

TREATY
BETWEEN
THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF
CHINA
AND
THE GOVERNMENT OF MALAYSIA
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the People’s Republic of China and the Government of Malaysia (hereinafter referred to singularly as “the Party” and collectively 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, equality and mutual benefit,

HAVE AGREED as follows:

Article 1

Scope of Assistance

1. The Parties shall, in accordance with this Treaty and consistent with their respective laws, render to each other the widest measure of mutual legal assistance in investigations, prosecutions and other proceedings in criminal matters.

2. Such assistance in relation to criminal matters shall include:

- (a) taking of evidence including:
 - (i) taking of testimonies or statements from persons;
 - (ii) providing relevant documents, records including bank, financial, corporate or business records, and articles of evidence and other evidentiary materials; and
 - (iii) obtaining and providing expert evaluations;
- (b) locating and identifying persons;
- (c) making necessary arrangements for persons to give evidence or to assist in criminal investigations, including the transfer of persons in custody;
- (d) executing requests for search and seizure;
- (e) conducting inspections or examinations of objects, sites, persons or human remains;
- (f) identifying, locating, restraining, freezing, seizure and forfeiture of proceeds and instrumentalities of crime;
- (g) effecting service of documents; and

- (h) any other forms of assistance which are not contrary to the laws of the Requested Party.

3. This Treaty applies solely to the provision of mutual legal assistance between both Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress or exclude any evidence, or to impede the execution of any request for assistance.

Article 2 Non-Application

1. This Treaty does not apply to –

- (a) the extradition of persons, including the arrest or detention with a view to extradition;
- (b) the enforcement in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by this Treaty and the laws of the Requested Party;
- (c) the transfer of sentenced persons to serve their sentence; or
- (d) the transfer of proceedings in criminal matters.

2. This Treaty does not authorize any Party to undertake, in the territory of the other, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of that other Party by its laws.

Article 3 Central Authorities

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty through the

diplomatic channel. For the purpose of this Treaty, the Central Authorities shall communicate directly with each other for the execution of requests.

2. For the People's Republic of China, the Central Authority shall be the Ministry of Justice.

3. For Malaysia, the Central Authority shall be the Attorney General or a person designated by the Attorney General.

4. Each Party shall expeditiously notify the other of any change in the designation of its Central Authority through the diplomatic channel.

Article 4 **Limitations on Assistance**

1. The refusal of a request for assistance under this Treaty shall be done in conformity with the respective laws of the Parties and the grounds of refusal shall include the following:

- (a) the request relates to conduct which would not constitute an offence under the laws of the Requested Party;
- (b) the Requested Party considers that the request relates to a political offence except that terrorism offences and offences which are not regarded as political offences under international conventions to which both States are Parties shall not be held to be political offences;
- (c) the request relates to an offence which only constitutes a military offence;
- (d) there are substantial grounds for the Requested Party to believe that the request was made for the purpose of investigating, prosecuting or conducting other proceedings in criminal matters against a person on account of the person's race, sex, religion, ethnic origin, nationality or political opinions;

- (e) the request relates to the prosecution of a person for an offence in respect of which the offender has been finally convicted, acquitted or pardoned or has served or is serving the sentence imposed by the Requested Party; and
- (f) the provision of the assistance would prejudice the sovereignty, security, public order or other essential public interests of the Requested Party.

2. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing investigation, prosecution or other proceedings in criminal matters 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 assistance, the Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the grounds of refusal or postponement.

5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

Article 5

Form of Requests

A request for assistance shall be made in writing and affixed with the signature or seal of the Central Authority of the Requesting Party. In urgent situations, the Requesting Party may make a request in other forms which are acceptable to the Requested Party such as facsimile or electronic mail, and

the Requesting Party shall confirm the request in writing promptly thereafter.

