

Signed at Beijing November 12, 1998
Entered into force March 24, 2000

**TREATY BETWEEN
THE REPUBLIC OF KOREA
AND THE PEOPLE'S REPUBLIC OF CHINA
ON MUTUAL JUDICIAL ASSISTANCE IN CRIMINAL MATTERS**

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

Desiring to improve the effectiveness of cooperation between the two countries in respect of mutual judicial assistance in criminal matters on the basis of mutual respect for sovereignty, equality and mutual benefit,

Have agreed as follows:

**Chapter I
General Provisions**

**Article 1
Scope of Application**

1. The Parties shall, in accordance with the provisions of this Treaty, grant each other the widest measure of assistance in investigations, prosecutions or proceedings in respect of criminal matters.
2. For the purpose of this Treaty, criminal matters mean investigations, prosecutions or proceedings relating to offences created by the respective laws of the Parties.
3. Assistance shall include:
 - (a) serving documents;
 - (b) taking evidence including statements from persons;
 - (c) providing information, documents, records and articles of evidence;
 - (d) locating or identifying persons or items;
 - (e) obtaining and providing expert evaluations;
 - (f) executing requests for search and seizure;
 - (g) making detained persons and others available to give evidence or assist investigation;
 - (h) measures to assist in relation to proceeds of crime;
 - (i) other forms of assistance not prohibited by the laws of the Requested Party.
4. The present Treaty does not apply to:
 - (a) the extradition of any person;
 - (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party, except to the extent permitted by the law of the Requested Party and this Treaty;
 - (c) the transfer of prisoners to serve sentences; and

- (d) the transfer of proceedings in criminal matters.

Article 2

Channels of Communication

1. For the purpose of this Treaty, the Parties shall communicate directly through their respective designated Central Authorities or through the diplomatic channel to request and render each other mutual judicial assistance.
2. The Central Authorities referred to in paragraph 1 are, for the Republic of Korea, the Minister of Justice or an official designated by that Minister, and for the People's Republic of China, the Ministry of Justice.

Article 3

Refusal or Postponement of Assistance

1. Assistance may be refused if, in the opinion of the Requested Party,
 - (a) the request relates to a political offence or to a military offence in its nature;
 - (b) the execution of the request would impair its sovereignty, security, public order or other essential public interests;
 - (c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinions or that that person's position may be prejudiced for any of those reasons; or
 - (d) the conduct for which the request is made would not constitute an offense under the laws of the Requested Party.
2. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation, prosecution or proceedings in the Requested Party.
3. Before refusing a request or postponing its execution, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.
4. If the Requested Party refuses or postpones assistance, it shall inform the Requesting Party of the reasons for the refusal or postponement.

Chapter II

Request and Assistance

Article 4

Contents of Requests

1. Requests for assistance shall include:
 - (a) the name of the competent authority conducting the investigation, prosecution or proceedings to which the request relates;

- (b) the purpose of the request and the description of the assistance sought;
 - (c) the description of the subject matter of the investigation, prosecution or proceedings, including a summary of relevant facts and laws; and
 - (d) any time limit within which compliance with the request is desired.
2. Requests for assistance, to the extent necessary and insofar as possible, shall also include:
- (a) information on the identity, nationality and location of any person from whom evidence is sought;
 - (b) information on the identity and location of a person to be served and that person's relationship to the proceedings;
 - (c) information on the identity and whereabouts of a person to be located;
 - (d) a description of the place to be searched and of the items to be seized;
 - (e) a description of any particular procedure or requirement wished to be followed in executing the request;
 - (f) information as to the allowances, expenses and fees to which a person asked to appear in the Requesting Party will be entitled;
 - (g) the need for confidentiality and the reasons therefor; and
 - (h) such other information as is necessary for the proper execution of the request.
3. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.
4. A request shall be made in writing and affixed with the signature or seal of the requesting authority. In urgent situations, the request may be made in another form, but shall be confirmed in writing promptly thereafter.

