



TREATY
BETWEEN
THE REPUBLIC OF SOUTH AFRICA
AND
THE REPUBLIC OF KOREA
ON
MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS

The Republic of South Africa and the Republic of Korea (hereinafter referred to as "the Parties");

Desiring to improve the effectiveness of both countries in the prevention, investigation, prosecution and suppression of crime through cooperation and mutual assistance in criminal matters;

Have agreed as follows:

Article 1

Scope of Application

1. The Parties shall, in accordance with this Treaty, grant each other assistance in criminal matters.
2. For the purposes of this Treaty, "criminal matters" means investigations, prosecutions or proceedings in respect of offences the punishment of which, at the time of a request for assistance, falls within the jurisdiction of the competent authorities of the Requesting Party.
3. Criminal matters shall also include matters connected with offences against a law relating to taxation, customs duties, foreign exchange control, or any other revenue matters.
4. Assistance shall include:
 - (a) taking evidence or statements from persons;
 - (b) providing information, documents, records, and articles of evidence;
 - (c) locating or identifying persons or items;
 - (d) serving documents;
 - (e) executing requests for search and seizure;

- (f) assisting in the availability of detained persons or others to give evidence or assist in investigations;
 - (g) measures to assist in relation to proceeds of crime; and
 - (h) any other form of assistance compatible with the object of this Treaty and not prohibited by the laws of the Requested Party.
5. This Treaty shall not apply to:
- (a) the extradition of any person;
 - (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party and this Treaty;
 - (c) the transfer of prisoners to serve sentences; and
 - (d) the transfer of proceedings in criminal matters.

Article 2 Other Arrangements

This Treaty shall not affect obligations subsisting between the Parties whether pursuant to other treaties, arrangements or otherwise, nor prevent the Parties from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

Article 3 Central Authority

1. Each Party shall designate a Central Authority to make or receive requests for the purposes of this Treaty. The Central Authority for the Republic of South Africa shall be the Department of Justice and

Constitutional Development. The Central Authority for the Republic of Korea shall be the Minister of Justice or an official designated by that Minister.

2. The Central Authorities shall communicate through the diplomatic channel or directly with each other for the purposes of this Treaty.

Article 4

Refusal or Postponement of Assistance

1. Assistance may be refused if, in the opinion of the Requested Party:
 - (a) the request relates to a political offence or to an offence under military law which is not also an offence under ordinary criminal law;
 - (b) the execution of the request would impair its sovereignty, security, public order, or other essential public interests;
 - (c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting or punishing a person by reason 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;
 - (d) the request relates to the prosecution or punishment of a person for conduct that would not, if it had taken place within the jurisdiction of the Requested Party, have constituted an offence;
 - (e) the request relates to the prosecution of a person for an offence in respect of which the person has been finally acquitted or pardoned or has served the sentence imposed in the Requested Party; or

- (f) the request relates to the prosecution of a person for an offence for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the Requested Party.
2. Assistance may be postponed by the Requested Party if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
3. Before refusing a request or postponing its execution, the Requested Party shall consult with the Requesting Party 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, it shall inform the Requesting Party of reasons for the refusal or postponement.

Article 5

Request for Assistance

1. A request for assistance shall be made in writing, except that the Requested Party may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing promptly thereafter unless the Requested Party agrees otherwise.
2. A request for assistance shall include:

- (a) the name of the competent authority conducting the investigation, prosecution or proceeding to which the request relates;
- (b) the purpose of the request and the description of the assistance sought;
- (c) a description of the subject matter and the nature of investigation or proceedings, including a summary of relevant facts and laws; and
- (d) any time limit within which the compliance with the request is desired.

3. A request for assistance, to the extent necessary and possible, shall also include:

- (a) information on the identity, nationality and location of any person or persons who are the subject of the investigation, prosecution or proceeding in the Requesting Party and of any person from whom evidence is sought;
- (b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (c) information on the identity and whereabouts of a person to be located;
- (d) a description of the person or place to be searched and of the items to be seized;
- (e) a description of any particular procedure or requirement to be followed in executing the request;
- (f) information as to the allowances and expenses to which a person asked to appear in the Requesting Party will be entitled;
- (g) the need for confidentiality and the reasons therefor; and
- (h) such other information as is necessary for the proper execution of the request.

4. If the Requested Party considers that the information contained in a request for assistance is not sufficient to enable the request to be dealt with, it may request additional information.

5. Requests, supporting documents and other communications made pursuant to this Treaty shall be accompanied by a translation into an official language of the Requested Party.

Article 6

Execution of Request

A request for assistance shall be executed promptly in accordance with the laws of the Requested Party and, insofar as it is not prohibited by those laws, in the manner requested by the Requesting Party.

Article 7

Return of Material to the Requested Party

Where required by the Requested Party, the Requesting Party shall return as soon as possible the material provided under this Treaty.

Article 8

Protection of Confidentiality

1. The Requested Party, if so requested, shall use its best efforts to keep confidential a request for assistance, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching the requested

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, if so requested, shall keep confidential the information and evidence provided by the Requested Party, except to the extent the information and evidence is needed for the investigation and proceedings described in the request.

Article 9

Limitation on Use

The Requesting Party shall not use or transfer any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in a request for assistance without the prior written consent of the Requested Party.

Article 10

Taking of Evidence

1. The Requested Party shall, in conformity with its law and upon request, take testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the Requesting Party.

