

TREATY BETWEEN THE REPUBLIC OF KOREA AND THE PEOPLE ' S REPUBLIC OF CHINA ON JUDICIAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS

the republic of korea and the people's republic of china (hereinafter referred to as "the parties"),

desiring to strengthen the judicial cooperation between the two countries in civil and commercial matters on the basis of mutual respect for sovereignty, equality and mutual benefit,

have agreed as follows:

chapter i general provisions

article 1 judicial protection

1. nationals of one party shall, in the territory of the other party, enjoy the same judicial protections as nationals of the other party and shall have the right of access to courts of that other party under the same conditions as those for nationals of that other party.
2. one party shall not delay without due cause the proceedings in which nationals of the other party are involved.
3. in the absence of a party's written laws to the contrary, its courts shall not require nationals of the other party to provide any security for costs of the proceedings only because they are foreigners or because they have no domicile or residence in its territory.
4. one party shall not, in the absence of its written laws to the contrary, restrict the departure from its territory of nationals of the other party who are parties to a case before its courts solely due to the fact that the case is still pending.
5. the provisions of this treaty referring to nationals of either party, with the exception of article 2, shall also apply to legal persons incorporated in the territory of a party in accordance with its national law.

article 2 legal aid

1. nationals of one party shall, in the territory of the other party, be entitled to legal aid of the other party in accordance with its national law.
2. an application for legal aid, as provided for in paragraph 1 of this article, shall be accompanied by a certificate on the financial situation of the applicant that is issued by the competent authority of the party in whose territory the applicant has his/her domicile or residence. if the applicant has no domicile or residence in the territory of

either of the parties, such certificate may be issued or verified by a diplomatic officer or a consular agent of the party of which he/she is a national.

3. the authority responsible for the decision on the application for legal aid may require additional information from the applicant.

article 3

scope of judicial assistance

the judicial assistance in civil and commercial matters to be provided under this treaty shall include:

- (a) service of judicial documents;
- (b) taking of evidence;
- (c) recognition and enforcement of arbitral awards; and
- (d) provision of legal information or judicial records.

article 4

channels of communication for judicial assistance

1. unless otherwise provided for in this treaty, the parties shall communicate directly through their respectively designated central authorities to make or to grant requests for judicial assistance.

2. the central authorities, referred to in paragraph 1 of this article, shall be the ministry of court of administration for the republic of korea, and the ministry of justice for the people's republic of china.

3. where one party changes its designation of central authority, that party shall so inform the other party through diplomatic channels.

article 5

laws applicable to judicial assistance

the parties shall apply their respective national laws in executing requests for judicial assistance, unless otherwise provided for in this treaty.

article 6

refusal of judicial assistance

1. if the requested party considers that the provision of judicial assistance would prejudice its sovereignty, security, public order or other essential public interests, or the assistance sought is beyond the competence of its judicial authorities, it may refuse to provide judicial assistance and shall inform the requesting party of the reasons for the refusal.

2. a request for judicial assistance in service of judicial documents or taking of

evidence shall not be refused by the requested party solely on the ground that its courts have exclusive jurisdiction over the subject matter of the action or that its national law would not permit the action upon which the request is based.

article 7 **correspondence**

1. if the central authority of the requested party deems that a request is not in compliance with the provisions of this treaty, it shall promptly inform the central authority of the requesting party and specify its objections to the request.

2. if the central authority of the requested party deems that the information provided is inaccurate or is not sufficient to enable the request to be executed in accordance with the provisions of this treaty, it may inquire as to the accuracy of the information provided in the request or ask the central authority of the requesting party for supplemental information.

3. if the central authority of the requesting party, under paragraph 1 or 2 of this article, takes the appropriate measures or provides corrected or supplemental information sufficient to remove any barriers to the execution of the request, then the central authority of the requested party shall arrange to execute the request.

4. the central authority of the requesting party may ask the central authority of the requested party for information on the progress in regard to the execution of the request.

article 8 **language**

1. a request for judicial assistance shall be accompanied by a translation in the official language of the requested party or in english and any accompanying documents shall be accompanied by a translation in the official language of the requested party.

2. written communications emanating from the central authority of one party shall be sent to the central authority of the other party with a translation in the official language of the other party or in english.

