



China No.2 (2014)

Treaty

between the United Kingdom of Great Britain and Northern Ireland and
the People's Republic of China on Mutual Legal Assistance in Criminal
Matters

Beijing, 2 December 2013

[The Treaty is not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 2014*

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**TREATY BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND THE PEOPLE’S REPUBLIC OF CHINA
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The United Kingdom of Great Britain and Northern Ireland and the People’s Republic of China (hereinafter referred to as “the Parties”);

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

With full respect for human rights and the rule of law;

Have decided to conclude this Treaty and have agreed as follows:

ARTICLE 1

Scope of Application

1. The Parties shall, in accordance with the provisions of this Treaty, provide widest mutual legal assistance in investigations, prosecutions and judicial proceedings related to criminal matters, including the restraint, freezing, seizure and confiscation of the proceeds and instrumentalities of crime.

2. Such assistance shall include:

- (a) serving documents of criminal proceedings;
- (b) taking testimonies or statements from persons;
- (c) providing documents, records and articles of evidence;
- (d) obtaining and providing expert evaluations;
- (e) locating and identifying persons;
- (f) conducting inspections or examinations;
- (g) making persons available for giving evidence or assisting in investigations;
- (h) conducting inquiry, searches, freezing and seizures;

- (i) obtaining banking information;
- (j) assistance relating to proceeds from criminal activities and instrumentalities of crime;
- (k) notifying results of criminal proceedings and supplying criminal records;
- (l) exchanging information on law; and
- (m) any other forms of assistance which is not contrary to the laws of the Requested Party.

3. This Treaty shall only apply to mutual legal assistance between the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain or exclude evidence, or to impede the execution of a request.

ARTICLE 2

Central Authorities

1. For the purposes of this Treaty, the Central Authorities designated by the Parties shall communicate directly with each other for matters concerning mutual request and assistance.

2. For the People's Republic of China, the Central Authorities referred to in Paragraph 1 of this Article shall be the Ministry of Justice and the Ministry of Public Security.

3. For the United Kingdom of Great Britain and Northern Ireland, the Central Authorities referred to in Paragraph 1 of this Article shall be:

- (a) for the purposes of sending requests;
 - (i) the Secretary of State; and/or
 - (ii) the Lord Advocate (for matters pertaining to Scotland).

- (b) for the purpose of receiving requests;
 - (i) the Secretary of State;
 - (ii) the Lord Advocate (for matters pertaining to Scotland); and/or
 - (iii) Her Majesty's Revenue and Customs.

4 Should either Party change one or more of its designated Central Authorities, it shall inform the other Party of such change through diplomatic channels via Diplomatic Note.

ARTICLE 3

Limitations on Assistance

1. The Requested Party may refuse to provide assistance in any of the following circumstances:
 - (a) the request relates to conduct which would not constitute an offence under the laws of the Requested Party. But the Requested Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the laws of the Requested Party;
 - (b) the Requested Party considers that the request relates to a political offence except a terrorism offence or an offence which is not regarded as a political offence under any international convention to which both States are Parties;
 - (c) the request relates to an offence which only constitutes a military offence;
 - (d) there are substantial grounds for the Requested Party to believe that the request has been made for the purposes of investigating, prosecuting, punishing or other proceedings against a person on account of that person's race, sex, religion, nationality or political opinions, or that that person's position in judicial proceedings may be prejudiced for any of those reasons;

- (e) 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 referred to in the request;
 - (f) the Requested Party considers that the assistance requested lacks substantial connection with the case; and
 - (g) the Requested Party believes that the execution of the request would impair its sovereignty, security, *ordre public* or other essential public interests.
2. The Requested Party may postpone to provide assistance if execution of a request would interfere with an ongoing investigation, prosecution or judicial proceedings in the Requested Party.
 3. Where the Requested Party is considering refusing assistance in line with paragraph 1 of this Article, it may first, in accordance with paragraph 4 of Article 4, seek further information from the Requesting Party where to do so would facilitate the execution of the request.
 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 these conditions, it shall comply with them.
 5. If the Requested Party refuses or postpones the provision of assistance, it shall promptly inform the Requesting Party of the reasons for the refusal or postponement.

ARTICLE 4

Form and Content of Requests

1. A request for assistance shall be made in a form capable of producing a written record, including facsimile and e-mail, and which is affixed with the signature or seal of a Central Authority of the Requesting Party. The Requesting Party shall provide the original and official request in writing promptly, unless otherwise agreed by the Requested Party.

2. A request for assistance shall include the following:
 - (a) the name and address of the competent authority conducting the investigation, prosecution or judicial proceedings to which the request relates;
 - (b) the subject matter and nature of the investigation, prosecution or judicial proceedings for the purposes of which the request is made;
 - (c) a summary of the information giving rise to the request, including a summary of the facts and the text of the provisions of applicable law;
 - (d) a description of the evidence or other assistance sought, its purpose and its relevance to the case; and
 - (e) any timeframe within which compliance with the request is sought.

