

TREATY WITH KAZAKHSTAN ON MUTUAL LEGAL  
ASSISTANCE IN CRIMINAL MATTERS

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE  
REPUBLIC OF KAZAKHSTAN ON MUTUAL LEGAL ASSISTANCE IN  
CRIMINAL MATTERS, SIGNED AT WASHINGTON ON FEBRUARY  
20, 2015



MARCH 17, 2016.—Treaty was read the first time, and together with the  
accompanying papers, referred to the Committee on Foreign Relations  
and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PUBLISHING OFFICE



## LETTER OF TRANSMITTAL

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THE WHITE HOUSE, *March 17, 2016.*

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Republic of Kazakhstan on Mutual Legal Assistance in Criminal Matters, signed at Washington on February 20, 2015. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties negotiated by the United States to more effectively counter criminal activities. The Treaty should enhance our ability to investigate and prosecute a wide variety of crimes.

The Treaty provides for a broad range of cooperation in criminal matters. Under the Treaty, the Parties agree to assist each other by, among other things: producing evidence (such as testimony, documents, or items) obtained voluntarily or, where necessary, by compulsion; arranging for persons, including persons in custody, to travel to another country to provide evidence; serving documents; executing searches and seizures; locating and identifying persons or items; and freezing and forfeiting assets or property that may be the proceeds or instrumentalities of crime.

I recommend that the Senate give early and favorable consideration to the Treaty, and give its advice and consent to ratification.

BARACK OBAMA.



## LETTER OF SUBMITTAL

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DEPARTMENT OF STATE,  
*Washington, October 7, 2015.*

The PRESIDENT,  
*The White House.*

THE PRESIDENT: I have the honor to submit to you the Treaty between the United States of America and the Republic of Kazakhstan on Mutual Legal Assistance in Criminal Matters, signed at Washington on February 20, 2015 (the "Treaty"). I recommend the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, the United States has entered into similar bilateral treaties with a number of countries. The Treaty contains all of the essential provisions of such treaties sought by the United States. It will enhance our ability to investigate and prosecute a wide variety of offenses. The Treaty is self-executing and will not require further implementing legislation.

An overview of the Treaty, including a detailed, article-by-article analysis, is enclosed with this report. The Department of Justice joins the Department of State in favoring approval of the Treaty by the Senate at the earliest possible date.

Respectfully submitted.

JOHN F. KERRY.

Enclosures: As stated.

## U.S.-KAZAKHSTAN MUTUAL LEGAL ASSISTANCE TREATY

## OVERVIEW

The Treaty between the United States of America and the Republic of Kazakhstan on Mutual Legal Assistance in Criminal Matters (the “Treaty”) creates, for the first time, a treaty-based relationship of mutual legal assistance between the United States and the Republic of Kazakhstan. The Treaty covers mutual legal assistance in criminal matters and contains many provisions similar to those in treaties of its kind with other nations. It also includes all of the essential provisions sought by the United States.

## ARTICLE-BY-ARTICLE ANALYSIS

The following is an article-by-article description of the provisions of the Treaty.

Article 1 sets out the scope of assistance available under the Treaty. Article 1(1) creates an international obligation on each Party to provide mutual legal assistance to the other Party in connection with the investigation, prosecution and prevention of criminal offenses and in proceedings related to criminal matters, such as civil forfeiture proceedings. This ensures that the Parties can afford each other legal assistance in a broad range of criminal matters, from violent crimes to fraud, from tax matters to racketeering, from computer crime to environmental crime, and so on. Pursuant to Article 1(2), assistance also may be sought for investigations and proceedings by authorities involved in implementing governmental regulations relating to violations that may be referred for criminal prosecution under the laws of the Requesting State. Thus, where the conditions of the Treaty are otherwise met, assistance would be available, for example, for proceedings of the U.S. Securities and Exchange Commission when those proceedings are incidental to, or connected with pending criminal investigations or prosecutions, or may be referred for criminal prosecution. Article 1(3) contains a non-exhaustive list of the major types of assistance to be provided under the Treaty, including producing evidence (such as testimony, documents, or items) obtained voluntarily or, where necessary, by compulsion; arranging for persons, including persons in custody, to travel to another country to provide evidence; serving documents; conducting searches and seizures; locating or identifying persons or items; and identifying, tracing, immobilizing, seizing and forfeiting assets or property that may be the proceeds or instrumentalities of crime. Each of these types of assistance is described in detail in subsequent articles in the Treaty.

