

TREATY BETWEEN
JAPAN AND THE UNITED STATES OF AMERICA
ON MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS

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Japan and the United States of America,

Desiring to establish more effective cooperation between both countries in the area of mutual legal assistance in criminal matters,

Desiring that such cooperation will contribute to combating crime in both countries,

Have agreed as follows:

Article 1

1. Each Contracting Party shall, upon request by the other Contracting Party, provide mutual legal assistance (hereinafter referred to as "assistance") in connection with investigations, prosecutions and other proceedings in criminal matters in accordance with the provisions of this Treaty.
2. The assistance shall include the following:
 - (1) taking testimony, statements or items;
 - (2) examining persons, items or places;
 - (3) locating or identifying persons, items or places;
 - (4) providing items in the possession of governmental departments or agencies;
 - (5) presenting an invitation to a person whose appearance in the requesting Party is sought;
 - (6) transfer of a person in custody for testimony or other purposes;
 - (7) assisting in proceedings related to forfeiture and immobilization of proceeds or instrumentalities of criminal offenses; and

(8) any other assistance permitted under the laws of the requested Party and agreed upon between the Central Authorities of the Contracting Parties.

The term "items" as used in this Treaty means documents, records and articles of evidence.

3. Each Contracting Party shall, upon request by the other Contracting Party, provide assistance in accordance with the provisions of this Treaty in connection with an administrative investigation of suspected criminal conduct, in such cases and upon such conditions as the Central Authority of the requested Party deems appropriate, if the Central Authority of the requesting Party certifies that:

(1) the authority conducting the administrative investigation has statutory or regulatory authority for the administrative investigation of facts that could constitute criminal offenses, including referring matters to prosecutors for criminal prosecution or providing testimony, statements or items obtained during administrative investigations to prosecutors in accordance with specific procedures; and

(2) the testimony, statements or items to be obtained will be used in the requesting Party in an investigation, prosecution or other proceeding in criminal matters, including the decision whether to prosecute.

4. Except as otherwise provided for in this Treaty, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution or other proceeding in the requesting Party would constitute a criminal offense under the laws of the requested Party.

5. This Treaty is intended solely for assistance between the Contracting Parties. The provisions of this Treaty neither create a new right nor affect a pre-existing right on the part of a private person to impede the execution of a request or to suppress or exclude any evidence.

Article 2

1. Each Contracting Party shall designate the Central Authority that is to perform the functions provided for in this Treaty:

(1) For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General.

(2) For Japan, the Central Authority shall be the Minister of Justice or the National Public Safety Commission or persons designated by them.

2. Requests for assistance under this Treaty shall be made by the Central Authority of the requesting Party to the Central Authority of the requested Party.

3. The Central Authorities of the Contracting Parties shall communicate directly with one another for the purposes of this Treaty.

Article 3

1. The Central Authority of the requested Party may deny assistance if the requested Party considers that:

(1) a request relates to a political offense;

(2) the execution of a request would impair its security or other essential interests;

(3) a request does not conform to the requirements of this Treaty; or

(4) the conduct that is the subject of the investigation, prosecution or other proceeding in the requesting Party would not constitute a criminal offense under the laws of the requested Party and the execution of a request requires a court warrant or other compulsory measures under the laws of the requested Party.

2. Before denying assistance pursuant to paragraph 1, the Central Authority of the requested Party shall consult with the Central Authority of the requesting Party to consider whether assistance can be provided subject to such conditions as the requested Party may deem necessary. If the requesting Party accepts such conditions, the requesting Party shall comply with them.

3. If assistance is denied, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party of the reasons for the denial.

Article 4

1. The Central Authority of the requesting Party shall make a request in writing. However, the Central Authority of the requesting Party may make a request by any other reliable means of communication if the Central Authority of the requested Party considers it appropriate to receive a request by that means. In such cases, the Central Authority of the requested Party may require the Central Authority of the requesting Party to provide supplementary confirmation of the request in writing. A request shall be made in the language of the requested Party unless otherwise agreed between the Central Authorities of the Contracting Parties.

2. A request shall include the following:

(1) the name of the authority conducting the investigation, prosecution or other proceeding;

(2) the facts pertaining to the subject of the investigation, prosecution or other proceeding; the nature and the stage of the investigation, prosecution or other proceeding; and the text of the relevant laws of the requesting Party;

(3) a description of the assistance requested; and

(4) a description of the purpose of the assistance requested.