3. To the extent necessary and possible, a request for assistance shall also include the following:
 - (a) the identity, date of birth, nationality and location of any person from whom evidence is sought;
 - (b) the identity, date of birth, nationality and location of a person to be served, that person's relationship to the proceedings and the manner in which the service is to be effected;
 - (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 description of the place to be searched and the articles to be seized;
 - (f) a description of the inquiry to be made and the property to be frozen;
 - (g) a description of the manner in which any testimony or statement is to be taken and recorded;
 - (h) a list of questions to be asked of a witness or expert;
 - (i) a description of any particular procedures to be followed in executing the request and the reasons for following those procedures;

- (j) information as to the allowances and expenses to which a person invited to appear in the Requesting Party to give evidence or to assist in the investigation will be entitled;
- (k) a description of the requirement of confidentiality and the reasons; and
- (l) such other information which may facilitate execution of the request.

4. If the Requested Party considers the information contained in the request insufficient to enable it to deal with the request, it may request additional information.

ARTICLE 5

Language

Requests and supporting documents submitted pursuant to this Treaty shall be accompanied by a translation into the language of the Requested Party except where the Parties have agreed otherwise.

ARTICLE 6

Execution of Requests

1. The Requested Party shall execute a request for assistance in accordance with its laws.
2. Insofar as not contrary to its laws, the Requested Party may provide assistance in the manner and form requested by the Requesting Party.
3. The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request. If the assistance requested cannot be provided, the Requested Party shall promptly inform the Requesting Party of the reasons.

ARTICLE 7

Spontaneous Information

1. A Central Authority of either Party may, without prior request, forward information to a Central Authority of the other Party, where it considers such information may assist the receiving Party in initiating or carrying out investigations, prosecutions or judicial proceedings, or may lead to a request by that Party under this Treaty.
2. The receiving Party may, at its discretion, decide whether to accept the information forwarded pursuant to paragraph 1 of this Article.
3. The receiving Party may, if it decides to accept the information forwarded pursuant to paragraph 1 of this Article, use the information for any purpose, subject to any conditions specified by the providing Party.

ARTICLE 8

Confidentiality and Limitation on Use

1. The Requested Party shall 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 so 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 purpose other than for the case stated in the request without the prior consent of the Requested Party.
4. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation under the laws of the Requesting Party to use or disclose such information for the purpose of judicial proceedings. The Requesting Party shall, wherever possible, notify the Requested Party in advance of any such disclosure.

5. Information or evidence which has been made public in the territory of a Party, in accordance with this Treaty, will no longer be subject to confidentiality or the requirements of paragraph 3 of this Article.

6. Either Party that transfers personal data obtained as a result of the execution of a request made under the Treaty may require the Party to which the data have been transferred to give information on the use made of such data.

ARTICLE 9

Service of Documents

1. The Requested Party shall, in accordance with its laws and upon request, effect service of documents that are transmitted by the Requesting Party. However, the Requested Party shall not be obligated to effect service of a document which requires the person to be served to appear as a defendant.

2. Any person who has failed to answer a summons or notice to appear, service of which has been requested, shall not, even if it contains a notice of penalty, be subject to any punishment or measure of restraint.

3. The Requested Party shall, after effecting service, provide the Requesting Party with a proof of service that shall indicate the date, place and manner of service, and be signed or sealed by the authority which served the document.

ARTICLE 10

Transmission of Documents or Other Materials

1. 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.

2. 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 forms as may be requested by the Requesting Party in order to make them admissible according to the laws of the Requesting Party.

ARTICLE 11

Presence of Persons of the Requesting Party

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 may facilitate the participation of such persons, including allowing such persons to pose questions, through personnel of competent authorities 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.

ARTICLE 12

Decline to Give Evidence due to Privilege or Immunity

1. A person who is requested 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 initiated in the Requested Party.
2. If a person who is requested to give evidence under this Treaty claims privilege or immunity from giving evidence under the laws of the Requesting Party, the Requested Party shall inform the Requesting Party of that person's opinion and ask the Requesting Party to provide evidence of whether such a privilege or immunity exists. The evidence provided by the Requesting Party shall be deemed as sufficient proof of whether such a privilege or immunity exists.

ARTICLE 13

Availability of Persons to Give Evidence or Assist in Investigations

1. Subject to Article 14, the Requested Party, at the request of the Requesting Party, shall invite the person concerned to appear before relevant authorities in the territory of the Requesting Party to give evidence or assist in investigations. The Requested Party shall promptly inform the Requesting Party of the person's response.
2. The Requesting Party shall transmit a request for the appearance of a person to give evidence or assist in investigations in its territory no less than sixty days before the scheduled appearance. The Requested Party may consent to a shorter period of time in case of emergency.

