



Mutual Assistance in Criminal Matters (Prescribed Foreign Country) (Republic of Korea) Regulations 2000

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 28th day of February 2000

Present:

His Excellency the Governor-General in Council

Pursuant to section 65 of the Mutual Assistance in Criminal Matters Act 1992, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

- 1 Title**
These regulations are the Mutual Assistance in Criminal Matters (Prescribed Foreign Country) (Republic of Korea) Regulations 2000.

2 Commencement

These regulations come into force on 30 March 2000.

3 Interpretation

In these regulations, unless the context otherwise requires,—
Act means the Mutual Assistance in Criminal Matters Act 1992

Treaty means the Treaty between New Zealand and the Republic of Korea on Mutual Legal Assistance in Criminal Matters, done at Wellington on 15 September 1999, a copy of the English text of which is set out in the Schedule.

4 Part III of Act to apply to Republic of Korea

Part III of the Act applies to the Republic of Korea subject to any limitations, conditions, exceptions, or qualifications that are necessary to give effect to the Treaty.

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Schedule
Treaty between New Zealand and the Republic of
Korea on Mutual Legal Assistance
in Criminal Matters

NEW ZEALAND AND THE REPUBLIC OF KOREA
(hereinafter referred to as “the Parties”),

DESIRING to improve the effectiveness of both countries in the prevention, investigation and prosecution 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 investigations, prosecutions or proceedings in respect of criminal matters.
- 2 Criminal matters also include matters connected with offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters, but not in connection with non-criminal proceedings relating thereto.
- 3 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) making arrangements for persons to give evidence or assist in criminal investigations in the Requesting Country;
 - (g) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities; and
 - (h) other assistance consistent with the object of this Treaty which is not inconsistent with the law of the Requested Country.

- 4 Assistance granted under this Treaty does not include:
- (a) the extradition, or the arrest or detention for that purpose, of any person;
 - (b) the execution in the Requested Country of criminal judgments imposed in the Requesting Country except to the extent permitted by the law of the Requested Country and this Treaty;
 - (c) the transfer of persons in custody to serve sentences;
 - (d) the transfer of proceedings in criminal matters.
- 5 This Treaty shall not apply to Tokelau unless the Parties have exchanged notes agreeing the terms on which this Treaty applies.

Article 2
OTHER ASSISTANCE

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

Article 3
CENTRAL AUTHORITY

- 1 The Parties at all times shall each have a person who, or an authority which, is designated as the Central Authority to transmit and receive requests for the purposes of this Treaty.
- 2 The following persons or authorities are hereby designated to be the Central Authorities at the commencement of this Treaty:
- (a) for the Republic of Korea the Central Authority is the Minister of Justice;
 - (b) for New Zealand the Central Authority is the Attorney-General.
- 3 Each Party shall notify the other of any change of its Central Authority.

- 4 The Central Authorities shall normally communicate directly with one another but may, if they choose, communicate through the diplomatic channel.

**Article 4
CONTENTS OF REQUESTS**

- 1 Requests for assistance shall:
- (a) specify the purpose of the request and the nature of the assistance sought;
 - (b) identify the person, agency or authority that initiated the request;
 - (c) include a description of the nature of the criminal matter, including a summary of the relevant facts and laws and applicable penalties;
 - (d) include a statement indicating the current status of the investigation or proceeding;
 - (e) include a statement specifying any time frame within which compliance with the request is desired.
- 2 Requests for assistance, where relevant and so far as possible, shall also include:
- (a) the identity, nationality and location of the person or persons who are the subject of, or who may have information relevant to, the criminal matter;
 - (b) where the request is for assistance under Article 10 or 11,
 - (i) a description of the matters about which persons are to be examined including, where appropriate, any questions that the Requesting Country wishes to be put to those persons;
 - (ii) a description of any documents, records or articles of evidence to be produced and, where relevant, a description of the appropriate person to be asked to produce them;
 - (c) where the request is for assistance under Article 12 or 13, information about the allowances and expenses to which a person travelling to the Requesting Country would be entitled;