Article 6

Contents of Requests

1. A request for assistance shall include the following:

- (a) the name of the competent authority conducting the investigation, prosecution or other proceedings in criminal matters to which the request relates;
- (b) the purpose of the request and the nature of the assistance sought;
- (c) a description of the nature of the case to which the request relates, a summary of its facts and the text of the provisions of the applicable law;
- (d) a description of the evidence, information or other assistance sought;
- (e) specification of any time limit within which compliance with the request is desired; and
- (f) such other information as is necessary for the proper execution of the request.

2. A request for assistance may also, to the extent necessary, contain the following information:

- (a) the identity and location of any person from whom evidence is sought;
- (b) the identity and location of a person to be served, and that person's relationship to the criminal proceedings;
- (c) the identity and whereabouts of the person to be located or whose identity is to be verified;

- (d) a description of the object, site, person or human remains to be inspected or examined;
- (e) a description of the object to be searched and seized and information justifying such action;
- (f) a description of the proceeds and instrumentalities of crime to be identified, located, restrained, frozen, seized and forfeited;
- (g) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed;
- (h) any special requirements for confidentiality and the reasons for it;
- (i) a list of questions to be asked of a witness; and
- (j) any court order relating to the assistance requested and a statement relating to the finality of that order.

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

4. Requests and supporting documents shall be submitted in duplicate.

Article 7 Language

1. Requests and supporting documents from Malaysia to the People's Republic of China shall be in English and accompanied by a translation in Chinese.

2. Requests and supporting documents from the People's Republic of China to Malaysia shall be in Chinese and accompanied by a translation in English.

Article 8

Execution of Requests

1. The Requested Party shall execute a request for assistance in accordance with its laws.

2. Insofar as it is not contrary to its laws, the Requested Party may execute the request for assistance in the manner requested by the Requesting Party.

3. In providing assistance, the Requested Party shall represent the interests of the Requesting Party in the Requested Party in any proceedings arising out of a request for assistance. If requested, the Central Authority of the Requested Party may make other arrangements for the representation of the Requesting Party in such proceedings.

4. The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request. If the assistance cannot be provided, the Requested Party shall promptly inform the Requesting Party of the reasons.

Article 9

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 Requesting Party shall keep confidential the information and evidence provided by the Requested Party except to the extent that the evidence and information is needed for the investigation, prosecution and other proceedings in criminal matters described in the request.

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.

4. Notwithstanding paragraph 3 of this Article, in cases where the charge is altered, the information or evidence provided may be used insofar as the offence, as charged, is constituted by the same conduct to which the request relates.

Article 10

Taking of Evidence

1. The Requested Party shall, upon request and in accordance with its 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 use its best endeavors to meet such requirement.

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 Treaty 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 not contrary to the laws 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 the personnel of the 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 11

Refusal to Give Evidence

1. A person who is required to give evidence under this Treaty may refuse to give evidence if the laws of the Requested Party permit or require that person to refuse to do so in similar circumstances in proceedings originating in the Requested Party.

2. If a person who is required to give evidence under this Treaty claims a right or privilege of immunity from giving evidence under the laws of the Requesting Party, the Requested Party shall inform the Requesting Party of that person's opinion and require the Requesting Party to provide evidence of whether such a right or privilege exists. The evidence provided by the Requesting Party shall be deemed as sufficient proof of whether such a right or privilege exists unless explicit evidence to the contrary is available.

3. This Article shall not prevent a person from waiving his right or privilege of immunity from giving evidence, and providing evidence voluntarily.

Article 12

Location or Identification of Persons

The Requested Party shall, upon request, use its best endeavors to ascertain the location or identity of a person specified in the request and who is reasonably believed to be within its territory.

Article 13

Attendance of Person in the Requesting Party

1. The Requested Party may, upon request, assist in arranging the attendance of a person in the Requested Party, subject to his consent, in the Requesting Party-

- (a) to assist in the investigations in relation to a criminal matter in the Requesting Party; or
- (b) to appear in proceedings in relation to a criminal matter in the Requesting Party unless that person is the person accused.

2. The Requested Party shall invite the person to appear as a witness or expert in criminal proceedings in the Requesting Party or to assist in the investigations. Where appropriate, the Requested Party shall satisfy itself that satisfactory arrangements have been made for the person's security. The Requested Party shall promptly inform the Requesting Party of the person's response.