ARTICLE 14

Protection of Witnesses and Experts

1. The Requesting Party may make arrangements to ensure so far as possible that a person attending in the territory of the Requesting Party pursuant to Article 13 shall not be subject to service of process, or be detained or subject to any restriction of personal liberty, by reason of any acts or convictions in the Requesting Party that preceded his or her departure from the territory of the Requested Party.
2. The Requested Party may request an assurance that the person concerned shall not be subject to service of process, or be detained or subject to any restriction of personal liberty, by reason of any acts or convictions in the Requesting Party that preceded his or her departure from the territory of the Requested Party.
3. The Requesting Party shall provide such assurances to the Requested Party and, if required, to the person concerned, as far as possible in accordance with its laws. The Requesting Party shall also inform the Requested Party and, if required, the person concerned, which of the assurances requested cannot be provided.
4. The Requesting Party shall inform the Requested Party and the person concerned that, if an extradition request is made by a third State in relation to the person concerned after his or her entry into the territory of the Requesting Party pursuant to Article 13, how extradition requests are dealt with under the laws of the Requesting Party.
5. If the Requesting Party cannot provide such assurances to the satisfaction of the Requested Party, the Requested Party may refuse to invite the person concerned to appear before the relevant authorities in the territory of the Requesting Party.
6. Paragraphs 1 to 5 of this Article shall cease to apply if the person concerned has stayed on in the territory of the Requesting Party fifteen days after that person has been officially notified that his or her presence is no longer required or, after having left, he or she has voluntarily returned. But 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 or her control.
7. A person who declines to give evidence or assist in investigations in accordance with Article 13 shall not be subject to any penalty or mandatory restriction of personal liberty for so declining.

ARTICLE 15

Taking of Evidence by Video Conference

1. One Party may request that the other Party allow a person within the territory of the Requested Party to give evidence in investigations, prosecutions and judicial proceedings in criminal matters in the Requesting Party by video conference.
2. The Requested Party may accept a request under paragraph 1 of this Article to the extent that it is possible and would not violate the laws of the Requested Party.
3. The Parties may reach agreement on the conditions and procedures applicable to taking evidence by video conference.

ARTICLE 16

Inquiry, Search, Freezing and Seizure

1. The Requested Party shall, to the extent its laws permit, execute a request for inquiry, search, freezing and seizure of evidential materials and articles.
2. The Requested Party shall provide the Requesting Party with the results of executing the request, including the results of inquiry or search, the place and circumstances of freezing or seizure, and the subsequent custody of such materials and articles.
3. The Requested Party may transmit the seized materials and articles to the Requesting Party if the Requesting Party agrees to the terms and conditions for such transmission as proposed by the Requested Party.

ARTICLE 17

Banking Information

1. The Requested Party may, to the extent possible, upon request, provide the Requesting Party with:
 - (a) account holder information;
 - (b) account information.

2. In addition to the information required by Article 4, when requesting account holder information the Requesting Party shall provide the Requested Party, as far as possible, with the following information:

- (a) the name of the account holder and any other identifying information;
- (b) the name of the financial institution which it is believed holds the account holder information and the account number;
- (c) the provisions of applicable law describing the offences, including the maximum sentence, in connection with which account holder information is requested;
- (d) a summary of the facts of the case in connection with which account holder information is requested; and
- (e) an explanation of the relevance to the investigation, prosecution or judicial proceedings in criminal matters of the account holder information requested.

3. When requesting account information the Requesting Party shall provide the Requested Party, as far as possible, with:

- (a) the information specified in Paragraph 2 of this Article, including, in particular, the name of the account holder, the name of the financial institution and the account number; and
- (b) the dates during which the account is to be inquired or monitored.

4. For the purposes of this Article:

- (a) “account holder information” is information as to whether a person holds, or has held, an account at a financial institution and (if so) information as to;
 - i the account number;
 - ii the person’s full name;
 - iii the person’s date of birth;

- iv the type of identification document provided by the person to the financial institution and the information contained within that document;
 - v any addresses for the person;
 - vi the date on which the account was opened;
 - vii the date, if any, on which the person ceased to hold the account;
 - viii any other accounts held by that person at that financial institution;
 - ix if the account is held otherwise than in the name of a person, the nature of the account holder and any other information held by the financial institution about the account holder;
 - x if the account is held jointly, details of the matters referred to in ii-v in relation to the other person who jointly holds the account.
- (b) “account information” is information obtained through the inquiry and monitoring of an account which is held at a financial institution.
- (c) the meaning and scope of “financial institution” shall be determined in accordance with the laws of the Requested Party.

