

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

The Government of the People' s Republic of China and the Government of the Italian Republic, hereinafter referred to as "the Parties" ,

Desiring to further improve the cooperation between the two countries with respect to mutual legal assistance in criminal matters on the basis of mutual respect of sovereignty, equality and mutual advantage,

Have decided to conclude this Treaty and

Have agreed as follows

ARTICLE 1
Scope

1. The Parties, in accordance with the provisions of this Treaty, undertake to afford one another the greatest measure of mutual legal assistance in criminal matters.
2. Such assistance shall include:
 - (a)service of documents relating to criminal proceedings;
 - (b)taking evidence or statements from persons;
 - (c)obtaining and providing expert witnesses evaluations ;
 - (d)sending documents, records, and other articles of evidence;
 - (e)locating and identifying person;
 - (f)conducting inspections or examining sites or items;
 - (g)transferring persons in custody for the purpose of their giving evidence or taking part in other procedural acts;

- (h) carrying out investigations, searches, freezing and seizure of assets;
- (i) confiscating the proceeds and items related to the criminal offence;
- (j) communicating the results of criminal proceedings and transmitting information taken from judicial records;
- (k) exchanging information on law; and
- (l) any other form of assistance not in contrast with the law of the Requested Party.

3. This Treaty shall not apply to:

- (a) the extradition of any person;
- (b) the execution of criminal judgments or decisions rendered in the Requesting Party, except to the extent permitted by the law of the Requested Party and this Treaty;
- (c) the transfer of a sentenced person for the purpose of serving sentence; and
- (d) transfer of criminal proceedings.

4. This Treaty shall apply exclusively to mutual legal assistance between the Parties.

ARTICLE 2 Central Authorities

1. For the purpose of this Treaty, the designated Central Authorities of the Parties shall transmit the request for assistance and communicate directly in matters concerning mutual assistance.

2. The Central Authorities shall be the Ministry of Justice of the People's Republic of China and the Ministry of Justice of the Italian Republic.

3. Each Party shall communicate to the other, through the diplomatic channels, any change of the designated Central Authority.

ARTICLE 3 Refusal or Postponement of Assistance

1. The Requested Party may refuse the assistance requested if:

- (a) the request relates to a conduct which is not regarded as a criminal offence under the law of the Requested Party;

(b) the Requested Party believes that the request relates to a criminal offence of a political nature, with the exception of terrorist criminal offences or criminal offences that are not considered political offences on the basis of international Conventions to which both States are Parties;

(c) the request relates to an exclusively military criminal offence under the law of the Requesting Party;

(d) the Requested Party has founded reasons to believe that the request is made in order to investigate, prosecute, punish or promote other types of actions against a person on account of that person's race, sex, religion, nationality or political opinion or that such person's position may be prejudiced by any of those reasons;

(e) the Requested Party has already started or concluded criminal proceedings or has already rendered a final judgment with respect to that same person who is under investigation or charged for the same criminal offence indicated in the request;

(f) the Requested Party believes that granting the request may impair its sovereignty, security, public order or other essential interests of the State or cause consequences in contrast with the fundamental principles of its national laws;

2. The Requested Party may postpone providing assistance if execution of the request would interfere with ongoing criminal proceedings in the Requested Party.

3. Before refusing a request or postponing its execution, the Requested Party has the faculty to consider whether the assistance may be granted upon conditions. If the Requesting Party accepts the assistance upon said conditions, said Party is bound to comply with them.

4. If the Requested Party refuses or postpones assistance it shall inform the Requesting Party of the reasons for such refusal or postponement.

ARTICLE 4

Form and Content of Requests

1. The request shall be made in writing and bear the signature or stamp of the Requesting Authority in compliance with its domestic laws.