3. Where a person is asked to attend in the Requesting Party, the request shall contain information on the following matters:

- (a) the fees, allowances and expenses, if any, to which he will be entitled;
- (b) the arrangements for his security while he is traveling to and from the Requesting Party and while he is in the Requesting Party, if any; and
- (c) the arrangements for his accommodation while he is in the Requesting Party.

Article 14

Attendance of Person in Custody in the Requesting Party

1. The Requested Party may, upon request, allow a person in custody in the Requested Party, subject to his consent, to be temporarily transferred to the Requesting Party to give evidence or to assist in the investigations, provided that the Parties have previously agreed on the conditions of the transfer.

2. The Requesting Party shall hold the person transferred in custody and shall return that person in custody to the Requested Party at the conclusion of the matter in relation to which the transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released from custody and be treated as a person referred to in Article 13 of this Treaty.

Article 15

Protection of Persons Giving Evidence or Assisting Investigations

1. Subject to paragraph 2 of this Article, where a person is present in the Requesting Party pursuant to a request made under Article 13 or 14 of this Treaty -

- (a) that person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party in respect of any conduct or conviction for any offence against the laws of the Requesting Party that is alleged to have been committed, or that was committed, before the person's departure from the Requested Party; or

(b) that person shall not, without the consent of the Requested Party and of that person, be required to give evidence in any criminal proceedings or assistance in any investigation in the Requesting Party other than the criminal proceedings or investigation to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if the person referred to in paragraph 1 has stayed on in the territory of the Requesting Party for fifteen days after that person has been officially notified that his 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 control.

3. A person who is present in the Requesting Party pursuant to a request made under Article 13 or 14 of this Treaty shall be subject to the laws of that Party relating to contempt, perjury and the making of false declarations but shall not otherwise be subject to prosecution based on such evidence.

4. The competent authority which seeks the appearance of a witness from the Requested Party for the purpose of giving evidence shall ensure that the witness is properly instructed regarding his responsibilities and obligations to the court.

5. A person who refuses to attend, or to give evidence or assist in investigations, in the Requesting Party pursuant to a request made under Article 13 or 14 of this Treaty shall not be subjected to any penalty or mandatory restriction of personal liberty for such refusal.

Article 16

Taking of Evidence by Video Conference

1. One Party may request that the other Party allow a person within the territory of the Requested Party to give evidence in

investigations, prosecutions and other proceedings in criminal matters in the Requesting Party by video conference.

2. The Requested Party may accept a request under paragraph 1 of this Article to the extent that it is possible and would not violate the laws of the Requested Party.

3. The Parties may reach agreement on the conditions and procedures applicable to taking evidence by video conference.

Article 17

Search and Seizure

1. The Requested Party shall, upon request, execute a request for the search and seizure and delivery of any documents, records or items to the Requesting Party if there are reasonable grounds for believing that the documents, records or items are relevant to a criminal matter for evidentiary purposes and provided that the rights of *bona fide* third parties are protected.

2. The Requested Party shall provide the Requesting Party with the results of the execution of the request, including results of the search, place and circumstances of seizure, and the subsequent custody of such documents, records or items.

3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized documents, records or items which may be delivered to the Requesting Party that are considered necessary by the Requested Party to protect the documents, records or items to be transferred.

Article 18

Return of Evidence

The Requesting Party shall, upon request, return to the Requested Party originals of documents, records or items

provided to the Requesting Party pursuant to a request under this Treaty.

Article 19

Service of Documents

1. The Requested Party shall, upon request and in accordance with its laws, effect service of documents that are transmitted by the Requesting Party. However, the Requested Party shall not be obliged to effect service of a document which requires the person to be served to appear as the defendant.

2. The Requesting Party shall transmit any request for the service of a document pertaining to the response or appearance in the Requesting Party not later than sixty days before the scheduled response or appearance. The Requested Party may consent to a shorter period of time in case of emergency.

