

Extradition Treaty between the Republic of India and Mongolia

UNION OF INDIA

India

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Rule

EXTRADITION-TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-MONGOLIA of 2004

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Extradition Treaty between the Republic of India and MongoliaPublished vide Notification No. G.S.R. 524(E), dated 7th July, 2004Ministry of External AffairsOrderG.S.R. 524(E). - Whereas the Extradition Treaty between the Government of the Republic of India and Mongolia was signed at New Delhi, India on 3rd January, 2001; and the instruments of ratification exchanged at New Delhi on 15th January, 2004 and which treaty provides as follows:The Republic of India and Mongolia, hereinafter referred to as the "Contracting Parties",Desiring to make more effective the cooperation of the two Parties in the suppression of crime by making further provision for the reciprocal extradition of offenders:Recognising that concrete steps are necessary to combat terrorism;Have agreed as follows:Article 1Obligation to extradite

1. Each Contracting Party undertakes to extradite to the other Contracting Party, in the circumstances and subject to the conditions specified in this Treaty, any person, being accused or convicted of an extradition offence as described in Article 2 of this Treaty, committed within the territory of the Requesting Party, is found within the territory of the Requested Party, whether such offence was committed before or after the entry into force of this Treaty.

2. Extradition shall also be available in respect of an extradition offence as described in Article 2 of this Treaty committed outside the territory of the Requesting Party but in respect of which it has jurisdiction, if the Requested Party would, in corresponding circumstances, have jurisdiction over such an

offence. In such circumstances the Requested Party shall have regard to all the circumstances of the case including the seriousness of the offence.

3. Extradition shall also be available for an extradition offence as described in Article 2 of this Treaty, if it is committed in a third State by a citizen of the Requesting Party and it bases its jurisdiction on the citizenship of the offender, subject to the provisions under Article 15 of this Treaty.

Article 2 Extradition offences

1. An extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting Party is punishable by a term of imprisonment for a period of at least one year.

2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

Article 3 Composite Offences Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested Party, if this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence under the laws of both the Contracting Parties. Article 4 Offences of conspiracy, incitement and attempt, and extra-territorial jurisdictions.

1. It shall be an offence under the laws of both the Contracting Parties for any person to abet, conspire or attempt to commit, or incite or participate as an accomplice in the commission of, any extradition offence.

2. It shall also be an offence under the laws of both the Contracting Parties, for any citizen of a Contracting Party to commit any offence in any place beyond its territory.

Article 5 Grounds for refusal of extradition

1. A person may not be extradited if:

1.1 he is a citizen of the Requested Party; or 1.2 he satisfies the Requested Party that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason of: 1.2.1 the expiry of the limitation-period for initiating the criminal proceedings under the legislation of the Requested Party or for execution of a sentence, or on other legal grounds; 1.2.2 the accusation against him having not been made in the interests of the justice; or 1.3 the extradition is not permitted

according to the laws of the Requested Party;1.4the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.

2. A person shall also not be extradited if in respect of the offence for which his extradition is requested, he has been previously proceeded against in the Requested Party, and convicted or acquitted.

3. The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for the extradition offence in the courts of that Party.

Article 6ProcedureThe procedure with regard to Extradition and provisional arrest shall be governed by the laws of the Requested State.Article 7Obligation to Prosecute

1. Where the Requested Party refuses a request for extradition for the reason set out in, paragraph 3, of Article 5 of this Treaty, it shall submit the case to its competent authorities for prosecution.

2. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 8Consequences of non-extradition of own citizensIf according to paragraph 1.1 of Article 5 of this Treaty, extradition is refused, the Requested Party, shall initiate criminal prosecution against such person for the same offence according, to its laws. For this the Requesting Party Shall transfer to the Requested Party the relevant documents and evidence.Article 9Postponement of extradition & temporary extradition

1. If the person to be extradited is being prosecuted or serving sentence for another crime in the territory of the Requested Party, the extradition may be postponed till the end of the proceedings of the case, end of sentence or release, which shall be advised to the Requesting Party.

2. If the postponement of extradition can cause the expiration of the limitation or impede the investigation, the person can be extradited temporarily under a special request of the Requesting Party.

3. The temporarily extradited person must be returned to the Requested Party immediately after the end of the proceedings of the case.

Article 10Extradition procedure

1. The request for extradition shall be made through diplomatic channels.

2. The request shall be accompanied by:

2.1 the name and surname (petronym) of the person whose extradition is requested, information on his citizenship, place of residence or whereabouts and other pertaining data, as well as, if possible, the description of the person's appearance, his photographs and fingerprints; 2.2 a statement of the facts of the offence for which extradition is requested; and 2.3 the text of the corresponding law; 2.3.1 defining that offence; and 2.3.2 prescribing the punishment for that offence.

3. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the warrant of arrest issued by a competent court or authority of the Requesting Party.