The Treaty also authorizes provision of any other assistance not prohibited by the laws of the Party receiving the request (referred to in the Treaty as the “Requested State,” while the Party making the request is the “Requesting State”). As long as there is no specific legal restriction under the laws of the Requested State barring the type of assistance requested, it may be provided pursuant to the Treaty.

Consistent with most U.S. mutual legal assistance treaties (MLATs), Article 1(4) provides that, with the exception of where it is specifically required by the laws of the Requested State, “dual criminality” is not a prerequisite for assistance under the Treaty.

Thus, unless otherwise provided by the laws of the Requested State, assistance shall be provided without regard to whether the conduct at issue would constitute an offense under the laws of the Requested State. The Treaty does require “dual criminality” in certain circumstances. For example, under Article 14, a Requested State is obligated to execute a search and seizure request only if the request includes sufficient information justifying the action under its law and the offense at issue would also constitute an offense under its law.

Article 1(5), a standard provision in U.S. MLATs, provides that the Treaty is intended solely for government-to-government mutual legal assistance. The Treaty is not intended to provide to persons other than the Parties a means of evidence gathering, nor is it intended to extend generally to civil matters. Private persons in the United States may continue to obtain evidence from Kazakhstan by letters rogatory, an avenue of international assistance that the Treaty leaves undisturbed. Similarly, the paragraph provides that the Treaty does not give rise to any right in any private person to suppress or exclude evidence provided pursuant to the Treaty, or to impede the execution of a request.

Article 2 requires each Party to designate a “Central Authority” to make and receive Treaty requests. The Central Authority of the United States would make requests to Kazakhstan on behalf of federal and state agencies and local law enforcement authorities in the United States. The Central Authority of Kazakhstan would make all requests emanating from analogous officials in Kazakhstan. Pursuant to Article 2(3), the Central Authorities are to communicate directly with one another.

For the United States, the Central Authority is the Attorney General or a person designated by the Attorney General. For Kazakhstan, the Central Authority is the Prosecutor General’s Office. In the United States, the authority to handle duties of the Central Authority under MLATs has been delegated to the Office of International Affairs in the Criminal Division of the Department of Justice.

The Central Authority of the Requesting State exercises discretion, consistent with the provisions of the Treaty, as to the form of requests, as well as the number and priority of requests. The Central Authority of the Requested State is responsible for receiving and evaluating each incoming request; transmitting it to the proper agency, court, or other authority for execution; and providing a timely response.

Article 3 sets forth the circumstances under which the Requested State’s Central Authority may deny assistance under the Treaty. Refusal under this Article is discretionary with the Central Authority of the Requested State. Several of the grounds for refusal are common to most U.S. MLATs. For example, a request may be denied if it relates to a military offense or does not conform to the requirements of the Treaty. A request may also be denied if its execution would prejudice the sovereignty, security, public order or other essential interests of the Requested State. This essential interests clause would allow the United States to deny requests for assistance in support of investigations or prosecutions that are politically motivated, infringe on freedom of expression or other U.S.

constitutional protections, or are connected to a political offense. The Parties discussed the scope of the essential interests clause during negotiations and agreed that it would permit denial on these grounds.

In keeping with the overall intent of the Treaty to facilitate assistance, the Parties also included in Article 3 a provision designed to limit the use of grounds for refusal. Under Article 3(2), a Central Authority, before denying assistance under Article 3(1), is to consult with its counterpart in the Requesting State to consider whether assistance can be provided subject to such conditions as the Central Authority of the Requested State deems necessary. If the Requesting State accepts assistance subject to these conditions, it is required to comply with them.

Article 3(3) gives the Requested State discretion to deny a request if the offense is punishable by less than one year of imprisonment under the law of the Requesting State or the crime is financial in nature but does not involve a significant material loss, and the Central Authority of the Requested State determines that the resources required to execute the request are not justified in light of the less severe nature of the offense. The inclusion of such a *de minimis* clause is a priority for the United States in order to avoid the obligation to execute large numbers of MLAT requests relating to minor crimes, which can create significant burdens on the resources of the Department of Justice.