Article 5

Language

Requests and supporting documents made pursuant to this Treaty shall be accompanied by a translation into the language of the Requested Party or into the

Article 6

Execution of Requests

1. The Requested Party shall promptly execute a request for assistance in accordance with its national law.
2. Insofar as not contrary to the law of the Requested Party, the request for assistance may be executed in the manner requested by the Requesting Party.

Article 7

Return of Material to the Requested Party

Where required by the Requested Party, the Requesting Party shall return as soon as possible the material provided under this Treaty.

Article 8

Protection of Confidentiality

The Requested Party, if so requested, shall use its best efforts to keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

Article 9

Limitation on Use

1. The Requesting Party shall not use any information or evidence obtained under this Treaty for any other purposes other than the investigation, prosecution or proceedings described in the request without the prior consent of the Requested Party.
2. The Requesting Party, if so requested, shall keep confidential information and evidence provided by the Requested Party, except to the extent that the information and evidence is needed for the investigation, prosecution or proceedings described in the request.

Article 10

Service of Documents

1. The Requested Party shall effect service of documents that are transmitted to it for this purpose by the Requesting Party.
2. A request for the service of document requiring the appearance of a person shall be submitted to the Requested Party not less than sixty days before the date on which the appearance is required, unless in urgent cases the Requested Party agrees otherwise.
3. The Requested Party shall, after effecting service, forward to the Requesting Party a proof of service that shall include the description of the date, place and manner of service, and be affixed with the signature or seal of the authority which served the document. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.

Article 11

Taking of Evidence

1. The Requested Party shall, in conformity with its law and upon request, take testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the Requesting Party.
2. The Requested Party shall, to the extent permitted by its law and upon request, permit the presence of such judicial personnel concerned in the investigation, prosecution or proceedings as specified in the request during the execution of the request, and may

allow such personnel, in a manner agreed to by the Requested Party, to question the person whose evidence is being taken. In the event that such direct questioning is not permitted, such personnel may be allowed to submit questions to be posed through the Requested Party to the persons whose evidence is being taken.

3. For the purpose of paragraph 2, the Requested Party shall, upon request, promptly inform the Requesting Party of the time and place of the execution of the request.

Article 12

Decline to Give Evidence

1. A person who is required to give evidence under this Treaty may decline to give evidence where the law of the Requested Party permits or demands that person not to give evidence in similar circumstances in proceedings originating in the Requested Party.

2. Where a person who is required to give evidence under this Treaty claims that there is a right or obligation to decline to give evidence under the laws of the Requesting Party, the Requested Party may request the Requesting Party to provide a certificate as to the existence of that right or obligation.

3. Where the Requested Party receives a certificate from the Requesting Party as to the existence of the right or obligation claimed by the person, that certificate, in the absence of evidence contrary, shall provide sufficient evidence as to the existence of the right or obligation.

Article 13

Locating or Identifying Persons or Items

The Requested Party shall, in accordance with the request, endeavour to find out the whereabouts of any persons or items referred to in the request or verify the person's identity.

Article 14

Availability of Persons to Give Evidence or Assist Investigations

1. The Requesting Party may request the assistance of the Requested Party in inviting a person to appear as a witness or expert in the proceedings or assist in the investigations. That person shall be informed of any expenses, allowances and fees payable.

2. The Requested Party shall promptly inform the Requesting Party of the person's response.

Article 15

Availability of Persons in Custody to Give Evidence or Assist Investigation

1. The Requested Party shall, at the request of the Requesting Party, temporarily transfer the person in custody in its territory to the Requesting Party to assist investigation, prosecution or proceedings, provided that person consents and the Central Authorities have reached a prior written agreement on the conditions of the transfer.
2. Where the person transferred is required to be kept in custody under the laws of the Requested Party, the Requesting Party shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request.
3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in Article 14.
4. For the purpose of this Article, the person transferred shall receive credit for service of the sentence imposed in the Requested Party for time served in the custody of the Requesting Party.

