

TREATY BETWEEN THE REPUBLIC OF KOREA AND THE KINGDOM OF THAILAND ON MUTUAL
ASSISTANCE IN CRIMINAL MATTERS

The Republic of Korea and the Kingdom of Thailand (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 the provisions of this Treaty, grant each other the widest measure of mutual assistance in investigations, prosecutions or proceedings in respect of criminal matters.
2. For the purposes of this Treaty, "criminal matters" means investigations, prosecutions or proceedings relating to any offence the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the Requesting Party.
3. Assistance shall include:
 - (a) taking testimony, statements or evidence from persons;
 - (b) providing information, documents, records, and articles of evidence;
 - (c) locating or identifying persons or objects;
 - (d) serving documents;
 - (e) executing requests for searches and seizures;
 - (f) transferring persons in custody for testimonial purposes;
 - (g) facilitating the appearance of persons in the Requesting Party for testimonial purposes or to assist in investigations;
 - (h) measures to assist in relation to proceeds of crime; and
 - (i) other forms of assistance not prohibited by the law of the Requested Party.
4. This Treaty is intended solely for mutual assistance between the criminal law enforcement authorities of the Parties and is not intended or designed to provide such assistance to private parties.
5. This Treaty shall not apply to the execution of arrest warrants or to military offences. For the purposes of this Treaty, military offences are violations of military laws and regulations which do not constitute offences under ordinary criminal law.
6. This Treaty does 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, or prevent the Parties from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

Article 3
Central Authorities

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 Korea shall be the Minister of Justice or an official designated by that Minister. The Central Authority for the Kingdom of Thailand shall be the Attorney General or an official designated by the Attorney General.

2. Requests under this Treaty shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

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;
- (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 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; or
- (d) the conduct which is the subject of the investigation, prosecution or proceeding in the Requesting Party would not constitute an offence under the law 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, prosecution or proceeding 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 promptly inform the Requesting Party of the reasons for the refusal or postponement.

Article 5 **Form and Contents of Requests**

1. A request 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. Requests 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; and
- (c) the description of the subject matter and the nature of the investigation, prosecution or proceeding, including a summary of relevant facts and laws except in cases of request for service of documents.

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

- (a) information on the identity, nationality and location of the 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 proceeding, and the manner in which service is to be made;
- (c) information on the identity and whereabouts of a person or objects to be located;
- (d) a description of the person or place to be searched and of the objects 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;
- (h) any time limit within which compliance with the request is desired;
- (i) a list of questions to be answered; and
- (j) such other information as is necessary for the proper execution of the request.

4. If the Requested Party considers that the information contained in the request 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 the language of the Requested Party or into the English language.

Article 6 **Execution of Requests**

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner requested by the Requesting Party.

2. The Requested Party shall not decline the execution of a request on the ground of bank secrecy.

Article 7 **Return of Objects to the Requested Party**

Where required by the Requested Party, the Requesting Party shall return as soon as possible any documents, records or articles of evidence provided under this Treaty.

Article 8 **Protection of Confidentiality**

The Requested Party, if so requested, shall keep confidential a request, 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.

Article 9 **Limitation on Use**

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

2. The Requesting Party, if so requested, shall keep confidential information and evidence provided by the Requested Party, except to the extent that the information and evidence is needed for the investigation, prosecution or proceeding described in the request.

Article 10 **Taking Testimony, Statements or Evidence from Persons**

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 articles of evidence for transmission to the Requesting Party.

2. The Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and 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 person whose testimony or evidence is being taken.

3. A person from whom evidence is to be taken in the Requested Party pursuant to a request under this Article may decline to give evidence where the law of the Requested Party or that of the Requesting Party so provides.

4. If any person in the Requested Party claims that there is a right or obligation to decline to give evidence under the law of the Requesting Party, the Requesting Party shall, upon request, provide a certificate to the Requested Party as to the existence or non-existence thereof. 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 Facilitating the Appearance of Persons

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 proceeding or assist in investigations. The Requesting Party shall indicate the extent to which the expenses and allowances will be paid.

2. The Requested Party shall promptly inform the Requesting Party of the person's response.

Article 12 Transfer of Persons in Custody

1. A person in custody in the Requested Party shall, at the request of the Requesting Party, be temporarily transferred to the Requesting Party for testimonial purposes, provided that both the person and the Requested Party consent to that transfer.

2. Where the person transferred is required to be kept in custody under the law 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 matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

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.

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

Article 13 Safe Conduct

1. A person present in the Requesting Party pursuant to a request made under Article 11 or 12 shall not be subject to service of process, or be prosecuted, detained or subjected to any other restriction of personal liberty in that Party for any acts or omissions 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 to.

2. Paragraph 1 of the present Article shall cease to apply if a person, being free to leave, has not left the Requesting Party within a period of fifteen (15) days after that person has been officially notified that that person's 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 and Official Documents

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

Article 15
Locating Persons or Objects

1. The Requested Party shall, upon request, take all reasonable measures to locate persons or objects believed to be in the Requested Party and needed in connection with an investigation, prosecution or proceeding in the Requesting Party.
2. The Requested Party shall communicate as soon as possible the results of its inquiries to the Requesting Party.

Article 16
Service of Documents

1. The Requested Party shall, in accordance with its national law, effect service of documents that are transmitted to it for this purpose by the Requesting Party.
2. A request for the service of document requiring the appearance of a person shall be received by the Requested Party not less than fifty (50) 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 that shall include the description of the date and place 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 advised of the reasons.

Article 17
Search and Seizure

1. The Requested Party shall, insofar as its law permits, carry out requests for search and seizure and delivery of any article to the Requesting Party provided that the request includes the information justifying such action under the law of the Requested Party and that the rights of *bona fide* third parties are protected.
2. The Requested Party shall provide, in accordance with its law, 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 article seized.

Article 18
Proceeds of Crime

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds of crime 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, suspected proceeds of crime are found, the Requested Party shall take such measures as are permitted by its law to freeze, seize and forfeit 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 Party.

4. The Requested Party in control of forfeited proceeds shall deal with those proceeds 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 19

Transmission of Documents and Objects and Authentication

1. A request for assistance shall not require any form of certification or authentication.

2. The documents or records supplied in support of or in response to such a request shall be transmitted in the originals or certified true copies thereof.

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

Article 20

Costs

1. The Requested Party shall pay all costs relating to the execution of the 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 21

Consultations

The Parties shall consult promptly, at the request of either, concerning the interpretation and application of this Treaty.

Article 22

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 that their respective requirements for the entry into force of this Treaty have been complied with.

2. This Treaty applies to any requests presented after its entry into force even if the relevant acts or omissions occurred prior to the entry into force of this Treaty.

3. Either Party may terminate this Treaty by notice in writing through diplomatic channels at any time.

Termination shall take effect six (6) months after the date on which notice is given.

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

DONE in duplicate at Seoul on this 25th day of August 2003, in the Korean, Thai and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF FOR THE KINGDOM OF
KOREA THAILAND