2. The request for assistance shall include the following:

- (a) the name of the competent authority conducting the criminal proceedings to which the request relates ;
 - (b) a description of the nature of the criminal offence to which the request relates, a statement of the facts and the indication of the laws providing for that criminal offence;
 - (c) a description of the activity requested.
3. The request for assistance, to the extent necessary and insofar as possible, shall also include the following:
- (a) information on the identity and residence of the person from whom evidence is sought;
 - (b) information on the identity and residence of the person on whom service is to be made and his/her status in respect of the proceedings;
 - (c) information on the identity of the person to be found or identified and on the place where said person may be;
 - (d) a description of the place or item to be inspected or examined;
 - (e) a description of any special procedure sought for giving execution to the request stating the reasons for it;
 - (f) a description of the place to be searched and the indication of the items to search for, for investigation, freezing and seizure purposes;
 - (g) a description of any requirement for confidentiality and the reasons thereof ;
 - (h) information as to the allowances and expenses to which the person who is required to appear before the Requesting Party as witness or expert witness will be entitled; and
 - (i) any other information which may facilitate the execution of the request.
4. If the Requested Party believes that the content of the request is not sufficient to meet the conditions of this Treaty, it has the faculty to require further information.
5. The request and supporting documents submitted under this Article shall be accompanied by a translation in the language of the Requested Party.

ARTICLE 5
Execution of Requests

1. The Requested Party undertakes to give immediate execution to the request for assistance in compliance with its domestic law.

2. Insofar as it is not contrary to its domestic law, the Requested Party has the faculty to execute the request for assistance in accordance with the manner requested by the Requesting Party.

3. The Parties may reach agreement to use, in particular situations, videolink conference to take evidence or statements from persons, to the extent that this is possible and would not violate the laws of either Party.

4. The Requested Party undertakes to inform promptly the Requesting Party on the results of the execution of the request. If the assistance requested cannot be granted, the Requested Party must inform immediately the Requesting Party, giving the reasons thereof.

ARTICLE 6

Confidentiality and Rule of Speciality

1. The Requested Party shall treat with confidentiality the request, including its contents, supporting documents and any document received in execution of the same, if the Requesting Party so requests. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party, which shall then decide whether the request should nevertheless be executed.

2. The Requesting Party shall treat as confidential any information or evidence provided by the Requested Party, if the latter so requests, otherwise it will use such information or evidence exclusively in the manner and in accordance with conditions requested by the Requested Party.

3. The Requesting Party undertakes not to use any information or evidence obtained under this Treaty for any purposes different from those indicated in the request without having been previously authorised to do so by the Requested Party.

ARTICLE 7

Service of Documents

1. The Requested Party, in compliance with its domestic law and being so requested, shall serve the documents transmitted by the Requesting Party.

2. The Requested Party, after having effected the service of the documents, shall provide the Requesting Party with proof of the service, indicating the date, place and manner of service and bearing the signature or stamp of the authority which served the document. If service cannot be effected, the Requesting Party shall be so informed and communicated the reasons thereof.

ARTICLE 8

Taking of Evidence

1. The Requested Party, in compliance with its domestic law, shall carry out the taking of evidence requested and transmit it to the Requesting Party.

2. When the request for assistance concerns the transmission of documents or records, the Requested Party has the faculty to transmit certified copies or photocopies thereof. However, where the Requesting Party explicitly requires the transmission of the originals, the Requested Party undertakes to meet this request to the extent possible.

3. Insofar as it is not contrary to the domestic law of the Requested Party, documents and other items to be transmitted to the Requesting Party in compliance with this Article shall be certified in the manner requested by the Requesting Party in order to make them admissible pursuant to the law of the Requesting Party.

4. Any original of a document or record and any item transmitted to the Requesting Party shall be returned as soon as possible to the Requested Party if the latter so requests.

5. Insofar as it is not contrary to the domestic law of the Requested Party, the latter may authorise the persons specified in the request to be present at the execution of the request. The persons so authorised may, through the competent Authorities of the Requested Party, pose questions in relation to the judicial assistance activity. To this end, the Requested Party undertakes to inform promptly the Requesting Party on the date and place of execution of the request.

