

P.R. China-Thailand MLA Treaty

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

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

With a view to improving the effective cooperation between the two countries in respect of mutual legal assistance in criminal matters on the basis of mutual respect for sovereignty and equality and mutual benefit,

Have agreed as follows:

Article 1

Scope of Application

1. The Parties agree, in accordance with the provisions of this Treaty, to provide each other the widest measure of mutual legal assistance in connection with investigations, prosecutions and other proceedings relating to criminal matters, irrespective of whether the assistance is sought or to be provided by a court or some other authority.
2. Such assistance shall include:
 - (a) serving documents of criminal proceedings;
 - (b) taking testimonies or statements from persons in the Requested Party;
 - (c) providing documents, records and articles of evidence;

- (d) obtaining and providing expert evaluations;
- (e) locating and identifying persons;
- (f) conducting judicial inspections or examining sites or objects;
- (g) transferring persons in custody or facilitating the appearance of others in the Requesting Party for testimonial purposes;
- (h) conducting inquiry, searches, freezing and seizures;
- (i) measures to locate, freeze, seize and confiscate the proceeds of crime;
- (j) notifying judgments or decisions in criminal matters and supplying criminal records;
- (k) exchanging information on law; and
- (l) any other forms of assistance which is not contrary to the law of the Requested Party.

3. This Treaty does not apply to:

- (a) the extradition of any person;
- (b) the execution of criminal judgments, verdicts or decisions rendered in the Requesting Party except to the extent permitted by the law of the Requested Party and this Treaty;
- (c) the transfer of the sentenced person for serving sentence;
- (d) the transfer of criminal proceedings; and
- (e) the execution of arrest warrants.

4. This Treaty shall only apply to mutual legal assistance between the Parties. The provision of this Treaty shall deny any private person any right to obtain or exclude any evidence, or to impede the execution of a request.

5. This Treaty shall not apply to military offences.

Article 2

Central Authorities

1. For the purpose of this Treaty, the Central Authorities designated by the Parties shall communicate directly with each other for matters concerning mutual request and assistance.
2. The Central Authorities referred to in paragraph 1 of this Article shall be the Ministry of Justice for the People's Republic of China, and the Attorney General or an official designated by the Attorney General for the Kingdom of Thailand.
3. Should either Party change its designated Central Authority, it shall inform the other Party of such change through diplomatic channels.

Article 3

Refusal or Postponement of Assistance

1. The Requested Party may refuse to provide assistance if:
 - (a) the request relates to conduct which would not constitute an offence under the law of the Requested Party;
 - (b) the request is considered by the Requested Party as relating to a political offence;
 - (c) there are substantial grounds for the Requested Party to believe that the request has been made for the purpose of investigating, prosecuting, punishing or other proceedings against 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;

- (d) the Requested Party has already rendered a final judgment against the same accused for the same offence as related to in the request; or
- (e) the Requested Party determines that the execution of the request would impair its sovereignty, security, public order or other essential public interests.

2. The Requested Party may postpone to provide assistance if the execution of a request would interfere with an ongoing investigation, prosecution or other 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 to provide assistance, it shall inform the Requesting Party of the reasons for the refusal or postponement.

Article 4

Form and Content of Requests

1. A request shall be made in writing and affixed with the signature or seal of the Central Authority of the Requesting Party. In urgent circumstances or where otherwise permitted by the Requested Party, a request may be made by facsimile but shall be confirmed in writing promptly thereafter.

2. A request for assistance shall include the following:

- (a) the name of the competent authority conducting the investigation, prosecution or other proceedings to which the request relates;
- (b) a description of the nature of the relevant case, a summary of the relevant facts and the provisions of laws applicable to the case to which the request relates; and
- (c) a description of the assistance sought and that of the purpose and relevance for which the assistance is sought.

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

- (a) information on the identity and residence of a person from whom evidence is sought;
- (b) information on the identity and residence of a person to be served and that person's relationship to the proceedings;
- (c) information on the identity and whereabouts of the person to be located or identified;
- (d) a description of the place or object to be inspected or examined;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) in the case of requests to take evidence from a person, a statement as to whether sworn or affirmed statements are required, and a description of the subject matter of the evidence or statement sought;
- (g) a description of any particular procedure desirable to be followed in executing the request and reasons therefor;
- (h) a description of the place to be searched and of the property to be inquired, frozen and seized;

- (i) a list of questions to be answered by witnesses;
- (j) a description of the need for confidentiality and the reasons therefor;
- (k) information as to the allowances and expenses to which a person invited to be present in the Requesting Party to give evidence or assist in investigation will be entitled; and
- (l) such other information which may facilitate execution of the request:

4. If the Requested Party considers the contents contained in the request not sufficient to enable it to deal with the request, it may request additional information.

