

法規名稱：TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHINA (TAIWAN) AND THE GOVERNMENT OF THE REPUBLIC OF NAURU

簽訂日期：民國 108 年 08 月 07 日

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The Government of the Republic of China (Taiwan) and the Government of the Republic of Nauru (hereinafter referred to individually as a "Party" and collectively as the "Parties"), desiring to improve the effective cooperation of the law enforcement authorities of the states represented by either Party through mutual legal assistance in criminal matters on the basis of mutual respect, reciprocity, and mutual benefit, have agreed as follows:

Article 1 Scope of Assistance

1. The Parties shall provide mutual assistance through the relevant authorities, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, court proceedings and prevention of offenses and in proceedings related to criminal matters.
2. Assistance shall include:
 - (a) taking the testimony or statements of persons;
 - (b) providing documents, records, and articles of evidence;
 - (c) locating or identifying persons;
 - (d) serving documents;
 - (e) executing requests for searches and seizures;
 - (f) examining objects and sites;
 - (g) assisting in proceedings related to immobilization and confiscation of assets or collection of fines; and
 - (h) any other form of assistance not contrary to the laws of the Requested Party.
3. This Treaty is intended solely for mutual legal assistance between the Parties, and shall not give rise to a right on the part of any private person to obtain, suppress, or

exclude any evidence, or to impede the execution of a request.

Article 2 Central Authorities

1. The Central Authority of the Parties are:
 - (a) on behalf of the Government of the Republic of China (Taiwan), the Ministry of Justice or persons designated by the Ministry of Justice;
 - (b) on behalf of the Government of the Republic of Nauru, the Ministry of Justice and Border Control or persons designated by the Ministry of Justice and Border Control.
2. The Central Authorities shall directly communicate with one another for the purpose of this Treaty.

Article 3 Limitations on Assistance

1. The Central Authority of the Requested Party may deny assistance if:
 - (a) the request relates to a political offence;
 - (b) the request relates to an offense under military law that would not be an offense under ordinary criminal law;
 - (c) the execution of the request would prejudice the security, public order, or similar essential interests of the Requested Party;
 - (d) the request is not made in conformity with this Treaty;
 - (e) the request is made pursuant to Article 14 or Article 16 and relates to conduct which, if committed in the Requested Party, would not be an offense in that State; or
 - (f) Assistance may be postponed if the immediate execution of the request would interfere with an ongoing investigation, prosecution or criminal proceedings in the Requested Party.
2. Before denying assistance pursuant to paragraph 1 of this Article, the Requested Party shall consult with the Requesting Party on certain additional conditions it deems necessary for such assistance to be provided. If the Requesting Party accepts such additional conditions, no

assistance will be provided by the Requested Party before such conditions are met.

3. If the Requested Party denies assistance, it shall inform the Requesting Party of the reasons for such denial.

Article 4 Form and Contents of Requests

1. A request for assistance shall be in writing. The Requested Party may accept a request in other forms in urgent circumstances or any other situations agreed by the Parties in advance. In any such cases, the request shall be confirmed in writing within ten days thereafter unless the Requested Party agrees otherwise. The request shall be in the language used in the Requested Party unless otherwise agreed.
2. The request shall include the following:
 - (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
 - (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses that relate to the matter and any punishment that might be imposed for each offense;
 - (c) a description of the evidence, information, or other assistance sought;
 - (d) a description of the purpose for which the evidence, information, or other assistance is sought; and
 - (e) the name and address of the person to be served, where necessary.
3. To the extent necessary and possible, a request shall also include:
 - (a) information on the identity and location 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 precise description of the place or person to be searched and of the articles to be seized;
 - (e) a description of the manner in which any testimony or statement is to be taken and recorded;
 - (f) a list of questions to be asked of a witness or a defendant;
 - (g) a description of any particular procedure to be followed in executing the request;
 - (h) any other information that may be brought to the attention of the Requested Party to facilitate its execution of the request.
4. If the Requested Party considers the contents contained in the request not sufficient to enable the request to be dealt with, it may request additional information.
 5. No form of certification or authentication shall be required for a request for assistance or its supporting documents.

Article 5 Execution of Requests

1. The Central Authority of the Requested Party shall promptly execute the request or, when appropriate, transmit it to relevant authorities for execution. The executing authorities of the Requested Party shall do everything in their power to execute the request.
2. The Requested Party shall make all necessary arrangements for and meet the costs of the representation of the Requesting Party in the Requested Party in any proceedings arising out of a request for assistance.
3. Requests shall be executed in accordance with the laws of the Requested Party except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is contrary to the laws of the Requested Party.
4. If the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in the Requested Party, it may postpone such execution, or set necessary additional

- conditions for such execution after consultations with the Requesting Party. If the Requesting Party accepts such additional conditions, relevant authorities in the Party represented by it shall comply with the conditions.
5. The Requested Party shall make their best efforts to keep any request and its contents confidential if confidentiality is requested by the Requesting Party. If any such request could not be executed without breaching such confidentiality, the Requested Party shall inform the Requesting Party of such situation. The Requesting Party shall then determine whether to proceed such request.
 6. The Requested Party shall respond to reasonable inquiries made by the Requesting Party concerning the progress of the execution of any request.
 7. The Requested Party shall promptly inform the Requesting Party of any result of the execution of the request. If the request is denied, the Requested Party shall inform the Requesting Party of the reasons for the denial in writing.

