

**DEPARTMENT OF JUSTICE TREATY BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS ON MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS**

(WITH ANNEX)

Nassau, March 13, 1990

In force July 10, 1990

The Government of Canada and the Government of the Commonwealth of the Bahamas, desiring to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through cooperation and mutual assistance in law enforcement matters, have agreed as follows:

ARTICLE I

Definitions

For the purposes of this Treaty,

"central authority" means

- a. for Canada, the Minister of Justice or officials designated by the Minister;
- b. for the Commonwealth of The Bahamas, the Attorney General or officials designated by the Attorney General;

"competent authority" means any law enforcement authority with responsibility for matters related to the investigation or prosecution of offences;

"offence" means

- a. for Canada, an offence created by a law of Parliament that may be prosecuted upon indictment, or an offence created by the Legislature of a Province specified in the Annex;
- b. for the Commonwealth of The Bahamas, an offence for which the statutory penalty is a term of imprisonment of one year or more;

"public interest" means any substantial interest related to national security or other essential public policy;

"request" means a request made under this Treaty.

ARTICLE II

Scope of Application

1. The Parties shall provide, in accordance with the provisions of this Treaty, mutual legal assistance in all matters relating to the investigation, prosecution and suppression of offences.

2. Assistance shall include:

- a. exchanging information and objects;
- b. locating or identifying persons, objects and sites;
- c. serving documents;
- d. taking the evidence of persons;
- e. executing requests for searches and seizures;
- f. providing documents and records.

3. This Treaty is, intended solely for mutual legal assistance between the Parties.

ARTICLE III

Other Assistance

1 . The Parties, including their competent authorities, may provide assistance pursuant to other agreements, arrangements or practices.

2. The Central Authorities may agree, in exceptional circumstances, to provide assistance pursuant to this Treaty in respect of illegal acts that do not constitute an offence within the definition of offence in Article I.

ARTICLE IV

Obligation to Request Assistance

1. A Party seeking to obtain documents, records or other articles known to be located in the territory of the other Party shall request assistance pursuant to the provision of this Treaty, except as otherwise agreed pursuant to Article III (1).

2. To the extent that the provisions of this Treaty are not applicable, adequate or available, the Parties shall consult with a view to identifying other means of assistance which are to be used.

ARTICLE V

Third Countries

In any investigation or prosecution in which a national or resident of one Party is directed by the judicial process of a third country to undertake or refrain from any conduct in the territory of the other Party in a manner that conflicts with the laws or established policies of that other Party, the Parties agree to consult with a view to identifying means to avoid or minimize such conflict that the Parties might pursue between themselves, or, either jointly or inPidually, with the third country concerned.

ARTICLE VI

Limitations on Compliance

1. The Requested State may deny assistance to the extent that:

- a. the request is not made in conformity with the provisions of this Treaty; or
- b. execution of the request is contrary to its laws or public

2. The Requested State may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

3. Before denying or postponing assistance pursuant to this Article, the Requested State, through its Central Authority,

- a. shall promptly inform the Requesting State of the reason for considering denial or postponement; and
- b. shall consult with the Requesting State to determine whether assistance may be given subject to such terms and conditions as the Requested State deems necessary.

4. If the Requesting State accepts assistance subject to the terms and conditions referred to in paragraph 3(b), it shall comply with said terms and conditions.

ARTICLE VII

Requests

1 . Request shall be made by the Central Authority of the Requesting State directly to the Central Authority of the Requested State.

2. Requests shall be made in writing. In urgent circumstances, or where otherwise permitted by the Requested State, requests may be made orally, but shall be confirmed in writing immediately thereafter.

3. A request shall contain such information as the Requested State requires to execute the request, including:

a. the name of the competent authority conducting the investigation or proceeding to which the request relates;

b. the subject matter and nature of the investigation or proceeding to which the request relates;

c. a description of the evidence, information or other assistance sought; and

d. the purpose for which the evidence, information, or other assistance is sought, and any time limitations relevant thereto; and

e. requirements for confidentiality.

4. The Requested State shall keep confidential a request and its contents except when disclosure is specifically authorized the Requesting State.

ARTICLE VIII

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, transmit it to the competent authorities, who shall make best efforts to execute the request. The Courts of

the Requested State shall have jurisdiction to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. A request shall be executed in accordance with the law of the Requested State and, to the extent not prohibited by the law of the Requested State, in accordance with the directions stated in the request.

ARTICLE IX

Costs

1. The Requested State shall assume all ordinary expenses of executing a request within its boundaries, subject to paragraph 3 of this Article, except:

- a. fees of experts;
- b. expenses of interpretation, translation, transcription and stenographic services;
- c. travel and incidental expenses of persons travelling to the Requested State to attend the execution of a request; and
- d. costs of counsel appointed with the approval of the Requesting State.