5. Requests and supporting documents made under this Article shall be accompanied by a translation in the language of the Requested Party or English.

Article 5

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner requested by the Requesting Party.

2. The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request. If the assistance requested can not be provided, the Requested Party shall inform the Requesting Party of the reasons.

Article 6

Confidentiality and Limitation on Use

1. The Requested Party shall keep confidential a request, including its contents, supporting documents and any action taken in accordance with the request, if so requested by the Requesting Party. If the request cannot be executed without breaching such confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requested Party may require that information or evidence furnished and the source of such information or evidence be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting Party shall comply with the conditions except to the extent that the information or evidence is needed in a public trial resulting from the investigation, prosecution, or proceeding described in the request.

3. The Requesting Party shall not use any information or evidence obtained under this Treaty for any purposes other than for the case described in the request without the prior consent of the Requested Party.

Article 7

Service of Documents

1. The Requested Party shall, in accordance with its national law and upon request, effect service of documents 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. The Requested Party shall, after effecting service, provide 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 be advised of the reasons thereof.

Article 8

Taking of Testimony, Statements and Other Evidence in the Requested Party

1. Upon a request that a person be summoned to give testimony, make a statement, or produce documents, records or articles in the Requested Party, that person may be compelled to do so in accordance with the provisions of the law of the Requested Party.

2. If the person referred to in paragraph 1 of this Article asserts a claim of immunity, incapacity or privilege under the law of the Requesting Party, the Requested Party shall request the Requesting Party to provide a certificate on the validity of the immunity, incapacity or privilege. The certificate provided by the Requesting Party shall be regarded as conclusive evidence on the immunity, incapacity or privilege unless there is convincing evidence otherwise.

3. The Requested Party shall, upon request, furnish information in advance as to the date and place of the taking of the evidence.

4. Insofar as not contrary to the law of the Requested Party, the Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to pose questions, through personnel of the competent authorities of the Requested Party, to the person from whom evidence is to be taken.

Article 9

Transmission of Records, Documents or Articles and Authentication

1. When the request for assistance concerns the transmission of records, documents or articles, the Requested Party may transmit the original or certified true copies thereof.
2. The Requesting Party shall, upon request, return any original records, documents or articles furnished in execution of requests as soon as possible.
3. Insofar as not prohibited by the law of the Requested Party, records, documents or articles shall be transmitted in a 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.
4. Evidence or documents transmitted pursuant to this Treaty shall not require any form of authentication, save as specified in paragraph 3.

Article 10

Availability of Persons to Give Evidence or Assist in Investigation

1. When the Requesting Party requests the appearance of a person to give evidence or assist in investigation in the territory of the Requesting Party, the Requested Party shall invite the person to appear before the appropriate authority in the territory of the Requesting Party. The Requesting Party shall indicate the extent to which allowances and expenses will be paid to the person. The Requested Party shall promptly inform the Requesting Party of the person's response.

2. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the territory of the Requesting Party within a reasonable time before the scheduled appearance.

Article 11

Transfer of Persons in Custody for Testimonial Purposes

1. The Requested Party may, at the request of the Requesting Party, temporarily transfer a person in custody in its territory to the Requesting Party for appearing before an authority for testimonial purposes, provided that the person so consents and the Parties have previously reached a written agreement on the conditions of the transfer.

2. If the person transferred is required to be kept in custody under the law of the Requested Party, the Requesting Party shall hold that person in custody.

3. The Requesting Party shall promptly return the person transferred to the Requested Party as soon as he/she finishes giving testimony.

4. For the purpose of this Article, the person transferred shall receive credit for service of the sentence imposed in the Requested Party for the period of time served in the custody of the Requesting Party.

Article 12

Protection of Witnesses and Experts

1. Any witness or expert present in the territory of the Requesting Party shall not be investigated, prosecuted, detained, punished or subject to any other restriction of personal liberty by the Requesting Party for any acts or omissions which preceded that person's entry into its territory, nor shall that person be obliged to give evidence or to assist in any investigation, prosecution or other proceedings other than that to which the request relates, except with the prior consent of the Requested Party and that person.

