



Kuwait No. 2 (2018)

Treaty

on Mutual Legal Assistance in Criminal Matters between the Government
of the United Kingdom of Great Britain and Northern Ireland and the
Government of the State of Kuwait

Kuwait City, 28 January 2018

[The Treaty is not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 2018*

Cm 9658



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ISBN 978-1-5286-0675-2

CCS0718003328 07/18

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

**TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE STATE OF KUWAIT**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the State of Kuwait (hereinafter referred to as "the Contracting Parties");

DESIRING to improve the effectiveness of co-operation between the Contracting Parties in the investigation, prosecution and suppression of crime by making provision for mutual legal assistance in criminal matters;

HAVING DUE REGARD for human rights and the rule of law;

MINDFUL of the guarantees under their respective legal systems which provide an accused person with the right to a fair trial, including the right to adjudication by an impartial tribunal established pursuant to law ;

Have agreed as follows:

ARTICLE 1

Scope of Assistance

- 1) The Contracting Parties undertake to provide each other, in accordance with the provisions of this Treaty, and in conformity with their respective domestic laws and international obligations, the widest possible measure of mutual legal assistance in the investigation and prosecution of criminal offences, and in proceedings related to criminal matters.
- 2) Assistance shall include:
 - a) taking testimony or statements from persons;
 - b) providing documents, records and items of evidence, including bank records;
 - c) service of documents;
 - d) search and seizure;
 - e) restraining and confiscating the proceeds and instrumentalities of criminal activities, including restraining of dealings in property or the freezing of assets alleged to be related to a criminal matter;

- f) locating and identifying witnesses and suspects;
 - g) facilitating the personal appearance of witnesses;
 - h) effecting the temporary transfer of persons in custody to appear as witnesses;
 - i) return of assets, in accordance with this Treaty and the domestic law of the Requested Party;
 - j) sharing of assets in accordance with this Treaty and the domestic law of the Requested Party; and,
 - k) such other assistance as may be agreed between the Central Authorities.
- 3) Assistance shall be provided without regard to whether the conduct that is the subject of the request would be punishable under the domestic laws of both Contracting Parties. Where a request is made for search and seizure of evidence, production orders, restraint or confiscation of the proceeds of crime, the Requested Party may render the assistance in accordance with its domestic law.

ARTICLE 2

Grounds for Refusal or Postponement of Assistance

- 1) Assistance may be refused if:
 - a) the Requested Party considers that the execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests, or is otherwise inconsistent with its domestic law; or
 - b) the offence is regarded by the Requested Party as being of a political nature or an offence only under military law; or
 - c) there are substantial grounds for believing that the request for assistance has been made for the purpose of investigating, prosecuting or punishing a person on account of that person's race, sex or status, religion, nationality, ethnic origin or political opinions or that person's position may be prejudiced for any of those reasons; or
 - d) the request relates to an offence the prosecution of which would be incompatible with the Requested Party's domestic law on double jeopardy (*ne bis in idem*) or
 - e) the provision of assistance would, or would be likely to prejudice an investigation or criminal proceeding in the Requested Party or endanger the safety of any person.

- 2) 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
- 3) The Requested Party may postpone the execution of the request if its immediate execution could interfere with any ongoing criminal proceedings in the territory of the Requested Party
- 4) Before refusing a request for assistance, the Requested Party shall consider whether assistance may be granted subject to certain conditions. If the Requesting Party accepts assistance subject to the conditions imposed under this Article, it shall comply with such conditions.
- 5) If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.

ARTICLE 3

Designation of Central Authorities

- 1) Central Authorities shall be established by the Contracting Parties.
- 2) For the United Kingdom, the Central Authorities for the purposes of sending requests shall be:
 - a) The Secretary of State for the Home Department; or
 - b) The Lord Advocate (for matters pertaining to Scotland).
- 3) For the United Kingdom, the Central Authorities for the purpose of receiving requests shall be:
 - a) the Secretary of State for the Home Department; or
 - b) Her Majesty's Revenue and Customs (for matters pertaining to fiscal matters); or
 - c) The Lord Advocate (for all matters pertaining to Scotland).
- 4) For the State of Kuwait the Central Authority shall be the Ministry of Justice.
- 5) The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

6) The Contracting Parties may, at any time, designate any other authority as a Central Authority for the purposes of this Treaty. Notification of such a designation will take place by exchange of diplomatic notes.

ARTICLE 4

Form, Language and Contents of Requests

1) A request for assistance shall be made in writing. The request for assistance may be transmitted by fax or email, provided the original request is submitted within thirty (30) working days from receipt of the transmitted request, unless the Requested Party agrees otherwise.

