

TREATY BETWEEN  
THE GOVERNMENT OF THE REPUBLIC OF INDIA  
AND  
THE GOVERNMENT OF MALAYSIA  
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The GOVERNMENT OF THE REPUBLIC INDIA and the GOVERNMENT OF MALAYSIA (hereinafter referred to singularly as "the Party" and collectively as "the Parties"):

GUIDED by the traditional friendly relations between the two countries,

DESIRING to improve the effectiveness of the law enforcement authorities of the Parties in the investigation and prosecution of crime and the tracing, restraint and forfeiture of the proceeds and instrumentalities of crime through cooperation and mutual assistance in criminal matters,

HAVE AGREED as follows:

ARTICLE 1

SCOPE OF ASSISTANCE

1. The Parties shall, in accordance with this Treaty and in conformity with their respective laws, render to one another the widest measure of mutual assistance in connection with investigations, prosecutions and proceedings in criminal matters over which the Requesting Party has jurisdiction at the time the assistance is requested.

2. Mutual assistance to be rendered in accordance with this Treaty may include:

- (a) taking of evidence or statements from persons;
- (b) making arrangements for persons to give evidence or to assist in criminal investigations, including the transfer of persons in custody;
- (c) effecting service of judicial documents;
- (d) executing searches and seizures;
- (e) examining objects and sites;
- (f) providing relevant documents and records, including bank, financial, corporate or business records;
- (g) providing objects, including lending of exhibits;
- (h) recovering, forfeiting or confiscating property in respect of any criminal matter;
- (i) restraining dealings in property or freezing property, that may be recovered in respect of any criminal matter;
- (j) locating and identifying witnesses and suspects;
- (k) identifying or tracing proceeds of crime and property and instrumentalities derived from or used in the commission of any criminal matter;
- (l) recovering pecuniary penalties in respect of any criminal matter; and
- (m) any other form of assistance not prohibited by the laws of the Requested Party.

3. This Treaty applies solely to providing of mutual assistance among the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress or exclude

any evidence or to impede the execution of any request for assistance.

## ARTICLE 2

### NON-APPLICATION

1. This Treaty does not apply to –
  - (a) the arrest or detention of any person with a view to the extradition of that person;
  - (b) the enforcement in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party;
  - (c) the transfer of any person in custody to serve sentence; and
  - (d) the transfer of proceedings in criminal matters.
2. This Treaty does not authorise either Party to undertake, in the territory of the other, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of the other Party by its laws.

## ARTICLE 3

### DESIGNATION OF CENTRAL AUTHORITIES

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty through the diplomatic channel.
2. For the Republic of India, the Central Authority shall be the Ministry of Home Affairs or a person designated by that Ministry.
3. For Malaysia, the Central Authority shall be the Attorney General or a person designated by the Attorney General.

4. Each Party shall expeditiously notify the other of any change in the designation of its Central Authority.

5. Except as otherwise provided in paragraph 1, the Central Authorities shall communicate directly with one another for the purposes of this Treaty.

#### ARTICLE 4

#### LIMITATIONS ON ASSISTANCE

1. The Central Authority of the Requested Party shall refuse assistance if, in the opinion of the Central Authority of the Requested Party –

- (a) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would have constituted a military offence under the laws of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party;
- (b) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;
- (c) the request relates to the investigation, prosecution or punishment of a person for any criminal matter in a case where the person –
  - (i) has been convicted, acquitted or pardoned by a competent court or other authority in the Requesting Party; or
  - (ii) has undergone the punishment provided by the law of that Requesting Party,

in respect of that criminal matter or of another criminal matter constituted by the same act or omission as the first-mentioned offence;

- (d) the rendering of the assistance would affect the sovereignty, security, public order or other essential public interest of the Requested Party;
- (e) the grant or execution of the request would be contrary to the laws of the Requested Party; or
- (f) the request relates to an offence of a political nature.

