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**United States of America
and
Sweden**

Treaty between the Government of the United States of America and the Government of the Kingdom of Sweden on mutual legal assistance in criminal matters (with forms). Stockholm, 17 December 2001

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**États-Unis d'Amérique
et
Suède**

Traité entre le Gouvernement des États-Unis d'Amérique et le Gouvernement du Royaume de Suède sur l'entraide judiciaire en matière pénale (avec formulaires). Stockholm, 17 décembre 2001

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[ENGLISH TEXT – TEXTE ANGLAIS]

TREATY

BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE KINGDOM OF SWEDEN

ON

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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FORMS

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The Government of the United States of America and the Government of the Kingdom of Sweden,

Desiring to improve the effectiveness of the law enforcement authorities of both countries in the investigation and prosecution of crime through cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

Article 1

Scope of Assistance

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation and prosecution of offenses and in proceedings related to criminal matters.

2. Assistance shall include:

- a) locating or identifying persons or items;
- b) serving documents;
- c) taking the testimony or statements of persons;
- d) transferring persons in custody for testimony or other purposes;
- e) providing documents, records, and items;
- f) executing requests for searches and seizures;
- g) assisting in proceedings related to immobilization and forfeiture of assets and restitution;
- h) initiating criminal proceedings in the Requested State; and
- i) providing any other form of assistance consistent with the purposes of this Treaty and not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State. However, before executing a request that requires transfer of persons in custody pursuant to Article 12, search and seizure pursuant to Article 16, or assistance in forfeiture proceedings pursuant to Article 18, the Requested State may require that the subject offense be punishable under its penal or administrative laws.

4. This Treaty is intended solely for mutual legal assistance between the Contracting Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2

Central Authorities

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

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 Kingdom of Sweden, the Central Authority shall be the Ministry of Justice.

3. Each Central Authority shall make requests on behalf of authorities that by law are responsible for investigations, prosecutions, or proceedings related to criminal matters. For the United States of America, these authorities are prosecutors, investigators with criminal law enforcement jurisdiction, and agencies or entities with specific statutory or regulatory authority to refer matters for criminal prosecution. For Sweden, these authorities are courts, public prosecutors, and other authorities authorized to conduct criminal investigations.

4. The Central Authorities shall communicate directly with one another for purposes 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 an offense under military law that would not be an offense under ordinary criminal law;
- b) the request relates to a political offense;
- c) the request relates to an offense for which the penalty in the Requesting State is deprivation of liberty for a period of a year or less;
- d) execution of the request would prejudice the security or other essential interests ("ordre public") of the Requested State; or
- e) the request is not made in conformity with the Treaty.

2. Before denying assistance pursuant to 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 given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. 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 shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In that event, the request shall be confirmed in writing within 10 days unless the Central Authority of the Requested State agrees otherwise. A request and any supporting documents shall be in the language of the Requested State or accompanied by a translation into that language unless agreed otherwise.

2. A 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 the legal provisions applicable to the specific criminal offenses that relate to the matter;
- 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 and its connection to the facts.

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

- a) information on the identity and suspected location of a person to be located;
- 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 location of any person from whom evidence is sought;
- d) a precise description of the place or person to be searched and of the items to be seized;

- e) a description of the testimony sought, which may include a list of questions to be asked of a witness;
- f) a description of the manner in which any testimony or statement is to be taken and recorded;
- g) a description of any particular procedure to be followed in executing the request;
- h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and
- i) any other information that may be brought to the attention of the Requested State to facilitate its execution of the request.

Article 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute a request or, when appropriate, 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 orders necessary to execute the request.

2. The Requested State shall make all necessary arrangements for and meet the costs of representing the Requesting State in any proceedings in the Requested State arising out of a request for assistance.

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 method of execution specified in a 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 that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultation with the Central Authority of the Requesting State. If the Requesting State accepts assistance subject to conditions, it shall comply with the conditions.

5. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State regarding the progress toward execution of a request.

6. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of a request. If the request cannot be executed due to impossibility, lack of compliance with domestic legal requirements in the Requested State, or any other reason, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for its inability to execute the request.

Article 6

Costs

1. The Requested State shall pay all costs relating to the execution of a request except for the following, which shall be paid by the Requesting State:

- a) the fees of experts;
- b) the costs of translation, interpretation, and transcription; and
- c) the allowances and expenses related to travel of persons traveling either in the Requested State for the convenience of the Requesting State or pursuant to Articles 11, 12 or 13.

2. If during the execution of a request it becomes apparent that complete execution will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7

Limitations on Use

1. The Requested State may make the execution of a request dependent on the condition that the information or evidence obtained will not, without prior consent of its Central Authority, be used or transmitted by the authorities of the Requesting State for investigations or proceedings other than those specified in the request.

2. Nothing in this Article shall preclude, to the extent required under the constitution of the Requesting State, the disclosure or use of information or evidence in a criminal proceeding. The Requesting State shall notify the Requested State in advance of any such disclosure or use.