In addition, if the Central Authority of the Requested State denies assistance, it is required under Article 3(4) to inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4 prescribes the form and contents of requests under the Treaty, specifying in detail the information required in each request. It also permits the Central Authority of the Requested State to request additional information, if necessary to execute the request.

Article 5 concerns the execution of requests. Article 5(1) includes three important concepts: the obligation of the Central Authority of the Requested State to execute requests promptly (or to transmit them to the competent authorities who have jurisdiction to execute the requests); the requirement that competent authorities do “everything in their power” to execute requests; and the granting of authority to courts of the Requested State to issue subpoenas, search warrants, or other legal process necessary to execute requests. Article 5(2) builds on these concepts by requiring the Requested State to make all necessary arrangements to represent the Requesting State in any proceedings arising out of a request for assistance. It is understood that such proceeding may include proceedings before a judicial authority or administrative agency. Taken together, these provisions reflect an understanding that the Parties intend to provide each other with a wide measure of assistance from judicial and executive branches of government in the execution of mutual legal assistance requests. These provisions also specifically authorize U.S. courts to use all of their powers to issue whatever process is necessary to satisfy a request under the Treaty, whether the authority for such process comes from the Treaty itself or from existing statutes.



Article 5(3) specifies that requests are to be executed in accordance with the laws of the Requested State except to the extent that the Treaty provides otherwise. The requests themselves may specify a particular procedure to be followed, and such specified procedure is to be followed unless prohibited by the law of the Requested State. Following the procedure specified can be important to ensure evidence collected in one State satisfies the requirements for admissibility at trial in the other. It is understood that, if neither the Treaty nor the request specifies procedures to be followed, the Requested State is to execute the request in accordance with its domestic laws applicable in criminal investigations and related proceedings. The intent of this provision, like similar provisions in other U.S. MLATs, is to allow the Requested State to use its established procedures for obtaining evidence where procedures are not otherwise specified, so long as those procedures do not undermine the obligation in the Treaty to provide assistance. *See, e.g., In re Commissioner's Subpoenas*, 325 F.3d 1287 (11th Cir. 2003).

Article 5(4) allows the Central Authority of the Requested State to postpone the execution of a request, or make execution subject to specified conditions, if it determines that execution of the request would interfere with an ongoing criminal investigation, prosecution or proceeding in that state. If the Requesting State accepts assistance subject to conditions, it must comply with such conditions.

Confidentiality of requests is addressed in Article 5(5). The Requesting State may ask that the request, its contents and the outcome of the execution of the request be kept confidential. The Requested State must use its best efforts to comply with such a request, but if assistance cannot be granted without breaching the confidentiality requirements, the decision whether to proceed is left to the Requesting State.

Articles 5(6) and (7) address some of the types of communications between Central Authorities essential to a good working mutual legal assistance relationship. For example, Central Authorities must respond to reasonable requests for progress reports, and inform each other of the outcome of execution of requests, including any reasons for denial of a request. Article 5(8) makes clear that the Requested State is not obligated to translate documents provided to the Requesting State in response to a request.

Article 6 addresses the costs associated with providing assistance. As is standard in U.S. MLATs, Article 6 provides that the Requested State must pay all costs relating to the execution of the request, including representation costs, except for the following items to be paid by the Requesting State: fees of expert witnesses; costs of translation, interpretation and transcription; and allowances and expenses related to travel of persons pursuant to Articles 10 and 11 (relating to travel for the purpose of providing assistance and transfer of persons in custody). The Kazakh delegation explained that, for its domestic law purposes, its treasury department would require that the treaty contain an explicit obligation that it pay the costs of executing requests; accordingly, this Article specifies that the State obligated to pay for a particular expense (as provided elsewhere in this Article) shall follow its own internal processes for making the payment. This article also provides that, in the event

that fulfilling a request would require extraordinary expenses, the Central Authorities will consult in order to determine how those costs shall be borne.

Article 7 addresses limitations on use of information and evidence provided under the Treaty. Under Article 7(1), the Central Authority of the Requested State may request that information or evidence produced in response to a request under the Treaty not be used for any investigation, prosecution or proceeding other than that described in the request without the consent of the Central Authority of the Requested State. In such cases, the Requesting State must comply with the request for limitations on use.