ARTICLE 9

Refusal to Give Evidence

1. A person requested to give evidence pursuant to this Treaty has the faculty to refuse to give evidence if the law of the Requested Party permits said person not to give evidence, in similar circumstances, in criminal proceedings originating in the Requested Party.

2. The person requested to give evidence pursuant to this Treaty has the faculty to refuse to give evidence also in all the cases in which the law of the Requesting Party so permits if that same Party expressly so indicated in the request.

ARTICLE 10

Witnesses and Expert Witnesses Appearing on the Territory of the Requesting Party

1. The Requested Party shall, at the request of the Requesting Party, invite a person to appear before the competent Authority on the territory of the Requesting Party as witness or expert witness. The latter shall indicate the amount of allowances and reimbursement of expenses to which the person summoned is entitled. The Requested Party shall inform promptly the Requesting Party on the availability of such person.

2. The Requesting Party shall transmit to the Requested Party the request for service of a document requiring the appearance of a person before an Authority of the territory of the Requesting Party not less than sixty days before the day set for appearance unless, in urgent cases, the Requested Party has agreed on a shorter period of time.

ARTICLE 11

Temporary Transfer of Detained Persons

1. The Requested Party has the faculty, at the request of the Requesting Party, to transfer temporarily a person detained on its territory to the Requesting Party in order to appear before a competent authority to give evidence or take part in other procedural acts, provided that said person so consents and that a written agreement has previously been reached between the Parties on the transfer and conditions thereof.

2. The Requesting Party shall retain the person so transferred in a state of detention.

3. The Requesting Party shall immediately return to the Requested Party the person transferred at the end of the activities indicated in paragraph 1 of this Article.

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 spent in detention in the Requesting Party.

ARTICLE 12

Guarantees for Witnesses and Expert Witnesses

1. Any witness or expert witness who is on the territory of the Requesting Party shall not be investigated upon, prosecuted, arrested or subjected to any other measure involving deprivation of personal liberty, by the Requesting Party in relation to any act or omission which preceded that person's entry on that territory, as well as not being compelled to give evidence or take part in any other act related to any proceedings other than that indicated in the request, unless the Requested Party and the person concerned so agree.

2. Paragraph 1 of this Article shall cease to have effect if that person does not leave the territory of the Requesting Party within fifteen days of the moment when s/he is officially informed that his/her presence is no longer required or if, after having left it, voluntarily returns to it. However, said time limit does not include the period of time when the person does not succeed in leaving the territory of the Requesting Party for reasons beyond his/her control.

3. The person who refuses to give evidence or to take part in other procedural acts pursuant to Articles 10 or 11 shall not be liable, for such refusal, to any sanction or other measure involving deprivation of personal liberty.

ARTICLE 13

Investigations, Searches, Freezing and Seizing of Items

1. The Requested Party, insofar as possible and in compliance with its domestic law, shall execute any request to investigate on

property, to search, freeze and seize the items related to the criminal offence.

2. The Requested Party shall supply the Requesting Party with the information indicated in paragraph 1 of this Article regarding the execution of the request.

3. Without prejudice for the rights of third parties in good faith and the possibility to return such property to their lawful owner, the Requested Party, at the request of the Requesting Party, may put at the latter's disposal the items seized in compliance with its domestic law. If the delivery of said items requires to comply with conditions imposed by the Requested Party, the Requesting Party shall comply with those conditions.

ARTICLE 14 Identification of Bank Information

1. The Requested Party, at the request of the Requesting Party, shall promptly ascertain whether an identified natural or legal person who is suspected of or charged with a criminal offence is the holder of a bank account or accounts at any bank located on its territory. The Requested Party shall promptly communicate the results of its enquiries to the Requesting Party.