Article 6 Costs

1. The Requested Party shall pay the costs relating to the execution of the request, but the Requesting Party shall bear:
 - (a) the allowances or expenses for the travel of persons under Article 10 of this Treaty in accordance with the regulations of the Requesting Party;
 - (b) the allowances or expenses for persons to travel to and from and stay in the territory of the Requested Party under Article 8.(3) of this Treaty;
 - (c) the costs of establishing and operating video conferencing or television links and the interpretation and transcription of such proceedings pursuant to Article 11 of this Treaty;
 - (d) the expenses and fees of expert witness;
 - (e) the costs of translation, interpretation, and transcription;
- and

- (f) the allowances or expenses to which a person asked to appear in the Requesting Party shall be entitled.
2. If it becomes apparent that the execution of the request would require expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which such request could be executed.

Article 7 Limitations on Use

1. The Requesting Party shall not use the information or evidence obtained pursuant to this Treaty for purposes other than those specified in the request without the previous written consent of the Requested Party. The authorities of the Requesting Party shall comply with any conditions imposed in the further use of the information or evidence.
2. The Requested Party may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting Party accepts the information or evidence subject to such conditions, the Requesting Party shall make their best efforts to comply with the conditions.
3. Information or evidence that has been made public in the Requesting Party in accordance with paragraphs 1 or 2 may thereafter be used for any purpose.

Article 8 Testimony or Evidence in the Requested Party

1. A person in the territory of the Requested Party from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence. A person, who gives false testimony or statement, either orally or in writing, in execution of a request, shall be subject to prosecution and punishment in the Requested Party in accordance with its criminal laws.
2. Upon request, the Requested Party shall furnish information in advance about the date and place of the taking of the

testimony or evidence pursuant to this Article.

3. 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 to the person giving the testimony or evidence and to make a verbatim transcript in a manner agreed to by the Requested Party.
4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the evidence, including all items requested, shall nonetheless be taken and the claim made known to the Requesting Party for resolution.

Article 9 Records of the States

1. The Requested Party shall provide, as requested, the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of departments and agencies of the Requested Party.
2. The Requested Party may provide requested copies of any documents, records, or information which are in the possession of a department or agency, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to the law enforcement or judicial authorities of the Requested Party. The Requested Party may in its discretion deny a request pursuant to this paragraph entirely or in part.

Article 10 Attendance of Persons in the Requesting Party

1. When the Requesting Party requests the appearance of a person in the territory of the Requesting Party, the Requested Party shall invite the person to appear before the appropriate authority in the Requesting Party. The Requesting Party shall indicate the extent to which the expenses shall be paid. The Requested Party shall promptly inform the Requesting Party of

the response of the person.

2. A person who consents to provide assistance pursuant to the preceding paragraph of this Article:
 - (a) shall not be prosecuted, detained, subject to service of process or of any other restriction of personal liberty in the territory of the Requesting Party for any acts, omissions or convictions which preceded such person's entry into the Requesting Party;
 - (b) shall not be obliged to give evidence or assist in any investigation, prosecution, or proceeding other than that to which the request relates except with the prior consent of the Requested Party and such person; and
 - (c) shall not be subject to prosecution based on his testimony except that such person shall be subject to charges for contempt or perjury.
3. The person whose presence is requested may decline to comply with the request if the Requesting Party does not grant such assurances.
4. The assurances provided for by paragraph 2 of this Article shall cease seven days after the Requesting Party has notified the Requested Party that the person's presence is no longer required, or when the person, having left the Requesting Party, voluntarily returns. The Requesting Party may, in its discretion, extend this period up to fifteen days if it determines that there is good cause to do so.

Article 11 Examining Witness by Video Conference

1. A person within the territory of the Requested Party may give evidence in proceedings in the Requesting Party by video conference.
2. Where a witness is to be examined by video conference, the procedures shall be conducted before an appropriate authority in the Requested Party.
3. The examining shall be supervised by a competent authority of the Requesting Party and evidence shall be given:

- (a) in accordance with the domestic laws of the Requesting Party, taking into account the formalities and the procedures set out by the Requested Party; and
 - (b) in accordance with any other measures for the protection of the witness which have been agreed between the Parties.
4. At the examining procedure, the appropriate authority of the Requested Party shall be responsible for:
- (a) ensuring there is appropriate interpretation of proceedings;
 - (b) establishing the identity of the witness;
 - (c) intervening, where necessary, to safeguard the rights of the witness;
 - (d) drawing up a record of the examining which shall include the following information:
 - i. the date and place of the hearing;
 - ii. the identity of the person heard;
 - iii. the identities and functions of anyone else participating in the hearing;
 - iv. details of any oaths taken; and the technical conditions under which the examining took place; and
 - (e) transmitting the record of the examining as referred to in this Article as soon as is practicable after the conclusion of the examining.