- (d) where the request is for assistance under Article 16 or 17, a description of the material sought and, where relevant, its likely location;
 - (e) where the request is for assistance under Article 17,
 - (i) a statement outlining the basis of the Requesting Country's belief that proceeds of crime may be located in its jurisdiction, and
 - (ii) the court order, if any, sought to be enforced and a statement about the status of that order;
 - (f) where the request is for assistance that may lead to or result in the discovery or recovery of proceeds of crime, a statement as to whether a special arrangement under Article 17(4) is sought;
 - (g) a statement outlining any particular requirement or procedure that the Requesting Country may have, or wish to be followed in giving effect to the request, including details of the manner or form in which any information, evidence, document or item is to be supplied;
 - (h) a statement setting out the wishes, if any, of the Requesting Country concerning the confidentiality of the request, and the reasons for those wishes;
 - (i) where an official of the Requesting Country intends travelling to the Requested Country in connection with the request, information about the purpose of that person's visit, the proposed time frame and travel arrangements;
 - (j) any other supporting information, evidence or documents that is necessary to enable, or may assist, the Requested Country to give effect to the request.
- 3 A request, any supporting documentation and any communications made pursuant to this Treaty, shall be in the language of the Requesting Country and be accompanied by a translation into the language of the Requested Country.
- 4 If the Requested Country considers that the information contained in a request is not sufficient to enable the request to be dealt with in accordance with this Treaty, it may request additional information.

- 5 A request shall be made in writing except that the Requested Country may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing within 20 days unless the Requested Country agrees otherwise.

Article 5
REFUSAL OF ASSISTANCE

- 1 Assistance shall be refused if, in the opinion of the Requested Country,
- (a) the request relates to an offence that is regarded by the Requested Country as an offence of a political character or an offence only under military law;
 - (b) the request relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Country;
 - (c) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of that person's race, sex, religion, nationality or political opinions; or
 - (d) the request, if granted, would seriously impair the Requested Country's sovereignty, security or essential interests, considerations of which may include the safety of any person and the burden on the resources of the Requested Country.
- 2 Assistance may be refused if, in the opinion of the Requested Country,
- (a) 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 Country;
 - (b) 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 Country, have constituted an offence; or

- (c) the request relates to an offence which carries the death penalty in the Requesting Country but in respect of which the death penalty is either not provided for in the Requested Country or not normally carried out unless the Requesting Party gives such assurances as the Requested Country considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out.

- 3 Assistance may be postponed by the Requested Country if the request would interfere with an ongoing investigation or prosecution in the Requested Country.

- 4 Before denying or postponing assistance pursuant to this Article, the Requested Country, through its Central Authority, shall:
 - (a) promptly inform the Requesting Country of the reason for considering denial or postponement; and
 - (b) consult with the Requesting Country to determine whether assistance may be given subject to such terms and conditions as the Requested Country deems necessary.

- 5 If the Requesting Country accepts assistance subject to the terms and conditions referred to in paragraph 4(b), it shall comply with those terms and conditions.

Article 6
EXECUTION OF REQUESTS

- 1 Requests for assistance shall be carried out promptly by the competent authorities of the Requested Country in accordance with the laws of that country and, to the extent those laws permit, in the manner requested by the Requesting Country.

- 2 The Requested Country may postpone the delivery of material requested if such material is required for proceedings

in respect of criminal or civil matters in that Country. If this is the case, the Requested Country shall, upon request, provide certified copies of documents.

- 3 The Requested Country shall promptly inform the Requesting Country of circumstances, when they become known to the Requested Country, which are likely to cause a significant delay in carrying out the request.

Article 7

RETURN OF MATERIAL TO REQUESTED COUNTRY

Where required by the Requested Country, the Requesting Country shall return material provided under this Treaty when it is no longer needed for the criminal matter to which the request relates.

Article 8

CONFIDENTIALITY AND LIMITATION OF USE

- 1 The Requested Country shall, if so requested, use its best efforts to keep confidential a request for assistance, the contents of the request and its supporting documentation, and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality, the Requested Country shall so inform the Requesting Country before executing the request, and the Requesting Country shall advise whether it nevertheless wishes the request to be executed.
- 2 The Requesting Country shall, if so requested, use its best efforts to keep confidential information and evidence provided by the Requested Country except to the extent that the evidence and information is needed for the criminal matter to which the request relates and where otherwise authorised by the Requested Country.
- 3 The Requesting Country shall, if so requested, use its best efforts to ensure that the information or evidence is protected against loss and unauthorised access, use, modification, disclosure or other misuse.

- 4 The Requesting Country shall not use information or evidence obtained, nor anything derived from either, for purposes other than those stated in a request without the prior consent of the Requested Country.

