

P.R. China-Indonesia MLA Treaty

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

The Republic of Indonesia and the People's of Republic China (hereinafter referred to as "the Parties"), desiring to strengthen the close cooperation between the two countries in judicial field on the basis of mutual respect for sovereignty, equality and mutual benefit, have hereby resolved to conclude this Treaty on mutual legal assistance in Criminal Matters, and have agreed as follows :

CHAPTER I GENERAL PROVISIONS

Article 1 Scope of Applications

1. The parties shall, in accordance with this Treaty, grant to each other assistance in investigations or proceedings of criminal matters.
2. For the purpose of this Treaty, criminal matters refer to any act or omission constituting an offence in accordance with the respective national law of the parties.
3. Assistance provided shall consist of:
 - a. taking evidence and obtaining statements from persons
 - b. providing legal documents and other relevant judicial records
 - c. locations and identifications of persons
 - d. executions of requests for search and seizure, and transfer of documentary evidence and material evidence
 - e. measure to transfer the proceeds of crime
 - f. seeking the consent of persons to be available to give evidence or to assist in investigations by requesting party, and where such persons are in custody arranging for their temporary transfer to that State
 - g. service of documents and
 - h. conducting expert evaluations and notification of results of proceedings in criminal matter.

Article 2 Other Assistance

This Treaty shall not derogate from obligations subsisting between the Parties whether pursuant to other treaties or arrangements or otherwise nor prevent the Parties providing assistance to each other pursuant to other treaties or arrangements or otherwise.

Article 3 Central Authority

Mutual legal assistance shall be requested and rendered directly through the Central Authorities, namely, the Ministries of Justice of the Parties.

Article 4 Refusal of Assistance

1. Assistance may be refused if :
 - (a) the request relates to the investigation or proceeding of a person for an offence that is regarded by requested Party as an offence of a political character or a military offence as created by the national law of that Party;
 - (b) there are substantial grounds for believing that the request for assistance has been made merely for the purpose of prosecuting or punishing that person on account of that person's race, sex, religion, nationality or political opinions or that person's positions may be prejudiced to any of these reasons;
 - (c) the requested Party is of the opinion that the request, if granted, would prejudice its sovereignty, security, national interest or other essential interest;
 - (d) provisions of the assistance sought could prejudice and investigation or proceeding in the requested Party, prejudice the safety of any person or implies an excessive burden on the resources of that Party; or
 - (e) such assistance would violate the fundamental principles of the national law of the requested Party.
2. Before refusing to grant a request for assistance 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 conditions it shall comply with those conditions.
3. The requested Party shall inform in due course the requesting Party of the decision of refusal of the execution of the request and give reasons for it.

Article 5 Applicable Law in Legal Assistance

1. The requested Party shall apply its national law in the execution of a request.
2. The requesting Party may require the execution of the request in specific manner, which the requested Party shall adopt to the extent compatible with its national law.

Article 6 Cost and Expenses

1. The requested Party shall meet the cost of fulfilling the request for assistance except that the requesting Party shall bear :
 - a. the expenses associated with conveying any persons to or from the requested Party, and any fees, allowances or expenses payable to that person whilst in the requesting Party pursuant to a request under Articles 11 or 12. The requesting Party shall pay him/her in advance partially or wholly the above mentioned allowances and expenses
 - b. the expenses associated with conveying custodial or escorting officers and

- c. the expenses and fees incurred by the requested Party pursuant to a request under Article 17.

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

Article 7 Language

1. In correspondence with each other, the Parties shall use the official languages of their respective countries together with translations into English.

2. The request for mutual legal assistance and its supporting documents shall be written in the official language of the requested Party, and shall be accompanied by a translation into English.

CHAPTER II FORM OF LEGAL ASSISTANCE

Article 8 Letter of Request for Legal Assistance

1. Request for legal assistance shall be made in the form of a letter of Request, which shall contain the following

- a. the name of requesting authority,
- b. the nature and facts of the case, and the provisions of the applicable laws
- c. the name, nationality, residence or domicile of the persons concerned in the request, and all other information helpful to their identification
- d. the purpose of the request and the judicial act requested to be performed
- e. a list of the documents and objects requested to be searched, seized or transferred
- f. the details of and reasons for a particular procedure, should such be requested, for the requested Party to adopt
- g. the time limit within which the execution of the request is desired
- h. other materials which are necessary for the execution of the request. express indications, if deemed necessary, of the need to keep the request confidential.

