

**TREATY BETWEEN THE PEOPLE'S REPUBLIC OF CHINA  
AND THE FEDERATIVE REPUBLIC OF BRAZIL  
ON JUDICIAL ASSISTANCE IN CIVIL AND COMMERCIAL  
MATTERS**

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

Desirous to strengthen the judicial cooperation between the two  
countries on the basis of mutual respect for sovereignty and equality and  
mutual benefit,

Have resolved to conclude this Treaty and have agreed as follows:

**Chapter I  
General Provisions**

**Article 1  
Scope of Application**

1. The Parties mutually agree to provide wide judicial assistance and  
cooperation in civil and commercial matters.
2. For the purpose of this Treaty, civil matters include labour law  
matters.

**Article 2  
Scope of Judicial Assistance**

Judicial assistance under this Treaty shall include:

- (a) the service of judicial or extrajudicial documents;
- (b) the taking of evidence;

(c) the recognition and enforcement of court decisions and arbitral awards;

(d) the exchange of information on law;

(e) any other sort of judicial assistance, provided it is not incompatible with the national law of the Requested Party.

### **Article 3**

#### **Judicial Protection**

1. Nationals of one Party shall, in the territory of the other Party, enjoy the same judicial protection as nationals of the other Party and shall have the right to access to courts of the other Party under the same conditions as those for the nationals of the other Party.

2. Courts of one Party shall not require nationals of the other Party to provide any security for costs of the proceedings only because that they are foreigners or they have no domicile or residence in its territory.

3. Provisions of paragraph 1 and 2 of this Article shall also apply to legal persons located and incorporated in the territory of either Party in accordance with its national law.

### **Article 4**

#### **Reduction and Exemption from Costs of Proceedings and Legal Aid**

1. Nationals of one Party shall, in the territory of the other Party, be entitled to reduction or exemption from payment of costs of proceedings and be entitled to legal aid under the same conditions and to the same extent as those for nationals of the other Party.

2. An application for reduction or exemption of costs of proceedings or for legal aid as provided for in paragraph 1 shall be accompanied by a certificate on the financial situation of the applicant that is issued by the competent authority of the Party in whose territory the applicant has his/her

domicile or residence. If the applicant has no domicile or residence in the territory of either of the Parties, such certificate may be issued or verified by the diplomatic or consular agents of the Party of which that person is a national.

3. Judicial authorities or other competent authorities responsible for the decision on the application for reduction or exemption of costs of proceedings or for legal aid may require additional information.

## **Article 5**

### **Central Authorities**

1. The Central Authorities respectively designated by the Parties shall co-operate with each other and promote cooperation amongst the competent authorities in their respective States in order to achieve the objectives of this Treaty.

2. Unless otherwise provided for in this Treaty, the Parties shall communicate directly through their Central Authorities to make or to grant requests for judicial assistance.

3. The Central Authorities referred to in paragraphs 1 and 2 of this Article shall be the Ministry of Justice for the People's Republic of China, and the Ministry of Justice for the Federative Republic of Brazil.

4. Where one Party changes its designation of Central Authority, that Party shall so inform the other Party through diplomatic channels.

## **Article 6**

### **Laws Applicable to Judicial Assistance**

The Parties shall apply their respective national laws in executing requests for judicial assistance, unless otherwise provided for in this Treaty.

## **Article 7**

### **Refusal of Judicial Assistance**

1. If the Requested Party considers that provision of judicial assistance would prejudice its sovereignty, security or essential public interests, or is contrary to the fundamental principles of its national law, it may refuse to provide judicial assistance and shall inform the Requesting Party of the reasons of the refusal.

2. The request for assistance in service of judicial or extrajudicial documents or taking of evidence shall not be refused by the Requested Party solely on the ground that its courts have exclusive jurisdiction over the subject matter of the action or that its national law would not permit the action upon which the request is based.