2. For the purposes of this Treaty the following offences shall not be regarded as offences of a political nature:

- (a) an offence established under any international treaty to which both Parties are a party and which is declared in the international treaty concerned not to be regarded as an offence of a political nature for the purposes of mutual assistance in criminal matters;
- (b) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State, a Head of Government, or of a Minister of a Government of the Parties;
- (c) any attempt, abetment or conspiracy to commit any of the offences referred to in subparagraphs (a) and (b).

3. Without prejudice to the exceptions specified in paragraph 2, the Requested Party may consider that serious offences against life, physical integrity or freedom of persons and property and any attempt, abetment or conspiracy to commit any of these offences are not treated as offences of a political nature for the purpose of this Treaty.

4. The Central Authority of the Requested Party may refuse assistance if, in the opinion of the Central Authority of the Requested Party, the rendering of the assistance would or would be likely to prejudice the safety of any person, whether that person is within or outside the Requested Party.

5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

6. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing investigation or criminal proceedings in the Requested Party.

7. Before refusing a request or postponing its execution pursuant to this Article, the Central Authority of the Requested Party shall consider whether assistance may be granted subject to certain conditions.

8. If the Requesting Party accepts assistance subject to the terms and conditions imposed under paragraph 7, it shall comply with such terms and conditions.

9. If the Central Authority of the Requested Party refuses or postpones assistance, it shall promptly inform the Central Authority of the Requesting Party of the grounds of refusal or postponement.

10. The Parties undertake that they will, subject to their respective domestic laws, reciprocate any assistance granted in respect of an equivalent offence irrespective of the applicable penalty.

## ARTICLE 5

### FORM OF REQUESTS

1. Requests for assistance shall be made in writing or, where possible, by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity. In urgent situations and where permitted by the law of the Requested Party, requests may be made orally, but in such cases the requests shall be confirmed in writing within ten days.

2. In urgent situations and where permitted by the law of the Requested Party, requests and any communication related thereto may be transmitted through the International Criminal Police Organization (INTERPOL).

## ARTICLE 6

### CONTENTS OF REQUESTS

1. A request shall contain such information as the Requested Party or investigation or criminal proceedings requires to execute the request, including –

- (a) the name of the competent authority conducting the investigation or criminal proceedings to which the request relates;
- (b) the purpose of the request and the nature of the assistance sought;
- (c) a description of the offence to which the request relates with extracts of the relevant sections of the law;
- (d) except in cases of requests for service of judicial documents, a description of the facts alleged to constitute the offence and a statement or text of the relevant laws;
- (e) except in cases of requests for service of judicial documents, a description of the essential acts or omissions or matters alleged or sought to be ascertained;
- (f) a description of the evidence, information or other assistance sought;
- (g) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed;
- (h) specification of any time limit within which compliance with the request is desired;
- (i) any special requirements for confidentiality and the reasons for it; and
- (j) such other information as is necessary for the proper execution of the request.

2. Requests for assistance may also, to the extent necessary, contain the following information:

- (a) the identity, nationality and location of the person or persons who are the subject of the investigation or criminal proceedings;
- (b) the identity and location of any person from whom evidence is sought;
- (c) the identity and location of a person to be served, that person's relationship to the criminal proceedings, and the manner in which service is to be made;
- (d) information on the identity and whereabouts of a person to be located;
- (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 the documents, records or items of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;
- (h) a statement as to whether sworn or affirmed evidence or statements are required;
- (i) a description of the property, asset or article to which the request relates, including its identity and location; and
- (j) any court order relating to the assistance requested and a statement relating to the finality of that order.

3. If the Central Authority of the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, the Central Authority may request additional information. The Requesting Party shall supply such additional information as the Requested Party considers necessary to enable the request to be fulfilled.



4. The Requested State shall not refuse to execute the request solely because it does not include all of the information described under this article if it can otherwise be executed according to the laws of the Requested State.

