

TREATY

**BETWEEN THE PEOPLE'S REPUBLIC OF CHINA AND
MALTA ON MUTUAL JUDICIAL ASSISTANCE IN
CRIMINAL MATTERS**

2009

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The People's Republic of China and Malta, hereinafter referred to as the Parties,

DESIRING TO improve the effectiveness of co-operation between the Parties in the investigation, prosecution, trial and punishment of criminal offenders and other related criminal proceedings through mutual judicial assistance in criminal matters in accordance with the terms of this Treaty and on the basis of mutual respect for sovereignty and equality,

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 possible measure of mutual assistance in criminal proceedings.
2. Such assistance shall include:
 - (a) serving documents of criminal proceedings;
 - (b) taking testimonies or statements from persons;
 - (c) providing documents, records and articles of evidence;
 - (d) obtaining and providing expert evaluations;
 - (e) locating and identifying persons;
 - (f) conducting inspections or examining sites or objects;
 - (g) facilitating the availability of persons for giving evidence or assisting in investigations;
 - (h) transferring persons in custody for giving evidence or assisting in investigations;
 - (i) conducting inquiries, tracing of assets, searches, freezing and seizures;
 - (j) forfeiture of proceeds from criminal activities and instruments of crime;
 - (k) notifying results of criminal proceedings and supplying records of previous criminal convictions;
 - (l) exchanging information on law; and

- (m) any other forms of assistance which is not contrary to the laws of the Requested Party.
3. This Treaty does not apply to requests for:
- (a) arrest;
 - (b) extradition;
 - (c) execution of criminal judgements, verdicts or decisions rendered in the Requesting Party except to the extent permitted by the laws of the Requested Party and this Treaty;
 - (d) transfer of the sentenced person for serving sentence;
 - (e) transfer of criminal proceedings; and
 - (f) any action concerning offences which constitute exclusively military offences.
4. This Treaty shall only apply to mutual judicial assistance in criminal matters between both Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor expand or limit rights otherwise available under domestic law.

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 making requests and providing assistance.
2. For the People's Republic of China, the Central Authority shall be the Ministry of Justice; For Malta, the Central Authority shall be the Attorney General.
3. Requests and related communications under the Treaty shall be transmitted by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.
4. 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 Requested Party is of the opinion that the execution of the request would impair its sovereignty, security, *ordre publique*, or other essential interests;
 - (b) the Requested Party is in the process of taking criminal proceedings or has already rendered a final judgement against the same suspect or accused for the same facts constituting the offence for which assistance is requested;
 - (c) the request relates to an offence that is regarded by the Requested Party as an offence of a political character;
 - (d) the Requested Party is of the opinion that the request has been made for the purpose of investigation, prosecution, trial, punishment or other related criminal proceedings against a person on account of that person's race, sex, colour, religion, place of origin, nationality or political opinions or that that person's position may be prejudiced for any of those reasons;
 - (e) the request relates to conduct which would not constitute a criminal offence under the laws of the Requested Party; or
 - (f) the Requested Party considers that the assistance requested lacks substantial connection with the case.
2. The Requested Party may postpone to provide assistance if execution of a request would interfere with an ongoing investigation, prosecution, trial, punishment or other related criminal proceedings in the Requested Party.
 3. Before refusing a request or postponing its execution pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.
 4. If the Requested Party refuses or postpones to provide assistance, it shall inform the Requesting Party of the provisions of this Treaty upon which the postponement or refusal is based.

ARTICLE 4

Form and Contents 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 situations, the Requested Party may accept a request in other forms and the Requesting Party shall confirm the request in writing soon thereafter unless the Requested Party agrees otherwise.
2. A request for assistance shall include the following:
 - (a) the name of the authority conducting the proceedings to which the request relates;

- (b) a description of the subject matter and nature of the proceedings and the legal provisions applicable to the case to which the request relates ;
 - (c) a summary of the relevant facts giving rise to the request;
 - (d) a description of the assistance sought and its purpose and relevance; and
 - (e) any time limit within which it is desired that the request be executed.
3. To the extent necessary and possible, a request shall also include:
- (a) the identity, date of birth and residential address or location of any person from whom evidence is sought together with a description of the manner in which any testimony or statement is to be taken and recorded and a list of questions to be asked of a witness;
 - (b) the identity, date of birth and residential address or location of a person to be served, that person's relationship to the proceedings, and the manner in which preferably the service is to be made;
 - (c) available 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 any person to be searched and of the articles to be seized for the purpose of evidence;
 - (f) a description of the place to be searched and of the articles to be frozen or seized for the purpose of evidence;
 - (g) where applicable, a declaration of any need for confidentiality and the reasons therefor;
 - (h) a description of any particular procedure to be followed in executing the request and the reasons therefor;
 - (i) information as to the allowances and expenses to which a person invited to be present in the territory of the Requesting Party will be entitled;
 - (j) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.
4. If the Central Authority of the Requested Party considers the information contained in the request not sufficient to enable it to deal with the request it may request additional information from the Central Authority of the Requesting Party.