## **Article 8**

### **Form and Content of Request for Judicial Assistance**

1. Request for judicial assistance shall be made in writing and affixed with the signature or seal of the requesting authority and shall contain the following:

- (a) the name and address of the requesting authority;
- (b) the name of the requested authority, if possible;
- (c) the name, nationality and address of the person concerned in the request; in case of legal person, its name and address;
- (d) the name and address of the representative of the party concerned, if necessary;
- (e) the description of the nature of the action to which the request relates and summary of the case and, where appropriate, the copy of the complaint or pleading that initiated the action;
- (f) the description of the assistance sought;
- (g) the list of questions to be posed in the Requested Party, when the assistance sought aims to question a person;
- (h) other information which may be necessary for the execution of the

request.

2. The request for judicial assistance, its supporting documents and the corresponding translations shall be presented in duplicate.

3. If the Requested Party considers that the information provided by the Requesting Party is not sufficient to enable the request to be dealt with in accordance with this Treaty, it may require additional information from the Requesting Party.

## **Article 9**

### **Language**

1. Requests for judicial assistance and their supporting documents shall be written in the language of the Requesting Party and be accompanied by a translation in the language of the Requested Party.

2. The Central Authority of either Party may use its official language to be accompanied with a translation into the English language in their written communication.

## **Article 10**

### **Expenses**

1. The Requested Party shall bear the costs arising from the execution of requests for judicial assistance in its territory.

2. The Requesting Party shall bear the costs arising from the execution of requests for service in accordance with paragraph 2 of Article 12 of this Treaty.

3. Regarding the costs arising from the execution of requests for taking of evidence, the Requesting Party shall bear :

(a) costs arising from the execution of requests by a particular method provided for in paragraph 2 of Article 15 of this Treaty;

(b) expenses for persons to travel to, stay in and leave the territory of

the Requested Party under paragraph 5 of Article 15 of this Treaty;

(c) expenses or allowances for persons to travel to, stay in and leave the territory of the Requesting Party under Article 18 of this Treaty.

(d) expenses and fees of experts; and

(e) expenses and fees for translation and interpretation.

4. If it becomes apparent that execution of a request requires expenses of an extraordinary nature, the Parties shall consult to determine the conditions under which the request can be executed.

## **Chapter II**

### **Service of Judicial and Extrajudicial Documents**

#### **Article 11**

##### **Scope of Application**

One Party shall, in accordance with provisions of this Treaty, execute requests made by the other Party for service of judicial and extrajudicial documents on persons in its territory .

#### **Article 12**

##### **Execution of Request for Service**

1. The Requested Party shall execute a request for service by a method prescribed by its national law.

2. The Requested Party shall, to the extent not contrary to its national law, effect service by a particular method expressly required by the Requesting Party.

3. If the requested authority is not competent to execute the request, it shall transmit the request to the competent authority for execution.

4. If it is difficult for the Requested Party to effect service according to the address indicated by the Requesting Party, the Requested Party shall take

necessary measures to ascertain the address and may, if necessary, require additional information from the Requesting Party. If the Requested Party still cannot ascertain the address or execute the request due to other reasons, it shall return the request and supporting documents to the Requesting Party and indicate the reasons which prevent the service.

### **Article 13**

#### **Notification of Results of Service**

The Requested Party shall, through the channel of communication provided for in Article 5 of this Treaty, notify the Requesting Party in writing of results of service which shall be accompanied by a certificate of service produced by the authority executing the service. The certificate shall indicate the name and identity of the person addressed, the date, place and method of the service. Where the person addressed refuse to accept, the reason of refusal shall be indicated.

### **Chapter III**

#### **Taking of Evidence**

### **Article 14**

#### **Scope of Application**

1. One Party shall, in accordance with provisions of this Treaty, execute requests made by the other Party for taking of evidence, including obtaining statements of the parties to the case and testimonies of witnesses, taking material and documentary evidence, conducting expert evaluation or judicial inspection, or performing other judicial acts relating to taking evidence.