## ARTICLE 7

### EXECUTION OF REQUESTS

1. Requests for assistance shall be carried out promptly, in the manner provided for by the laws and practices of the Requested Party. To the extent permitted by its laws and practices, the Requested Party may carry out the request in the manner specified by the Requesting Party.

2. The Central Authority of the Requested Party may, if requested to do so, make all necessary arrangements for the representation of the Requesting Party in the Requested State in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

3. The Central Authority of the Requested Party shall respond within a reasonable period to reasonable inquiries by the Central Authority of the Requesting Party concerning progress toward execution of the request.

4. The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

## ARTICLE 8

### LIMITATIONS ON USE OF EVIDENCE OBTAINED

1. The Requesting Party shall not, without the consent of the Requested Party and subject to such terms and conditions as the Requested Party considers necessary, use or transfer information or

evidence provided by the Requested Party for investigations or criminal proceedings other than those stated in the request.

2. Notwithstanding paragraph 1, in cases where the charge is altered, the information or evidence provided may be used insofar as the offence, as charged, is criminal matter in respect of which mutual assistance could be provided under this Treaty.

## ARTICLE 9

### PROTECTION OF CONFIDENTIALITY AND USE OF EVIDENCE AND INFORMATION

1. The Requested Party shall, upon request and to the extent permitted by its laws, use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting of such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching the confidentiality requirements stated in the request, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requesting Party shall, upon request and to the extent permitted by its laws, keep confidential evidence and information provided by the Requested Party, except to the extent that the evidence and information is needed for the investigation and criminal proceedings described in the request.

## ARTICLE 10

### OBTAINING OF EVIDENCE

1. The Requested Party shall, upon request and to the extent permitted by its laws, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce documents, records and other evidence for transmission to the Requesting Party.

2. To the extent not prohibited by the law of the Requested Party, persons specified in the request may be permitted to be present to facilitate the execution of the request.

## ARTICLE 11

### RIGHT OR OBLIGATION TO DECLINE TO GIVE EVIDENCE

1. A person who is required to give sworn or affirmed testimony or provide statements or produce documents, records or other evidence under this Treaty in the Requested or Requesting State pursuant to a request for assistance may decline to do so where -

- (a) the law of the Requested Party permits or requires that person to decline to do so in similar circumstances in proceedings originating in the Requested State; or
- (b) the law of the Requesting Party permits or requires that person to decline to do so in similar circumstances in proceedings originating in the Requesting State.

2. If the person claims that there is a right or obligation to decline to give sworn or affirmed testimony or provide statements or produce documents, records or other evidence under the law of the other Party, the Party where that person is present shall, with respect thereto, rely on a certificate given or a declaration made by the other Party or under the law of the other Party as evidence of the existence or non-existence of that right or obligation.

3. This Article shall not apply where the testimony, statements, documents, records or other evidence are given, provided or produced voluntarily.

## ARTICLE 12

### PROVIDING DOCUMENTS, RECORDS AND OBJECTS

1. The Requested Party shall provide the Requesting Party with copies of publicly available records including documents or information in any form in the possession of government departments and agencies in the Requested Party.
2. The Requested Party may, to the extent permitted by its laws, provide the Requesting Party with copies of any records including documents or information in any form and objects (including lending of exhibits) that are in the possession of a government department or agency in the Requested Party which are not publicly available.
3. In so far as permitted by the laws of the Requested Party, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting Party in order to make them admissible according to the law of the Requesting Party.
4. The Requested State may provide certified true copies of the relevant documents or records unless the Requesting State expressly requests originals. Where originals are requested, the Requested Party may provide them where possible.

## ARTICLE 13

### ATTENDANCE OF A PERSON IN THE REQUESTING STATE

1. The Requested Party may, upon request and in accordance with its laws, assist in arranging the attendance of a person, subject to the consent of that person in the Requesting State -
  - (a) to assist in the investigations in relation to a criminal matter in the Requesting State; or
  - (b) to appear in proceedings in relation to a criminal matter in the Requesting State unless that person is the person charged.