Article 9 SERVICE OF DOCUMENTS

- 1 The Requested Country shall, to the extent its laws permit, carry out requests for the service of documents in respect of a criminal matter.
- 2 A request for service of a summons requiring the appearance of a person as a witness in the Requesting Country shall be made to the Requested Country within 45 days before the scheduled appearance. In urgent cases the Requested Country may waive this requirement.
- 3 The Requested Country shall forward to the Requesting Country proof of service of the documents. If service cannot be effected, the Requesting Country shall be so informed and advised of the reasons.
- 4 A person who fails to comply with any process served on him or her shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Country or Requested Country.

Article 10 TAKING OF EVIDENCE

- 1 The Requested Country shall, to the extent its laws permit, carry out requests for the taking of evidence in respect of a criminal matter, for transmission to the Requesting Country.
- 2 To the extent permitted by its law, the Requested Country shall permit such persons as are specified in the request to be present during the execution of the request and shall allow

such persons to question the person giving evidence or to submit the questions to be posed to that person.

- 3 A person from whom evidence is to be taken in the Requested Country pursuant to a request under this Article may decline to give evidence where:
- (a) the law of the Requested Country would permit or require that person to decline to give evidence in similar circumstances in criminal proceedings originating in the Requested Country; or
 - (b) the law of the Requesting Country would permit or require that person to decline to give evidence in such criminal proceedings in the Requesting Country.
- 4 If any person in the Requested Country claims that there is a right or obligation to decline to give evidence under the law of the Requesting Country, the Central Authority of the Requesting Country shall, upon request, provide a certificate to the Central Authority of the Requested Country as to the existence or otherwise of that right. In the absence of evidence to the contrary, the certificate shall be sufficient evidence of the matters stated in it.
- 5 For the purposes of this Article, the taking of evidence includes the production of documents or other articles.

Article 11

OBTAINING OF STATEMENTS OF PERSONS

The Requested Country shall, upon request, endeavour to obtain statements of persons in respect of a criminal matter in the Requesting Country.

Article 12

TRANSFER OF PERSONS IN CUSTODY TO GIVE EVIDENCE

- 1 A person in custody in the Requested Country may, at the request of the Requesting Country, be temporarily transferred

to that Country to give evidence in criminal proceedings in that Country. For the purposes of this Article, a person in custody also includes a person not detained in prison but who is subject to a sentence imposed for an offence, not being a sentence of a monetary nature.

- 2 The Requested Country shall transfer a person in custody to the Requesting Country only if:
 - (a) the person freely consents to the transfer; and
 - (b) the Requesting Country agrees to comply with any conditions specified by the Requested Country relating to the custody or security of the person to be transferred.

- 3 Where the Requested Country advises the Requesting Country that the transferred person is no longer required to be held in custody, that person shall be released.

- 4 A person who is transferred pursuant to a request under this Article shall be returned to the Requested Country in accordance with arrangements agreed by the Requested Country as soon as practicable after the evidence has been given or at such earlier time as the person's presence is no longer required.

- 5 A person transferred shall receive credit for service of the sentence imposed in the Requested Country for the time served in the custody of the Requesting Country.

Article 13

AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

- 1 The Requesting Country may request the assistance of the Requested Country in arranging for the transfer of a person (not being a person to whom Article 12 of this Treaty applies) to the Requesting Country to give or provide evidence or assistance in respect of a criminal matter in the Requesting Country.

- 2 The Requested Country shall, if satisfied that satisfactory arrangements for that person's safety will be made by the Requesting Country, invite the person to consent to give or provide evidence or assistance in the Requesting Country. The person shall be informed of any expenses or allowances payable. The Requested Country shall promptly inform the Requesting Country of the person's response and, if the person consents, take all steps necessary to facilitate the request.

Article 14 SAFE CONDUCT

- 1 Subject to paragraph 2 of this Article, where a person is in the Requesting Country pursuant to a request made under Articles 12 or 13 of this Treaty, during the period that the person is required to remain in the Requesting Country for the purposes of the request:
- (a) the person shall not be detained, prosecuted or punished in the Requesting Country for any offence, nor be subject to any civil proceedings, being civil proceedings to which the person could not be subjected if the person were not in the Requesting Country, in respect of any act or omission which preceded the person's departure from the Requested Country; and
 - (b) the person shall not, without the person's consent, be required to give evidence in any criminal proceeding or to assist any criminal investigation other than the criminal matter to which the request relates.
- 2 Paragraph 1 of this Article ceases to apply if that person, being free to leave, has not left the Requesting Country within a period of 15 days after that person has been officially notified that his or her presence is no longer required or, having left, has returned.
- 3 A person who does not consent to give evidence pursuant to Articles 12 or 13 of this Treaty shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Country or Requested Country.