2. If the requested Party considers that the information contained in the request is not sufficient in accordance with this Treaty to enable the request to be dealt with, it may request additional information.

3. The letter of Request and its supporting document shall be signed and sealed by the relevant authorities of the requesting Party.

Article 9 Service of Document

1. The request party shall execute the request for service of any document made by the requesting Party in the due course.

2. The requested party shall forward to the requesting Party proof of service of the document which contains the signature of the addressee, the date of the receipt, the seal of the serving authority, the signature

of the server and the manner and place of the service. If service cannot be effected, the requesting Party shall be so informed and advised of the reasons.

Article 10 Taking of Evidence

1. Unless otherwise provided this Treaty, the request Party shall make all necessary arrangement for the taking of evidence as required by the requesting Party.
2. Where a request is made for the purpose of a proceeding in relation to a criminal matter in the requesting Party, the requested Party shall, upon request, endeavour to take the evidence of witnesses for transmission to the requesting Party.
3. For the purpose of request under this Article the requesting Party shall specify the subject matter about which persons are to be examined including any question to be put.
4. The requested party shall!, to the extent permitted by it law and upon request, inform the requesting party of the time and place of the executing of request, so that the relevant personnel as authorized by the national law of the requesting Party can be present during the execution of the request ask question through the relevant personnel of the requested.
5. A person who required to give evidence in the requested Party under this Article may decline to give evidence where either :
 - (a) The law of the requested Party permits that witness to decline to give evidence in similar circumstances in proceedings originating in the requested Party; or
 - (b) Where the law of the requesting Party permits that witness to decline to give evidence in such proceedings in the requesting Party.

Article 11 Appearance of Witnesses and Expert

1. If the requesting Party considers it necessary for a witness or expert to appear personally before its judicial authorities to perform the related act in the proceedings, it shall mention in the request for service summons, and the requested party shall convey the abovementioned request to the witness or expert therewith. It shall also indicate the terms on expenses, allowances and fees payable.
2. The request for service of summons shall be handed over to the requested Party at least two month prior to the date on which the persons concerned are required to appear before the judicial authorities of the requesting party to perform the related judicial act in the proceeding. In Urgent cases, the requesting Party may waive the witness or expert.
3. The Requested Party shall inform the requesting Party of the reply of the witness or expert.

Article 12 Available of Persons in Custody to give Evidence

1. If the judicial authorities of one Party considers it necessary to take testimony of a person as a witness who is held in custody in the territory of the requested Party, the persons may be upon request transferred temporarily to the requesting Party, provided that person consents to the transfer.
2. For the purpose mentioned in paragraph 1, the Central Authorities of the Party specified in Article 3 of this Treaty shall reach a prior agreement on the terms and conditions of the transfer.

3. While the persons transferred is required to be held in custody under the law of the requested Party, the requesting Party shall hold that person in custody and shall return that person in custody to the requested Party at the conclusions of the matter in relation to which the transfer was sought under paragraph 1 of this article or at such earlier time as the person's presence is no longer required.
4. The requesting Party may request the extension of the period of stay of this person if it still needs the presence of the person, if the person so consent.

Article 13 Protection of Witness and Experts

1. The requesting Party shall not impose any punishment, or take measure or threaten to take measure against the person for his/her refusal to be as witness or expert in accordance with Article 11 or 12.
2. A witness or expert referred to in article 11 or 12 shall not be detained, prosecuted or punished in the requesting Party, for any offence, nor be subject to any civil suit, being to civil suit to which the person could not be subjected if the person were not in requesting Party, in respect of any act or commission which preceded the person's departure from the requested Party.
3. A witness or expert shall not be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.
4. A witness or expert shall forfeit the protection granted in paragraph 1 if they have not left the requesting Party within 15 days after they are notified by the judicial authorities that their presence are no longer required, or having left, have voluntarily returned. However this period of time shall not include the time during which the witnesses or experts or other persons are unable to leave the requesting Party for reasons beyond his/her control.
5. Where the requested Party advises the requesting party that the transferred persons referred to in article 12 are no longer required to be held in custody, those persons shall be set at liberty and be treated as the persons referred to in Article 11.