Under Article 7(2), the Central Authority of the Requested State may also request that information or evidence produced under the Treaty be kept confidential or be used subject to specified terms and conditions. If the Requesting State accepts the requested conditions, it must use its best efforts to comply with those conditions. The default rule, however, is that such information or evidence is not confidential, and Article 7(4) also provides that, once such information or evidence has been made public in the territory of the Requesting State in accordance with Article 7, it may be used for any purpose. Moreover, the Treaty explicitly permits the disclosure of information or evidence to the extent that there is an obligation to disclose under the Constitution of the Requesting State in a criminal proceeding. This contingency, found in Article 7(3), was included to ensure that the United States would be able to satisfy any obligations to disclose information under the Constitution, such as those set forth in *Brady v. Maryland*, 373 U.S. 83 (1963).

As with other provisions of the Treaty, the confidentiality protections and use limitation provisions of Article 7 are for the benefit of the two governments that are Parties to the Treaty, and invocation and enforcement of these provisions is entirely a matter for the Parties.

Article 8 is the first in a series of articles that spell out in detail the procedures to be employed in the case of specific types of requests for assistance outlined in Article 1(3). Article 8 addresses production of evidence, whether it is a statement or testimony, documents, records, or particular items. A person from whom evidence is sought under the Treaty may appear voluntarily to provide such evidence, or, if necessary, the Treaty authorizes the Parties to compel production of evidence. This compulsion may be accomplished by subpoena or any other means available under the laws of the Requested State (see Article 5(3)).

Article 8(2) calls on the Requested State, upon request, to inform the Requesting State in advance of the date and place of the taking of testimony or evidence. Article 8(3) requires the Requested State to permit persons specified in the request to be present during execution of the request and to allow such persons to question the person giving testimony or evidence.

Article 8(4) provides that, if a person from whom the request seeks testimony or evidence asserts a right to decline to provide such evidence by claiming an immunity, incapacity or privilege under the laws of the Requesting State, the evidence shall nonetheless be taken and the claim made known to authorities of the Requesting State so that they may resolve it. The Treaty does not

specifically address the resolution of claims of privilege under the Requested State's law but, by implication, those are to be resolved by that State's authorities. This formulation allows each Party to resolve claims of privilege made under its own laws.

Article 8(5) contains the first of several provisions in the Treaty addressing the authentication of evidence produced pursuant to the Treaty. Similar provisions are found at Articles 9(3) and 14(2). Evidence produced under the Treaty may be authenticated by an attestation, including, with respect to business records, official records, and items that have been seized pursuant to the Treaty, by use of one of the forms appended to the Treaty. The appended forms are an integral part of the Treaty. The Treaty provides that evidence produced and authenticated according to the procedure set forth in the Treaty shall be admissible in evidence in the territory of the Requesting State.

Article 9 addresses the provision of documents or other records in the possession of government agencies. The Parties are obligated to provide to each other copies of publicly available records in any form in the possession of governmental departments and agencies upon request. The Treaty authorizes the Requested State, in its discretion, to provide to the Requesting State any records that are not publicly available, to the same extent, and under the same conditions, as they would be available to the Requested State's own law enforcement or judicial authorities.

The Treaty will constitute a "convention relating to the exchange of tax information" for purposes of Title 26, United States Code, Section 6103(k)(4), and the United States would have the discretion to provide tax return information to Kazakhstan under this article in appropriate cases.

Article 10 provides a mechanism for the Requesting State to ask for the voluntary appearance in its territory, or in the territory of a third state, of a person located in the territory of the Requested State for the purpose of assistance under the Treaty, such as to serve as a witness or expert in proceedings or to assist in an investigation. The Requesting State must indicate the extent to which the person's expenses will be paid. The Requested State is required to inform the person of the request for the person's appearance and notify the Requesting State of the person's response.

When a person agrees to travel to appear in the territory of the Requesting State, Article 10(2) provides that the Requesting State shall grant the person safe conduct, thus ensuring that the person appearing in the territory of the Requesting State will not be subject to service of process or be detained or subjected to any restriction on personal liberty for acts or convictions that preceded the person's departure from the territory of the Requested State. The grant of safe conduct pursuant to this provision applies only to past offenses and would not prevent the Requesting State from prosecuting the person for perjury or any other crime committed while present, pursuant to Article 10, in the territory of the Requesting State. Under Article 10(3), safe conduct shall cease seven days after the person is notified that his presence in the Requesting State is no longer required and he is physically able to depart but has not done so, or when the person has left the territory of the Requesting State and voluntarily returns. In its discretion, the

Central Authority of the Requesting State may, for good cause, extend the period of safe conduct.