2. This Treaty shall not apply to:

(a) taking of evidence which is not intended for use in judicial proceedings commenced or contemplated; or

(b) obtaining documents which are not specified in the request, or do not have direct and close connection with the case.

## **Article 15**

### **Execution of Request for Taking of Evidence**

1. The Requested Party shall execute a request for taking of evidence in accordance with its national law.

2. The Requested Party shall, to the extent not contrary to its national law, execute a request for taking of evidence by a particular method expressly required by the Requesting Party.

3. If the requested authority is not competent to execute the request, it shall transmit the request to the competent authority for execution.

4. If it is difficult for the Requested Party to take evidence according to the address indicated by the Requesting Party, the Requested Party shall take necessary measures to ascertain the address and may, if necessary, require additional information from the Requesting Party. If the Requested Party still cannot ascertain the address or execute the request due to other reasons, it shall return the request and supporting documents to the Requesting Party and indicate the reasons which prevent the execution of the request.

5. If the Requesting Party so request explicitly, the Requested Party shall inform the Requesting Party of the time when and the place where, the request will be executed, in order that the parties concerned or their representatives may be present. The above-mentioned parties or their representatives shall comply with the laws of the Requested Party when they are present.

## **Article 16**

### **Decline to Give Evidence**

1. Where a person who is required to give evidence under this Treaty



claims that there is a right or privilege to decline to give evidence under the laws of the Requesting Party, the Requested Party shall require the Requesting Party to provide a certificate on the existence of that right or privilege. The certificate provided by the Requesting Party shall be regarded as conclusive evidence on the existence of that right or privilege unless there is a manifestly contrary evidence.

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

## **Article 17**

### **Notification of Results of Execution**

The Requested Party shall, through the channels of communication provided for in Article 5 of this Treaty, notify the Requesting Party in writing of the results of the execution of the request for taking evidence, and shall transfer evidential materials obtained.

## **Article 18**

### **Availability of Persons to Give Evidence**

1. The Requested Party shall, at the request of the Requesting Party, invite a person to appear in the territory of the Requesting Party to give evidence. The Requesting Party shall inform the person of the extent and standard of any allowances and expenses payable to him/her. The Requested Party shall promptly inform the Requesting Party of the person's response.

2. A request for the service of a document which invites a person to appear in the territory of the Requesting Party to give evidence shall be transmitted to the Requested Party no less than one hundred and twenty (120) days before the scheduled appearance unless, in urgent cases, the Requested

Party agrees to a shorter period of time. The above-mentioned term will be considered by the time the Central Authority of the Requested Party receives the request.

## **Article 19**

### **Protection of Witnesses and Experts**

1. The witness or expert present in the territory of the Requesting Party shall not be prosecuted, detained, punished or subject to any other restriction of personal liberty by that Party for any acts or omissions which preceded that person's entry into its territory, nor shall the person be obliged to give evidence in any proceeding other than that the request relates to, except with the prior consent of both 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 a period of fifteen days after that person has been officially notified that his/her presence is no longer required or, after having left, has voluntarily returned. 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 an invitation to give evidence as provided for in Article 18 shall not, by reason of so declining, be subject to any sanctions or subject to any compulsory measures of restriction of personal liberty.

## **Chapter IV**

### **Recognition and Enforcement of Court decisions and Arbitral Awards**

## **Article 20**

### **Scope of Court decisions**

1. The following decisions rendered by a court of one Party after the entry into force of this Treaty shall, under the terms and conditions provided

for in this Treaty, be recognised and enforced in the territory of the other Party:

(a) decisions given by courts in proceedings concerning civil and commercial matters; or

(b) decisions given by courts in criminal proceedings with regard to civil matters concerning the payment of damages and return of property for victims.

2. “Court decisions” referred to in paragraph 1 of this Article shall include conciliation documents produced by courts concerning civil and commercial matters.