5. The request and supporting documents shall be accompanied by a translation into the language of the Requested Party or into the language of English.

ARTICLE 5

Execution of Requests

1. For the purpose of this treaty, the Requested Party shall, in accordance with its laws or practices, take whatever actions it deems necessary to give effect to requests received from the Requesting Party.
2. When execution of the request requires action by an authority other than the Central Authority, the request shall be transmitted to the appropriate authority by the Central Authority of the Requested Party.
3. The method of execution specified in the request may be followed to the extent that it is not incompatible with the laws and practices of the Requested Party.
4. If, in the opinion of the Requested Party, the execution of a request would endanger the personal safety and other legitimate rights and interests of any witness or law enforcement officer, or any person related to or associated with them, the Parties shall consult to determine the terms and conditions under which the request can be executed.
5. The Central Authority of the Requesting Party shall inform the Central Authority of the Requested Party promptly of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.
6. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request.

ARTICLE 6

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 11(4);
 - (b) allowances or expenses for persons to travel to, stay in and leave from the Requesting Party under Article 13 or 14;
 - (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 7

Confidentiality and Limitations on Use

1. The Requested Party shall keep confidential a request, including the fact that a request has been made or responded to, 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 the extent to which the request should be executed.
2. The Requesting Party shall not, without the prior consent of the Requested Party, use or disclose any information or evidence obtained under this treaty for any purposes other than for the proceedings stated in the request.

ARTICLE 8

Protection of Personal Data

1. The Requesting Party may only use the personal data transmitted by the Requested Party for the purpose of the proceedings stated in the request or for any other purpose under the conditions determined by the Requested Party.
2. The Requested Party shall endeavor to ensure the correctness of the transmitted information concerning personal data.

ARTICLE 9

Service of Documents

1. Upon request, the Requested Party shall, in accordance with its national laws and as far as possible, effect service of documents that are transmitted by the Requesting Party but shall not be obliged to effect service of a document which requires a person to appear as the accused.
2. Any request for the service of a document requiring a person to appear in the territory of the Requesting Party shall be transmitted by the Central Authority of the Requesting Party a reasonable time before the date on which the person is scheduled to appear.
3. The service of a document requiring a person to appear in the territory of the Requesting Party shall not impose on the person any obligation to comply with it notwithstanding anything to the contrary in the document so served.

4. The Requested Party shall provide the Requesting Party a proof of service in the manner specified in the request or, if it cannot do so, in the manner provided by its own national law and containing the reason if service cannot be effected.

ARTICLE 10

Location or Identification of Persons

1. The Requested Party shall make its best efforts to ascertain the location or identity of persons specified in the request.
2. The Central Authority of the Requested Party shall, as soon as possible, communicate the results of its inquiries to the Central Authority of the Requesting Party.

ARTICLE 11

Taking of Evidence

1. Upon request, the Requested Party shall, in accordance with, and to the extent allowed by its national laws, take evidence and transmit it to the Requesting Party.
2. When the request concerns the transmission of documents or records, the Requested Party may transmit certified copies or photocopies thereof. However, where the Requesting Party explicitly requires transmission of originals, the Requested Party shall meet such requirement to the extent possible.
3. Insofar as not contrary to the laws of the Requested Party, the documents and other materials to be transmitted to the Requesting Party in accordance with this Article shall be certified in such form as may be requested by the Requesting Party in order to make them admissible according to the laws of the Requesting Party.
4. Insofar as it is not contrary to its laws, 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 put questions, through the competent authority of the Requested Party, to the person from whom evidence is to be taken. For this purpose, the Central Authority of the Requested Party shall, as soon as practicable, inform the Central Authority of the Requesting Party of the time and place of the execution of the request.

ARTICLE 12

Decline to Give Evidence

1. A person who is required to give evidence under this Treaty may decline to give evidence if the laws of the Requested Party permit the person not to give evidence in similar circumstances in proceedings originating in the Requested Party.

2. If a person who is required to give evidence under this Treaty asserts a right or privilege of immunity from giving evidence under the laws of the Requesting Party, the Requested Party shall request the Requesting Party to provide a certificate on whether the person enjoys that right or privilege. The certificate provided by the Requesting Party shall be regarded as conclusive evidence of the right or privilege unless convincing evidence to the contrary is produced.