3. Information or evidence that either has been made public in the Requesting State in the normal course of the proceeding for which it was provided or has been disclosed in accordance with paragraph 2 may thereafter be used for any purpose.

Article 8

Confidentiality

1. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of 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.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be disclosed 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.

Article 9

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 be questioned or give testimony or produce items including, but not limited to, documents, records, and articles of evidence. A person who gives false testimony, or makes a false certification during the execution of a request, shall be subject to prosecution and punishment in the Requested State in accordance with the criminal laws of that State.

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 pursuant to this Article.

3. The Requested State shall permit the presence of persons designated in a request during execution of the request and shall allow such persons to question or present questions to be posed to the person giving the testimony or evidence.

4. A person giving testimony or evidence may assert such claims of immunity, incapacity, or privilege as are available under the laws of either State. If a person asserts such a claim under the laws of the Requesting State, the Requested State shall rely, with respect thereto, on the representation of the Central Authority of the Requesting State as evidence of the existence of the immunity, incapacity, or privilege. Where the person's testimony or evidence has been taken in the Requested State, that person may reassert the claim for consideration by the judicial authorities in the Requesting State.

5. The Requesting State may request that items produced in the Requested State pursuant to this Article or Article 16, or that are the subject of testimony taken pursuant to this

Article, be authenticated by an attestation. The Requesting State may request that the absence of such items be certified by an attestation. Where such items are business records, the attestation may be:

- a) by a certificate such as Form A or A-1 appended to this Treaty;
- b) by a written summary of testimony containing the essential information sought in Form A or A-1; or
- c) by a document containing the essential information required by the Requesting State.

Records so authenticated in Sweden, or documentation so attesting to the absence of such records, shall be admissible in evidence in the United States as proof of the truth of the matters set forth therein.

Article 10

Official Records

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 public authorities in the Requested State.

2. The Requested State may provide copies of any records, including documents or information in any form, in the possession of public authorities in that State, but not publicly available, to the same extent and under the same conditions as such copies would be available to its own public authorities. The Requested State may, in its discretion, deny a request pursuant to this paragraph entirely or in part.

3. The Requesting State may request that official records produced in the Requested State pursuant to this Article be authenticated in accordance with the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, dated 5 October 1961, or by an official charged with maintaining them through the use of Form B appended to this Treaty. No further authentication shall be necessary. The Requesting State may request that the absence or nonexistence of such records be certified by an attestation through the use of Form B-1 appended to this Treaty. Records so authenticated in Sweden, or Form B-1 attesting to the absence of such records, shall be admissible in evidence in the United States as proof of the truth of the matters set forth therein.

Article 11

Appearance in the Requesting State

1. The Requested State shall invite a person in that State to appear before the appropriate authority in the Requesting State. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.

2. The request shall indicate the extent to which the invited person's expenses will be reimbursed. If that person so requests, the Requesting State may provide funds with respect to those expenses in advance through its embassy in the Requested State.

3. An invited person who is not a suspect or defendant may not be prosecuted, detained, or subjected to any restriction of personal liberty in the Requesting State by reason of acts or convictions that preceded that person's departure from the Requested State. An invited person who is a suspect or defendant may not be prosecuted, detained, or subjected to any restriction of personal liberty in the Requesting State by reason of acts or convictions that preceded that person's departure from the Requested State that are not specified in the request. For the United States, such safe conduct may also extend to the effects of service of process. For the United States, safe conduct provided in this paragraph shall apply only to the extent authorized by the Central Authority. Any safe conduct authorized by the Central Authority of the United States shall be communicated to the Central Authority of Sweden.

4. The safe conduct provided in the above paragraph shall cease 10 days after the person has been notified that the person's presence is no longer required or when the person, having left the Requesting State, voluntarily returns.

Article 12

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 both the person and the Requested State consent.

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 both States agree.

3. For purposes of this Article:

- a) the receiving State shall have the authority and the obligation to keep the person transferred in custody 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 unless otherwise agreed by both States;
 - c) the receiving State shall not require the sending State to initiate extradition or other 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.
4. A person transferred pursuant to this Article may not, while in the receiving State:
- a) be prosecuted, detained, or subjected to any restriction of personal liberty by reason of acts or convictions that preceded his departure from the sending State other than as provided in paragraph 3; or
 - b) be required to testify in proceedings not specified in the request.
5. The safe conduct provided in the above paragraph shall cease when a person released in accordance with paragraph 3 voluntarily remains in the receiving State more than 10 days after the person has been notified that the person's presence is no longer required or when the person, having left the receiving State, voluntarily returns.
6. A person appearing in a trial in the Requesting State under the provisions of this Article may not be prosecuted in that State on the basis of such testimony except for contempt or perjury.

Article 13

Transit of Persons in Custody

1. The Requested State may authorize the transit through its territory of a person held in custody by a third State whose personal appearance has been requested by the Requesting State to give testimony or evidence or otherwise provide assistance in criminal proceedings or other proceedings related to criminal offenses.
2. The Requested State shall have the authority and the obligation to keep the person in custody during transit.

