

MUTUAL LEGAL ASSISTANCE

**Treaty Between the
UNITED STATES OF AMERICA
and MALTA**

Signed at Valletta May 18, 2006

with

Annex



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

MALTA

Mutual Legal Assistance

Treaty signed at Valletta May 18, 2006;

*Transmitted by the President of the United States of America
to the Senate September 28, 2006 (Treaty Doc. 109-13,
109th Congress, 2d Session);*

*Reported favorably by the Senate Committee on Foreign Relations
July 29, 2008 (Senate Executive Report No. 110-13,
110th Congress, 2d Session);*

*Advice and consent to ratification by the Senate
September 23, 2008;*

Ratified by the President December 11, 2008;

*Exchange of Diplomatic Notes at Floriana
January 28, 2008 and March 16, 2009;*

Entered into force February 1, 2010.

With annex.

Treaty on Certain Aspects of Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the Government of Malta

1. As contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Mutual Legal Assistance Agreement"), the Governments of the United States of America and Malta acknowledge that, in accordance with the provisions of this Treaty, the U.S.-EU Mutual Legal Assistance Agreement is applied between them under the following terms:

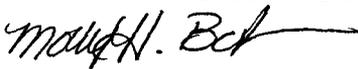
- (a) This Treaty is intended solely for mutual legal assistance between the United States of America and Malta in accordance with the terms of the U.S.-EU Mutual Legal Assistance Agreement, and shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor expand or limit rights otherwise available under domestic law;
- (b) Article 4 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 1 of the Annex to this Treaty shall govern the identification of financial accounts and transactions;
- (c) Article 5 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 2 of the Annex to this Treaty shall govern the formation and activities of joint investigative teams;
- (d) Article 6 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 3 of the Annex to this Treaty shall govern the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States;
- (e) Article 7 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 4 of the Annex to this Treaty shall govern the use of expedited means of communication;
- (f) Article 8 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 5 of the Annex to this Treaty shall govern the providing of mutual legal assistance to the administrative authorities concerned;
- (g) Article 9 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 6 of the Annex to this Treaty shall govern the limitation on use of information or evidence provided to the requesting State, and governing the conditioning or refusal of assistance on data protection grounds;
- (h) Article 10 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Treaty shall govern the circumstances under which a requesting State may seek the confidentiality of its request;

- (i) Article 13 of the U.S.-EU Mutual Legal Assistance Agreement as set forth in Article 8 of the Annex to this Treaty shall govern the invocation by the requested State of grounds for refusal.
2. The Annex reflects the provisions on mutual legal assistance applicable between the United States of America and Malta upon entry into force of this Treaty.
3. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, this Treaty shall apply to offenses committed before as well as after it enters into force.
4. This Treaty shall apply to requests made after its entry into force. Nevertheless, in accordance with Article 12(2) of the U.S.-EU Mutual Legal Assistance Agreement, Articles 3 and 4 of the Annex apply to requests pending in the Requested State at the time this treaty enters into force.
5. (a) This Treaty shall be subject to the completion by the United States of America and Malta of their respective applicable internal procedures for entry into force. The Governments of the United States of America and Malta shall thereupon exchange notifications indicating that such measures have been completed. This Treaty shall enter into force on the date of entry into force of the U.S.-EU Mutual Legal Assistance Agreement.
- (b) In the event of termination of the U.S.-EU Mutual Legal Assistance Agreement, this Treaty shall be terminated. The Governments of the United States of America and Malta nevertheless may agree to continue to apply some or all of the provisions of this Treaty.

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

DONE at Valletta, this 18th day of May 2006, in the English language.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF
MALTA:



ANNEX

**Article 1:
Identification of bank information**

- 1 (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.
- (b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:
 - (i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;
 - (ii) information in the possession of non-bank financial institutions; or
 - (iii) financial transactions unrelated to accounts.
2. A request for information described in paragraph 1 of this Article shall include:
 - (a) the identity of the natural or legal person relevant to locating such accounts or transactions;
 - (b) sufficient information to enable the competent authority of the requested State to:
 - (i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and
 - (ii) conclude that the information sought relates to the criminal investigation or proceeding; and
 - (c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.
3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:
 - (a) for Malta, the Office of the Attorney General; and
 - (b) for the United States of America, the attaché responsible for Malta of the:

- (i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;
- (ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;
- (iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

- 4. The United States of America and Malta shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both States, and with respect to such other criminal activity as they may notify each other.
- 5. Assistance may not be refused under this Article on grounds of bank secrecy.
- 6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the requirements of its domestic law.

**Article 2:
Joint investigative teams**

- 1. Joint investigative teams may be established and operated in the respective territories of the United States of America and Malta for the purpose of facilitating criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the United States of America and Malta.
- 2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.
- 3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

**Article 3:
Video conferencing**

1. The use of video transmission technology shall be available between the United States of America and Malta for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as provided for under the law of the requested State.
2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne as agreed upon by the requesting and requested States.
3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.
4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.
5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.
6. The requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

Article 4:
Expedited transmission of requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication.

Article 5:
Mutual legal assistance to administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.
2. Requests for assistance under this article shall be transmitted between the United States Department of Justice and the Office of the Attorney General of Malta, or between such other authorities as may be agreed by the Department of Justice and the Ministry of Justice of Malta.

Article 6:
Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:
 - (a) for the purpose of its criminal investigations and proceedings;
 - (b) for preventing an immediate and serious threat to its public security;
 - (c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
 - (i) set forth in subparagraph (a); or
 - (ii) for which mutual legal assistance was rendered under Article 5 of this Annex;
 - (d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
 - (e) for any other purpose, only with the prior consent of the requested State.

- 2 (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.
- (b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.
3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

**ARTICLE 7:
Requesting State's request for confidentiality**

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request cannot be executed without breaching the requested confidentiality, the Department of Justice for the United States, and, for Malta, the Office of the Attorney General, shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

**ARTICLE 8:
Refusal of assistance**

Subject to Article 1(5) and 6(2)(b) of this Annex, the provisions of this Annex are without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, ordre public or other essential interests.