

LEGAL NOTICE NO. 46

REPUBLIC OF TRINIDAD AND TOBAGO

THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 1997

ORDER

MADE BY THE ATTORNEY GENERAL UNDER SECTION 40(1A) OF THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 1997

THE MUTUAL ASSISTANCE (AGREEMENT BETWEEN TRINIDAD AND TOBAGO AND THE UNITED STATES OF AMERICA) ORDER, 2003

1. This Order may be cited as the Mutual Assistance (Agreement between Trinidad and Tobago and the United States of America) Order, 2003.

2. The Agreement between the Government of the United States of America and the Government of the Republic of Trinidad and Tobago on Mutual Assistance in Criminal Matters, referred to in the Schedule, shall have the force of Law in Trinidad and Tobago.

SCHEDULE

TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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*Mutual Assistance (Agreement between Trinidad and Tobago and  
the United States of America) Order, 2003*

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The Government of the Republic of Trinidad and Tobago and the Government of the United States of America, hereunder referred to as the Contracting Parties.

Desiring to improve the effectiveness of the Law Enforcement Authorities of both countries in the investigation, prosecution and prevention of crime through co-operation and mutual legal assistance in criminal matters. Have agreed as follows:

ARTICLE 1

SCOPE OF ASSISTANCE

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offences, and in proceedings related to criminal matters.

2. Assistance shall include:

- (a) taking the testimony or statements of persons;
- (b) providing documents, records, and articles of evidence;
- (c) locating or identifying persons;
- (d) serving documents;
- (e) transferring persons in custody for testimony or other purposes;
- (f) executing requests for searches and seizures;
- (g) assisting in proceedings related to restraint, confiscation, forfeiture of assets, restitution, and collection of fines;
- (h) examining objects and sites; and
- (i) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offence under the laws of the Requesting State. However, the Requesting State may, in its discretion, refuse to comply in whole or in part with a request for assistance under this Treaty to the extent that it appears to the Central Authority of the Requested State to concern conduct which would not constitute an offence under the laws of the Requested State.

4. The Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty 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.

ARTICLE 2

CENTRAL AUTHORITY

1. There shall be a Central Authority for each Contracting Party.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by that Attorney General. For the Government of the Republic of Trinidad and Tobago, the Central Authority shall be the Attorney General or a person designated by the Attorney General.

3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

ARTICLE 3

LIMITATION ON ASSISTANCE

1. The Central Authority of the Requested State may deny assistance if—
  - (a) the request relates to an offence under military law which would not be an offence under ordinary criminal law;
  - (b) the execution of the request would prejudice the security or similar essential interest of the Requested State; or
  - (c) the request is not made in conformity with the Treaty.
2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.
3. If the Central Authority of the Requesting State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

ARTICLE 4

FORM CONTENTS OF REQUESTS

1. A request for assistance shall be in writing except that the Central Authority of the Requesting State may accept a request in another form in emergency situations. In any such case, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise. The request shall be in the language of the Requested State unless otherwise agreed.
2. The request shall include the following:
  - (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
  - (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offences, which relates to the matter, and a summary of the facts and the laws which form the basis thereof;
  - (c) a description of the evidence, information, or other assistance sought; and
  - (d) a statement of the purpose for which the evidence, information, or other assistance is sought.
3. To the extent necessary and possible, a request shall also include:
  - (a) information on the identity, including, where available, full name, date of birth, address, and location of any person from whom evidence is sought;
  - (b) information on the identity, including, where available, full name, date of birth, address, 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, including, where available, full name, date of birth, address, and whereabouts of a person to be located;
  - (d) a precise description of the place or person to be searched and of the articles to be seized;
  - (e) a description of the manner in which any testimony or statement is to be taken and recorded;

- (f) a list of questions to be asked of a witness;
- (g) a description of any particular procedure to be followed in executing the request;
- (h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled;
- (i) any time limit within which compliance with the request is desired, stating reasons; and
- (j) any other information which may be brought to the attention of the Requesting State to facilitate its execution of the request.