Article 16

Protection of Witnesses and Experts

1. A person present in the Requesting Party according to Article 14 or 15 shall not be prosecuted, detained or subject to any other restriction of personal liberty by that Party for any acts or omissions which preceded that person 's entry into its territory or for that person 's testimony or evaluation given in its territory, nor shall the person be obliged to give evidence or to assist any investigation in any investigation, prosecution or proceedings other than that the request relates to.
2. Paragraph 1 of the present Article shall cease to apply if a person, being free to leave, has not left the Requesting Party within a period of fifteen days after that person has been officially notified that that person 's presence is no longer required or, having left, has voluntarily returned. But this period of time shall not include the time during which the person is unable to leave the territory of the Requesting Party for reasons beyond his/her control.
3. A person who declines to give evidence or assist investigation according to Articles 14 or 15 shall not, by reason thereof, be liable to any penalty or subjected to coercive measure by the Requesting Party, nor be threatened with the penalty or coercive measure in the request, summon or similar documents.

Article 17

Search and Seizure

1. The Requested Party shall, insofar as its law permits, carry out a request for search and seizure and delivery of any material to the Requesting Party provided that the request includes the information justifying such action under the laws of the Requested Party.
2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the material seized.

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

Article 18

Proceeds of Crime

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds of crimes are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.

2. Where, pursuant to paragraph 1, suspected proceeds of crimes are found, the Requested Party shall take such measures as are permitted by its law to restrain and forfeit such proceeds.

3. In the application of this Article, the legal rights of a third party to such proceeds shall be respected under the law of the Requested Party.

4. The Requested Party in control of forfeited proceeds shall dispose of them in accordance with its law. To the extent permitted by its laws, the Requested Party may transfer forfeited proceeds to the Requesting Party.

Article 19

Notification of Results of Proceedings in Criminal Matters

One Party shall, upon request, inform the other Party of results of criminal proceedings related to nationals of the other Party.

Article 20

Exchange of Information on Laws and Regulations

The Parties shall, upon request, inform each other of the laws and regulations in force or repealed and the application of judicial practices in their respective country.

Article 21

Supply of Criminal Records

One Party shall, upon request, provide other Party with past criminal records against the person being prosecuted in a criminal matter in the other Party, provided that the person was ever sentenced in the Party.

Article 22

Certification and Authentication

1. Subject to paragraph 2, a request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require any form of certification or authentication.

2. Insofar as not prohibited by the law of the Requested Party, documents, records or other materials shall be transmitted in such form or accompanied by such certification as may be requested by the Requesting Party in order to make them admissible according to the law of the Requesting Party.

Article 23

Expenses

1. The Requested Party shall meet the cost of providing the assistance, except that the Requesting Party shall bear:

- (a) the expenses associated with conveying any person to and from the territory of the Requested Party under Article 11 (2);
- (b) any allowances or expenses payable to the person to, from and in the Requesting Party under Article 14 or 15. These shall be paid according to the standards or regulations of the Party where the allowances or expenses have been incurred; and
- (c) the expenses and fees of experts.

2. The Requesting Party shall, if so requested, pay in advance the expenses, allowances and fees borne by it.

3. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 24

Service of Documents and Taking of Evidence by Diplomatic and Consular Officials

Either Party may serve documents on and take evidence from its nationals in the territory of the other Party through its diplomatic or consular officials therein, provided that the laws of the other Party will not be violated and no compulsory measures of any kind will be taken.

Chapter III

Final Clauses

Article 25

Other Arrangements

This Treaty shall not affect obligations subsisting between the Parties whether pursuant to other treaties, arrangements or otherwise, or prevent the Parties from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

Article 26
Consultation

The Parties shall consult promptly, through diplomatic channel, at the request of either, concerning the interpretation, the application or the implementation of this Treaty.

Article 27
Entry into Force and Termination

- 1 This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Seoul. The present Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.
2. This Treaty applies to any requests presented after its entry into force even if the relevant acts or omissions occurred prior to this Treaty entering into force.
3. Either Party may terminate this Treaty by notice in writing through the diplomatic channel at any time. Termination shall take effect six months after the day on which the notice is given.

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

DONE in duplicate at Beijing on this 12th day of November 1998, in the Korean, Chinese and English languages, all texts being equally authentic. In case of any divergency of interpretation, the English text shall prevail.

FOR THE REPUBLIC
OF KOREA

FOR THE PEOPLE ' S REPUBLIC
OF CHINA