2. Paragraph 1 of this Article shall cease to apply if the person referred to in paragraph 1 of this Article has stayed on in the territory of the Requesting Party fifteen days after that person has been officially notified that his/her presence is no longer required or, after having left, has voluntarily returned. But 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 his/her control.

3. A person who has been served pursuant to Article 7 with a legal document calling for an appearance in the Requesting Party shall not be subjected to any civil or criminal forfeiture, or other legal sanction or measure of restraint, because of failure to comply therewith, even if the document contains a notice of penalty.

Article 13

Search, Freezing and Seizure

A request for search, freezing, seizure and delivery of any article to the Requesting Party shall be executed by the Requested Party to the extent its national law permits.

Article 14

Proceeds of Crime

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of crime 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 the latter's jurisdiction.

2. Where, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested Party shall, upon request, take such measures as are permitted by its law to freeze, seize and confiscate such proceeds.

3. At the request of the Requesting Party, the Requested Party may, to the extent permitted by its national law and under the terms and conditions agreed to by the Parties, transfer all or part of the proceeds of crime, or the proceeds from the sale of such assets to the Requesting Party.

4. In applying this Article, the legitimate rights and interests of the Requested Party and any third party to such proceeds shall be respected under the law of the Requested Party.

Article 15

Notification of Judgments or Decisions in Criminal Matters

A Party that has made a request to the other in accordance with this Treaty shall, at the request of the latter, inform the latter of judgments or decisions in criminal matters to which the request of assistance relates.

Article 16

Supply of Criminal Records

The Requested Party may provide, upon request, the Requesting Party with the past criminal records and information of the sentence against the person investigated or prosecuted in a criminal matter in the territory of the Requesting Party, if the person concerned has been subject to penal prosecution in the Requested Party. The Requested Party in its discretion may deny the request entirely or in part.

Article 17

Exchange of Information on Law

The Parties shall, upon request, furnish each other with the laws in force or the laws used to be in force and information on judicial practice in their respective countries related to the implementation of this Treaty.

Article 18

Expenses

1. The Requested Party shall meet the cost for executing the request, but the Requesting Party shall bear the following:

- (a) expenses for persons to travel to, stay in and leave from the Requested Party under Article 8 (4);
- (b) allowances or expenses for persons to travel to, stay in and leave from the Requesting Party under Articles 10 or 11 in accordance with the standards or regulations of the place where such allowances or expenses have been incurred;
- (c) expenses and fees of experts; and
- (d) expenses and fees of translation and interpretation.

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.

Article 19

Other Basis for Cooperation

This Treaty shall not prevent either Party from providing assistance to the other Party according to other applicable international agreements or its national law. The Parties may also provide assistance in accordance with any other arrangement, agreement, or practice which may be applicable.

Article 20
Settlement of Dispute

Any dispute arising out of the interpretation and application of this Treaty shall be resolved through consultation by diplomatic channels if the Central Authorities of the Parties are themselves unable to reach agreement.

Article 21
Entry into Force, Amendment and Termination

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Beijing. This Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.

2. This Treaty may be amended at any time by written agreement between the Parties.

3. 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.

4. This Treaty applies to any requests presented after its entry into force even if the relevant acts or omissions occurred before this Treaty enters into force.

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

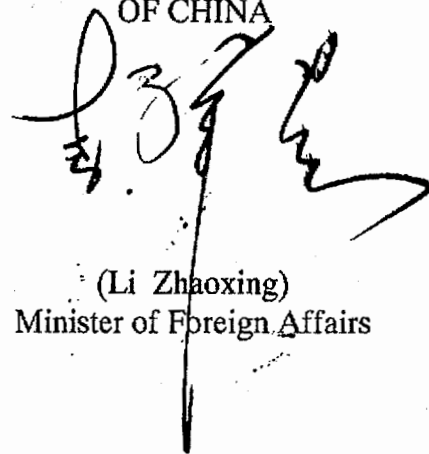
DONE in duplicate at Chiang Mai on this 21st day of June 2003, in the Thai, Chinese and English languages, all texts being equally authentic. In case there is any divergence of interpretation of this Treaty, the English text shall prevail.

FOR THE KINGDOM OF THAILAND

FOR THE PEOPLE'S REPUBLIC
OF CHINA



(Surakiart Sathirathai)
Minister of Foreign Affairs



(Li Zhaoxing)
Minister of Foreign Affairs