

Japan: Law for International Assistance in Investigation and Other Related Matters

LAW FOR INTERNATIONAL ASSISTANCE IN INVESTIGATION AND OTHER RELATED MATTERS (TENTATIVE TRANSLATION)

(Law No. 69 of 1980, as amended by Law No. 89 of 2004)

(As of September.1.2005)

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Chapter 1 General Provisions

(Definitions)

Article 1.

As used in this Law, the following terms shall have the meanings indicated herein:

- (1) “Assistance” means to provide a foreign country, at its request, with evidence necessary for the country to investigate a criminal case, including transfer of a sentenced person for testimony;
- (2) “Requesting country” means a foreign country which has made a request to Japan for assistance;
- (3) “Offense for which assistance is requested” means any offense which is mentioned in a request for assistance by the requesting country as being the subject of investigation.
- (4) “Transfer of a sentenced person for testimony” means an international transfer of a person who is detained for execution of a sentence, in accordance with a treaty that provides such a person may be transferred for appearance as a witness to be examined in criminal proceedings.

(Restrictions on assistance)

Article 2.

Assistance shall not be provided in any of the following circumstances: (1) When the offense for which assistance is requested is a political offense, or when the request for assistance is deemed to have been made with a view to investigating a political offense;

- (2) Unless otherwise provided by a treaty, when the act constituting the offense for which assistance is requested would not constitute an offense under the laws, regulations or ordinances of Japan were it committed in Japan;

(3) With respect to a request for an examination of a witness or a submission of material evidence, unless otherwise provided by a treaty, when the requesting country does not clearly demonstrate in writing that the evidence is indispensable to the investigation.

(Receipt of requests and forwarding of evidence)

Article 3.

1. A request for assistance shall be received, and evidence shall be forwarded to the requesting country, by the Minister of Foreign Affairs. The Minister of Justice, however, may carry out these tasks, upon a consent given by the Minister of Foreign Affairs, when a treaty confers the authority to receive requests for assistance on the Minister of Justice, or where exigency or other special circumstances exist.

2. When the Minister of Justice receives a request for assistance or forwards evidence to the requesting country in accordance with the second sentence of the preceding paragraph, the Minister of Justice may ask the Minister of Foreign Affairs for cooperation necessary for the execution of matters relating to the assistance.

(Measures to be taken by the Minister of Foreign Affairs)

Article 4.

Upon receiving a request for assistance, the Minister of Foreign Affairs shall, except where any of the following applies, forward the written request for assistance or a certification prepared by the Minister of Foreign Affairs of the fact that such a request has been made, as well as related documents, with the opinion of the Minister of Foreign Affairs attached, to the Minister of Justice:

- (1) When a request has been made based on a treaty, where the form of the request does not satisfy the requirements of the treaty;
- (2) When a request has been made without being based on a treaty, where there is no guarantee from the requesting country that it will honor requests of the same sort from Japan.

Chapter 2 Collection of Evidence and Other Related Matters

(Measures to be taken by the Minister of Justice)

Article 5.

1. With respect to a request for assistance in matters other than a transfer of a sentenced person for testimony, except where any Item in Article 2 (any item in Articles 2 or 4, when the Minister of Justice receives a request for assistance pursuant to the second sentence of the first paragraph of Article 3) applies, the Minister of Justice shall, when none of the following applies and the Minister of Justice deems it appropriate to honor the request, take one of the following measures:

- (1) Forward the related documents to the Chief Prosecutor of an appropriate District Public Prosecutors Office and order the Chief Prosecutor to collect the evidence necessary for assistance;
- (2) Forward the documents concerning the request for assistance to the National Public Safety Commission;
- (3) Forward the documents concerning the request for assistance to the Commandant of the Maritime Safety Agency, or to the head of other national agency to which judicial police officials belong as provided by Article 190 of the Code of Criminal Procedure (Law No. 131 of 1948).

2. With respect to a request for provision of a document relating to litigation which is in the custody of a court, a public prosecutor or a judicial police officer, the Minister of Justice shall forward the documents concerning the request for assistance to the custodian of the record.

3. The Minister of Justice may conduct investigation on the whereabouts of a relevant person and other necessary matters, when the Minister of Justice deems it necessary in order to take measures provided in paragraph 1 or any other measures relating to the assistance.

(Measures to be taken by the National Public Safety Commission)

Article 6.

Upon receiving the documents provided for in paragraph 1, item (2) of Article 5, the National Public Safety Commission shall forward the related documents to an appropriate prefectural police force, and direct it to collect the evidence necessary for assistance.

(Measures to be taken by a chief prosecutor, etc.)

Article 7.

1. When a Chief Prosecutor receives an order provided for in paragraph 1, item (1) of Article 5, he/she shall have a public prosecutor in the Office take measures to collect the evidence necessary for assistance.