Article 12 Location or Identification of Persons or Items

If the Requesting Party seeks the location or identity of persons or items in the Requested Party, the Requested Party shall make their best efforts to ascertain the location or identity.

Article 13 Service of Documents

1. The Requested Party shall make their best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting Party.
2. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person

- before an authority in the Requesting Party a reasonable time before the scheduled appearance.
3. The Requested Party shall return a proof of service in the manner specified in the request.

Article 14 Search and Seizure

1. The Requested Party shall obtain the execution of a request for the search, seizure, and delivery of any item to the Requesting Party if 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 evidence seized.

Article 15 Return of Items

The Requested Party may require that the Requesting Party return any items, including documents, records, or articles of evidence, furnished to it in execution of a request under this Treaty as soon as possible.

Article 16 Exchange of Criminal Records

Each Party shall inform the other Party of any criminal convictions and subsequent measures recorded in respect of citizens in custody of the other Party.

Article 17 Restraint, Forfeiture and Confiscation of Property

1. The Parties shall assist each other in proceedings involving the identification, tracing, restraint, seizure and confiscation of the proceeds and instrumentalities of crime in accordance with the domestic laws of the Requested Party. This may include action to immobilize temporarily the proceeds or instrumentalities pending further proceedings.
2. In addition to the provisions contained in Article 4 of this Treaty, a request for assistance in restraint or confiscation

proceedings shall also include:

- (a) details of the property in relation to which cooperation is sought;
- (b) the location of the property and its connection with the subjects of the request;
- (c) the connection, if any, between the property and the offences; and
- (d) a true copy of the restraint or confiscation order made by the competent authority and statement of the grounds on which the order was made, if they are not indicated in the order itself.

Article 18 Third Party

- 1. As to the search and seizure set out under Article 14 of this Treaty, the Requested Party may require the Requesting Party's agreement to the terms and conditions deemed necessary to protect third party's interests over the items to be transferred.
- 2. In the case of assisting restraint or confiscation of proceedings set out under Article 17 of this Treaty, details of any third party's interests in the property shall be included in the request.
- 3. With respect to asset sharing set out under Article 19 of this Treaty, not only the right of victims may take precedence over asset sharing between the Parties but also the rights claimed by bona fide third parties over these assets shall be respected as well.

Article 19 Asset Sharing

- 1. Assistance offered based on Article 1(2)(g) of this Treaty provides that the Requested Party may make a request for asset sharing to the other Party of which such assistance materially led, or is expected to lead, to confiscation.
- 2. A request for asset sharing shall be made no later than one year from the date of final confiscation was made, unless

- otherwise agreed between the Parties.
3. The Requesting Party shall determine the proportion of the assets to be shared in accordance with the extent of the assistances afforded by the Requested Party unless the value of the realized assets or the assistance rendered by the Requested Party is de minimis.
 4. In appropriate cases where there are identifiable victims, consideration of the rights of victims shall take precedence over asset sharing between the Parties.

Article 20 Compatibility with Other Agreements

Assistance and procedures set forth in this Treaty shall not prevent either of the Parties from granting assistance to the other Party through the provisions of other applicable agreements, or through the provisions of the laws applicable of the Parties. The Parties may also provide assistance pursuant to any arrangement, agreement, or practice which may be applicable.

Article 21 Consultation

The Central Authorities of the Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 22 Entry into Force; Amendment and Termination

1. This Treaty shall enter into force on the thirtieth day after the date of the last notification on the fulfillment by the Parties of their internal procedures necessary for its entry into force. Such notification shall be made in writing.
2. This Treaty applies to any request presented after its entry into force even if the relevant offenses occurred before this Treaty enters into force.
3. This Treaty may be amended by the mutual consent of the Parties. The amendments shall enter into force in accordance

- with the procedure set out in paragraph 1 of this Article.
4. Either Party may terminate this Treaty by means of written notice to the other Party. Termination shall enter into force six months following the date of receipt of such notification.
5. If either Party gives a termination notice, cooperation and assistance in accordance with this Treaty shall continue or information provided, for requests submitted before the effective date of notification until the Requesting Party terminates the requested assistance. In the event of the termination of this Treaty, information, documents or items of evidence obtained under this Treaty shall continue to be treated confidentially in the manner prescribed under Article 7.(2) of this Treaty.

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

DONE IN DUPLICATE, on this 7th day of August, 2019 in the City of Taipei in the Chinese and English languages, both texts being equally authentic.

FOR THE GOVERNMENT
OF THE REPUBLIC OF
CHINA (TAIWAN)

Ching-Hsiang Tsai
Minister of Justice

FOR THE GOVERNMENT
OF THE REPUBLIC OF
NAURU

Hon. David Adeang
Minister of Justice and Border
Control