- 4 A person who consents to give evidence pursuant to Articles 12 or 13 of this Treaty shall not be subject to prosecution based on his or her testimony, except for perjury or contempt of Court.

Article 15
PROVISION OF INFORMATION

- 1 The Requested Country 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 or inspection by the public.
- 2 The Requested Country may provide copies of any documents or records in the same manner and under the same conditions as they may be provided to its own law enforcement and judicial authorities.

Article 16
SEARCH AND SEIZURE

- 1 The Requested Country shall, to the extent its laws permit, carry out requests made in respect of a criminal matter in the Requesting Country for the search, seizure and delivery of material to that country.
- 2 The Requested Country shall provide such information as may be required by the Requesting Country concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the material seized.
- 3 The Requesting Country shall observe any conditions imposed by the Requested Country in relation to any seized material which is delivered to the Requesting Country.

Article 17
PROCEEDS OF CRIME

- 1 The Requested Country shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting Country of the results of its inquiries.
- 2 Where, pursuant to paragraph 1, suspected proceeds of crime are found, the Requested Country shall take such measures as are permitted by its law to restrain or confiscate such proceeds.
- 3 In the application of this Article, the rights of bona fide third parties shall be respected under the law of the Requested Country.
- 4 The Requested Country shall retain any proceeds of crime that are confiscated unless otherwise agreed in a particular case.
- 5 For the purposes of this Treaty “proceeds of crime” means any property suspected, or found by a court to be property directly or indirectly derived or realised as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence; and includes property that is used to commit or to facilitate the commission of an offence.

Article 18
CERTIFICATION AND AUTHENTICATION

- 1 Subject to paragraph 2, a request for assistance, and the documents in support thereof, and documents or materials furnished in response to a request, shall not require any form of certification or authentication unless the Requested Country so requests in a particular case.

- 2 Where, in a particular case, the Requested or Requesting Country requests that documents or materials be authenticated, the documents or materials shall be duly authenticated in the manner provided in paragraph 3.
- 3 Documents or materials are authenticated for the purposes of this Treaty if:
 - (a) they purport to be signed or certified by a judge, magistrate or other official in or of the Country sending the document; and
 - (b) they purport to be sealed with an official seal of the Country sending the document or of a Minister, a Department or an official of the Government, of that Country.

Article 19 SUBSIDIARY ARRANGEMENTS

The Central Authority of each Party may enter into subsidiary arrangements consistent with the purposes of this Treaty and with the laws of both Parties.

Article 20 REPRESENTATION AND EXPENSES

- 1 Unless otherwise provided in this Treaty the Requested Country shall make all necessary arrangements for the representation of the Requesting Country in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Country.
- 2 The Requested Country shall meet the cost of fulfilling the request for assistance except that the Requesting Country shall bear:
 - (a) the expenses associated with conveying any person to or from the territory of the Requested Country, and the accommodation expenses of the person and any fees, allowances or other expenses payable to that person whilst in the Requesting Country pursuant to a request under Articles 9, 12 or 13 of this Treaty;

- (b) the expenses associated with conveying custodial or escorting officers;
- (c) fees and expenses of experts and associated with the translation of documents;
- (d) where required by the Requested Country, exceptional expenses incurred in fulfilling the request.

Article 21

CONSULTATION AND SETTLEMENT OF DISPUTES

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

Article 22

ENTRY INTO FORCE AND TERMINATION

- 1 This Treaty enters into force 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 applies to requests whether or not the relevant acts or omissions occurred prior to this Treaty entering into force.
- 3 Either Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force six months after the date of receipt of that notice. Where notice to terminate this Treaty has been given in accordance with this Article, any request for assistance received before termination shall be dealt with as if the Treaty were still in force unless the Requesting Country withdraws the request.

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

DONE at Wellington on the fifteenth day of September 1999 in English and Korean, both texts being equally authentic.

FOR NEW ZEALAND
Don McKinnon
Minister of Foreign Affairs
and Trade

FOR THE REPUBLIC OF
KOREA
Hong Soon-young
Minister of Foreign Affairs
and Trade

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations come into force on 30 March 2000. They provide that Part III of the Mutual Assistance in Criminal Matters Act 1992 applies to the Republic of Korea (South Korea). The Republic of Korea may make requests to New Zealand for assistance in criminal matters, but requests are subject to any limitations, conditions, exceptions, or qualifications that are contained in the Treaty between New Zealand and the Republic of Korea. The Treaty is set out in the *Schedule*.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 2 March 2000.

These regulations are administered in the Ministry of Justice.
