



# Mutual Assistance in Criminal Matters (Prescribed Foreign Country) (People's Republic of China) Regulations 2007

Anand Satyanand, Governor-General

## Order in Council

At Wellington this 19th day of November 2007

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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Republic of China on Mutual Legal Assistance in  
Criminal Matters**

## Regulations

### 1 **Title**

These regulations are the Mutual Assistance in Criminal Matters (Prescribed Foreign Country) (People's Republic of China) Regulations 2007.

### 2 **Commencement**

These regulations come into force on 1 January 2008.

### 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 People's Republic of China on Mutual Legal Assistance in Criminal Matters, done at Wellington on 6 April 2006, a copy of the English text of which is set out in the Schedule.

### 4 **Part 3 of Act to apply to People's Republic of China**

Part 3 of the Act applies to the People's Republic of China subject to any limitations, conditions, exceptions, or qualifications that are necessary to give effect to the Treaty.

### 5 **Mutual Assistance in Criminal Matters (Prescribed Foreign Country) (Hong Kong Special Administrative Region of the People's Republic of China) Regulations 1999 not affected**

Nothing in these regulations affects the Mutual Assistance in Criminal Matters (Prescribed Foreign Country) (Hong Kong Special Administrative Region of the People's Republic of China) Regulations 1999.

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**Schedule**

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**Treaty between New Zealand and the People's  
Republic of China on Mutual Legal Assistance in  
Criminal Matters**

NEW ZEALAND AND THE PEOPLE'S REPUBLIC OF CHINA  
("the Parties").

With a view to improving the effective cooperation between the two countries in respect of mutual legal assistance in criminal matters on the basis of mutual respect for sovereignty and equality and mutual benefit,

Have decided to conclude this Treaty and 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 other proceedings in respect of criminal matters.
2. Criminal matters for the purpose of paragraph 1 means, for New Zealand, investigations, prosecutions or other proceedings relating to any offence created by a law of Parliament; and for the People's Republic of China, investigations, prosecutions or other proceedings relating to any offence created by the laws enacted and issued by the National People's Congress and its Standing Committee.
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 of criminal matters;
  - (e) executing requests for search and seizure;
  - (f) making arrangements for persons to give evidence or assist in criminal investigations in the Requesting Party;
  - (g) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities;

- (h) exchanging information on law; and
  - (i) other assistance consistent with the object of this Treaty which is not inconsistent with the law of the Requested Party.
4. This Treaty does not apply to:
- (a) the extradition of any person;
  - (b) the execution of criminal judgments and/or decisions rendered in the Requesting Party except to the extent permitted by the laws of the Requested Party and this Treaty;
  - (c) the transfer of a sentenced person for serving their sentence; and
  - (d) the transfer of criminal proceedings.
5. This Treaty relates exclusively to mutual legal assistance between both Parties.

## **Article 2**

### *Central Authorities*

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 under this Treaty.
2. Each Party shall notify the other of its designated Central Authority immediately after the entry into force of this Treaty through the diplomatic channel. Any subsequent change of the designated Authority shall be notified in the same manner.
3. Requests for assistance shall be made to the Central Authority in accordance with the provisions of this Treaty.

## **Article 3**

### *Refusal or Postponement of Assistance*

1. The Requested Party may refuse to provide assistance if:
  - (a) the request relates to conduct which would not constitute an offence under the laws of the Requested Party;
  - (b) the request relates to an offence of a political or military character;

- (c) there are substantial grounds for the Requested Party to believe that the request has been made for the purpose of investigating, prosecuting, punishing or taking other proceedings against 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;
  - (d) the Requested Party is in the process of or has terminated criminal proceedings or has already rendered a final judgment against the same suspect or accused for the same offence as that to which the request relates;
  - (e) the Requested Party considers that the assistance requested lacks substantial connection with the case; or
  - (f) the Requested Party determines that the execution of the request would impair its sovereignty, security, public order, or other essential public interests.
2. Where a request cannot be executed for the reasons in paragraph 1 of this Article or because execution is contrary to fundamental principles of the Requested Party's national law, the Requested Party shall promptly return the request and accompanying documentation to the Requesting Party and shall give reasons for the decision.
  3. The Requested Party may postpone the provision of assistance if the execution of a request would interfere with an ongoing investigation, prosecution or other proceedings in the Requested Party.
  4. Before refusing a request or postponing its execution, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to those conditions, it shall comply with them.
  5. If the Requested Party postpones the provision of assistance, it shall inform the Requesting Party of the reasons for the postponement.

