be made by or through the Minister of Justice of Canada and the Procuraduría General de la República of the United Mexican States as the Co-ordinating Authorities of the Parties.

Article XIII

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner requested by the Requesting Party.
2. If the Requesting Party desires witnesses or experts to give evidence under oath, it shall expressly so request.
3. Unless original documents are expressly requested, the provision of certified copies of those documents shall be sufficient compliance with the request.

Article XIV

Limitations on Use of Information or Evidence

1. The Requesting Party shall not use any information or evidence obtained under this Treaty for purposes other than those stated in the request without the prior consent of the Co-ordinating Authority of the Requested Party.
2. When necessary, the Requested Party may request that information or evidence furnished be kept confidential in accordance with conditions it may specify. If the Requesting Party cannot comply with such conditions, the Co-ordinating Authorities shall consult to determine mutually agreeable conditions of confidentiality.
3. The use of any information or evidence obtained under this Treaty which has been made public in the Requesting Party in a proceeding resulting from the investigation or the proceeding described in the request, shall not be subject to the restriction referred to in paragraph 1.

Article XV

Authentication

Evidence or documents transmitted through the Co-ordinating Authorities pursuant to this Treaty shall not require any form of authentication.

Article XVI

Language

1. Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested Party.
2. 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.

Article XVII

Other Assistance

This Treaty shall not derogate from obligations subsisting between the Parties whether pursuant to other treaties, arrangements or otherwise, or prevent the Parties providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

Article XVIII

Expenses

1. The Requested Party shall meet the cost of executing the request for assistance, except that the Requesting Party shall bear:
 - a. the expenses associated with conveying any person to or from the Requested Party at the request of the Requesting Party, and any allowance or expenses payable to that person while in the Requesting Party pursuant to a request under Articles VII or IX of this Treaty;
 - b. the expenses and fees of experts either in the Requested Party or the Requesting Party.

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

Article XIX

Consultations

The Parties shall consult promptly, at the request of either, concerning the interpretation and the implementation of this Treaty, including Articles VI and XVIII, in order to avoid any disproportionate effects on either Party.

Article XX

Third States

Where a national or resident of one Party is directed by the judicial authorities of a third State to act in a manner that conflicts with the laws or public interest of the other Party, the Parties shall consult to identify means to avoid or minimize such conflict.

Article XXI

Entry into Force and Termination

1. This Treaty shall enter into force thirty (30) days after the Contracting States have exchanged notifications, through diplomatic channels, that their respective domestic legal requirements for its entry into force have been met.
2. This Treaty shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.
3. Either, Party may terminate this Treaty by notice in writing, through diplomatic channels, at any time and it shall cease to be in force one hundred and eighty (180) days following receipt of such notice.

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

DONE at Mexico City this 16th day of March 1990, in two originals, each in the English, French and Spanish languages, the texts in each of the three languages having equal authenticity.

FOR THE GOVERNMENT OF CANADA
David J. S. Winfield

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES
Enrique Alvarez Del Castillo