Article 11 provides a similar mechanism for persons in custody. A need sometimes arises for the testimony in one country of a person who is incarcerated in another country. For example, a person incarcerated in one country—whether the Requesting or Requested State—may need to be present for the purpose of assistance under the Treaty, such as when an incarcerated witness may have to give testimony in the presence of an incarcerated defendant in the other country. The appearance of the detained person is still voluntary, but is also subject to the agreement of the Central Authorities. In addition, the Treaty imposes certain conditions on such transfers: the person must be held in custody by the receiving State, unless otherwise authorized by the sending State; the receiving State must return the person in custody to the territory of the sending State as soon as circumstances permit or as otherwise agreed; the return of the person shall not require extradition proceedings; and the period that the person is in custody in the territory of the receiving State shall be credited against the person's sentence in the sending State.

Article 12 provides for determining the whereabouts or identity in the territory of the Requesting State of persons (such as witnesses, potential defendants, or experts) or items when such information is requested. The Treaty requires only that the Requested State use its best efforts to ascertain the location or identity of the person or items sought. The extent of such efforts will vary, of course, depending on the quality and extent of the information provided by the Requesting State concerning the suspected or last known location of the person or items.

Article 13 relates to service of documents. It creates an obligation on the part of the Requested State to use its best efforts to serve documents relating to a request for assistance, such as summonses, complaints, subpoenas, or notices. Under Article 13(2), when the document pertains to an appearance in the territory of the Requesting State, the request for the service of the document must be transmitted a reasonable time before the scheduled appearance. Article 13(3) requires the Requested State to return proof of service in the manner specified in the request.

Article 14 obligates the Requested State to 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 and the offense at issue would also constitute an offense under the law of the Requested State. For requests from Kazakhstan to the United States, this means the request would have to be supported by a showing of probable cause for the search. The Requested State may require that the Requesting State agree to terms deemed necessary to protect interests of third parties, such as victims and legitimate owners.

Article 15 allows the Requested State to require that the Requesting State return any items provided to it in execution of a request under the Treaty.

Assistance in forfeiture proceedings is the subject of Article 16. The types of actions that could be undertaken under this Article in-

clude actions to restrain, seize and forfeit property. The Article applies both to conviction-based forfeiture proceedings and to non-conviction based forfeiture proceedings premised on criminal conduct. The Requested State is required to provide the assistance only if the request includes information sufficient under the laws of the Requested State to justify the action. Article 16(2) provides a non-exhaustive list of the types of assistance that a Party is required to provide pursuant to this Article.

Article 16(3) requires the Requested State to consult with the Requesting State before disposing of property frozen, restrained, seized, or forfeited pursuant to Article 16. Article 16(4) permits the Party in control of the property to transfer all or part of it to the other Party or, after consultation between the Parties, to any other state that assisted in forfeiture of property in a manner proportionate to the other Party's or other state's assistance. United States law permits the government to transfer a share of certain forfeited property to other countries that participate directly or indirectly in the seizure or forfeiture of the property when, among other requirements, such transfer is authorized by an international agreement. This Article provides such authorization for asset sharing with Kazakhstan. Article 16(4) also provides that, where appropriate and upon request, priority must be given to returning property to the Requesting State so that victims of an offense may be compensated or the property may be returned to its legitimate owners. Article 16(5) requires the Parties to assist each other, to the extent permitted by their respective domestic laws, in proceedings relating to restitution to victims of crime. Article 16(6) gives the Requested State discretion to deny assistance requested pursuant to Article 16 if the value of the property in question does not substantially exceed the resources that would be expended in providing the assistance. Before denying assistance for this reason, however, the Central Authority of the Requested State must consult with the Central Authority of the Requesting State.