## **Article 21**

### **Submission of Application**

Application for recognition and enforcement of court decision may be submitted directly by the party to the case to the competent court of the Requested Party, or to the court which rendered the decision and transmitted by that court to the competent court of the Requested Party through the channels of communication provided for in Article 5 of this Treaty.

## **Article 22**

### **Documents to be Produced**

1. An application for recognition and enforcement of a court decision shall be accompanied by:

(a) a certified copy of the decision;

(b) a document to establish that the decision is final and, where the enforcement is applied, to establish that the decision is enforceable, unless the decision itself has already so indicated explicitly;

(c) a document to establish that the decision has been duly served on the defeated party and that the party who lacks the legal capacity in litigation has been duly represented; and

(d) in case of default decision, a document to establish that the defaulting party has been duly summoned.

2. The application, decision and documents mentioned above shall be accompanied by a certified translation in the language of the Requested Party and their corresponding copies.

### **Article 23**

#### **Refusal of Recognition or Enforcement**

Recognition or enforcement of court decisions mentioned in paragraph 1, Article 20 of this Treaty may be refused in accordance with the provisions of Article 7 of this Treaty, or if:

(a) the decision is not final or is not enforceable in accordance with the laws of the Party in which the decision is rendered;

(b) the court rendering the decision has no jurisdiction in accordance with the laws of the Requested Party;

(c) the defeated party has not been duly summoned or the party who lacks the legal capacity in litigation has not been duly represented;

(d) proceedings between the same parties and having the same subject matters are pending before a court of the Requested Party, and those proceedings were the first to be instituted; or

(e) the decision is inconsistent with a decision rendered by the court of the Requested Party, or rendered by the court of a third State and recognised by the court of the Requested Party.

### **Article 24**

#### **Procedure for Recognition and Enforcement**

1. The procedure provided for in the laws of the Requested Party shall be applied to the recognition and enforcement of court decisions.

2. The court of the Requested Party shall confine itself to examination

of whether the court decisions meet the terms and conditions provided for in this Treaty and shall not review their merits.

3. If the court decision contains elements which are severable and cannot be recognised or enforced as a whole, the court of the Requested Party may decide only to grant recognition or enforcement on part of them.

#### **Article 25**

##### **Effect of Recognition and Enforcement**

The court decisions which have been granted recognition or enforcement shall have the same effect as those rendered by the courts of the Requested Party in the territory of that Party.

#### **Article 26**

##### **Recognition and Enforcement of Arbitral Awards**

Each Party shall recognise and enforce the arbitral awards rendered in the territory of the other Party in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards concluded in New York on 10 June, 1958.

#### **Chapter V**

##### **Other Provisions**

#### **Article 27**

##### **Exchange of Information on Law**

The Parties shall, upon request, exchange information concerning the laws in force and the judicial practice in their respective countries related to the implementation of this Treaty.

**Article 28**  
**Exemption of Legalisation**

For the purpose of this Treaty, any documents produced or verified by the courts or other competent authorities of the Parties and transmitted through the channels of communication provided for in Article 5 of this Treaty shall be exempted from any form of legalisation.

**Article 29**  
**Settlement of Disputes**

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

**Chapter VI**  
**Final Clauses**

**Article 30**  
**Entry into Force, Amendment and Termination**

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Brasilia. 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. Each Party will notify the other Party through diplomatic channels after the procedure for bringing this written agreement into force has been completed in accordance with its laws. The amendments shall enter into force thirty days from the date of the later notification.

3. Either Party may terminate this Treaty by written notice to the other Party through diplomatic channels at any time. Termination shall take effect on

the one hundred and eightieth day after the date on which the notice is given.

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

DONE in duplicate at Beijing on this 19th day of May 2009, in the Chinese, Portuguese and English languages, all texts being equally authentic. In case of any divergence concerning the interpretation of the present Treaty, the English text shall prevail.

For the People's  
Republic of China



For the Federative  
Republic of Brazil