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

(1) information on the identity and whereabouts of any person from whom testimony, statements or items are sought;

(2) a description of the manner in which testimony, statements or items are to be taken or recorded;

(3) a list of questions to be asked of the person from whom testimony, statements or items are sought;

(4) a precise description of persons or places to be searched and of items to be sought;

(5) information regarding persons, items or places to be examined;

(6) a description of the manner in which an examination of persons, items or places is to be conducted and recorded, including the format of any written record to be made concerning the examination;

(7) information regarding persons, items or places to be located or identified;

(8) a description of any particular procedure to be followed in executing the request;

(9) information on the allowances and expenses to which a person whose appearance is sought before the appropriate authority in the requesting Party will be entitled; and

(10) any other information that should be brought to the attention of the requested Party to facilitate the execution of the request.

Article 5

1. The Central Authority of the requested Party shall promptly execute a request in accordance with the relevant provisions of this Treaty or transmit it to the authority having jurisdiction to do so. The competent authorities of the requested Party shall do everything in their power to ensure the execution of a request.

2. The Central Authority of the requested Party shall make all necessary arrangements for the execution of a request in the requested Party.

3. A request shall be executed in accordance with the provisions of this Treaty and the laws of the requested Party. The manner or particular procedure described in a request referred to in paragraph 3(2), 3(6) or 3(8) of Article 4 shall be followed to the extent it is in accordance with the laws of the requested Party, and where it is possible.

4. In order to execute a request pursuant to paragraph 1,

(1) with respect to the United States of America, the courts shall have the authority to issue subpoenas, search warrants or other orders necessary to execute a request; and

(2) with respect to Japan, the judge will have the authority to issue warrants or orders necessary to execute a request.

5. If the execution of a request is deemed to interfere with an ongoing investigation, prosecution or other proceeding in the requested Party, the Central Authority of the requested Party may postpone the execution or make the execution subject to conditions deemed necessary after consultations between the Central Authorities of the Contracting Parties. If the requesting Party accepts such conditions, the requesting Party shall comply with them.

6. The requested Party shall make its best efforts to keep confidential the fact that a request has been made, the contents of a request, the outcome of the execution of a request and other relevant information concerning the execution of a request if such confidentiality is requested by the Central Authority of the requesting Party. If a request cannot be executed without disclosure of such information, the Central Authority of the requested Party shall so inform the Central Authority of the requesting Party, which shall then determine whether the request should nevertheless be executed.

7. The Central Authority of the requested Party shall respond to reasonable inquiries by the Central Authority of the requesting Party concerning the status of the execution of a request.

8. Upon request by the Central Authority of the requesting Party, the Central Authority of the requested Party shall inform in advance the Central Authority of the requesting Party of the date and place of the execution of a request.

9. The Central Authority of the requested Party shall promptly inform the Central Authority of the requesting Party of the result of the execution of a request, and shall provide the Central Authority of the requesting Party with the testimony, statements or items obtained as a result. If a request cannot be executed in whole or in part, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party of the reasons therefor.

Article 6

1. Unless otherwise agreed between the Central Authorities of the Contracting Parties, the requested Party shall pay all costs related to the execution of a request, except for the fees of an expert witness, the costs of translation, interpretation and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 14 and 15. Such fees, costs, allowances and expenses shall be paid by the requesting Party.

2. If it becomes apparent that expenses of an extraordinary nature are required to execute a request, the Central Authorities of the Contracting Parties shall consult to determine the conditions under which a request will be executed.

Article 7

1. The Central Authority of the requested Party may request that the requesting Party not use any testimony, statements or items provided under this Treaty other than in the investigation, prosecution or other proceeding described in a request without prior consent of the Central Authority of the requested Party. In such cases, the requesting Party shall comply with such a request.

2. The Central Authority of the requested Party may request that testimony, statements or items provided under this Treaty be kept confidential or be used only subject to other conditions it may specify. If the requesting Party agrees to such confidentiality or accepts such conditions, it shall comply with them.

3. Nothing in this Article shall preclude the use or disclosure of testimony, statements or items provided under this Treaty to the extent that there is an obligation under the Constitution of the requesting Party to do so in a criminal prosecution. The Central Authority of the requesting Party shall inform the Central Authority of the requested Party in advance of any such proposed use or disclosure.

4. Testimony, statements or items provided under this Treaty that have been made public in the requesting Party consistent with the provisions of this Article may thereafter be used for any purpose.

Article 8

1. The Central Authority of the requested Party may request that the requesting Party transport and maintain items provided under this Treaty in accordance with the conditions specified by the Central Authority of the requested Party, including the conditions deemed necessary to protect third-party interests in the items to be transferred.
2. The Central Authority of the requested Party may request that the requesting Party return any items provided under this Treaty in accordance with the conditions specified by the Central Authority of the requested Party, after such items have been used for the purpose described in a request.
3. The requesting Party shall comply with a request made pursuant to paragraph 1 or 2. When such a request has been made, the requesting Party shall not examine the items without the prior consent of the Central Authority of the requested Party if the examination impairs or could impair the item.