Article 17 states that this Treaty is not intended to be the sole mechanism for the Parties to provide assistance to each other and the Parties may provide assistance to each other through other means, such as applicable agreements, the provisions of their national laws, and other arrangements or practices. Thus, for example, the Treaty would leave the provisions of U.S. and Kazakh law on letters rogatory completely undisturbed, and would not alter any practices or arrangements concerning investigative assistance or prohibit the Parties from developing other such practices or arrangements. Further, the article provides that a request for assistance is not necessary when one Party wishes spontaneously to share information or evidence with the other Party.

Article 18 provides that the Parties will settle any disputes regarding interpretation or application of the Treaty through consultations.

Article 19 states that the Parties may make amendments to the Treaty by mutual written agreement. Amendments will enter into force pursuant to the same procedures as the Treaty itself, which are set out in Article 20.

Article 20 provides that the Treaty is subject to ratification by each Party. For the United States, this means ratification after the

advice and consent of the Senate. The Treaty will enter into force upon the exchange of instruments of ratification, which will occur through diplomatic channels. Article 20 also provides procedures for termination of the Treaty.

TREATY  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
THE REPUBLIC OF KAZAKHSTAN  
ON  
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS .

The United States of America and the Republic of Kazakhstan, hereinafter referred to as the "Parties" or the "States,"

Desiring to improve the effectiveness of the competent authorities of both Parties in the investigation, prosecution and prevention of crime through cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

**Article 1**  
**Scope of Assistance**

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution and prevention of criminal offenses, and in proceedings related to criminal matters.
2. For purposes of this Treaty, investigations and proceedings include investigations and proceedings relating to regulatory offenses to the extent that they may be referred for criminal prosecution in the Requesting State.
3. Assistance shall include:
  - a) taking the testimony or statements of persons;
  - b) providing and authenticating documents, records, and articles of evidence;
  - c) locating or identifying persons or items;
  - d) serving documents;
  - e) transferring persons in custody for testimony or other assistance under this Treaty;
  - f) conducting searches and seizures;
  - g) identifying, tracing, immobilizing, seizing and forfeiting assets and assisting in related proceedings; and
  - h) any other form of assistance not prohibited by the laws of the Requested State.

4. Except when required by the laws of the Requested State, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the territory of the Requesting State would constitute an offense under the laws of the Requested State.
5. This 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 party to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

#### **Article 2**

##### **Central Authorities**

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty, to determine whether and how the request should be executed and to execute the request or refer it to other competent authorities for execution.
2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Republic of Kazakhstan, the Central Authority shall be the Prosecutor General's Office.
3. The Central Authorities shall transmit requests and communicate directly with one another for the purposes of this Treaty.
4. The Central Authorities 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 3**

##### **Limitations on Assistance**

1. The Central Authority of the Requested State may deny assistance if:
  - a) the request relates to a military offense that would not be an offense under ordinary criminal law;
  - b) execution of the request would prejudice the sovereignty, security, public order or other essential interests of the Requested State; or



- c) the request is not made in conformity with this Treaty.
2. Before denying assistance pursuant to paragraph 1 of 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 provided subject to such conditions as the Requested State deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.
  3. The Central Authority of the Requested State may also deny assistance if the offense on which the request is based is punishable by less than one year of imprisonment in the Requesting State or involves an offense that does not give rise to a significant material loss, and the Central Authority of the Requested State determines that the resources required to execute the request are not justified in the light of the less severe nature of the offense.
  4. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

**Article 4**  
**Form and Contents of Requests**

1. A request for assistance, and related communications, shall be in writing and bear the signature of an official of the Central Authority of the Requesting State. A request may be made by expedited means of communications, including facsimile or electronic mail, with the original request to follow if required by the Central Authority of the Requested State. In very urgent situations, the Central Authority of the Requested State may accept a request other than in a written form. In any such urgent case, the request shall be confirmed in writing within ten (10) 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 a statement of the facts and

- how they constitute the specific criminal offenses on which the request is based, and the applicable penalties;
- 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 and location of any person from whom evidence is sought;
  - b) information on the identity 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 and possible 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 description of any particular procedure to be followed in executing the request;
  - g) a list of questions to be asked of a witness;
  - h) information as to the allowances and expenses to which a person asked to appear outside the Requested State will be entitled; and
  - i) any other information that may be brought to the attention of the Requested State to facilitate the execution of the request.
4. If the Central Authority of the Requested State determines that the request does not contain sufficient information to proceed to its execution, the Central Authority of the Requested State may request that the Requesting State provide such additional information as may be necessary to comply with 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 other legal process necessary to execute the request. Other competent authorities of the Requested State may issue subpoenas, search warrants, or other legal process necessary to execute the request, as authorized by the law of the Requested State.