**Article 4***Form and Content of Requests*

1. A request shall be made in writing and affixed with the signature or seal of the Central Authority of the Requesting Party. In urgent situations, the Requested Party may accept a request in other forms and the Requesting Party shall confirm the request in writing promptly thereafter unless the Requested Party agrees otherwise.
2. A request for assistance shall include the following:
  - (a) the name of the competent authority conducting the investigation, prosecution or other proceedings to which the request relates;
  - (b) a description of the nature of the offending, a summary of the relevant facts and the legal provisions applicable to the case;
  - (c) a description of the assistance sought and of the purpose and relevance for which the assistance is sought;
  - (d) the time limit within which the request is desired to be executed; and
  - (e) include a statement indicating the current status of the investigation, prosecution or other proceedings.
3. To the extent necessary and possible, a request shall also include the following:
  - (a) information on the identity and residence of a person from whom evidence is sought;
  - (b) information on the identity and residence of a person to be served and that person's relationship to the proceedings;
  - (c) information on the identity and whereabouts of the person to be located or identified;
  - (d) a description of the place or object to be inspected or examined;
  - (e) a statement outlining any particular requirement or procedure that the Requesting Party 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;

- (f) where the request is for assistance in relation to proceeds of crime,
    - (i) a statement outlining the basis of the Requesting Party's belief that proceeds of crime may be located in its jurisdiction; and
    - (ii) the authoritative warrant or legal order, if any, sought to be enforced and a statement about the status of that warrant or legal order;
  - (g) a description of the need for confidentiality and the reasons therefore;
  - (h) information as to the allowances and expenses to which a person invited to be present in the Requesting Party to give evidence or assist in an investigation will be entitled;
  - (i) a description of the matters about which persons are to be examined including, where appropriate, any questions that the Requesting Party wishes to be put to those persons;
  - (j) 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;
  - (k) where persons, such as those referred to in Article 8 paragraph 5 intend traveling to the Requested Party in connection with the request, information about the purpose of that person's visit, the proposed timeframe and travel arrangements; and
  - (l) such other information as may facilitate execution of the request.
4. If the Requested Party considers the content of the request is not sufficient to enable it to deal with the request, it may request additional information.
5. Requests and supporting documents made under this Article shall be accompanied by a translation in the language of the Requested Party.

**Article 5***Execution of Requests*

1. Requests for assistance shall be carried out promptly by the Requested Party in accordance with the laws of that Party and, insofar as not contrary to its national laws, in the manner requested by the Requesting Party.
2. The Requested Party may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in the Requested Party. The Requested Party shall, upon request, provide certified copies of documents.
3. The Requested Party shall promptly inform the Requesting Party of circumstances, when they become known to the Requested Party, which are likely to cause a significant delay in carrying out the request.
4. The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request.

**Article 6***Confidentiality and Limitation on Use*

1. The Requested Party shall, to the extent its law permits, keep confidential a request, including its contents, supporting documents and any action taken in accordance with the request, if so requested by the Requesting Party. If the request cannot be executed without breaching such confidentiality, the Requested Party shall inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.
2. The Requesting Party shall keep confidential the information and evidence provided by the Requested Party, if so requested by the Requested Party, or shall use such information or evidence only under the terms and conditions specified by the Requested Party.
3. The Requesting Party shall not use any information or evidence obtained under this Treaty for any purposes other than for the case described in the request without the prior consent of the Requested Party.



**Article 7***Service of Documents*

1. The Requested Party shall, in accordance with its national laws and upon request, 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 Party shall be made to the Requested Party no less than sixty days, before the scheduled appearance. In urgent cases the Requested Party may waive this requirement.
3. The Requested Party shall forward to the Requesting Party proof of service of the documents. That proof shall include the description of the date, place, and manner 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 8***Taking of Evidence*

1. The Requested Party shall, in accordance with its national laws, carry out requests for the taking of evidence in respect of a criminal proceeding, for transmission to the Requesting Party.
2. When the request concerns the transmission of documents or records, the Requested Party may transmit certified copies or photocopies thereof. However, where the Requesting Party explicitly requires transmission of originals, the Requested Party shall meet such requirement to the extent possible.
3. A person in the Requested Party from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary and in conformity with the laws of the Requested Party, to appear and testify or produce evidence, including documents, records, or articles.