2) The request shall include the following:

- a) the name and address of the authority conducting the proceedings to which the request relates;
- b) the subject matter and nature of the proceedings for the purposes of which the request is made;
- c) a description of the offence to which the request relates including its applicable penalty (including a copy of the relevant text or code);
- d) a summary of the information giving rise to the request;
- e) a description of the evidence or other assistance sought;
- f) the purpose for which the evidence or other assistance is sought; and
- g) details of any period within which compliance with the request is desired.

3) To the extent necessary and possible, a request shall also include:

- a) the identity, date of birth, nationality and location of any person from whom evidence is sought and that person's relationship to the investigation/proceedings;
- b) the identity, date of birth, nationality and location of a person to be served, that person's relationship to the proceedings, and the manner in which the service is to be made;
- c) available information on the identity and whereabouts of a person to be located and that person's relationship to the investigation/ proceedings;

- d) a precise description of the place to be searched and a description, relevance and value to the investigation/proceedings 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 or expert;
 - g) a description of any particular procedures to be followed in executing the request;
 - h) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled;
 - i) requirements for confidentiality; and
 - j) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.
- 4) Where the request involves the presence of a person in the territory of the Requesting Party, as provided for under Article 13 (Attendance of Person in the Territory of the Requesting Party) or Article 14 (Transfer of Persons in Custody) of this Treaty, the request shall include information on the extent of immunity, if any, to be afforded to the person while he or she is in the territory of the Requesting Party.
- 5) If the Requested Party considers that the information contained in the request is not sufficient for the purposes of this Treaty, that Party may request the Requesting Party to provide additional information.
- 6) All requests made and supporting documents provided by the Parties in accordance with this Treaty shall be accompanied by a translation into the official language of the Requested Party.

ARTICLE 5

Execution of Requests

- 1) The Central Authority of the Requested Party shall endeavour to promptly execute the request or arrange for its execution through its competent authorities.
- 2) The Central Authority shall endeavour to ensure the prompt execution of the request in accordance with the domestic law of the Requested Party and, to the extent not prohibited by its domestic law, in the manner specified by the Requesting Party

- 3) The Requested Party may make appropriate arrangements to ensure the interests of the Requesting Party are adequately represented in court proceedings.
- 4) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to a request
- 5) 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 and the reason or reasons for that decision
- 6) The Central Authority of the Requested Party may facilitate the participation of investigative officers from the Requesting Party in the execution of the request, if specified in the request.

ARTICLE 6

Confidentiality, Limitations on use and Data Protection

- 1) The Requested Party shall, upon request, keep confidential the request for assistance, its contents and supporting documents, and any response to such a request.
- 2) If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting State, which shall then determine whether, and the extent to which, it wishes the request to be executed.
- 3) The Requesting Party shall not use or disclose any information or evidence obtained under this Treaty for any purpose other than for the proceedings stated in the request without the prior consent of the Requested Party.
- 4) Either Contracting Party may refuse to transfer personal data obtained as a result of the execution of a request made under this Treaty where the transfer of such data is prohibited under its domestic law
- 5) Either Contracting Party that transfers personal data obtained as a result of the execution of a request made under this Treaty may require the Contracting Party to which the data have been transferred to give information on the use made of such data.

ARTICLE 7

Legalisation Requirements

- 1) Documents, transcripts, records, statements and other materials shall be exempted from any legalisation requirements, including certification or authentication by consular or diplomatic officers.
- 2) Documents, transcripts, records, statements and other materials which are to be transmitted to the Requesting Party shall only be certified if the Requesting Party so requests. For that purpose, certification by the Central Authority of the Requested Party shall be sufficient.

ARTICLE 8

Return of Documents, Records or Items of Evidence

Unless otherwise agreed upon by the Central Authorities, any documents, records, or items furnished to the Requesting Party in the execution of a request under this Treaty shall be disposed of in a mutually acceptable manner as soon as is practicable.

ARTICLE 9

Obtaining Testimony or Evidence

- 1) A person in the territory of the Requested Party from whom testimony or evidence is required pursuant to this Treaty may be compelled, if necessary, to appear in order to testify or produce documents, records, or articles of evidence by summons or such other method as may be permitted under the domestic law of the Requested Party
- 2) If under Article 5 (6) (Execution of Requests) of this Treaty the Requested Party has permitted the presence of specified persons during the execution of the request, then, subject to the domestic law of the Requested Party, such persons may be permitted to present questions to be asked of the person giving testimony or producing evidence
- 3) A person from whom testimony or evidence is to be taken in the Requested Party pursuant to a request under this Article may decline to give testimony or produce evidence where the domestic law of the Requested Party so provides and shall not be subject to any legal penalty as a result

4) Where a person so compelled asserts a claim of immunity, incapacity or privilege under the domestic law of the Requesting State, the Requesting Party shall be informed of such a claim and the testimony or evidence shall be taken unless the Requesting Party accepts the validity of the claim.