## ARTICLE 5

### EXECUTION OF REQUESTS

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts of the Requested State shall have authority to issue subpoenas, search warrants, or orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for and meet the costs of the representation in the Requested State of the Requesting State in any proceedings arising out of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the denial.

ARTICLE 6

COSTS

The Requested State shall pay all cost relating to the execution of the request, except for the fees of expert witnesses, the cost of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which costs, fees, allowances, and expenses shall be paid by the Requesting State.

ARTICLE 7

LIMITATIONS ON USE

1. The Central Authority of the Requested State may request that the Requesting State not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested State. In such cases, the Requesting State shall comply with the conditions.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

3. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the Requesting State in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such proposed disclosure.

4. Information or evidence which has been made public in the Requesting State in accordance with paragraph 1 or 2 may thereafter be used for any purpose.

ARTICLE 8

TESTIMONY OR EVIDENCE IN THE REQUESTED STATE

1. A person in the Requested State from whom testimony or evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Evidence produced in the Requested State pursuant to this Article or which is the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. Documents authenticated by Form A shall be admissible in evidence in the Requesting State.

#### ARTICLE 9

##### RECORDS OF GOVERNMENT AGENCIES

1. The Requested State shall upon request provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested State.

2. The Requested State may provide copies of any documents, records, or information which are in the possession of a government department or agency in that State, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Official records produced pursuant to this Article may be authenticated by the official in charge of maintaining them through the use of Form B appended to this Treaty. No further authentication shall be necessary. Documents authenticated under this paragraph shall be admissible in evidence in the Requesting State.

#### ARTICLE 10

##### TESTIMONY IN REQUESTING STATE

1. When the Requesting State request the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of their response of the person.

2. The Central Authority of the Requesting State may, in its discretion, determine that a person appearing in the Requesting State pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded his departure from the Requested State.

3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or when the person, having left the Requesting State, voluntarily returns. The Central Authority of the Requesting State may, in its discretion, extend this period for up to fifteen days if it determines that there is good cause to do so.

#### ARTICLE 11

##### TRANSFER OF PERSONS IN CUSTODY

1. A person in the custody of the Requested State whose presence in the Requested State is sought for purposes of assistance under this Treaty shall be transferred from the Requested State to the Requesting State for that purpose if the person consents and if the Central Authorities of both States agree.

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article—

- (a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the sending State;
- (b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
- (c) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and
- (d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

#### ARTICLE 12

##### LOCATION AND IDENTIFICATION OF PERSONS OR ITEMS

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

#### ARTICLE 13

##### SERVICE OF DOCUMENTS

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the Request.

#### ARTICLE 14

##### SEARCH AND SEIZURE

1. The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request, every official who has custody of a seized item shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity of the item, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State.

3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed to be necessary to protect bona fide third party interest in the item to be transferred.

## ARTICLE 15

## RETURN OF ITEMS

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty as soon as possible.

## ARTICLE 16

## ASSISTANCE IN FORFEITURE PROCEEDINGS

1. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of offences which are located in the territory of the other Party and may be restrainable, forfeitable, or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other Party on the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to restraint, forfeiture, and confiscation of the proceeds and instrumentalities of offences restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily restrain the proceeds or instrumentalities pending further proceedings.

3. The Party that has custody over proceeds or instrumentalities of offences shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws or as otherwise agreed and upon such terms as it deems appropriate.

## ARTICLE 17

## COMPATIBILITY WITH OTHER TREATIES

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice which may be applicable.

## ARTICLE 18

## CONSULTATIONS

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 19

RATIFICATION, ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force when both Parties have notified each other through an exchange of diplomatic notes of the completion of their respective requirements for entry into force.

2. Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification.

Made this 7th day of March, 2003.

G. MOREAN  
*Attorney General*

Laid in the House of Representatives this 14th day of March,  
2003.

J. SAMPSON-JACENT  
*Clerk of the House*

Laid in the Senate this 25th day of March, 2003.

D. DOLLY  
*Clerk of the Senate*