2. When the Superintendent General or a chief of a prefectural police force (hereinafter referred to as the “chief of a police force”) is directed as provided for in Article 6, he/she shall have a judicial police officer of his prefectural police force take measures provided for in paragraph 1 .

3. When the head of a national agency receives the documents provided for in paragraph 1, item (3) of Article 5, he/she shall have an appropriate judicial police officer of his/her agency take measures provided for in paragraph 1 .

(Measures to be taken by a public prosecutor, etc.)

Article 8.

1. With regard to collection of evidence necessary for assistance, a public prosecutor or a judicial police officer may: ask any person concerned to appear before them and interrogate the person; request an expert to make a non-compulsory inspection; ask the owner, possessor or custodian of a document or other material to submit it; or ask a public office, or a public or private organization to make reports on necessary matters.

2. With regard to collection of evidence necessary for assistance, a public prosecutor or judicial police officer may, if it is deemed to be necessary, undertake seizure, search, or compulsory inspection of evidence, upon a warrant issued by a judge.

3. A public prosecutor or a judicial police officer may, when the evidence to be collected pursuant to the preceding two Paragraphs is a business document or item (hereinafter in this paragraph refers to a document or any other item that is prepared or retained in the course of a business) and a request for assistance in certification regarding the manner of preparation and retention of such a document or item has been made, request the person who has prepared or retained such a document or item, or any other person who seems to have professional knowledge regarding its preparation or retention, to submit a certificate of the matters asked for in the request.

4. When requesting submission of a certificate pursuant to the preceding paragraph, a public prosecutor or a judicial police officer must notify the person whom they ask for a certificate that submission of a false certificate may result in criminal punishment.

5. A public prosecutor or a judicial police officer may have a public prosecutor's assistant officer or a judicial police official to take the measures provided for in paragraphs 1 through 3 above.

(Penalty)

Article 9.

A person who submits a false certificate in response to a request for submission of a certificate in accordance with paragraph 3 of Article 8 shall be punishable with imprisonment for not more than a year or with fine of not more than 500,000 yen. This shall not apply, however, when such conduct of the person constitutes a crime under the Penal Code (Law No. 45 of 1907).

(Application for examination of a witness)

Article 10.

A public prosecutor may apply to a judge for examination of a witness when any of the following applies:

- (1) When the request for assistance is for examination of a witness;
- (2) When a person concerned has refused to appear or to make statements in response to interrogation in accordance with paragraph 1 of Article 8;
- (3) When a person who has been requested to submit a certificate pursuant to paragraph 3 of Article 8 has refused to do so.

(Application for a warrant, etc.)

Article 11.

An application for issuance of a warrant or examination of a witness shall be accompanied with a document set forth in item (3) of Article 2. This shall not apply, however, when a treaty provides otherwise.

(Jurisdiction of the court, etc.)

Article 12.

An application for issuance of a warrant or examination of a witness shall be made to a judge of the District Court that has jurisdiction over the place where the office to which the requesting person belongs is located; an objection to a measure taken by a judicial police official concerning the seizure or the restoration of a seized article shall be made to the District Court that has jurisdiction over the place where that judicial police official exercised his/her duties.

(Application mutatis mutandis of the Code of Criminal Procedure, etc.)

Article 13.

Except as otherwise provided in this Law, the provisions of the Code of Criminal Procedure (limited only to Chapters II and V through XIII of Book I, Chapter I of Book II, Chapters I and IV of Book III), and of the laws, regulations and ordinances concerning the costs of criminal proceedings, shall apply mutatis mutandis to the measures taken by a public prosecutor, public prosecutor's assistant officer or a judicial police official, to the issuance of a warrant and the examination of a witness by a judge, and to the

decision rendered by a court or a judge, insofar as such application is not incompatible with the nature of the proceedings.

(Measures to be taken after disposition has been made, etc.)

Article 14.

1. When the Chief Prosecutor has finished obtaining the evidence necessary for assistance, he/she shall promptly forward the evidence obtained, with his/her opinion attached, to the Minister of Justice. When the head of a national agency provided for in paragraph 1, item (3) of Article 5 has finished obtaining the evidence, he/she shall do the same.
2. When the chief of a police force has finished obtaining the evidence necessary for assistance, the prefectural Public Safety Commission shall promptly forward the evidence obtained, with its opinion attached, to the National Public Safety Commission.
3. Upon receiving the evidence as provided for in paragraph 2 above, the National Public Safety Commission shall promptly forward the evidence, with its opinion attached, to the Minister of Justice.
4. The custodian of a record made in connection with litigation who has received the documents concerning a request for assistance as provided for in paragraph 2 of Article 5, shall promptly forward the record or a certified copy thereof, with his/her opinion attached, to the Minister of Justice; when he/she is unable to do so, he/she shall return the documents concerning the request for assistance to the Minister of Justice.
5. When, after receiving the evidence provided for in paragraph 1, 3, or 4 above, the Minister of Justice deems it to be necessary, he/she shall determine conditions that the requesting country shall observe with respect to the use or the return of the evidence.
6. When the requesting country does not assure that it will observe the conditions provided for in paragraph 5 above, the Minister of Justice shall not provide the assistance.