Article 14

Location or Identification of Persons or Items

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

Article 15

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 and, with respect to a defendant, no less than 30 days, before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the request or acceptable under the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague, November 15, 1965.

Article 16

Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and transfer of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. The Requesting State may request that every official who has custody of a seized item certify, through the use of Form C appended to this Treaty, the identity of the item, the continuity of its custody, and the integrity of its condition. No further authentication shall be required. Items so certified in Sweden shall be admissible in evidence in the United States.

3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed to be necessary to protect third-party interests in the item to be transferred.

Article 17

Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items transferred to it in execution of a request under this Treaty as soon as possible.

Article 18

Assistance in Forfeiture Proceedings

1. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of offenses that are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction, it may present this information to its authorities for a determination as to whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other Party on the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings and enforcement of judgments relating to the forfeiture of the proceeds and instrumentalities of offenses and restitution to the victims of crime. This may include identifying, tracing, and provisionally freezing, seizing, or otherwise immobilizing proceeds or instrumentalities in support of such proceedings or enforcement of judgments.

3. Upon request, the Party that has instituted provisional measures pursuant to paragraph 2 shall secure, to the extent permitted by its laws, an order authorizing the transfer of the property concerned to the jurisdiction of the Requesting State.

4. Proceeds and instrumentalities forfeited to a Contracting Party pursuant to this Article shall be disposed of by that Party according to its laws. Either Party may transfer such property, the proceeds of its sale, or a portion thereof to the other Party, to the extent permitted by their respective laws, upon such terms as they deem appropriate.

Article 19

Initiation of Criminal Proceedings in the Requested State

1. Either Contracting Party may transmit a request for the purpose of initiating a criminal proceeding before the appropriate authorities of the other Party where both Parties have jurisdiction to investigate or prosecute. Such requests shall be transmitted through the respective Central Authorities.

2. The Requested State shall consider initiating an investigation or prosecution to the extent appropriate under its laws, practices and procedures. The Requested State shall notify the Requesting State of any action taken on the request.

Article 20

Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Party through the provisions of other applicable international agreements or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

Article 21

Consultation

The Central Authorities of the Contracting Parties 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 22

Ratification, Entry Into Force, and Termination

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

2. This Treaty shall enter into force on the first day of the second month after the exchange of instruments of ratification.

3. Either Contracting Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect one year after the date upon which the other Party has received such notice through the diplomatic channel.

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

DONE at Stockholm this 17th day of December, 2001, in duplicate, in the English and Swedish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

(Mark A. Kennedy)

FOR THE GOVERNMENT OF
THE KINGDOM OF SWEDEN:

(Signature)

Form A

CERTIFICATION OF BUSINESS RECORDS

I, _____, attest on penalty of criminal punishment for false statement or

attestation that I am employed by/associated with _____ (name of business from which documents are sought) in the position

of _____ (business position or title). I further state that each of the records attached hereto is a

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 of execution)

_____ (place of execution)

Form A-1

CERTIFICATION OF ABSENCE OF BUSINESS RECORDS

I, _____, attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with _____, in the position of _____. As a result of my employment/association with the above-named business, I am familiar with the business records it maintains. The business maintains records that are:

- (A) 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) kept in the course of a regularly conducted business activity; and
- (C) made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

_____ *(signature)* _____

_____ *(date of execution)* _____

_____ *(place of execution)* _____

Form B

ATTESTATION WITH RESPECT TO OFFICIAL RECORDS

I, _____, attest on penalty of criminal punishment for false statement or
attestation that:

- (1) _____ *(name of public authority)* is a public authority in Sweden authorized by Swedish law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;
- (2) my position with the above-named public authority is _____ *(official title)*;
- (3) in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and
- (4) those copies are described below and attached.

Description of Records:

_____ *(signature)* _____

_____ *(date of execution)* _____

_____ *(place of execution)* _____

Form B-1

ATTESTATION WITH RESPECT TO ABSENCE OF OFFICIAL RECORDS

I, _____, attest on penalty of criminal punishment for false statement or attestation that:

- (1) _____, *(name of public authority)*, is a public authority in Sweden authorized by Swedish law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;
- (2) records of the type described below set forth matters that are required by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the above-named public authority;
- (3) my position with the above-named public authority is _____, *(official title)*;
- (4) in my official capacity I have made, or caused to be made, a diligent search of the above-named public authority's records for the records described below; and
- (5) no such records have been found to exist therein.

Description of Records:

_____ *(signature)* _____

_____ *(date of execution)* _____

_____ *(place of execution)* _____

Form C

ATTESTATION WITH RESPECT TO SEIZED ITEMS

I, _____, attest on penalty of criminal punishment for false statement or

attestation that my position with the _____ in Sweden is

_____. I received custody of the items listed below from

_____. They are now in the

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

Description of Items:

Changes in condition while in my custody:

Official Seal