2. The Requested Party shall invite the person to appear as a witness or expert in criminal proceedings or to assist in the investigations. Where appropriate, the Requested Party shall satisfy itself that satisfactory arrangements have been made for the person's safety.

3. Where a person is asked to attend in the Requesting State, the request shall contain information on the following matters:

- (a) the fees, allowances and expenses;
- (b) the security arrangements; and
- (c) the arrangements for accommodation.

## ARTICLE 14

### ATTENDANCE OF PERSON IN CUSTODY IN THE REQUESTING STATE

1. The Requested Party may, upon request and to the extent permitted by and in accordance with its laws, allow a person in custody, subject to the consent of that person, to be temporarily transferred to the Requesting State to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the Requested Party, the Requesting Party shall hold the person in custody and shall return that person in custody to the Requested Party at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

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 released from custody and be treated as a person referred to in Article 13 of this Treaty.

4. The period of custody in the Requesting State shall count towards the period of imprisonment or detention in the Requested State.

## ARTICLE 15

### SAFE CONDUCT

1. Subject to paragraph 2, where a person is present in the Requesting State pursuant to a request under Article 13 or 14 of this Treaty -

- (a) that person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting State in respect of any acts or omissions or convictions for any offence against the law of the Requesting Party that was or is alleged to have been committed before that person's departure from the Requested State;
- (b) that person shall not without consent, be required to give evidence in any criminal proceedings or assistance in any investigation in the Requesting State other than the criminal proceedings or investigation to which the request relates; or
- (c) that person shall not be subjected to any civil suit in respect of any act or omission of the person that occurred or is alleged to have occurred before the person's departure from the Requested State.

2. Paragraph 1 shall not apply if that person, being free to leave, has not left the Requesting State within a period of 15 consecutive days after that person has been officially informed that his presence is no longer required or having left, has voluntarily returned, provided that the Central Authority of the Requesting Party may extend this period up to 15 days for valid reasons.

3. A person who attends before a competent authority or court in the Requesting State pursuant to a request made under Article 13 or 14 of this Treaty shall not be subjected to prosecution based on such testimony except that that person shall be subject to the laws of the Requesting Party in relation to contempt of court and perjury.

4. A person who does not consent to attend in the Requesting State pursuant to a request made under Article 13 or 14 of this Treaty shall not by reason only of such refusal or failure to consent be subjected to any penalty or liability or otherwise prejudiced in law.

## ARTICLE 16

### VIDEO CONFERENCING

Nothing in this Treaty shall prevent the use of live video or live television links or other appropriate communications and multimedia facilities in accordance with the laws and procedures of the Requested Party, if it is expedient in the interest of justice to do so.

## ARTICLE 17

### SEARCH AND SEIZURE

1. The Requested Party shall, to the extent permitted by and in accordance with its laws, execute a request for the search, seizure and delivery of any documents, records or objects to the Requesting Party if there are reasonable grounds for believing that the documents, records or objects are relevant to a criminal matter for evidentiary purposes.

2. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized documents, records or objects which may be delivered to the Requesting Party that are considered necessary by the Requested Party to protect the documents, records or objects to be transferred.

3. The Requested Party shall inform the Requesting Party of the results obtained as soon as practicable.

## ARTICLE 18

### RETURN OF EVIDENCE

1. The Requesting Party shall, upon request, at the conclusion of the criminal matter in respect of which the request for assistance was made return to the Requested Party any documents, records or objects provided to the Requesting Party.
2. Notwithstanding paragraph 1, the Requesting Party shall at any time, upon request, temporarily return to the Requested Party any documents, records or objects provided to the Requesting Party.

## ARTICLE 19

### LOCATION OR IDENTIFICATION OF PERSONS

The Requested Party shall, upon request and to the extent permitted by and in accordance with its laws, make its best endeavours to ascertain the location or identity of a person specified in the request.