ARTICLE 10

Hearing by Video Conference

1) A person within the territory of the Requested Party may give evidence in proceedings in the Requesting Party by video conference

2) If access to the technical means for video conferencing is not available in either Contracting Party, such means may be made available by the other Contracting Party by agreement

3) Where a person is to be heard by video conference, the hearing shall be conducted before an appropriate authority in the Requested Party

4) The hearing shall be supervised by a judicial authority of the Requesting Party and evidence shall be given:

- a) in accordance with the domestic law of the Requesting Party; and
- b) in accordance with any other measures for the protection of the person which have been agreed between the Contracting Parties

5) At the hearing the appropriate authority of the Requested Party shall be responsible for:

- a) ensuring there is appropriate interpretation of proceedings;
- b) establishing the identity of the person;
- c) intervening, where necessary, to safeguard the rights of the person;
- d) drawing up a record of the hearing which shall include the following information:
 - i. the date and place of the hearing;
 - ii. the identity of the person heard;
 - iii. the identities and functions of anyone else participating in the hearing;
 - iv. details of any oaths taken; and

- v. the technical conditions under which the hearing took place; and
- e) transmitting the record of the hearing as referred to in this Article as soon as is practicable after the conclusion of the hearing.

ARTICLE 11

Provision of Publicly Available Documents and Other Records

- 1) The Requested Party shall, upon request, provide the Requesting Party with copies of publicly available records that are in the possession of authorities in the Requested Party
- 2) The Requested Party may provide the Requesting Party with copies of documents or records in the possession of authorities in the territory of the Requested Party but which are not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement or judicial authorities.

ARTICLE 12

Service of Documents

- 1) The Requested Party shall, upon request and insofar as is possible, effect service of any process issued or made for the purposes of criminal proceedings.
- 2) Any person who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently that person voluntarily enters the territory of the Requesting Party and is there again duly summoned.
- 3) The Requesting Party shall transmit a record for the service of a document requiring the appearance of a person before an authority in the Requesting Party at a reasonable time before the scheduled appearance
- 4) The Requested Party shall, wherever possible, return a proof of service in the manner specified in the request.

ARTICLE 13

Attendance of Persons in the Territory of the Requesting Party

- 1) Where a person is situated in the territory of the Requested Party, that Party may assist in arranging the attendance of that person, subject to his or her consent, in the territory of the Requesting Party :
 - a) to assist in the investigation in relation to a criminal matter; or
 - b) to appear in proceedings in relation to a criminal matter in the territory of the Requesting Party, unless that person is the person charged
- 2) The Requesting Party may make arrangements to ensure, so far as is possible, that a person attending in the territory of the Requesting Party 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 in the territory of the Requesting Party that preceded that person's departure from the territory of the Requested Party
- 3) The Requested Party may, if satisfied that appropriate arrangements for that person's safety will be made by the Requesting Party, invite the person to give or provide evidence or assistance in relation to a criminal matter in the Requesting Party. The person shall be informed of details of any immunity as required by Article 4(4) (Form, Language and Contents of Requests) of this Treaty and any expenses or allowances payable
- 4) The Requested Party shall promptly communicate in writing to the Requesting Party the person's response and, if the person consents, take any steps necessary to facilitate that person's attendance in the Requesting Party.

ARTICLE 14

Transfer of Persons in Custody

- 1) Where a request is received by the Requested Party for the transfer of a person in the custody of that Party to the territory of the Requesting Party for the purpose of providing assistance under this Treaty, that person shall be so transferred if he and the Requested Parties consent.
- 2) The Requesting Party shall be responsible for the safety of the person transferred whilst in custody.