2. The Requested State shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of a request for assistance executed by the Requested State.
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 manner 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 the Requested State, it may postpone execution, or make execution subject to conditions determined necessary after consultation 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 the fact that a request has been made, its contents and the outcome of the execution of the request, if such confidentiality is requested by 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 requests by the Central Authority of the Requesting State regarding the 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.

8. The Requested State is not obligated to translate correspondence, documents or other information provided in response to a request.

**Article 6**  
**Costs**

1. The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11 of this Treaty, which costs, fees, allowances, and expenses shall be paid by the Requesting State. Payment of the foregoing expenses shall be made in accordance with the internal processes of the State obligated to pay under this Article.
2. In cases in which extraordinary expenses arise, the Central Authorities of the Parties shall consult with one another to determine how those costs shall be borne.

**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 request to limit the use of the information or evidence.
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. Notwithstanding paragraphs 1 and 2 of this Article, the use or disclosure of information in a criminal prosecution shall be permitted to the extent that there is an obligation to do so under the Constitution of the Requesting State. The Requesting State shall notify the Requested State in advance of any such proposed disclosure.

4. Information or evidence that has been made public in the Requesting State in accordance with this Article may be used for any purpose.

**Article 8**

**Testimony or Evidence in the Requested State**

1. A person in the Requested State from whom 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.
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 of this Article asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the 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 Party.
5. Evidence produced in the territory of 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 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 of the Requested State.

2. The Requested State may provide copies of any documents, records, or information that are in the possession of a government department or agency of 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**

##### **Appearance before Authorities of the Requesting State**

1. When the Requesting State requests the appearance of a person in its territory, or before the appropriate authorities of the Requesting State in a third state, for the purpose of providing assistance under this Treaty, the Requested State shall invite the person to appear before the appropriate authority of the Requesting State. The Requesting State shall indicate the extent to which the expenses relating to such an appearance will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person.
2. A person appearing in the Requesting State pursuant to this Article, regardless of his or her nationality, 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. Any such person shall not be obliged to provide assistance other than that specified in the request.
3. Safe conduct, as provided in Paragraph 2 of this Article, shall cease to have effect if:
  - a) seven (7) days after the person has been notified that his presence is no longer required, and being physically able to depart, he has not left the Requesting State; or

- b) having left the Requesting State, the person has voluntarily returned to it.

The Central Authority of the Requesting State may, in its discretion, extend this period 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 Requesting 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 Parties 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 Parties agree.
3. For purposes of this Article:
  - a) the receiving State shall have the authority and the obligation to keep in custody the person transferred unless otherwise authorized 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 or Identification of Persons or Items**

If the Requesting State seeks the location or identity of persons or items in the Requested State, the Requested State shall use its best efforts to ascertain the location or identity.

**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 information sufficient under the laws of the Requested State to justify such action and the offense at issue would also constitute an offense 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 Requested State may require that the Requesting State agree to the terms and conditions deemed necessary to protect third-party interests in the items to be transferred.

**Article 15**  
**Return of Items**

The Requested State may require that 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. The Requested State shall execute a request to assist the Requesting State in conviction-based forfeiture proceedings, and in non-conviction-based forfeiture proceedings premised on underlying criminal conduct, relating to the restraint, seizure or forfeiture of property that:
  - a) constitutes, or is derived directly or indirectly from, the proceeds of an offense;
  - b) is an instrumentality of or otherwise used or intended to be used in an offense; or
  - c) is of equivalent or corresponding value to property described in subparagraph (a) of this paragraph that is or will be the subject of an order of restraint or seizure, or a judgment or order of forfeiture;

if the request includes information sufficient under the laws of the Requested State to justify such action.

