

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

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

- DESIRING to provide for more effective cooperation between the Parties in the repression of crime and, specifically, to facilitate the relations between the Parties in the area of mutual legal assistance in criminal matters, on the basis of mutual respect for sovereignty, equality and mutual benefit,

- UNDERTAKING to carry out their criminal proceedings with full respect for the rule of law and human rights,

HAVE AGREED as follows:

Article 1

Scope of Application

1. The Parties undertake to afford each other, in accordance with the provisions of this Treaty, the widest measure of mutual legal assistance in criminal proceedings in respect of offences which at the time of the request for assistance falls within the jurisdiction of the judicial authorities of the Requesting Party.

2. Mutual legal assistance shall include:

- (a) locating and identifying of persons;
- (b) obtaining of testimonies or statements of accused persons, witnesses or experts;
- (c) making witnesses or experts available for assisting in criminal proceedings;
- (d) production, search and seizure of property, records, documents including electronic evidence;
- (e) inquiry, search, seizure and confiscation of proceeds of offences and instruments of crime;
- (f) conducting inspections or examinations;
- (g) service of documents;
- (h) notifying results of criminal proceedings and supplying criminal records, including the records and other information that are necessary for the proceedings of pardon;
- (i) exchanging information on law; and

(j) other assistance consistent with the objects of this Treaty which is not inconsistent with the law of the Requested Party.

3. The Requested Party may refuse to grant assistance in respect of a conduct which would not constitute an offence under its law.

4. Mutual legal assistance in fiscal offences shall not be refused on the ground that the law of the Requested Party does not impose the same kind of tax or duty or does not contain tax, duty, customs or exchange regulations of the same kind as the law of the Requesting Party.

5. This Treaty shall only apply to mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

Article 2

Grounds for Refusal

1. Without prejudice to Article 1 paragraph 3 assistance may be refused if:

(a) the request relates to a conduct which constitutes a political offence or a military offence only;

(b) the request relates to the investigation, prosecution or punishment of a person for an offence in respect of which a maximum penalty may be imposed or executed which may be in conflict with the constitution or the fundamental principles of the domestic law of the Requested Party;

(c) the request relates to an offence in respect of which a criminal proceeding is pending in the Requested Party, the offender has been finally acquitted or pardoned or has served the sentence imposed or the criminal proceedings against the offender have been finally discontinued;

(d) the Requested Party considers that execution of the request is likely to prejudice its sovereignty, security, public order or other essential interests;

(e) there are substantial grounds for believing that the request for assistance has been made for the purpose of investigating, prosecuting or punishing a person on account of the person's race, sex, religion, nationality, ethnicity or political opinions or that the person's position may be prejudiced for any of those reasons;

(f) the required assistance would not be available for the given offence under the domestic law of the Requested Party; or

(g) the Requested Party considers that the assistance requested lacks sufficient connection with the case.

2. For the purposes of sub-paragraph (d) of paragraph 1, the Requested Party may include in its consideration of essential interests whether the provision of assistance could prejudice a criminal proceeding in that Party, prejudice the safety of any person or impose an excessive burden on the resources of that Party.

Article 3

Making and Transmission of Requests

1. Each Party shall have a Central Authority. For the Republic of Austria the Central Authority shall be the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice. For the People's Republic of China the Central Authority shall be the Ministry of Justice.
2. Each Central Authority shall make and receive requests. Requests shall be made on behalf of authorities which by law are responsible for investigation, prosecution or judicial proceedings related to criminal matters. The Central Authorities shall communicate directly with each other.
3. Requests for assistance shall be made in writing and affixed with a signature or seal of the Central Authority and may be forwarded through any electronic or other means of telecommunication provided that the Requesting Party confirms the request in writing promptly thereafter by transmitting the original. In case of using electronic or other telecommunication means, the receiving authority shall establish the authenticity before further processing the request.

Article 4

Contents of Requests

1. A request for assistance shall include the following:

(a) the name of the authority conducting the investigation, prosecution or judicial proceedings to which the request relates;

(b) a description of the facts including an assessment of the damage caused or likely to be caused if any and the nature of the case to which the request relates as well as the applicable law;

(c) a description of the assistance sought, its purpose and its relevance to the case.