2. The Requesting State shall assume all ordinary expenses required to present evidence from the Requested State in the Requesting State, including:

- a. travel and incidental expenses of witnesses travelling to the Requesting State, including those of accompanying officials; and
- b. fees of experts.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary nature and required to fulfill a request, the Parties shall consult to determine the terms and conditions under which the request may continue.

4. The Parties shall agree, pursuant to Article XVIII, on practical measures as appropriate for the reporting and payment of costs in conformity with this Article.

ARTICLE X

Limitations of Use

1. The Central Authority of the Requested State may require, after consultation with the Central Authority of the Requesting State, that information or evidence furnished be kept confidential or be disclosed or used only subject to terms and conditions it may specify.
2. The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested State.

ARTICLE XI

Location or Identity of Persons

The competent authorities of the Requested State shall make best efforts to ascertain the location and identity of persons specified in the request.

ARTICLE XII

Service of Documents

1. The Requested State shall serve any document transmitted to it for the purpose of service.
2. The Requesting State shall transmit a request for the service of document pertaining to a response or appearance in the Requesting State within a reasonable time before the scheduled response or appearance.
3. A request for the service of a document pertaining to an appearance in the Requesting State shall include such notice as the Central Authority of the Requesting State is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.
4. The Requested State shall return a proof of service in the manner required by the Requesting State or in any manner agreed upon pursuant to Article XVIII.

ARTICLE XIII

Taking of Evidence in the Requested State

1. A person requested to testify and produce documents, records or other articles in the Requested State may be compelled by subpoena or order to appear and testify and produce such documents, records and other articles, in accordance with the requirements of the law of the Requested State.

2. Every person whose attendance is required for the purpose of giving testimony under this Article is entitled to such fees and allowances as may be provided for by the law of the Requested State.

ARTICLE XIV

Government Documents and Records

1. The Requested State shall provide copies of publicly available documents and records of government departments and agencies.

2. The Requested State may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as would be available to its own law enforcement and judicial authorities.

ARTICLE XV

Certification and Authentication

1. Copies of documents and records provided under Article XIII or Article XIV shall be certified or authenticated in the manner required by the Requesting State or in any manner agreed upon pursuant to Article XVIII.

2. No document or record otherwise admissible in evidence in the Requesting State, certified or authenticated under paragraph 1, shall require further certification or authentication.

ARTICLE XVI

Search and Seizure

1. A request for search and seizure shall be executed in accordance with the requirements of the law of the Requested State.

2. The competent authority that has executed a request for search and seizure shall provide such certifications as may be required by the Requesting State concerning, but not limited to, the

circumstances of the seizure, identity of the item seized and integrity of its conditions, and continuity of possession thereof.

3. Such certifications may be admissible in evidence in a judicial proceeding in the Requesting State as proof of the truth of the matters certified therein, in accordance with the law of the Requesting State.

4. No item seized shall be provided to the Requesting State until that State has agreed to such terms and conditions as may be required by the Requested State to protect third party interests in the item to be transferred.

ARTICLE XVII

Proceeds of Crime

1. The Central Authority of either Party shall notify the Central Authority of the other Party of proceeds of crime believed to be located in the territory of the other Party.

2. The Parties shall assist each other to the extent permitted by their respective laws on proceedings related to the forfeiture of the proceeds of crime, restitution to the victims of crime, and the collection of fines imposed as a sentence in a criminal prosecution.

ARTICLE XVIII

Improvement of Assistance

1. The Parties agree to consult as appropriate with a view to developing other specific agreements or arrangements, formal or informal, on mutual assistance.

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

ARTICLE XIX

Ratification and Entry into Force

1. This Treaty shall be ratified, and the instruments of ratification shall be exchanged at Ottawa as soon as possible.

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

ARTICLE XX

Termination

Either Party may terminate this Treaty by giving written notice to the other Party at any time. Termination shall become effective six months after receipt of such notice.

ANNEX

The definition of offence includes offences created by the Legislature of a Province of Canada in the following categories:

1. securities;
2. wildlife protection,
3. environmental protection; and
4. consumer protection.

In Witness Whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done in duplicate, in the English and French languages, each language version being equally authentic, at Nassau, this 13th day of March, 1990.

For the Government of Canada

KATHRYN E. MCCALLION

Canadian High Commissioner for the Bahamas

For the Government of the Commonwealth of the Bahamas

EDWARD CHARLES CARTER

Minister of Foreign Affairs for the Bahamas