2. Assistance provided under this Article shall include:
  - a) freezing, restraining, seizing or forfeiting property described in paragraph (1) of this Article;
  - b) giving effect, unless contrary to the law of the Requested State, to orders to freeze, restrain or seize property described in paragraph (1) of this Article, and final orders or judgments of forfeiture with respect to such property issued by judicial or other competent authorities of the Requesting State; and
  - c) any other type of assistance described in this Treaty.
3. Property frozen, restrained, seized, or forfeited pursuant to this Article shall not be disposed of without consultation with the Requesting State.
4. A Party that has custody over forfeited property may transfer all or part of the forfeited property to the other Party, or, upon consultation between the Parties, to any other state that assisted in the forfeiture of the property, in a manner proportionate to the other Party's or other state's assistance. Where appropriate and upon request, priority shall be given to returning the property to the Requesting State for the purpose of compensating victims of an offense or returning property to legitimate owners. The Parties may, if necessary, enter into specific agreements regarding the terms of transfer of the forfeited property.

5. The Parties shall assist each other, to the extent permitted by their respective laws, in proceedings relating to restitution to victims of crime.
6. The Requested State may decline to provide assistance under this Article if the value of the property in question does not substantially exceed the resources reasonably anticipated to be expended in providing assistance. Before denying assistance pursuant to this paragraph, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State.

**Article 17**  
**Compatibility with Other Agreements**

This Treaty is not intended to be the sole mechanism for the Parties to provide assistance to each other. A Party may also provide assistance to the other Party through any other available means, including, but not limited to, applicable bilateral and multilateral agreements, the provisions of its own laws, and other arrangements or practices. No request under this Treaty shall be required when one Party wishes to share information or evidence spontaneously with the other Party.

**Article 18**  
**Settlement of disputes**

Any dispute that may arise in connection with the interpretation or application of this Treaty shall be settled by means of consultations between the Parties.

**Article 19**  
**Amendments**

Amendments may be made by mutual written agreement of the Parties and shall enter into force by the procedure provided by Article 20 of this Treaty.

**Article 20  
Ratification, Entry into Force, and Termination**

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged through diplomatic channels as soon as possible.
2. This Treaty shall enter into force upon the exchange of instruments of ratification.
3. Either Party may terminate this Treaty by means of written notice through diplomatic channels to the other Party. Termination shall take effect six (6) months following the date of such notification.


IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Treaty.

DONE at *Washington*, this *20<sup>th</sup>* day of *February*, 2015, in duplicate, in the English and Kazakh languages, both texts being equally authentic.

FOR THE  
UNITED STATES OF AMERICA:



FOR THE  
REPUBLIC OF KAZAKHSTAN:



Form A

**CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS**

I, \_\_\_\_\_, attest on penalty of criminal punishment for false  
[name]

statement or attestation that I am employed by \_\_\_\_\_  
[name of business from which documents are sought]

\_\_\_\_\_ and that my official title is \_\_\_\_\_,  
[title]

and further state that each of the records attached hereto is the original or a duplicate of the  
original record in the custody of \_\_\_\_\_  
[name of business from which documents are sought]

I further state that:

- A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- B) such records were kept in the course of a regularly conducted business activity;
- C) the business activity made such records as a regular practice; and
- D) if any such record is not the original, it is a duplicate of the original.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[date]

**Form B**

**ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS**

\_\_\_\_\_, attest on penalty of criminal punishment for false  
[name]  
statement or attestation that my position with the Government of \_\_\_\_\_  
[country]  
is \_\_\_\_\_ and that in that position I am authorized by the  
[official title]  
law of \_\_\_\_\_ to attest that the documents attached and described below  
[country]  
are true and accurate copies of original official records which are recorded or filed in  
\_\_\_\_\_, which is a government office or agency of  
[name of office or agency]  
\_\_\_\_\_  
[country]

Description of Documents :

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[title]

\_\_\_\_\_  
[date]

Form C

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, \_\_\_\_\_, attest on penalty of criminal punishment for false  
[name]

statement or attestation that my position with the Government of \_\_\_\_\_  
[country]

is \_\_\_\_\_. I received custody of the articles listed below  
[official title]

from \_\_\_\_\_ on \_\_\_\_\_, at \_\_\_\_\_  
[name of person] [date] [place]

in the same condition as when I received them (or, if different, as noted below).

Description of Articles:

Changes in condition while in my custody (if any):

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[title]

\_\_\_\_\_  
[place]

\_\_\_\_\_  
[date]

*Official Seal*