- 3) The Requesting Party may make arrangements to ensure, so far as is possible, that a person attending in the territory of the Requesting Party pursuant to this Article shall not be subject to service of process, or be detained or subjected to any further restriction of personal liberty, by reason of any acts or convictions in the Requesting Party that preceded that person's departure from the territory of the Requested Party.
- 4) The Requested Party may, if satisfied that appropriate arrangements for that person's safety will be made by the Requesting Party, invite the person to give or provide evidence or assistance in relation to a criminal matter in territory of the Requesting Party. The person shall be informed of details of any immunity as required by Article 4(4) (Form, Language and Contents of Requests) of this Treaty .
- 5) Unless notified to the contrary by the Requested Party, the Requesting Party shall have the authority and the obligation to keep in custody the person transferred
- 6) Where the Requested Party advises the Requesting Party that the person transferred is no longer required to be held in custody, that person shall be released from custody and be treated as a person to whom Article 13 (Attendance of Persons in the Territory of the Requesting Party) of this Treaty applies
- 7) The Requesting Party shall return the person transferred to the custody of the Requested Party as soon as circumstances permit and in any event no later than the date upon which he would have been released from custody in the territory of the Requested Party, unless otherwise agreed by the Contracting Parties and the person transferred
- 8) The Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred
- 9) The period of custody in the territory of the Requesting Party shall be deducted from the period of detention which the person concerned is, or will be, obliged to undergo in the territory of the Requested Party.

ARTICLE 15

Executing Searches and Seizures

- 1) The Requested Party shall carry out requests for search, seizure and delivery of any evidence to the Requesting Party provided the request contains information that would justify such action under the domestic law of the Requested Party.
- 2) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure and the subsequent custody of the evidence seized.

3) The Requested Party may require that the Requesting Party agrees to any terms and conditions which the Requested Party may deem necessary to protect proprietary interests in the evidence to be transferred.

ARTICLE 16

SPONTANEOUS INFORMATION

1) The Central Authority of one of the Contracting Parties may, without prior request, forward information to the Central Authority of the other Contracting Party when it considers that the disclosure of such information might assist the receiving Contracting Party in initiating or carrying out investigations or proceedings, or might lead to a request by the receiving Contracting Party under this Treaty

2) If one of the Contracting Parties becomes aware that the proceeds or instrumentalities of crime are located in the territory of the other Contracting Party and may be liable to restraint, seizure or confiscation under the laws of that Contracting Party, it may so inform the Central Authority of the other Contracting Party.

3) The providing Contracting Party may impose conditions on the use of such information by the receiving Contracting Party. The receiving Contracting Party shall be bound by these conditions.

ARTICLE 17

Restraint and Confiscation of Property

1) The Contracting Parties shall assist each other in proceedings involving the restraint, seizure and confiscation of the proceeds and instrumentalities of crime in accordance with the domestic law of the Requested Party.

2) In addition to the provisions contained in Article 4 (Form, Language and Content of Requests) of this Treaty, a request for assistance in restraint or confiscation proceedings shall also include:

- a) details of the property in relation to which co-operation is sought;
- b) the location of the property and its connection with the subject of the request;
- c) the connection, if any, between the property and the offences;
- d) details of any third party interests in the property; and

- e) if obtained, a certified true copy of the restraint or confiscation order made by the court and statement of the grounds on the basis of which the/order was made, if they are not indicated in the order itself.

ARTICLE 18

Return of Assets

- 1) Where an offence has been committed and a conviction has been obtained in the territory of the Requesting Party, the assets which have been seized by the Requested Party may be returned to the Requesting Party for the purpose of confiscation, in accordance with the domestic law of the Requested Party
- 2) The rights claimed by bona fide third parties over these assets shall be respected.

ARTICLE 19

Return of Embezzled Public Funds

When the Requested Party seizes or confiscates assets that constitute public funds, whether or not these have been laundered, and which have been embezzled from the Requesting Party, the Requested Party shall return the seized or confiscated assets, less any costs of realisation, to the Requesting Party.

ARTICLE 20

Circumstances in which Assets may be Shared

Where a Contracting Party is in possession of confiscated assets, and it appears to that Contracting Party that co-operation has been given by the other Contracting Party, those confiscated assets may be shared in accordance with Article 21 (Requests for Asset Sharing).

ARTICLE 21

Requests for Asset Sharing

- 1) A request for asset sharing may be made to the Requested Party in accordance with the provisions of this Treaty when its co-operation has led, or is expected to lead, to confiscation. A request for asset sharing shall be made, where possible, at or before the time a request for confiscation is made, unless otherwise agreed between the Contracting Parties .