3. the reply to the request, including the certificate for the service of judicial documents, may be drawn up in the official language of the requested party and need not be translated into the official language of the requesting party or into english.

article 9 **right to diplomatic channels**

this treaty shall not prevent either party from requesting any judicial assistance through diplomatic channels.

chapter ii service of judicial documents

article 10 scope of application

one party shall, in accordance with the provisions of this treaty, execute the requests made by the other party for service of judicial documents on persons in its territory.

article 11 form and content of a request

1. a request for service of judicial documents shall be made in the form specified in annex 1 to this treaty.
2. the documents to be served shall be attached to the request.

article 12 execution of request for service

1. a request duly made in accordance with the provisions of this treaty shall be executed expeditiously.
2. the execution of the request shall be effected in the manner prescribed by the law of the requested party or by the particular method expressly requested by the requesting party, unless such method is incompatible with the law of the requested party.
3. the part of the request containing a summary of the documents to be served shall be served with the documents.
4. if the authority to which the request has been transmitted is not competent to execute it, the request shall be sent forthwith to the authority which is competent to execute it.

article 13 notification of results of service

1. the requested party shall, through the channels of communication provided for in article 4 of this treaty, send to the requesting party a certificate in the form specified in annex 2 to this treaty.
2. if the documents have been served, the certificate shall indicate the name and identity of the recipient, and the date, place, and method of service.
3. if the documents have not been served, the certificate shall specify the reasons that have prevented service and the documents shall be returned to the requesting party.

article 14
costs of service

the requested party shall bear the costs arising from the execution of the request for service in its territory. however, the requesting party shall bear the costs arising from the use of the particular method expressly requested by the requesting party under paragraph 2 of article 12.

article 15
service of documents by diplomatic or consular agents

1. one party may effect service of judicial documents on its nationals in the territory of the other party through its diplomatic or consular agents, provided that the law of the other party will not be violated and no compulsory measures of any kind will be taken.

2. documents to be served under paragraph 1 of this article need not be accompanied by a translation in the official language of the other party, except in the case where the addressee is not familiar with the official language of the party of which he/she is a national.

chapter iii taking of evidence

article 16
scope of application

1. one party shall, in accordance with the provisions of this treaty, execute the requests made by the other party for the taking of evidence in its territory, including obtaining statements of the parties to the case and testimony of witnesses, taking material and documentary evidence, conducting expert evaluation or judicial inspection, entrusting the public office with inquiries on certain facts, or performing other judicial acts related to the taking of evidence.

2. this treaty shall not apply to:
(a) obtaining of evidence which is not intended for use in judicial proceedings commenced or contemplated; or
(b) obtaining of documents which are not enumerated in the request, or have no direct and close link with the proceedings in question.

article 17
form and content of a request

1. a request for the taking of evidence shall be made in written form.

2. the request shall include:
(a) the name and address of the requesting court;
(b) the names, nationalities, and addresses of the parties to the proceedings,

- in case of a legal person, its name and address;
 - (c) the names and addresses of the representatives of the parties to the proceedings, if necessary;
 - (d) the nature of the proceedings to which the request relates and a summary of the case; and
 - (e) the nature of the evidence to be obtained.
3. the request shall include, where appropriate:
- (a) the name and address of the person to be examined;
 - (b) the questions to be put to the person to be examined or a statement of the subject matter about which the person is to be examined;
 - (c) the nature of the documents or other property, real or personal, to be inspected;
 - (d) items of inquiries to be entrusted to the public office;
 - (e) any particular method or procedure to be followed under paragraph 2 of article 18; and
 - (f) other information which may be necessary for the execution of the request.

article 18

execution of request for taking of evidence

1. a request duly made in accordance with the provisions of this treaty shall be executed expeditiously.
2. the execution of the request shall be effected in the manner prescribed by the law of the requested party or by the particular method or procedure expressly requested by the requesting party, unless such method or procedure is incompatible with the law of the requested party or cannot be implemented by reason of its internal practice and procedure or due to practical difficulties.
3. if the authority to which the request has been transmitted is not competent to execute it, the request shall be sent forthwith to the authority which is competent to execute it.

article 19

attendance

1. the following persons may be present at the execution of a request:
- (a) the parties concerned and their representatives; and
 - (b) judges or court officers of the requesting party, only with prior authorization of the requested party.
2. in the execution of the request, the central authority of the requested party shall, if so requested, give reasonable notice to the central authority of the requesting party of when and where the intended taking of evidence will occur.
3. the parties and their representatives, judges and court officers shall comply with

the law of the requested party when present at the execution of the request.

article 20
measures of compulsion

in the execution of a request, the authority of the requested party shall apply the appropriate measures of compulsion in the instances and to the same extent as are provided for by its internal law for the execution of orders issued by the authorities of its own country or of the requests made by the parties in internal proceedings.

article 21
refusal to give evidence

1. a person who is required to give evidence under this treaty may refuse to give evidence in so far as that person has a privilege or duty to refuse to give evidence under the law of the requesting party, when the privilege or duty has been specified in the request, or when, at the instance of the central authority of the requested party, the privilege or duty has been otherwise confirmed to that authority by the central authority of the requesting party.

2. a person who is required to give evidence under this treaty may refuse to give evidence where the law of the requested party permits that person not to give evidence in similar circumstances in proceedings originating in the requested party.

article 22
notification of results of execution

1. the requested party shall, through the channels of communication provided for in article 4 of this treaty, notify the requesting party in writing of the results of the execution of the request for taking evidence, and shall transfer evidential materials obtained.