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

(a) information on the identity and location of a person of whom evidence is sought;

(b) information on the identity and location of a person to be served, that person's relationship to the criminal proceedings, and the manner in which service is to be made;

(c) information on the identity and whereabouts of a person or on the whereabouts of an item to be located;

(d) a precise description of the place or person to be searched and of the items to be seized;

(e) in case of requesting for search and seizure or other measures requiring authorisation by a competent authority according to the law of the Requested Party, a statement indicating the basis for belief that evidence or proceeds of crime may be found in the jurisdiction of the Requested Party, an authorisation of a competent

authority of the Requesting Party and a statement confirming the competence of that authority;

(f) a description of the object to be inspected or examined;

(g) a description of the testimony sought, which may include a list of questions to be asked and the information of any rights of that person to decline to give evidence under the law of the Requesting Party;

(h) a description of any particular procedure to be followed in executing the request;

(i) the requirements, if any, of special confidentiality and the reasons therefore;

(j) the time limit within which the request is desired to be executed, and

(k) any other information deemed to be necessary for the proper carrying out of the request.

3. The request as well as any supporting documents shall be accompanied by a translation into the language of the Requested Party.

4. 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, that Party may request that additional information be furnished within a delay specified by the Requested Party.

Article 5

Carrying out of Requests

1. The Requested Party shall apply its law in carrying out requests for assistance. As far as its law permits, the Requested Party shall carry out the request in the manner specified therein.
2. The Requested Party may postpone to provide assistance if execution of a request would interfere with an ongoing investigation, prosecution or judicial proceedings in the Requested Party.
3. The Requested Party shall promptly inform the Requesting Party of any and all circumstances which are likely to cause a significant delay in executing the request.
4. The Requested Party shall promptly inform the Requesting Party of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
5. If necessary, the Requested Party may make the granting of assistance dependent on conditions. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.
6. Any property, original records or documents furnished in execution of the request shall be returned by the Requesting Party to the Requested Party as soon as possible unless the Requested Party waives the return thereof.
7. 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 competent authorities of the Requested Party, to the person from whom evidence is to

be taken. For this purpose, the Requested Party shall promptly inform the Requesting Party of the time and place of the execution of the request.

Article 6

Certification

Documents or evidence transmitted pursuant to this Treaty shall not require any form of certification.

Article 7

Confidentiality and Speciality

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 Requesting Party shall keep confidential the information and evidence provided by the Requested Party, if so requested by the Requested Party, or shall use such information or evidence only under the terms and conditions specified by the Requested Party.

3. The Requesting Party shall not use any information or evidence obtained under this Treaty for any purpose other than for the case stated in the request without the prior consent of the Requested Party. Information received by way of mutual legal assistance in fiscal offences may be used in directly related tax, duty or customs proceedings.

4. The Parties shall take appropriate measures in order to protect any data exchanged under this Treaty against unauthorized access or alteration during the data transfer process.

Article 8

Protection of Personal Data

1. Information relating to an identified or identifiable person shall be transmitted only when it is related to a particular request. The transmitting Party shall ensure the accuracy of such personal data.

2. If it becomes evident that incorrect data or data whose transmission was not permissible under the domestic law and legislation of the transmitting Party has been transmitted, the transmitting Party shall notify without delay the Party that has received the data; the Party that has received the data shall without delay rectify any errors or delete the data. If the receiving Party has reason to believe that the supplied data are incorrect, it shall inform the transmitting Party forthwith.

3. The Parties shall take effective measures to protect the received personal data and the data recorded pursuant to paragraph 4 against accidental or unauthorized destruction, accidental loss, unauthorized access, unauthorized or accidental modification and unauthorized disclosure.

4. The Parties shall record purpose, subject and date of any communication of personal data as well as the transmitting and the receiving Authority.

5. Upon request, the Party which has received the data shall inform the transmitting Party of the use made of the data and the results achieved therefrom.

6. Transmitted data that are no longer used for the purposes permitted pursuant to this Treaty shall be deleted without delay or other measures permitted pursuant to domestic law shall be taken which serve the right of the affected person in the same way.