3. The Requested Party shall, after effecting service, provide the Requesting Party a proof of service that shall indicate the date, place and manner of service, and which is signed or sealed by the authority which served the document.

Article 20

Proceeds and Instrumentalities of Crime

1. The Requested Party shall, upon request and to the extent permitted by its laws, endeavor to locate, trace, restrain, freeze, seize and forfeit proceeds and instrumentalities of crime.

2. The Requested Party shall assist the Requesting Party, to the extent permitted by its laws, in proceedings relating to the forfeiture of proceeds and instrumentalities of crime. This may include action to freeze or seize the proceeds or instrumentalities of crime pending further proceedings.

3. Where the Requesting Party seeks assistance in the enforcement of an order which restrains, freezes, seizes and forfeits the property or assets, the request shall be accompanied by the original order or a certified copy of it.

4. The Requested Party in control of property or assets dealt with in accordance with this Article shall dispose of them according to its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of such property or assets, or the proceeds of its sale, to the Requesting Party upon mutually acceptable terms.

5. In the application of this Article, the rights of *bona fide* third parties shall be respected.

Article 21 Certification and Authentication

For the purpose of this Treaty, any documents transmitted in accordance with this Treaty shall not require any form of certification or authentication except as specified in this Treaty or the request.

Article 22 Expenses

1. The Requested Party shall assume all ordinary expenses of fulfilling the request for assistance except that, the Requesting Party shall bear –
 - (a) expenses for persons to travel to, stay in and leave from the Requested Party under Article 10(4) of this Treaty;
 - (b) fees, allowances or expenses for persons to travel to, stay in and leave from the Requesting Party under Article 13 or 14 of this Treaty and the expenses associated with conveying custodial or escorting officers;

- (c) expenses of expert evaluations;
- (d) expenses for translation, interpretation and transcription;
and
- (e) expenses associated with the taking of evidence via video conference.

2. If during the execution of the request it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the execution of the request is to be effected or continued.

Article 23 Consultation

1. The Central Authorities shall consult, at times mutually agreed upon by them, to promote the most effective use of this Treaty.

2. The Central Authorities may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 24 Other Arrangements

Nothing in this Treaty shall prevent the Parties from providing assistance to each other pursuant to other treaties, arrangements or the provisions of their laws.

Article 25

Settlement of Disputes

Any dispute between the Parties arising from the interpretation or implementation of the provisions of this Treaty shall be settled amicably through consultation or negotiation between the Parties through the diplomatic channel without reference to any third party or international tribunal.

Article 26

Entry into Force, Amendment and Termination

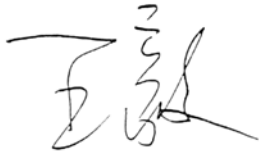
1. Each Party shall inform the other by diplomatic note when all necessary steps have been taken under its laws for entry into force of this Treaty. This Treaty shall enter into force upon the thirtieth day from the date on which the later diplomatic note is received.
2. This Treaty may be amended at any time by written agreement between the Parties. Any amendment will enter into force in accordance with the same procedure prescribed in paragraph 1 of this Article and will form part of this Treaty.
3. Any amendment will be without prejudice to the rights and obligations arising from or based on this Treaty before or up to the date such amendment enters into force.
4. Either Party may terminate this Treaty at any time by written notification to the other Party through the diplomatic channel. Termination shall take effect on the one hundred and eightieth day after the date on which the notification is given.
5. This Treaty applies to any requests presented after its entry into force even if the relevant conduct occurred before this Treaty enters into force.

6. Termination of this Treaty shall be without prejudice to the rights and obligations arising from or based on this Treaty and to the completion of any requests made pursuant to this Treaty before or up to the date of termination.

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

DONE in duplicate at Putrajaya on this 23 day of November (month) 2015 (year), in the Chinese, Malay and English languages, all texts being equally authentic. In case there is any divergence in interpretation of this Treaty, the English text shall prevail.

FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA



FOR THE GOVERNMENT OF
MALAYSIA