2. if the requested party cannot execute the request for any reason, it shall return that request to the requesting party with indication of the reasons which prevent the execution of the request.

article 23
costs of taking of evidence

1. the requested party shall bear the costs arising from the execution of a request for the taking of evidence in its territory. however, the requesting party shall bear:

- (a) the costs arising from the execution of requests by the particular method or procedure expressly requested by the requesting party under paragraph 2 of article 18;
- (b) the fees paid to experts; and
- (c) the fees paid to interpreters.

2. if it becomes apparent that the execution of a request requires expenses of an extraordinary nature, the parties shall consult to determine the terms and conditions under which the request can be executed.

3. the requesting party shall, if so requested by the requested party, pay in advance the expenses and costs to be borne by it.

article 24
taking of evidence by diplomatic or consular agents

one party may take evidence from its nationals in the territory of the other party through its diplomatic or consular agents in aid of proceedings commenced in the courts of the party which they represent, provided that the law of the other party will not be violated and no compulsory measures of any kind will be taken.

chapter iv recognition and enforcement of arbitral awards

article 25
recognition and enforcement of arbitral awards

each party shall recognize and enforce the arbitral awards rendered in the territory of the other party in accordance with the convention on the recognition and enforcement of foreign arbitral awards concluded in new york on june 10, 1958. the provisions of this treaty, in so far as they are incompatible with the convention mentioned above, shall not apply to the recognition and enforcement of arbitral awards.

chapter v other provisions

article 26
provision of legal information or judicial records

1. the central authority of the requested party shall provide, upon request, the central authority of the requesting party with information on its laws, regulations and judicial practice related to the proceedings of the requesting party.

2. the central authority of the requested party shall provide, upon request, the central authority of the requesting party with extracts from publicly available judicial records of the proceedings of the requested party in which nationals of the requesting party are involved.

article 27
exemption from legalization

for the purpose of this treaty, any documents produced or verified by the courts

or other competent authorities of the parties and transmitted through the channels of communication provided for in article 4 of this treaty shall be exempt from any form of legalization.

article 28
settlement of disputes

any dispute between the parties arising out of the interpretation or implementation of this treaty shall be settled amicably by consultation through diplomatic channels.

article 29
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.

chapter vi final clauses

article 30
entry into force and termination

1. this treaty is subject to ratification. the instruments of ratification shall be exchanged at seoul. this treaty shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification.
2. this treaty shall also apply to the requests made in respect of the proceedings commenced prior to entry into force of this treaty.
3. either party may terminate this treaty by written notice to the other party through diplomatic channels at any time. termination shall take effect on the one hundred and eightieth day after the date on which the notice is given.
4. notwithstanding the termination of this treaty, any request received prior to the termination of this treaty shall continue to be processed in accordance with the provisions of this treaty.

in witness whereof, the undersigned, being duly authorized thereto by their respective governments, have signed this treaty.

done in duplicate at beijing, this 7th day of july 2003, in the korean, chinese and english languages, all texts being equally authentic. in case of any divergence of interpretation, the english text shall prevail.

for the republic of korea

for the people's republic of china

annex 1

request for service of judicial documents

treaty between the republic of korea and

the people's republic of china on judicial assistance

in civil and commercial matters

the [name of the central authority of the requesting party] has the honor to send the following documents to the [name of the central authority of the requested party]. you are kindly requested to serve the documents on the addressee, in conformity with article 12 of the treaty:

a)

in accordance with the manner prescribed by the law of the requested party* b) in accordance with the following particular method: *

addressee

name

address

you are kindly requested to complete the annexed certificate and return it to the [name of the central authority of the requesting party]. list of documents

date

signature or seal

* delete if inappropriate.

summary of the documents to be served

name and address of the requesting court

name and nationality of the parties

title of the documents

nature of the proceedings and, where appropriate, the amount in dispute

date and place for entering appearance*

court which has given judgment*

date of judgment*

time-limits*

* delete if inappropriate.

annex 2

certificate

treaty between the republic of korea and

the people's republic of china on judicial assistance

in civil and commercial matters

the [name of the central authority of the requested party] has the honor to certify, in conformity with article 13 of the treaty, the following facts regarding the request for service of judicial documents no. ____ from the [name of the central authority of the requesting party].

1.

the documents have been served as follows*

date

place

method: a)

in accordance with the manner prescribed by the law of the requested party* b) in accordance with the following particular method: *

recipient

name

relationship to the addressee (family, employment, or other)

2.

the documents have not been served, by reason of the following: *

annexes

documents to be returned

documents establishing the service, if appropriate

date

place

signature or seal

* delete if inappropriate.