

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

The People's Republic of China and the Bolivarian Republic of Venezuela, hereinafter referred to 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 and equality and mutual benefit,

Have agreed as follows:

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Article 1

Scope of Application

1. The Parties shall provide mutual legal assistance in criminal matters in accordance with the provisions of this Treaty and their respective internal laws.

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 judicial inspections or examining sites or objects;
- (g) making persons available for giving evidence or assisting in investigations;
- (h) transferring persons in custody for giving evidence or assisting in

investigations;

(i) conducting inquiries, searches, freezing of assets and seizures of evidential materials and articles;

(j) forfeiting proceeds from criminal activities and instruments of crime;

(k) notifying results of criminal proceedings and supplying criminal records;

(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:

(a) the request of the extradition of any person;

(b) the transfer of the sentenced person for serving sentence; and

(c) the transfer of criminal proceedings.

4. This Treaty shall only apply to mutual legal assistance between both Parties. The provision of this Treaty shall deny any private person any right to obtain or exclude any evidence, or to impede the execution of a request.

## 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 mutual request and assistance. This requirement shall be without prejudice to the right of the Parties to communicate through diplomatic channels.

2. The Central Authorities referred to in paragraph 1 of this Article shall be the Ministry of Justice and the Supreme People's Procuratorate for the People's Republic of China, and the Office of the Attorney General for the Bolivarian Republic of Venezuela.

3. 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 request relates to conduct which would not constitute an offense under the laws of the Requested Party. However, the Requested Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offense under the internal law of the Requested Party;

(b) the request is considered by the Requested Party as relating to a political offense;

(c) the request relates to an offense which is a purely military offense;

(d) there are substantial grounds for the Requested Party to believe that the request has been made for the purpose of investigating, prosecuting, punishing or conducting other judicial proceedings against a person on account of that person's race, sex, religion, nationality or political opinions, or that that person's position may be prejudiced for any of those reasons;

(e) the person under investigation or being accused is or has been ~~subject to a criminal proceeding or a final judgment has been rendered~~ against him/ her by the Requested Party for the same offense as related to in the request;

(f) the Requested Party considers that the assistance requested lacks direct connection with the case; or

(g) the Requested Party considers that the execution of the request may impair its sovereignty, security, public order or other essential interests, or be contrary to the fundamental principles of its internal laws.

2. The Requested Party may postpone to provide assistance if execution of a request would interfere with an ongoing investigation, prosecution or other proceedings 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 to provide assistance, it

shall inform the Requesting Party of the reasons for the refusal or postponement.

#### Article 4

##### Form and Content of Requests

1. A request shall be made in writing and affixed with the signature or seal of the requesting authority. In urgent situations, the Requested Party may accept a request by other means and the Requesting Party shall confirm the request in writing promptly thereafter unless the Requested Party agrees otherwise.

2. A request for assistance shall include the following:

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

(b) a description of the nature of the relevant case, a summary of the relevant facts and the provisions of laws applicable to the case to which the request relates;

(c) a description of the assistance sought and that of the purpose and relevance for which the assistance is sought; and

(d) the time limit within which the request is desired to be executed.

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

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

(b) the list of questions to be asked in the questioning for purposes of taking testimony;

(c) information on the identity and precise location of a person to be served and that person's relationship to the proceedings;

(d) information on the identity and whereabouts of the person to be located or identified;

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

(f) a description of any particular procedure desirous to be followed in executing the request and reasons thereof;

(g) a description of the place to be searched and of the property to be inquired, frozen and seized;

(h) a description of the need for confidentiality and the reasons thereof;  
(i) information as to the allowances and expenses to which a person invited to be present in the Requesting Party to give evidence or assist in investigation will be entitled; and

(j) such other information which may facilitate execution of the request.

4. 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.

5. Requests and supporting documents made under this Article shall be accompanied by a translation in the official language of the Requested Party.

## Article 5 Execution of Requests

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

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

3. The Requested Party shall immediately inform the Requesting Party of the outcome of the execution of the request. If the assistance requested can not be provided, the Requested Party shall inform the Requesting Party of the reasons.

4. The Requested Party shall use its official language when providing assistance to the Requesting Party.

## Article 6 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, 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 purposes other than for the case described in the request without the prior consent of the Requested Party.

## Article 7 Service of Documents

1. The Requested Party shall, in accordance with its internal laws and upon request, effect service of documents that are transmitted by the Requesting Party.

2. The Requested Party shall, after effecting service, provide the Requesting Party a proof of service that shall include the description of the date, place, and manner of service, and be affixed with the signature or seal of the authority which served the document. If service cannot be effected, the Requesting Party shall be so informed and be advised of the reasons thereof.

## Article 8 Taking of Evidence

1. The Requested Party shall, in accordance with its internal laws and upon request, 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 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 certificated in such forms 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 may permit the presence of such persons as specified in the request during the execution of the request, and may allow such persons to pose questions, through competent officials 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 9

#### Taking Evidence From Persons

At the request of the Requesting Party, any person present in the territory of the Requested Party shall be required to give testimony or to provide documents, records, or evidence in accordance with the law of the Requested Party.