## ARTICLE 20

### SERVICE OF DOCUMENTS

1. The Requested Party shall, in accordance with its laws, serve any document transmitted to it for the purpose of service.
2. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting State within a reasonable time before the scheduled response or appearance.
3. The Requested Party shall return a proof of service in the manner required by the Requesting Party.



## ARTICLE 21

### ASSISTANCE REGARDING PROCEEDS AND INSTRUMENTS OF CRIME

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Party the result of its inquiries.
2. When, pursuant to paragraph 1 of this Article, suspected proceeds or instruments of a crime are found, the Requested Party shall, upon request, take such measures as are permitted by and in accordance with its laws to restrain and forfeit those proceeds or instruments.
3. Proceeds or instruments forfeited or confiscated pursuant to the Treaty shall accrue to the Requested Party, unless and otherwise agreed.

## ARTICLE 22

### COMPATIBILITY WITH OTHER ARRANGEMENTS

1. Nothing in this Treaty shall prevent the Parties from providing assistance to each other pursuant to other treaties, arrangements or the provisions of their national laws.
2. This Treaty shall not affect or restrict rights and obligations of the Parties regarding mutual assistance in criminal matters under any other international, bilateral or multilateral treaty or arrangement.

## ARTICLE 23

### CERTIFICATION AND AUTHENTICATION

Documents, records and objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 12 or as required by the Requesting State.

## ARTICLE 24

### LANGUAGE

1. Requests and supporting documents thereto and other communications related to the request shall be submitted in the English language.
2. If these documents are not in the English language, they shall be accompanied by an English translation.

## ARTICLE 25

### COSTS

1. The Requested Party shall bear the ordinary expenses concerning the execution of a request for assistance, except that the Requesting Party shall bear-
  - (a) the fees of counsel retained, if any, at the request of the Requesting Party;
  - (b) the fees and expenses of experts or witnesses;
  - (c) the costs of translation, interpretation and transcription; and
  - (d) the expenses associated with conveying a person to and from the territory of the Requested Party and the fees, allowances and expenses payable to the person concerned while that person is in the Requesting State pursuant to a request under Article 13 or 14 of this Treaty.
2. The cost of establishing live video or television links or other appropriate communications and multimedia facilities, the costs related to the servicing of live video or television links or other appropriate communication and multimedia facilities, the remuneration of interpreters provided by the Requested Party and allowances to witnesses and their traveling expenses in the

Requested Party shall be refunded by the Requesting Party to the Requested Party unless the Parties mutually agree otherwise.

3. If during the execution of the request it becomes apparent that resources including expenses of an extraordinary or substantial nature are required to execute the request, the Parties shall mutually determine the terms and conditions for the execution of the request.

## ARTICLE 26

### CONSULTATION

1. The Central Authorities shall consult at mutually agreed times to promote the most effective use of this Treaty.

2. The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

3. Any difference as to the interpretation of provisions of this Treaty shall be settled by mutual consultation through diplomatic channels.

## ARTICLE 27

### AMENDMENT

This Treaty may be modified or amended at any time by mutual written consent of the Parties.

## ARTICLE 28

### RATIFICATION, ENTRY INTO FORCE AND TERMINATION

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force from the date of exchange of the instruments of ratification.

3. This Treaty shall apply to requests presented after the date of its entry into force whether the relevant acts or omissions constituting the offence occurred before or after that date.

4. Either Party may terminate this Treaty by written notification. The termination shall take effect six (6) months from the date on which it was notified to the other Party.

5. Termination of this Treaty shall be without prejudice to the rights and obligations arising from or based on this Treaty and to the completion of any requests made pursuant to this Treaty before the date of termination.

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

Done in two originals at Putrajaya on this 12th day of March Two Thousand Twelve in Hindi, Malay and English, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

**FOR THE GOVERNMENT  
THE REPUBLIC OF INDIA**



(Sanjay Singh)  
Secretary

Ministry of External Affairs

**FOR THE GOVERNMENT OF  
OF MALAYSIA**



(Tan Sri Abdul Gani Patail)  
Attorney General of Malaysia