ARTICLE 13

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 investigations 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 to the Requested Party any request for the service of a document requiring the appearance of a person before an authority in the territory of the Requesting Party no less than sixty days before the scheduled appearance unless, in urgent cases, the Requested Party has agreed to a shorter period of time.

ARTICLE 14

Transfer of Persons in Custody for Giving Evidence or Assisting in Investigations

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 to give evidence or assist in investigations, 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 laws 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 Requesting Party as soon as he/she is finished giving evidence or assisting in investigations.
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 custody of the Requesting Party.

ARTICLE 15

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 declines to give evidence or assist in investigations in accordance with Articles 13 or 14 shall not be subject to any penalty or mandatory restriction of personal liberty for such decline.

ARTICLE 16

Supply of Criminal and Other Records

1. Upon request the Requested Party shall provide the Requesting Party with the past criminal records and information on the sentence against the person investigated or prosecuted on a criminal matter in the territory of the Requesting Party, if the person concerned has been subject to criminal prosecution in the Requested Party.
2. The Requested Party shall provide the Requesting Party with copies of publicly available records of government departments and agencies of the Requested Party.
3. The Requested Party may provide a copy of any record or information in the possession of a government department or agency but not publicly available. The Requested Party may refuse a request pursuant to this paragraph entirely or in part.

ARTICLE 17

Inquiries, Tracing, Search, Freezing and Seizure

1. The Requested Party shall, to the extent its national laws permit, execute a request for inquiries, tracing, search, freezing and seizure of evidential materials, articles and assets.
2. The Requested Party shall provide the Requesting Party with such information as requested concerning the results of executing the request.

3. The Requested Party may transmit the seized materials, articles or assets to the Requesting Party if the Requesting Party agrees to the terms and conditions for such transmission as proposed by the Requested Party, including such terms and conditions as may be deemed necessary to protect the rights of any third party in the item to be transmitted.

ARTICLE 18

Return of Documents and Articles

The Central Authority of the Requesting Party shall return any documents or articles furnished to it upon the execution of a request under this Treaty as soon as practicable unless the Central Authority of the Requested Party waives the return of the documents or articles.

ARTICLE 19

Forfeiture of Proceeds from Criminal Activities and Instruments of Crime

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds from criminal activities or instruments of crime are located within its territory and shall notify the Requesting Party of the result of the inquiries. In making the request, the Requesting Party shall state to the Requested Party the reason why it believes that the proceeds or instruments may be located in the latter's territory.
2. If the suspected proceeds or instruments of crime are found in accordance with paragraph 1 of this Article, the Requested Party shall, at the request of the Requesting Party, take measures to freeze, seize and forfeit such proceeds or instruments according to its national laws.
3. At the request of the Requesting Party, the Requested Party may, to the extent permitted by its national laws and under the terms and conditions agreed to by the Parties, transfer to the Requesting Party all or part of the proceeds or instruments of crime, or the proceeds from the sale of such assets.
4. In applying this Article, the legitimate rights and interests of the Requested Party and any third party to such proceeds or instruments shall be respected under the laws of the Requested Party.

ARTICLE 20

Notification of Results of Proceedings in Criminal Matters

1. A Party that has made a request to the other in accordance with this Treaty shall, at the request of the Requested Party, inform the latter of results of the criminal proceedings to which the request of assistance relates.
2. Either Party shall, upon request, inform the other Party of the results of criminal proceedings it has instituted against a national of the latter.

ARTICLE 21

Consultation and Exchange of Information on Law

1. The Parties or Central Authorities shall consult promptly, at the request of either, concerning the implementation of this Treaty either generally or in relation to a particular case.
2. The Parties shall, upon request, furnish each other with the relevant legal provisions and information on judicial practice in their respective countries related to the implementation of this Treaty.

ARTICLE 22

Authentication and Legalization

For the purpose of this Treaty, any documents transmitted in accordance with this Treaty shall not require any form of authentication or legalization unless this Treaty otherwise provides.

ARTICLE 23

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 laws. The Parties may also provide assistance in accordance with any other arrangement, agreement, or practice which may be applicable.

ARTICLE 24

Applicability

This Treaty applies to any requests presented after the date it enters into force even if the relevant acts or omissions occurred before that date.

ARTICLE 25

Settlement of Disputes

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

ARTICLE 26

Entry into Force and Amendment

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at _____. 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.

ARTICLE 27

Termination

1. Either Party may terminate this Treaty by means of a written notice to the other Party. Termination shall take effect six months following the date of notification.
2. Requests for assistance made before the date of the notice referred to in paragraph 1 of this Article shall continue to be dealt with in accordance with the provisions of this Treaty.

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

DONE in _____ on the day of _____ in duplicate each in the Chinese and English languages, both texts being equally authentic. In case of differences in the interpretation, the English text shall prevail.

For the People's Republic of China

For Malta