Article 9

1. The requested Party shall take testimony, statements or items, and shall employ, if necessary, compulsory measures in order to do so.
2. The requested Party shall make its best efforts to make possible the presence of such persons as specified in a request for taking testimony, statements or items during the execution of the request, and to allow such persons to question the person from whom testimony, statements or items are sought. In the event that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the person from whom testimony, statements or items are sought.
3. The requested Party shall execute a request for the search and seizure of any item for the requesting Party, if such measures are necessary and the request includes information justifying those measures under the laws of the requested Party.
4. (1) If a person, from whom testimony, statements or items are sought pursuant to this Article, asserts a claim of immunity, incapacity or privilege under the laws of the requesting Party, testimony, statements or items shall nevertheless be taken.

(2) In cases where testimony, statements or items are taken in accordance with sub-paragraph (1), they shall be provided, together with the claim referred to in that sub-paragraph, to the Central Authority of the requesting Party for resolution of the claim by the competent authorities of the requesting Party.

Article 10

1. The requested Party shall examine persons, items or places, and shall employ, if necessary, compulsory measures in order to do so. Such measures may include the destruction of items, in whole or in part, and the entry into places.

2. Examinations pursuant to this Article may include taking of photographs or creation of video records of persons, items or places, and may involve the participation of expert witnesses.

3. The requested Party shall make its best efforts to make possible the presence of such persons as specified in a request for examining persons, items or places during the execution of a request.

Article 11

The requested Party shall make its best efforts to locate or identify persons, items or places.

Article 12

1. The requested Party shall provide the requesting Party with items that are in the possession of governmental departments and agencies of the requested Party and are available to the general public.

2. The requested Party may provide the requesting Party with items that are in the possession of governmental departments and agencies of the requested Party and are not available to the general public, to the same extent and under the same conditions as such items would be available to its investigative and prosecuting authorities.

Article 13

1. Testimony, statements or items provided under this Treaty may be authenticated by the requested Party by use of a form in the Attachment, which is an integral part of this Treaty. Testimony, statements or items authenticated in such manner shall be admissible in evidence in proceedings in the requesting Party in accordance with the relevant provisions of the Attachment.

2. The continuity of custody of items seized by the requested Party, the identity of the items and the integrity of their condition may be certified by the requested Party by use of a form in the Attachment. Such certification shall be admissible in evidence in proceedings in the requesting Party in accordance with the relevant provisions of the Attachment.

Article 14

1. The requested Party shall present an invitation to the person in the requested Party whose appearance before the appropriate authority in the requesting Party is sought. The Central Authority of the requesting Party shall inform the Central Authority of the requested Party of the extent to which the allowances and expenses for such appearance will be paid by the requesting Party. The Central Authority of the requested Party shall promptly inform the Central Authority of the requesting Party of the response of the person.

2. The person who consents to appear before the appropriate authority in the requesting Party according to the invitation referred to in paragraph 1 shall not be subject to detention or any restriction of personal liberty in its territory by reason of any conduct or conviction that precedes that person's departure from the requested Party.

3. (1) The safe conduct provided in accordance with paragraph 2 to the person who consents to appear before the appropriate authority in the requesting Party according to the invitation referred to in paragraph 1 shall cease when:

- (a) seven days have passed after the person was notified by the appropriate authority that the person's appearance is no longer necessary;
- (b) the person, having left the requesting Party, voluntarily returns to it; or

(c) the person fails to appear before the appropriate authority on the scheduled appearance date.

(2) When the notification is made pursuant to sub-paragraph (1)(a), or when the safe conduct ceases pursuant to sub-paragraph (1)(b) or (1)(c), the Central Authority of the requesting Party shall so inform the Central Authority of the requested Party without delay.

Article 15

1. A person in the custody of one Contracting Party whose presence in the territory of the other Contracting Party is necessary for testimony or other purposes shall be transferred for those purposes to that other Contracting Party, if the person consents and if the Central Authorities of the Contracting Parties agree, when permitted under the laws of the requested Party.

2. (1) The receiving Party shall have the authority and the obligation to keep the person transferred pursuant to paragraph 1 in the custody of the receiving Party, unless permitted by the sending Party to do otherwise.

(2) The receiving Party shall immediately return the person transferred to the custody of the sending Party as agreed beforehand, or as otherwise agreed between the Central Authorities of the Contracting Parties.

(3) The receiving Party shall not require the sending Party to initiate extradition proceedings for the return of the person transferred.

(4) The person transferred shall receive credit for service of the sentence imposed in the sending Party for the time served in the custody of the receiving Party.

3. The person transferred to the receiving Party pursuant to this Article shall enjoy the safe conduct provided for in Article 14 in the receiving Party until the return to the sending Party, unless the person consents and the Central Authorities of the Contracting Parties agree otherwise. In implementing this paragraph, "the requesting Party" and "the requested Party" referred to in Article 14 shall be read as "the receiving Party" and "the sending Party" respectively.