2. Upon the request of the Requesting Party, the parties to the relevant proceedings in the Requesting Party, their legal representatives and representatives of the Requesting Party may, subject to the laws and procedures of the Requested Party, be present at the proceedings.

3. The Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and, to the extent permitted by its law, may allow such persons to question the person whose testimony or evidence is being taken. In the event that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the persons whose testimony or evidence is being taken.

4. A person who is required to give evidence in the Requested Party pursuant to a request under this Article may decline to give evidence where the law of the Requested Party permits that person not to give evidence in similar circumstances in proceedings originating in the Requested Party.

5. Where a person who is required to give evidence in the Requested Party under this Article claims that there is a right to decline to give evidence under the laws of the Requesting Party, the Requested Party shall either:

- (a) request the Requesting Party to provide a certificate as to the existence of that right; or
- (b) nevertheless require the person to give the evidence and transmit the evidence to the Requesting Party for its determination as to the existence of the right claimed by the person.

6. Where the Requested Party receives a certificate from the Requesting Party as to the existence of the right claimed by the person, that certificate, in the absence of evidence contrary, shall provide sufficient evidence as to the existence of the right.

Article 11

Availability of Persons to Give Evidence or to Assist in Investigations

1. The Requesting Party may request the assistance of the Requested Party in inviting a person to appear as a witness or an expert in the proceedings or assist in the investigations. That person shall be informed of any expenses and allowances payable.
2. The Requested Party shall promptly inform the Requesting Party of the person's response.

Article 12

Availability of Persons in Custody to Give Evidence or to Assist in Investigations

1. A person in custody in the Requested Party shall, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to assist in investigations or proceedings provided that both the person and the Requested Party consent to that transfer.
2. Where the person transferred is required to be held in custody under the laws of the Requested Party, the Requesting Party shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request.
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 set at liberty and be treated as a person referred to in Article 11 of this Treaty.

4. For the purpose of this Article, the person transferred shall receive credit for service of the sentence imposed in the Requested Party for time served in the custody of the Requesting Party.

Article 13

Safe Conduct

1. Subject to paragraph 2 of this Article, a person present in the Requesting Party pursuant to a request made under Article 11 or 12 shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in that Party in respect of any acts or omissions or convictions which preceded that person's departure from the Requested Party, nor shall that person be obliged to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if that person, being free to leave, has not left the Requesting Party within a period of fifteen (15) consecutive days after that person has been officially notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to Article 11 or 12 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

Article 14

Provision of Publicly Available Documents and Other Records

1. The Requested Party shall provide copies of documents and records that are open to public access as part of a public register or otherwise, or that are available for purchase by the public.
2. The Requested Party may provide copies of any other official document or record in the same manner and under the same conditions as they may be provided to its own law enforcement and judicial authorities.

Article 15

Service of Documents

1. The Requested Party shall effect service of documents that are transmitted to it for this purpose by the Requesting Party.
2. A request for the service of documents requiring the appearance of a person shall be received by the Requested Party not less than forty-five (45) days before the date on which the appearance is required. In urgent cases, the Requested Party may waive this requirement.
3. The Requested Party shall forward to the Requesting Party a proof of service. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.

Article 16
Search and Seizure

1. The Requested Party shall, to the extent its laws permit, execute a request for search and seizure and delivery of any material to the Requesting Party, provided that the request includes the information justifying such action under the laws of the Requested Party.
2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the material seized.
3. The Requested Party may require that the Requesting Party agree to terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 17
Proceeds of Crime

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds of crimes are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.
2. Where, pursuant to paragraph 1 of this Article, suspected proceeds of crimes are found, the Requested Party shall take such measures as are permitted by its law to restrain, forfeit or confiscate such proceeds.

3. In the application of this Article, the rights of a *bona fide* third party shall be respected under the law of the Requested Party.

4. The Requested Party in control of forfeited proceeds shall dispose of them in accordance with its law. To the extent permitted by its law and upon such terms as it deems appropriate, the Requested Party may transfer forfeited proceeds to the Requesting Party.

Article 18

Certification and Authentication

1. Subject to paragraph 2 of this Article, a request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require any form of certification or authentication.

2. Insofar as not prohibited by the law of the Requested Party, documents, records or other materials shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting Party in order to make them admissible according to the law of the Requesting Party.

Article 19

Expenses

1. The Requested Party shall meet the cost of executing a request for assistance, except that the Requesting Party shall bear:

- (a) the expenses associated with conveying any person to or from the territory of the Requested Party at the request of the Requesting Party, and any allowances or expenses

payable to that person while in the Requesting Party pursuant to a request under Article 11 or 12; and

(b) the expenses and fees of experts.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 20

Consultations

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the implementation of this Treaty either generally or in relation to a particular case.

Article 21

Entry into Force and Termination

1. This Treaty shall enter into force thirty (30) days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.


2. This Treaty shall apply to any requests presented after its entry into force, even if the relevant acts or omissions occurred prior to its entering into force.

3. Either Party may terminate this Treaty by notice in writing through the diplomatic channel at any time. Termination shall take effect six (6) months after the date on which the notice is given.

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

DONE in duplicate at *Seoul* on this *3rd* day of *May* 2007, in the English and Korean languages, both texts being equally authentic.

FOR THE REPUBLIC OF SOUTH
AFRICA



FOR THE REPUBLIC OF
KOREA