4. Insofar as not contrary to the laws of the Requested Party, the documents and other materials to be transmitted to the Requesting Party in accordance with this Article shall be certified in such form as may be requested by the Requesting Party in order to make them admissible according to the laws of the Requesting Party.
5. Insofar as not contrary to the laws of the Requested Party, 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, through judicial personnel of the Requested Party, to the person from whom evidence is to be taken. For this purpose, the Requested Party shall promptly inform the Requesting Party of the time and place of the execution of the request.
6. A person who is required to give evidence under this Treaty may decline to give evidence if the laws of the Requested Party permit the person not to give evidence in similar circumstances in proceedings originating in the Requested Party.
7. If a person who is required to give evidence under this Treaty asserts a right or privilege not to give evidence under the laws of the Requesting Party, the Requested Party shall request the Requesting Party to provide a certificate on the validity of the right or privilege. The certificate provided by the Requesting Party shall be regarded as conclusive evidence of the right or privilege unless there is convincing evidence otherwise.

### **Article 9**

#### *Obtaining of Statements*

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

**Article 10***Availability of Persons to Give Evidence or Assist in Investigations*

1. The Requesting Party may request the assistance of the Requested Party in arranging for the transfer of a person (not being a person to whom Article 11 of this Treaty applies) to the Requesting Party to give or provide evidence or assistance in respect of a criminal matter in the Requesting Party.
2. The Requested Party shall, if satisfied that satisfactory arrangements for that person's safety will be made by the Requesting Party, invite the person to consent to give or provide evidence or assistance in the Requesting Party. The person shall be informed of any expenses or allowances payable. The Requested Party shall promptly inform the Requesting Party of the person's response and, if the person consents, take all steps possible to facilitate the request.

**Article 11***Transfer of Persons in Custody to Give Evidence or Assist in Investigations*

1. The Requested Party may, at the request of the Requesting Party, temporarily transfer a person in custody in its territory to the Requesting Party for appearing before an authority to give evidence, or, to the extent consistent with the Requested Party's law, to assist in investigations, provided that the person so consents and the Parties have previously reached a written agreement on the conditions of the transfer.
2. If the person transferred is required to be kept in custody under the laws of the Requested Party, the Requesting Party shall hold that person in custody.
3. The Requesting Party shall promptly return the person transferred to the Requested Party as soon as he/she has finished giving evidence or assisting in the investigation.
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 served in the custody of the Requesting Party.

**Article 12***Protection of Persons Giving Evidence or Assisting in  
Investigations*

1. Any person present in the territory of the Requesting Party, pursuant to a request under Article 10 of this Treaty, shall not be investigated, prosecuted, detained, punished or subject to any other restriction of personal liberty by the Requesting Party, or subject to any civil proceeding, for any acts or omissions which preceded that person's entry into its territory, nor shall that person be obliged to give evidence or to assist in any investigation, prosecution or other proceedings other than that to which the request relates, except with the prior consent of the Requested Party and that person.
2. The provisions of paragraph 1 of this Article also apply to persons in custody referred to in Article 11, insofar as those provisions are not inconsistent with the conditions for transfer agreed under Article 11 paragraph 1.
3. Paragraph 1 of this Article shall cease to apply if the person referred to in paragraph 1 of this Article has stayed on in the territory of the Requesting Party fifteen days after that person has been officially notified that his/her presence is no longer required or, after having left, has voluntarily returned. However this period of time shall not include the time during which the person fails to leave the territory of the Requesting Party for reasons beyond his/her control.
4. A person who declines to travel and/or give evidence or assist in investigations in accordance with Articles 10 or 11 shall not be subject to any mandatory restriction of personal liberty or any other penalty for such refusal.
5. A person appearing in the Requesting Party pursuant to a request made under Articles 10 or 11 of this Treaty is subject to the laws of that Party relating to contempt, perjury, and the making of false declarations but shall not otherwise be subject to prosecution based on such evidence.

