

TREATY BETWEEN
JAPAN AND THE PEOPLE'S REPUBLIC OF CHINA
ON MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS

Japan and the People's Republic of China (hereinafter referred to as "the Parties"),

Desiring to establish more effective cooperation between both countries in the area of mutual legal assistance in criminal matters on the basis of the principles of mutual respect for sovereignty and equality and mutual benefit,

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

Have agreed as follows:

Article 1

1. Each Party shall, upon request by the other Party, provide widest 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. Assistance shall include the following:

(1) taking evidence including testimony, statements, documents, records and articles;

(2) executing search and seizure;

(3) conducting expert evaluations and other examinations of persons, places, documents, records or articles;

(4) locating or identifying persons, places, documents, records or articles;

(5) providing documents, records or articles in the possession of the legislative, administrative or judicial authorities of the requested Party as well as the local authorities thereof;

(6) presenting an invitation to a person whose appearance in the requesting Party is sought for giving testimony or assisting in investigations, prosecutions or other proceedings;

(7) transfer of a person in custody for giving testimony or assisting in investigations, prosecutions or other proceedings;

(8) serving documents of criminal proceedings;

(9) assisting in proceedings related to forfeiture of proceeds or instrumentalities of criminal offenses and other related measures thereof;

(10) providing criminal records; and

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

Article 2

1. Each Party shall designate the Central Authority that is to perform the functions provided for in this Treaty. For Japan, the Central Authority shall be the Minister of Justice or the National Public Safety Commission or persons designated by them. For the People's Republic of China, the Central Authority shall be the Ministry of Justice or the Ministry of Public Security.

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 Parties shall communicate directly with one another for the purposes of this Treaty.

4. Any changes in the designation of the Central Authority may be made by agreement in writing of the Parties through diplomatic channels without amendment of this Treaty.

Article 3

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

(1) the request relates to a political offense;

(2) the execution of the request would impair its sovereignty, security, public order or other essential interests;

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

(4) there are substantial grounds for believing that the request for assistance has been made with a view to investigating, prosecuting or punishing a person by reason of race, religion, nationality, ethnic origin, political opinions or sex, or that that person's position may be prejudiced for any of those reasons; or

(5) 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.

2. Before refusing assistance, 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 refused, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party of the reasons for the refusal.

Article 4

1. The Central Authority of the requesting Party shall make a request in writing and affixed with the signature or seal of the Central Authority of the requesting Party. 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 requesting Party shall provide supplementary confirmation of the request in writing promptly thereafter, unless otherwise agreed between the Central Authorities of the Parties. A request shall be accompanied by a translation into the language of the requested Party or, in case of urgency, into the English language unless otherwise agreed between the Central Authorities of the Parties.

2. A request shall include the following:

(1) the name of the authority conducting the investigation, prosecution or other proceeding to which the request relates;

(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 evidence is sought;

(2) a description of the manner in which evidence is to be taken or recorded;

(3) a list of questions to be asked of the person from whom evidence is sought;

(4) a precise description of persons or places to be searched and of documents, records or articles to be sought;

(5) information regarding persons, places, documents, records or articles to be examined;

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

(7) information regarding persons, places, documents, records or articles to be located or identified;

(8) 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;

(9) a description of the reason for believing that proceeds or instrumentalities of criminal offenses may be located in the requested Party;

(10) a description of any particular procedure to be followed in executing the request and reasons therefor;

(11) information on the allowances and expenses to which a person, whose appearance in the requesting Party is sought for giving testimony or assisting in investigations, prosecutions or other proceedings, will be entitled;

(12) a description of the reason for confidentiality concerning the request;

(13) the time limit within which the request is desired to be executed; and

(14) any other information that should be brought to the attention of the requested Party or that may otherwise facilitate the execution of the request.

4. If the requested Party considers that the information contained in a request for assistance is not sufficient to meet the requirements under this Treaty to enable the execution of the request, the Central Authority of the requested Party may request that additional information be provided.

Article 5

1. The requested Party shall promptly execute a request for assistance in accordance with the relevant provisions of this Treaty. The competent authorities of the requested Party shall take every possible measure in their power to execute a request.