2. Assistance may not be refused under this Article on grounds of bank secrecy.

ARTICLE 15 Seizure of the Proceeds and Items related to the Criminal Offence. Confiscation

1. The Requested Party, upon request of the Requesting Party, shall carry out the checks and investigations requested in order to prove if any proceeds of criminal offences or items related to the criminal offence are present on its territory and shall communicate to the Requesting Party the results of its investigations. In formulating its request, the Requesting Party shall communicate to the Requested Party the reasons that lead it to believe that proceeds or items related to the criminal offence might be on the Requested Party's territory.

2. When the alleged proceeds or items related to the criminal offence under paragraph 1 above are found, the Requested Party, at

the request of the Requesting Party, shall adopt the measures provided for in its domestic law in order to freeze, seize and confiscate the proceeds and items related to the criminal offence.

3. At the request of the Requesting Party, the Requested Party, in compliance with the conditions agreed by the Parties, shall transfer to the Requesting Party all or part of the proceeds or items related to the criminal offence, or the amounts obtained from the sale of said assets.

4. In any case, in applying this Article, the rights of the Requested Party and of third parties on those proceeds and items related to the criminal offence will in any case be respected.

ARTICLE 16

Exchange of Information on Criminal Proceedings

The Requested Party shall transmit to the Requesting Party, for the purposes of the criminal proceedings on which the request is based, information on criminal proceedings, previous convictions and sentences imposed in its Country against citizens of the Requesting Party.

ARTICLE 17

Exchange of Information on Law

The Parties shall, upon request, exchange information on the laws in force, or which were in force, and on the judicial practice followed in their Countries related to the implementation of this Treaty.

ARTICLE 18

Dispensing with Legalisation of Documents

The transmission of documents under this Treaty does not require any form of legalisation.

ARTICLE 19

Expenses

1. The Requested Party shall bear the costs of executing the request. However, the Requesting Party shall bear the following:

- (a) travel and stay expenses in the Requested Party concerning the persons indicated in Article 8, paragraph 5;
- (b) allowances and travel and stay expenses in the Requesting Party concerning the persons indicated in Article 10;
- (c) expenses arising from the execution of the request indicated in Article 11;
- (d) fees and expenses due to expert witnesses;
- (e) fees and expenses for translations and interpreting;
- (f) costs of the storage and handing over of the items seized.

If it is clear that the execution of the request entails expenses of an extraordinary nature, the Parties shall consult with a view to agree the conditions under which the request shall be executed and the criteria for sharing the relevant costs.

ARTICLE 20

Other Bases of Cooperation

This Treaty shall not prevent the Parties to afford one another mutual assistance in compliance with other applicable international agreements or their domestic law.

ARTICLE 21

Settlement of Disputes

Any dispute which may arise in connection with the interpretation or application of the present Treaty shall be settled by means of consultations between the Central Authorities.

Should they not reach an agreement, the dispute shall be settled by means of consultations through diplomatic channels.

ARTICLE 22

Entry into Force and Termination

1. This Agreement is subject to ratification. The instruments of ratification shall be exchanged at *Rome*

2. This Treaty shall enter into force upon the thirtieth day from the date of the exchange of the instruments of ratification.

3. Either Party has the faculty to withdraw from this Treaty at any time by giving written notice to the other Party through the diplomatic channel. Termination shall be effective on the one

hundred and eightieth day following the day on which such notice is given.

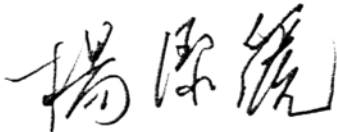
4. This Treaty shall apply to any request submitted after its entry into force, also if the criminal acts or omissions were committed before the entry into force of this Treaty.

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

DONE at 17th.....Rome..... on this
..... (day) of October..... (month)
..... (year) 2010, in duplicate in the Chinese,
Italian and English languages, all texts being equally authentic.

In case of any divergence in interpretation, the English text shall prevail.

FOR THE GOVERNEMENT OF THE
PEOPLE' S REPUBLIC OF CHINA



FOR THE GOVERNMENT OF
THE ITALIAN REPUBLIC