#### Article 10

#### 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 the validity of the right or privilege. The certificate provided by the Requesting Party shall be regarded as conclusive evidence on the right or privilege unless there is convincing evidence otherwise.

Article 11  
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 investigation 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.

2. The competent authorities of the Requested Party shall register in writing whether the person consents to appear in the Requesting Party, and the Central Authority of the Requesting Party shall be immediately informed of any answer of the person.

3. The Requesting Party shall transmit 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 12  
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 Requested Party as soon as he/she 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 the custody of the Requesting Party.

### Article 13

#### 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 11 or 12 shall not be subject to any penalty or mandatory restriction of personal liberty for such decline.

### Article 14

#### Inquiry, Search, Freezing and Seizure

1. The Requested Party shall, to the extent its internal law permits, execute a request for inquiry, search, freezing of assets and seizure of evidential materials and articles.

2. The Requested Party shall provide the Requesting Party with such information as requested concerning the results of executing the request, including information on the results of inquiry or search, the place and

circumstances of freezing or seizure, and the subsequent custody of such materials, articles or assets.

3. The Requested Party may transfer the seized materials, articles or assets to the Requesting Party if the Requesting Party agrees to the terms and conditions for such transfer as proposed by the Requested Party.

## Article 15

### Return of Documents, Records and Articles of Evidence to the Requested Party

At the request of the Requested Party, the Requesting Party shall return to the Requested Party the originals of documents or records and articles of evidence provided to it by the latter under this Treaty as soon as possible.

## Article 16

### Forfeiture of Proceeds from Criminal Activities and Instruments of Crime

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds from criminal activities or instruments of crime are deposited within its territory and shall notify the Requesting Party of the result of inquiries. In making the request, the Requesting Party shall state to the Requested Party the reasons for inferring that the proceeds or instruments may be deposited in the latter's territory.

2. Once 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 internal laws.

3. At the request of the Requesting Party, the Requested Party may, to the extent permitted by its internal laws and under the terms and conditions agreed to by the Parties, transfer all or part of the proceeds or instruments of crime, or the proceeds from the sale of such assets to the Requesting Party.

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.

5. For the purposes of this Treaty:

(a) “instruments of crime” shall mean any property used in or intended to be used in, or in connection with, the commission of an offense;

(b) “proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offense.

#### Article 17

##### 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 latter, 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 results of criminal proceedings it has instituted against a national of the latter.

#### Article 18

##### Supply of Criminal Records

The Requested Party shall provide, upon request, the Requesting Party with the past criminal records and information of the sentence against the person investigated or prosecuted in a criminal matter in the territory of the Requesting Party, if the person concerned has been subject to penal prosecution in the Requested Party.

#### Article 19

##### Exchange of Information on Law

The Parties shall, upon request, furnish each other with the laws in force or the laws that used to be in force, and information on judicial practice, related to mutual legal assistance in criminal matters in their respective countries.

Article 20  
Legalization

For the purpose of this Treaty, any documents transmitted in accordance with this Treaty shall not require any form of legalization.

Article 21  
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 territory of the Requested Party under Article 8 (4);

(b) allowances or expenses for persons to travel to, stay in and leave from the territory of the Requesting Party under Articles 11 or 12 in accordance with the standards or regulations of the place where such allowances or expenses have been incurred;

(c) expenses and fees of experts; and

(d) expenses and fees of translation and interpretation.

2. The Requesting Party may, upon request, pay in advance the expenses, allowances and fees it shall bear.

3. 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 22  
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 internal laws, and any other arrangement or practice which may be

applicable.

Article 23  
Settlement of Dispute

1. Any dispute that may arise out of the interpretation or implementation of this Treaty shall be settled through consultations between the Central Authorities.

2. In the event that the Central Authorities can not reach an agreement, the dispute shall be settled through negotiations between the Parties, by diplomatic channels.

Article 24  
Entry into Force, Amendment and Denouncement

1. Each Party shall inform the other by diplomatic note when all necessary constitutional and legal requirements have been met for the entry into force of this Treaty. ~~This Treaty shall enter into force upon the thirtieth day from the date of the later diplomatic note.~~

2. This Treaty may be amended at any time by written agreement between the Parties. Any such amendment will enter into force in accordance with the same procedure prescribed in paragraph 1 of this Article and will constitute an integral part of this Treaty.

3. Either Party may denounce this Treaty at any time by notice in writing to the other Party through diplomatic channels. Denunciation shall take effect on the one hundred and eightieth day after the date on which the notice is given.

4. This Treaty applies to any requests presented after its entry into force even if the relevant acts or omissions occurred before this Treaty enters into force.

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

DONE in duplicate at Beijing, on this twenty fourth day of September two thousand and eight, in the Chinese, Spanish and English languages, all texts being equally authentic. In case there is any divergence of interpretation of this Treaty, the English text shall prevail.

For the People's Republic of China

For the Bolivarian Republic of Venezuela