

No. 47708

**South Africa
and
Canada**

Treaty between the Government of the Republic of South Africa and the Government of Canada on mutual legal assistance in criminal matters. Durban, 12 November 1999

Entry into force: *4 May 2001 by notification, in accordance with article 24*

Authentic texts: *English and French*

Registration with the Secretariat of the United Nations: *South Africa, 30 August 2010*

**Afrique du Sud
et
Canada**

Traité d'entraide judiciaire en matière pénale entre le Gouvernement de la République d'Afrique du Sud et le Gouvernement du Canada. Durban, 12 novembre 1999

Entrée en vigueur : *4 mai 2001 par notification, conformément à l'article 24*

Textes authentiques : *anglais et français*

Enregistrement auprès du Secrétariat des Nations Unies : *Afrique du Sud, 30 août 2010*

[ENGLISH TEXT – TEXTE ANGLAIS]

TREATY
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
AND
THE GOVERNMENT OF CANADA
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND
THE GOVERNMENT OF CANADA;**

DESIRING to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through cooperation and mutual legal assistance in criminal matters;

HAVE AGREED as follows:

ARTICLE 1.

Obligation to Provide Mutual Legal Assistance

1. The Contracting Parties shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings in the Requesting State in a criminal matter, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.
3. Criminal matters means, for the Republic of South Africa both statutory and common law offences and, for Canada, investigations or proceedings relating to any offence created by Parliament or by the legislature of a province.
4. Criminal matters includes investigations, prosecutions or proceedings relating to offences concerning taxation, duties customs and foreign exchange.

5. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceedings in the Requesting State would constitute an offence under the laws of the Requested State.

6. Assistance includes:

- a) locating and identifying persons and objects;
- b) serving documents, including documents seeking the attendance of persons;
- c) providing information, documents and records;
- d) providing objects, including lending exhibits;
- e) search and seizure;
- f) taking evidence and obtaining statements;
- g) authorizing the presence of persons from the Requesting State at the execution of requests;
- h) making detained persons available to give evidence or assist investigations;
- i) facilitating the appearance of witnesses or the assistance of persons in investigations;
- j) taking measures to locate, restrain or forfeit the proceeds of crime; and
- k) any other form of assistance not prohibited by the law of the Requested State.

ARTICLE 2

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as not prohibited by that law, in the manner specified by the Requesting State.

2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.

3. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

ARTICLE 3

Contents of Requests

1. In all cases, requests for assistance shall indicate:
 - a) the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
 - b) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;
 - c) the purpose of the request and the nature of the assistance sought;
 - d) the degree of confidentiality required and the reasons therefor; and
 - e) any time limit within which the request should be executed.

2. In the following cases, requests for assistance shall include:
 - a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
 - b) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
 - c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned; and
 - d) in the case of making detained persons available, an indication of 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.

3. If necessary, and where possible, requests for assistance shall include:
 - a) the identity, nationality and location of a person who is the subject of the investigation, prosecution or proceedings;
 - b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.
4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information.
5. A request shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing promptly thereafter.

ARTICLE 4

Refusal or Postponement of Assistance

1. Assistance may be refused if, in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order, essential public interest or prejudice the safety of any person.
2. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.
3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
4. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

ARTICLE 5

Locating and Identifying Persons and Objects

The competent authorities of the Requested State shall endeavor to ascertain the location and identity of persons and objects specified in the request.