6. The competent authority which seeks the appearance of a witness from the Requested Party for the purpose of giving evidence, shall ensure that the witness is properly instructed regarding responsibilities and obligations to the court so as to ensure that the witness is not subjected to contempt or similar proceedings.
7. This Article shall not affect the obligation to return a person transferred in custody, as provided in Article 11.

### **Article 13**

#### *Search and Seizure*

1. The Requested Party shall, to the extent its national law permits, execute a request for identification, search and seizure, and the preservation of evidential materials, articles and assets.
2. The Requested Party shall provide the Requesting Party with such information as requested concerning the results of executing the request, including information on the results of the identification, search and seizure and the subsequent custody of such materials, articles or assets.
3. The Requested Party may transmit the seized materials, articles or assets to the Requesting Party if the Requesting Party agrees to the terms and conditions for such transmission as proposed by the Requested Party.

### **Article 14**

#### *Return of Material to Requested Party*

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

**Article 15***Proceeds of Crimes*

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds of criminal activities or instruments of crime, including any bank account, are within its territory, and shall notify the Requesting Party of the result of the inquiries. In making the request, the Requesting Party shall state to the Requested Party the reasons for inferring that the proceeds or instruments may be within the latter's territory.
2. Where, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested Party shall take such measures as are permitted by its law to restrain or confiscate such proceeds.
3. At the request of the Requesting Party, the Requested Party may, to the extent permitted by its national laws and under the terms and conditions agreed to by the Parties, transfer all or part of the proceeds or instruments of crime, or the proceeds from the sale of such assets to the Requesting Party.
4. In applying this Article, the legitimate rights and interests of the Requested Party and any third party to such proceeds or instruments shall be respected under the laws of the Requested Party.

**Article 16***Provision of Information*

The Requested Party may, insofar as permitted by its law, provide copies of any documents or criminal records in the same manner and under the same conditions as they may be provided to its own law enforcement and judicial authorities.

**Article 17***Exchange of Information*

The Parties may on request, consult on criminal justice matters, including informing each other of the laws in force or the laws which used to be in force and the judicial practices in their respective countries.

**Article 18***Other Cooperation*

This Treaty shall not prevent either Party from providing assistance to the other Party according to other applicable international agreements or its national laws. The Parties may also provide assistance in accordance with any other arrangement, agreement, or practice which may be applicable.

**Article 19***Authentication and Legalisation*

For the purpose of this Treaty, any documents transmitted in accordance with this Treaty shall not require any form of authentication or legalisation unless otherwise provided by this Treaty, or agreed by the Parties in any particular case.

**Article 20***Expenses*

1. The Requested Party shall meet the cost for executing the request, but the Requesting Party shall bear the following:
  - (a) expenses for persons to travel to, stay in and leave from the Requested Party under Article 8 (5);
  - (b) allowances or expenses for persons to travel to, stay in and leave from the Requesting Party under Articles 10 or 11 in accordance with the standards or regulations of the place where such allowances or expenses have been incurred;
  - (c) expenses and fees of experts; and
  - (d) expenses and fees of translation and interpretation.
2. The Requesting Party shall, upon request, pay in advance the expenses, allowances and fees it shall bear.

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

### **Article 21**

#### *Settlement of Disputes*

Any dispute arising out of the interpretation and application of this Treaty shall be resolved by consultation through the diplomatic channel if the Central Authorities of the Parties are themselves unable to reach agreement.

### **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 presented after it enters into force 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 through the diplomatic channel at any time and it shall cease to be in force 180 days 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 Party withdraws the request.



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

Done in duplicate at Wellington on this 6th day of April 2006, in the English and Chinese languages, both texts being equally authentic.

For New Zealand  
Hon Dr Michael Cullen  
Attorney-General

For the People's Republic of China  
Li Zhaoxing  
Foreign Minister

Rebecca Kitteridge,  
for Clerk of the Executive Council.

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### Explanatory note

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

These regulations, which come into force on 1 January 2008, provide that Part 3 of the Mutual Assistance in Criminal Matters Act 1992 applies to the People's Republic of China. The People's Republic of China 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 People's Republic of China. The Treaty is set out in the *Schedule*. These regulations do not affect the Mutual Assistance in Criminal Matters (Prescribed Foreign Country) (Hong Kong Special Administrative Region of the People's Republic of China) Regulations 1999.

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

Date of notification in *Gazette*: 22 November 2007.

These regulations are administered by the Ministry of Justice.

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