2. A request for assistance shall be executed in the manner or procedure provided for by the laws of the requested Party. The manner or particular procedure described in a request shall be followed to the extent not prohibited by the laws of the requested Party, and where the requested Party deems appropriate.

3. 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 as it deems necessary after consultations between the Central Authorities of the Parties. If the requesting Party accepts such conditions, the requesting Party shall comply with them.

4. The requested Party shall keep confidential the fact and substance of a request as well as the outcome of the execution of the request, except to the extent necessary to execute the request, if such confidentiality is requested by the Central Authority of the requesting Party. If confidentiality cannot be guaranteed or if the 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.

5. 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.

6. 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 evidence obtained by the execution of the request, including documents specifying information on the result of the execution of the request.

7. If the execution of a request is postponed or 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 Parties, the requested Party shall meet the cost for executing the request, but the requesting Party shall bear the following:

(1) allowances or expenses for persons to travel to, stay in and leave from the requesting Party under Articles 13 and 14;

(2) expenses for expert evaluations; and

(3) expenses for translation and interpretation.

2. The requesting Party may, upon request, pay in advance the expenses it shall bear.

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

Article 7

1. The requesting Party shall not use any evidence provided under this Treaty for any purpose other than in the investigation, prosecution or other proceeding described in a request without the prior consent of the Central Authority of the requested Party.

2. The requesting Party shall keep confidential the evidence provided under this Treaty, if so required by the Central Authority of the requested Party, or shall use such evidence only under the conditions specified by the Central Authority of the requested Party.

Article 8

1. The Central Authority of the requested Party may require that the requesting Party transport and maintain documents, records or articles provided under this Treaty in accordance with the conditions specified by the Central Authority of the requested Party, including the conditions as it deems necessary to protect the rights and interests of bona fide third parties.

2. The Central Authority of the requested Party may require that the requesting Party return any documents, records or articles provided under this Treaty in accordance with the conditions specified by the Central Authority of the requested Party, after such documents, records or articles have been used for the purpose described in a request.

3. The requesting Party shall comply with a requirement made pursuant to paragraph 1 or 2.

Article 9

1. The requested Party shall take evidence, and shall employ compulsory measures, including search and seizure, if such measures are necessary and the request includes information justifying those measures under the laws of the requested Party.

2. The requested Party shall, to the extent not contrary to its laws, make its best efforts to permit the presence of such persons as specified in a request for taking evidence during the execution of the request, and to permit such persons to question the person from whom evidence is sought. When such direct questioning is not permitted, such persons may submit questions to be posed to the person from whom evidence is sought.

3. For the purpose of paragraph 2, the Central Authority of the requested Party shall, upon request, inform in advance the Central Authority of the requesting Party of the date and place of the execution of a request.

4. (1) If a person, from whom evidence is sought pursuant to this Article, asserts a claim of immunity, incapacity or privilege under the laws of the requesting Party, evidence shall nevertheless be taken.

(2) In cases where evidence is taken in accordance with sub-paragraph (1), it 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.

5. When the request concerns the transmission of documents or records, the requested Party may transmit certified copies or photocopies thereof. However, where the requesting Party explicitly requires transmission of originals, the requested Party shall meet such requirements to the extent possible.

Article 10

1. The requested Party shall conduct expert evaluations and other examinations of persons, places, documents, records or articles, and shall employ compulsory measures, if such measures are necessary and the request includes information justifying those measures under the laws of the requested Party.

2. The requested Party shall make its best efforts to permit the presence of such persons as specified in a request for examining persons, places, documents, records or articles during the execution of the request.

Article 11

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

Article 12

1. The requested Party shall provide the requesting Party with documents, records or articles that are in the possession of the legislative, administrative or judicial authorities of the requested Party as well as the local authorities thereof and are available to the general public.

2. The requested Party may provide the requesting Party with documents, records or articles that are in the possession of the legislative, administrative or judicial authorities of the requested Party as well as the local authorities thereof and are not available to the general public.

Article 13

1. The requested Party shall present an invitation to a person in the requested Party whose appearance in the requesting Party is sought for giving testimony or assisting in investigations, prosecutions or other proceedings. 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. A witness or expert 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 prosecution, detention, punishment 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, nor shall the person be obliged to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation which is specified in the request.