(Notification when assistance is not provided)

Article 15.

When the Minister of Justice, after taking measures as provided for in paragraph 1, item (2) or (3) of Article 5, or in paragraph 2 of Article 5, deems it to be inappropriate to provide assistance, he/she shall, without delay, notify the person who has received the documents concerning the request for assistance to that effect.

(Consultation)

Article 16.

1. The Minister of Justice shall consult with the Minister of Foreign Affairs when making a decision not to provide assistance upon finding that the request falls under item (1) of Article 4 or that honoring the request would be inappropriate, or when setting conditions in accordance with paragraph 5 of Article 14.
2. When the Minister of Justice takes a measure provided for in the items of paragraph 1 of Article 5, he shall consult with the National Public Safety Commission or with the head of a National agency provided for in item(3) of that paragraph, according to their jurisdiction, except when the agency to collect evidence is clear from the documents concerning the request for assistance, such as when the examination of a witness is requested.

(Rules of the Supreme Court)

Article 17.

Besides the provisions of this Chapter, the necessary procedural rules concerning issuance of warrants, examination of witness, and appeals shall be determined by Supreme Court.

(Cooperation with the International Criminal Police Organization)

Article 18.

1. When the International Criminal Police Organization requests cooperation in the investigation of a criminal case of a foreign country, the National Public Safety Commission may take one of the following measures:

- (1) Direct a prefectural police force which is deemed to be appropriate to make the necessary inquiry;
- (2) Forward the documents concerning the requests for cooperation to the head of a national agency provided for in paragraph 1, item (3) of Article 5.

2. The provisions of Article 2 (except for items (3) and (4)), shall apply *mutatis mutandis* to the preceding in paragraph 1.

3. The National Public Safety Commission may, when it deems necessary in order to take the measures set forth in paragraph 1, have an official of the National Police Agency investigate the whereabouts and other necessary matters with respect to persons concerned.

4. With regard to the steps provided for in paragraph 1, the National Public Safety Commission shall consult with the head of a national agency in item (2) of paragraph 1, according to their jurisdiction, except when the agency to make the inquiry is clear from the request.

5. When the National Public Safety Commission takes a step provided for in paragraph 1, it shall hear the opinion of the Ministry of Justice.

6. The chief of a prefectural police force which has been directed to make an inquiry pursuant to item (1) of paragraph 1, shall order a police officer of his force to take the steps necessary for the inquiry.

7. The head of a national agency who has received the documents concerning a request for cooperation as provided for in item (2) of paragraph 1, may order a staff member of his/her agency who is a judicial police official to take the steps necessary for the requested inquiry.

8. With regard to the inquiry provided for in paragraph 6 or 7, a police officer or a staff member of a national agency in the preceding paragraph may question any person concerned, make a noncompulsory inspection, ask the owner, possessor or custodian of a document or other material to produce it, or ask a public office, or a public or private organization to make reports on necessary matters.

Chapter 3 Transfer of a Sentenced Person for Testimony

(Decision of transfer of a sentenced person for testimony and other related matters)

Article 19.

1. When the requesting country, in accordance with a treaty, requests a transfer of a sentenced person for testimony regarding a domestically sentenced person (hereinafter refers to a person who is detained in Japan for execution of a sentence of imprisonment or of an assistance sentence set forth in item 2 of Article 2 of Law for International Transfer of Sentenced Persons (Law No. 66 of 2002)), the Ministry of Justice shall make a decision of transfer of a sentenced person for testimony, with a determinate period for which the domestically sentenced person will be transferred, if none of item (1) or (2) of Article 2, or any of the following (with respect to cases where the Minister of Justice receives a request for assistance in

accordance with the provision in the second sentence of paragraph 1 of Article 3, none of item (1) or (2) of Article 2, item (1) of Article 4, or the following) applies, and where the Minister of Justice deems it appropriate to honor the request:

- (1) When the domestically sentenced person does not consent in writing;
 - (2) When the domestically sentenced person is under the age of 20;
 - (3) When the requested period for transfer of the domestically sentenced person exceeds 30 days;
 - (4) When a case regarding a crime that the domestically sentenced person has committed is pending in a Japanese court.
2. The provisions in paragraphs 5 and 6 of Article 14, and paragraph 1 of Article 16 shall be applied *mutatis mutandis* to where a request for transfer of a sentenced person regarding a domestically sentenced person has been made. Any technical provisions for such application shall be set forth in a Cabinet Order.
3. The Minister of Justice shall, when having made a decision set forth in paragraph 1, order the custodial chief of the penitentiary in which the domestically sentenced person is imprisoned to hand over the person in accordance with the decision, and notify the domestically sentenced person of the decision.