4. If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certified copy of the judgement and a statement that the person is no longer entitled to question the conviction or sentence and showing how much of sentence has not been carried out;

5. If the Requested Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within a reasonable time.

Article 11 Provisional arrest

1. In urgent cases a person may be provisionally arrested by the Requested Party, in accordance with its law, on the request of the competent authorities of the Requesting Party, made either through Diplomatic Channels or the National Central Bureau of International Criminal Police Organization - Interpol, before the receiving of the request for extradition. The request shall contain an indication of intention to request the extradition of that person and a statement of existence of a warrant of arrest or a conviction against him; and, if available, the data specified in paragraphs 2.1 and 2.3 of Article 10 of this Treaty and such further information, if any, as would be necessary to justify the issue of a warrant or arrest had the offence been committed, or the person been convicted, in the territory of the Requested Party.

2. A person arrested upon such a request shall be set at liberty upon the expiration of 60 days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request for extradition is subsequently received.

Article 12 Rule of speciality

1. The extradited person may not without consent of the Requested Party, be prosecuted or punished in the Requesting Party for the Offence other than that for which extradition has been granted and any lesser offence disclosed by the facts proved for the purposes of securing his extradition, nor may such a person, without consent of the Requested Party, be extradited to a third State,

2. The consent of the Requested Party is not required if;

2.1 the extradited person has not left, though had the opportunity, the territory of the Requesting Party within 30 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the Requesting Party for reasons beyond his control; 2.2 if the extradited person, once having left the territory of the Requesting Party, voluntarily returns there.

3. The provisions of paragraph 1 of this Article shall not apply to offences, committed after the return of person to the Requesting Party or matters arising in relation to such offences.

Article 13 Recognition of documents and evidence

1. Documents issued or certified and statements recorded by competent Courts or other authorities in the prescribed form in the territory of one Contracting Party as per its laws shall not require any form of authentication in the territory of the other Contracting Party.

2. Documents considered as public in the territory of one of the Contracting Parties shall have the evidential force of public documents also in the territory of the other Contracting Party.

Article 14Competing requestsIf extradition of the same person Whether for the same offence or for different offence is requested by a Contracting Party and a third State with which the Requested Party has an extradition arrangement, the Requested Party shall determine the State to which the person shall be extradited, and shall not be obliged to give preference to the contracting Party.
Article 15Capital punishmentIf under the law of the Requesting Party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested Party does not provide for the death penalty for the same offence, extradition may be refused, unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be carried out.
Article 16Transfer

- 1. The modalities of transfer of the person to be extradited shall be agreed upon by the competent authorities of both the Contracting Parties as mutually convenient.**
- 2. The Requesting Party shall take the person sought from the territory of the Requested Party within one month of the consent of Requested Party to extradite or such longer period as may be permitted under the law of the Requested Party. If the person is not removed within that period, the Requested Party may refuse to extradite him for the same offence.**
- 3. The General Prosecutor's Office of Mongolia and the Ministry of External Affairs of India shall communicate through diplomatic channels with one another on the request of extradition and transit for offences.**

Article 17Transfer of articles connected with crime

- 1. The Requested Party, shall within the limits of its legislation, transfer by the request of the Requesting Party the articles used for committing crime by the person being extradited, articles bearing crime traces or crime proceeds.**
- 2. The above article shall be transferred also in cases when the extradition cannot be effected if the person died, fled or due to other reasons.**
- 3. The Requested Party may temporarily postpone the transfer of the article referred to in paragraph I of this Article if they are required for proceedings instituted in connection with another criminal case till the end of such proceedings.**

4. The rights of third persons to the articles transferred to the Requesting Party shall remain in force. Upon termination of the proceedings the Requesting Party shall return these articles to their owners in its territory. If the owners are in the territory of the Requested Party the articles are to be returned to it for the transfer to them. If the owners are in the territory of a third country the article shall be returned to them by the Requesting Party without charges.

5. The transfer of the articles and of money shall be effected within the limits provided for by the legislation of the Requested Party.

Article 18 Mutual assistance in extradition Each Contracting Party shall, to the extent permitted by its law, afford the other the widest possible measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested. Article 19 Expenses on extradition All expenses related to the extradition shall be borne by the Contracting Party in whose territory the same occurred. The expenses by transit transportation of the extradited person by one of the Contracting Parties third State through the territory of the other Contracting Party shall be borne by the Contracting Party effecting the transit. Article 20 Languages While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language. Article 21 International Conventions Treaties The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from other International Conventions/Treaties to which the Contracting Parties are signatories. Article 22 Ratification and termination

1. This Treaty shall be subject to ratification and it shall enter into force on the 30th day after the exchange of the instruments of ratification.

2. This Treaty shall remain in force until either of the Contracting Parties terminates it by sending a note to that effect to the other Contracting Party and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorized thereto by their respective Authorities, have signed this Treaty. Done in duplicate at New Delhi this 3rd day of January 2001 in Hindi, Mongolian and English languages, each version being equally authentic. In case of any interpretational difference, the English text shall prevail. Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 12 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter II, shall apply to Mongolia with effect from the date of the publication of this notification.