3. (1) The safe conduct provided in accordance with paragraph 2 to the witness or expert 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) fifteen (15) days have passed after the witness or expert was notified by the appropriate authority that the person's appearance is no longer necessary. However, this period of time shall not include the time during which the person fails to leave the territory of the requesting Party for reasons beyond the person's control;
- (b) the witness or expert, having left the requesting Party, voluntarily returns to it; or

(c) fifteen (15) days have passed after the witness or expert failed to appear before the appropriate authority on the scheduled appearance date due to the reasons other than those arising out of the circumstances beyond the person's control.

(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.

4. A person who does not consent to appear before the appropriate authority in the requesting Party according to the invitation referred to in paragraph 1 shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting Party, notwithstanding any contrary statement in the request.

Article 14

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

2. (1) The requesting Party shall keep the person transferred pursuant to paragraph 1 in the custody of the requesting Party, unless permitted by the requested Party to do otherwise.

(2) The requesting Party shall immediately return the person transferred to the requested Party, as agreed between the Central Authorities of the Parties.

(3) The person transferred shall receive credit for service of the sentence imposed in the requested Party for the time served in the custody of the requesting Party.

3. The person transferred to the requesting Party pursuant to this Article shall enjoy the safe conduct provided for in Article 13 in the requesting Party until the return to the requested Party, unless the person consents and the Central Authorities of the Parties agree otherwise.

4. A person who does not consent to be transferred pursuant to this Article shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting Party, notwithstanding any contrary statement in the request.

Article 15

1. The requested Party shall, in accordance with its laws and upon request, effect service of documents of criminal proceedings that are transmitted by the requesting Party. However, the requested Party shall not be obligated to effect service of a document which requires a person to appear as the accused.

2. A request for service of a document requiring the appearance of a person before an appropriate authority in the requesting Party shall be received by the requested Party not less than sixty (60) days before the date on which the appearance is required. In urgent cases, the requested Party may waive this requirement.

3. In informing the result of the execution of a request for service of a document of criminal proceedings in accordance with the provisions of paragraph 6 of Article 5, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party in writing of the fact that the service was effected, as well as the date, place and manner of the service.

4. A person who does not comply with a document of criminal proceedings requiring the appearance of the person before an appropriate authority in the requesting Party served pursuant to this Article shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting Party, notwithstanding any contrary statement in that document.

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 includes action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

2. The requested Party that has custody over proceeds or instrumentalities of criminal offenses as a result of the assistance under paragraph 1 may transfer such proceeds or instrumentalities including the proceeds from the sale of such assets to the requesting Party, in whole or in part, to the extent permitted by the laws of the requested Party and upon such conditions as it deems appropriate.

3. In applying this Article, the legitimate rights and interests of bona fide third parties shall be respected under the laws of the requested Party.

Article 17

The requested Party shall provide the requesting Party with criminal records of the person investigated or prosecuted in criminal matters in the requesting Party, if the person concerned has been convicted in the requested Party.

Article 18

No legalization or any other certification of the documents transmitted by the Central Authority of either Party pursuant to this Treaty is required, when such documents are attested by the signature or seal of a competent authority or the Central Authority of such Party. Notwithstanding the above, at the request of the requesting Party, the requested Party may certify the documents to be transmitted to the requesting Party pursuant to this Treaty in a form specified in the request to the extent not contrary to the laws of the requested Party.

Article 19

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

Article 20

1. The Central Authorities of the Parties shall hold consultations for the purpose of facilitating speedy and effective assistance under this Treaty.

2. Any dispute arising out of the interpretation or application of this Treaty shall be settled through consultation through diplomatic channels.

Article 21

1. This Treaty shall be subject to ratification.
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 Party may terminate this Treaty at any time by notice in writing to the other Party through diplomatic channels. Termination shall take effect on the one hundred and eightieth day after the date on which the notice is given.

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

DONE at Beijing, in duplicate, in the Japanese, Chinese and English languages, all texts being equally authentic, this first day of December, 2007. In case of any divergence of interpretation, the English text shall prevail.

For Japan:

高村正彦

For the People's
Republic of China:

楊潔篪