(Measures relating to a handover)

Article 20.

1. The Minister of Justice shall send a permit of reception, when having made an order pursuant to paragraph 3 of Article 19.
2. The Minister of Foreign Affairs, upon receipt of a permit of reception in accordance with the preceding paragraph, shall forward it to the requesting country immediately.
3. Notwithstanding the two preceding paragraphs, when the Minister of Justice receives a request for assistance pursuant to the second sentence of paragraph 1 of Article 3, forwarding of a permit of reception to the requesting party shall be made by the Minister of Justice.
4. The custodial chief who has received an order set forth in paragraph 3 of Article 19 shall, when an official of the requesting country request handover of the domestically sentenced person by showing a Permit of Receipt, hand over the domestically sentenced person.
5. The official of the requesting country who has received the handover of the domestically sentenced person in accordance with the provision in the preceding paragraph shall expeditiously escort the domestically sentenced person to the requesting country.

(Treatment of the period of transfer of a domestically sentenced person)

Article 21.

A period for which a domestically sentenced person has been subject to transfer of a sentenced person for testimony (excluding a period in which the person was not detained) shall be considered time served for the purpose of execution of the sentence.

(Special provision to the Prison Law)

Article 22.

1. Paragraph 2 of Article 28 and Article 55 of the Prison Law (Law No. 28 of 1908) shall not apply to a handover of a domestically sentenced person to an official of the requesting country in accordance with paragraph 4 of Article 20.

2. Articles 56 and 57 of the Prison Law shall be applied *mutatis mutandis* to the personal items of a domestically sentenced person who has been handed over to an official of the requesting country pursuant to paragraph 4 of Article 20.

Chapter 4 Detention of a foreign sentenced person

(Detention of a Foreign Sentenced Person)

Article 23.

1. A public prosecutor must detain, based on a warrant for received transfer detention issued in advance, a foreign sentenced person (hereinafter refers to a person detained for execution of a sentence of imprisonment with or without labor or its equivalents in a foreign country) for whom a decision to examine as a witness in a Japanese criminal proceeding has been made, after receiving a handover of such a foreign sentenced person from an official of the foreign country for transfer of sentenced person for testimony.

2. Paragraph 1 through 3 of Article 6 and Article 7 of the Law on Extradition (Law No. 68 of 1953), and Article 71, paragraph 3 of Article 73, and Articles 74 and 126 of the Code of Criminal Procedure shall be applied *mutatis mutandis* to the detention of a foreign sentenced person based on a warrant for received transfer detention set forth in the preceding paragraph. Any technical provisions for such application shall be set forth in a Cabinet Order.

(Handover to a foreign official)

Article 24.

1. A foreign sentenced person who has been handed over from a foreign official for transfer for a sentenced person shall, within 30 days from the date of such a handover, be handed back to the foreign official. This shall not apply, however, when the foreign sentenced person cannot be handed back in compliance with the term set forth above due to natural disaster or other unavoidable circumstances.

2. A public prosecutor may have an assistant official for a public prosecutor, a police official, a maritime safety official, or an assistant maritime safety official escort the foreign sentenced person, based on a warrant for received transfer detention set forth in the paragraph 1 of Article 23, when necessary for handing over the foreign sentenced person to the foreign official in accordance with the preceding paragraph. In such a case, the provision in Article 74 of the Code of Criminal Procedure shall be applied *mutatis mutandis*.

(Suspension of detention of a foreign sentenced person)

Article 25.

1. A public prosecutor may, only on the basis of illness or other compelling circumstances, suspend the detention of a foreign sentenced person who is detained based on a warrant for received transfer detention, with such a person entrusted to a physician or other appropriate person, or with limitation on the domicile of such a person.

2. A public prosecutor may rescind suspension of the detention at any time when the prosecutor deems necessary to do so.

3. The provisions in paragraphs 3 through 5 of Article 22 of Law on Extradition shall be applied *mutatis mutandis* to rescission of suspension of the detention of a foreign sentenced person pursuant to the preceding paragraph. Any technical provisions for such application shall be set forth in an Cabinet Order.

(Special provision to the crimes of escape)

Article 26.

A foreign sentenced person who is detained in accordance with paragraph 1 of Article 23 shall be considered a person detained for execution of a judgment pending a finalized judgment for the purpose of the application of Articles 97, 98, and 102 (only to the extent setting forth the attempted offense for Articles 97 and 98) of the Penal Code.