Article 14 Provision of Evidence

1. The requested Party shall, through the channels provided for in Article 3, transfer testimonial materials taken in the investigation and taking of evidence.
2. The requested Party may transfer the certified copies or photocopies of the record or documents requested to be provided by The requesting Party. However, when the requesting Party expressly requires the transfer of the originals, the requested Party shall meet the requirement to the extent possible.
3. The requested Party shall transfer the objects that the requesting Party requires to be provided as evidence. Such transfer, however, shall not infringe upon the legitimate rights of the requested Party or the third party related with these objects.
4. If the above-mentioned documents, records or objects are indispensable for the criminal prosecutions of other pending cases in the territories Party, the requested Party may temporarily postpone their provision. The requested Party should, however, duly inform the requesting Party of the reasons for the postponement.

Article 15 Return of Evidence

The requesting Party shall, as soon as possible, return the original records and documents, or other objects which were transferred by the requested Party, unless the latter waives its right to return thereof.

Article 16
Protecting Confidentiality and Restricting use of
Evidence and Information

1. The requested Party, if so requested, shall keep the request for assistance, the contents of a request and its supporting documents, and the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested Party shall so inform the requesting Party which shall then determine whether the request should nevertheless be executed.
2. The requesting Party, if so requested, shall keep confidential information and evidence provided by the requested Party, except to the extent that the evidence and information is needed for the investigation and proceeding described in the request.
3. The requesting Party shall not use information or evidence obtained, nor anything derived from either, for purposes other than those stated in a request without the prior consent of the requested Party.

Article 17
Search and Seizure

1. The requested Party shall, insofar as its law permits, and the rights of third parties are protected, carry out requests for search and seizure and delivery of material to the requesting Party for evidentiary purposes, provided the information supplied, including additional information requested pursuant to paragraph 2 Article 8, if any, would justify such actions under the law of the requested Party.
2. The requested Party shall provide such information as may required by the requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and subsequent custody of the material seized.
3. The requesting Party shall observe any conditions imposed by the requested Party in relation to search and seizure.

Article 18
Transfer of Proceeds of Crime

1. Each the Parties to this Treaty shall transfer to the other Party the money and objects illicitly obtained by the offenders in the event of the envisaged crime in the territory of the requesting Party but found in the territory of the requested Party. Such transfer, however, shall not infringe upon the legitimate rights of the requested Party or the third party in relation to the above-mentioned proceed.
2. If the above-mentioned money and object are indispensable to pending criminal proceedings in the territory of the requested Party, the requested Party, may delay such transfer, duly informing the requesting Party of the delay.

CHAPTER III
MISCELLANEOUS

Article 19
Notifications of the Results of the Proceedings in Criminal Matters

Each Party shall, upon request, inform the other Party of the results of the final judgments and decisions of criminal proceeding against the nationals of other Party or which mutual assistance was granted.

Article 20
Supply of Criminal Records

The requested Party may, upon request, provide free of charge extracts of the criminal records and relevant information concerning the person being investigated of criminal responsibilities in the jurisdiction of the requesting Party.

Article 21
Exchange of Information on Laws and Regulations

The Parties shall, upon request, inform each other of laws and regulations in force or repeated in their respective countries.

Article 22
Effect of the Documents

For the purpose of implementing this Treaty, official document issued by the competent authorities of one Party, once signed and sealed, shall be dispensable of legalization when used by the other Party.

Article 23
Service Documents and Taking Evidence by
Diplomatic and Consular Official

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

Article 24
Consultation

The Parties shall consult promptly, at the request of either, concerning the interpretation and the application of this Treaty either generally or in relation to a particular case, through the Diplomatic channel.

CHAPTER IV
FINAL PROVISIONS

Article 25
Entry into force and termination

1. This Treaty shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective national legal requirements for the entry into force of this Treaty have been complied with.
2. It shall remain in force for period a period of five years and shall automatically remain in force for another five years consecutively, unless it is denounced by any Party by written notifications three months prior to its termination.

3. The termination of this Treaty shall not prejudice the completion of any ongoing activities agreed upon by the Parties under this Treaty.

DONE in duplicate at Jakarta on 24th day of July of two thousands, each one in Indonesian, Chinese, and English language. All texts are equally authentic. If there is any divergence concerning the interpretation, the English text shall prevail.

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

FOR THE REPUBLIC OF INDONESIA

FOR THE PEOPLE'S REPUBLIC OF CHINA