7. The legitimate rights of the person concerned by transmission of the data under this Treaty to access data concerning him/her, to seek correction or deletion in appropriate cases, and to effective remedy including compensation for the damage caused by illegal acts in relation to the transmission or use of the information shall be guaranteed by the respective Party.

8. The detailed rules for the procedure to assert these rights and exceptional limitations of the right of access as far as necessary for the protection of ongoing investigations shall be governed by the domestic law of the Parties.

Article 9

Taking Oral Evidence in the Requested Party

1. The Requested Party shall, upon request and in accordance with its domestic law, endeavour to obtain statements or testimonies of persons for the purpose of a criminal proceeding in the Requesting Party.

2. A person who is required to give evidence under this Treaty may decline to give evidence according to the law of either Party.

3. The Parties may reach an agreement to use video link conference to obtain oral evidence in particular situations, to the extent that it is possible and would not violate the law of either Party.

Article 10

Appearance of Witnesses or Experts

1. The Requesting Party may request the appearance of a witness or an expert to assist in criminal proceedings in that Party. The Requested Party shall invite this person to appear and shall inform the Requesting Party of the person's response.

2. The Requesting Party shall indicate the extent to which the person's expenses will be paid. A person who agrees to appear may ask that the Requesting Party advance money to cover the expenses. This advanced money may be provided through the embassy or a consulate of the Requesting Party.

Article 11

Safe Conduct

1. A person made available to give evidence in criminal proceedings in the Requesting Party shall not be detained, prosecuted or punished in the Requesting Party in respect of any act or omission which preceded that person's departure from the Requested Party. That person shall not be required to give evidence in any legal proceeding other than the proceeding to which the request relates unless with the prior consent of the Requested Party and that person.

2. Paragraph 1 of this Article shall cease to apply if that person has not left the Requesting Party within the period of thirty days after the person has either given evidence or has been officially notified that his or her appearance is no longer required. 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 declines to give evidence or assist in criminal proceedings in accordance with Article 10 of this Treaty shall not be subject to any penalty or restriction of personal liberty for such decline.

Article 12

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. The Requested Party shall, however, not be obliged to effect service of a document requiring the person to be served to appear as defendant.

2. The Requested Party shall after having effected service provide the Requesting Party with a proof of service that shall indicate the date, place and manner of service and be signed or sealed by the authority which has served the document.

Article 13

Proceeds of Crime and Instruments of Crime

The Requested Party shall, subject to its law, carry out requests for search and seizure of property, records or documents relating to an offence as well as requests for the

location, seizure or confiscation of the proceeds of crime and instruments of crime, which may be transferred in whole or in part to the Requesting Party upon specific agreement.

Article 14

Notification of Results of Criminal Proceedings

Upon request, the Requesting Party shall, through the channel established in Article 3 paragraph 2, inform the Requested Party of the results of the criminal proceedings to which the request of assistance related.

Article 15

Supply of Criminal Records

If a person is being investigated or prosecuted in the Requesting Party, the Requested Party shall provide upon request that person's criminal records to the Requesting Party.

Article 16

Expenses

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

(a) the expenses and fees of experts;

(b) the expenses of translation, interpretation;

(c) allowances or expenses for persons to travel to, stay in and leave from the territory of the Requesting Party under Article 10 in accordance with the law of the Requesting Party.

2. 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 17

Relation to other International Treaties

1. Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements. The Parties may also provide assistance pursuant to any bilateral arrangement or agreement which may be applicable.

2. This Treaty shall not affect obligations incurred under the terms of any other bilateral or multilateral international treaty which contains or may contain clauses governing specific aspects of mutual assistance in a given field.

3. This Treaty shall not affect obligations arising from membership in any international organisation.

Article 18

Settlement of Disputes

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

Article 19

Entry into Force and Termination

1. This Treaty shall be subject to ratification and enter into force on the first day of the third month following the month of the exchange of instruments of ratification.

2. This Treaty shall apply to requests whether or not the relevant offences occurred prior to the entry into force of this Treaty.

3. Either Party may terminate this Treaty by notice in writing at any time. It shall cease to be in force on the first day of the sixth month after receipt of notification.

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

DONE in duplicate at Beijing on the _____ in the German, Chinese and English language, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Austria

For the People's Republic of China