Article 16

1. The requested Party shall assist, to the extent permitted by its laws, in proceedings related to the forfeiture of the proceeds or instrumentalities of criminal offenses. Such assistance may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

2. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of criminal offenses that are located in the territory of the other Contracting Party and may be forfeitable or otherwise subject to seizure under the laws of that other Contracting Party, the Central Authority of the first Contracting Party may so inform the Central Authority of that other Contracting Party. If that other Contracting Party has jurisdiction in this regard, its Central Authority may present the information to its relevant authorities for a determination whether any action is appropriate. The Central Authority of that other Contracting Party shall report to the Central Authority of the first Contracting Party on the action taken by the relevant authorities.

3. A Contracting Party that has custody over such proceeds or instrumentalities of criminal offenses shall retain or dispose of them in accordance with its laws. That Contracting Party may transfer such proceeds or instrumentalities, in whole or in part, to the other Contracting Party, to the extent permitted by the laws of the first Contracting Party and upon such conditions as it deems appropriate.

Article 17

Nothing in this Treaty shall prevent either Contracting Party from requesting assistance from or providing assistance to the other Contracting Party in accordance with other applicable international agreements, or pursuant to its laws that may be applicable.

Article 18

1. The Central Authorities of the Contracting Parties shall hold consultations for the purpose of facilitating speedy and effective assistance under this Treaty, and may decide on such measures as may be necessary for this purpose.

2. The Contracting Parties shall, if necessary, hold consultations on any matter that may arise in the interpretation or implementation of this Treaty.

Article 19

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

2. This Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.

3. This Treaty shall apply to any request for assistance presented on or after the date upon which this Treaty enters into force, whether the acts relevant to the request were committed before, on or after that date.

4. Either Contracting Party may terminate this Treaty at any time by giving six months written notice to the other Contracting Party.

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

DONE at Washington, in duplicate, in the Japanese and English languages, both texts being equally authentic, this fifth day of August, 2003.

FOR JAPAN:

Mayumi Moriyama
Sadakazu Tanigaki
Ryozo Kato

FOR THE UNITED STATES
OF AMERICA:

John Ashcroft

Attachment

1. (1) Originals or copies of business records requested by the United States of America may be authenticated by Japan by use of CERTIFICATION OF BUSINESS RECORDS, attached hereto as Form A-1. Originals or copies of business records authenticated in such manner shall be admissible in evidence in the United States of America for the truth of the matters asserted therein.

(2) Originals or copies of business records requested by Japan may be authenticated by the United States of America by use of CERTIFICATION OF BUSINESS RECORDS, attached hereto as Form A-2. Originals or copies of business records authenticated in such manner shall be admissible in evidence in Japan when a court so decides in accordance with its laws.

2. (1) Originals or copies of foreign public documents requested by the United States of America may be authenticated by Japan by use of CERTIFICATION OF FOREIGN PUBLIC DOCUMENTS, attached hereto as Form B-1, and no further authentication or certification shall be required. Originals or copies of foreign public documents authenticated in such manner shall be admissible in evidence in the United States of America.

(2) Originals or copies of foreign public documents requested by Japan may be authenticated by the United States of America by use of CERTIFICATION OF FOREIGN PUBLIC DOCUMENTS, attached hereto as Form B-2. Originals or copies of foreign public documents authenticated in such manner shall be admissible in evidence in Japan when a court so decides in accordance with its laws.

3. (1) The continuity of custody of items seized by Japan's competent authorities in accordance with Article 9 of this Treaty, the identity of the items and the integrity of their condition, may be certified by Japan by use of CERTIFICATION WITH RESPECT TO SEIZED ITEMS, attached hereto as Form C-1, and no further certification shall be required. Such certification shall be admissible in evidence in the United States of America.

(2) The continuity of custody of items seized by the United States competent authorities in accordance with Article 9 of this Treaty, the identity of the items and the integrity of their condition, may be certified by the United States of America by use of CERTIFICATION WITH RESPECT TO SEIZED ITEMS, attached hereto as Form C-2. Such certification shall be admissible in evidence in Japan when a court so decides in accordance with its laws.

Form A-2
(For requests by Japan)
CERTIFICATION OF BUSINESS RECORDS

I, _____, on penalty of criminal
(name)
punishment for false statement or false attestation, hereby
state as follows:

1. I am employed by _____
(name of business from which the records
are sought) and my title is _____.
(title)

2. 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 the records are sought)

3. (1) 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;

(2) such records were kept in the course of a
regularly conducted business activity;

(3) the business activity made such records as a
regular practice; and

(4) if any such record is not the original, it is a
duplicate of the original.

(signature)

(date)

Sworn to or affirmed orally before me,

_____, a _____
(name) (position of person authorized to administer
oaths), this _____ day of _____, 20__.