- 2) A request made under paragraph 1 of this Article shall include the details of:
 - a) the case to which the request relates;
 - b) the assets (and their value) to which the request relates;
 - c) the agency or agencies invoked; and
 - d) the extent and circumstances of the co-operation
- 3) In relation to a request for asset sharing made in accordance with the provisions of this Article, the Requested Party shall :
 - a) consider whether to share assets (including consideration of the expected realised value of the assets); and
 - b) inform the Requesting Party the outcome of that consideration
- 4) Where the Requested Party has agreed to share assets, once realised, 50% of the amount obtained (unless otherwise agreed by the Central Authorities) must be transferred to the Requesting Party
- 5) Where the value of the assets realised is less than 10,000 British Pounds or equivalent in Kuwaiti Dinar at the time of realisation, the Requested Party may decide not to share assets, notwithstanding any decision made in accordance with paragraph 3.
- 6) In appropriate cases where there are identifiable victims, consideration of the rights of victims may take precedence over asset sharing between the Contracting Parties .
- 7) Contracting Parties may also agree to share assets for other reasons in relation to individual cases.

ARTICLE 22

Payment of Shared Assets

Unless otherwise agreed, any sum transferred pursuant to Article 21 (Requests for Asset Sharing) of this Treaty shall be paid:

- a) in the currency of the Requested Party;
- b) By means of an electronic transfer of funds; and
- c) To such recipient or recipients as specified by Central Authorities.

ARTICLE 23

Imposition of Conditions in Asset Sharing

Where a contracting state transfers any sum pursuant to Article 21 (Requests for Asset sharing) of this treaty, it may not impose any conditions as to the use of that sum, and, in particular, may not require the sum be shared with any other state, organisation or individual.

ARTICLE 24

Costs and Expenses

- 1) The Requested Party shall pay all costs relating to the execution of the request, except for the following which shall be paid by the Requesting Party :
 - a) fees and reasonable expenses of expert witnesses;
 - b) the allowances and expenses incurred pursuant to Article 13 (Attendance of Persons in the Territory of the Requesting Party) of this Treaty;
 - c) the costs of establishing and operating video conferencing or television links and the interpretation and transcription of such proceedings pursuant to Article 10 (Hearing by Video Conference) of this Treaty;
 - d) the costs of transferring persons in custody pursuant to Article 14 (Transfer of Persons in Custody) of this Treaty; and
 - e) such other costs or resources as agreed.

- 2) If the Central Authority of the Requested Party notifies the Central Authority of the Requesting Party that the execution of the request might require costs or other resources of an extraordinary nature, the Central Authorities shall consult each other with a view to reaching agreement on the conditions under which the request shall be executed and the manner in which costs shall be allocated.

ARTICLE 25

Compatibility with other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either of the Contracting Parties from granting assistance to the other Contracting Party through the provisions of other international agreements to which it may be a party, or through the provisions of its domestic law. The Contracting Parties may also provide assistance pursuant to any arrangement, agreement or practice which may be applicable between the law enforcement agencies of the Contracting Parties

ARTICLE 26

Consultations

The Contracting Parties may consult, orally or in writing, on the application or implementation of this Treaty, in general terms or in a particular case, whenever appropriate. The Contracting Parties may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty

ARTICLE 27

Settlement of Disputes

Any dispute regarding the interpretation, application or implementation of this Treaty shall be resolved through the diplomatic channels through consultations and negotiations.

ARTICLE 28

Application

- 1) This Treaty shall apply to offences committed before or after the date on which it enters into force.
- 2) This Treaty shall apply:
 - a) in the territory of the United Kingdom of Great Britain and Northern Ireland;
 - b) in the territory of the state of Kuwait; and
 - c) to any other territories for whose international relations one of the Contracting Parties is responsible and to which this Treaty shall have been extended by Exchange of Notes.

3) The application of this Treaty to any territory in respect of which extension has been made in accordance with paragraph 2(c) of this Article may be terminated by either Contracting Party giving six(6) months written notice to the other Contracting Party through the diplomatic channel.

ARTICLE 29

Entry into Force and Termination

1) This Treaty shall enter into force on the date of receipt of the last written notification through diplomatic channels by which the Contracting Parties notify each other of the completion of their respective requirements for the entry into force of this Treaty.

2) Either Contracting Party may terminate this Treaty at any time by giving notice in writing to the other. In that case, the Treaty shall cease to have effect six (6) months after the date of the receipt of that notification .

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

DONE at Kuwait City on twenty eighth January 2018 in duplicate, in the English and Arabic languages, both texts being equally authentic.

**For the Government of the United
Kingdom of Great Britain and
Northern Ireland:**

ALISTAIR BURT

**For the Government of the
State of Kuwait:**

**H.E KHALED SULAIMAN
AL-JARALLAD**

CCS071800332807

978-1-5286-0675-2