ARTICLE 18

Return of Documents, Records and Articles of Evidence

At the request of the Requested Party, the Requesting Party shall return to the Requested Party the originals of documents or records and articles of evidence provided to it by the latter under Articles 10 and 16 of this Treaty as soon as possible.

ARTICLE 19

Proceeds and Instrumentalities of Crime

1. The Parties shall assist each other in proceedings involving the identification, tracing, restraint, freezing, seizure and confiscation of the proceeds and instrumentalities of crime in accordance with the laws of the Requested Party.

2. In addition to the provisions contained within Article 4, a request for assistance in restraint, freezing, seizure or confiscation proceedings shall, as far as possible, also include:

- (a) details of the property in relation to which co-operation 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;
- (d) details of any third party interests in the property; and
- (e) a certified true copy of the restraint, freezing, seizure or confiscation order made by the court, or other appropriate authority, and, if they are not indicated in the order itself, a statement of the grounds on which the order was made.

3. In applying this Article, the legitimate rights and interests of the Requested Party and any third party to such proceeds or instrumentalities shall be respected.

ARTICLE 20

Return and Sharing of Assets

1. The Requested Party in possession of confiscated assets may, to the extent permitted by its laws, return those assets or the proceeds from the sale of such assets to the Requesting Party or share those assets or the proceeds from the sale of such assets with the Requesting Party. The requirements and arrangements for the return or sharing of such assets and the proportion to be returned or shared shall be agreed between the Parties.

2. When the Requested Party confiscates assets that constitute public funds, whether or not these have been laundered, and which have been embezzled from the Requesting Party, the Requested Party shall return the confiscated assets or the proceeds from the sale of such assets, less any reasonable costs of realisation, to the Requesting Party.

ARTICLE 21

Notification of Results of Proceedings in Criminal Matters

The Requesting Party shall, upon request, inform the Requested Party of the results of the criminal proceedings to which the request for assistance relates.

ARTICLE 22

Provision of Criminal Records

If a person is being investigated or prosecuted in the Requesting Party, the Requested Party shall provide, upon request, that person's criminal records in the Requested Party.

ARTICLE 23

Provision of Publicly Available and Official Documents

1. The Requested Party upon request shall provide the Requesting Party with copies of publicly available records that are in the possession of authorities in the Requested Party.
2. The Requested Party upon request may provide copies of an official document or record. The Requested Party may, in its discretion, deny a request pursuant to this paragraph entirely or in part.

ARTICLE 24

Exchange of Information on Law

The Parties shall, upon request, furnish each other with the laws and information on judicial practice in their respective countries related to the implementation of this Treaty.

ARTICLE 25

Authentication

For the purposes of this Treaty, any documents transmitted in accordance with this Treaty shall not require any form of authentication, unless otherwise provided for in this Treaty.

ARTICLE 26

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 the Requested Party under Article 11 of this Treaty;
 - (b) allowances or expenses for persons to travel to, stay in and leave the Requesting Party under Article 13 of this Treaty in accordance with the standards or regulations of the place where such allowances or expenses have been incurred; and
 - (c) expenses for expert evaluations.
2. The Requesting Party shall, upon request, pay in advance the expenses it shall bear.
3. If it becomes apparent that the execution of a request requires extraordinary expenses, the Parties shall consult to determine the terms and conditions under which the request can be executed.

ARTICLE 27

Other Basis for Co-operation

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

ARTICLE 28

Settlement of Dispute

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

ARTICLE 29

Territorial Extension

This Treaty shall apply to any territories for whose international relations the United Kingdom of Great Britain and Northern Ireland is responsible and to which this Treaty shall have been extended by Exchange of Notes, subject to either Party being able to terminate such extension by giving six months written notice to the other through the diplomatic channel.

ARTICLE 30

Entry into Force, Amendment and Termination

1. Each Party shall inform the other by Diplomatic Note when all necessary steps have been taken under its laws for entry into force of this Treaty. This Treaty shall enter into force upon the thirtieth day from the date on which the later Diplomatic Note is sent.
2. This Treaty may be amended at any time by written agreement between the Parties. Any such amendment will enter into force in accordance with the same procedure prescribed in Paragraph 1 of this Article and shall form part of this Treaty.
3. Either Party may terminate this Treaty at any time by notice in writing to the other Party through diplomatic channels. Termination shall take effect on the one-hundred-and-eightieth day after the date on which the notice is given.
4. This Treaty applies to any requests presented after its entry into force even if the relevant acts or omissions occurred before this Treaty enters into force.

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

DONE in duplicate at Beijing, on this second day of December 2013, in the English and Chinese languages, both texts being equally authentic.

**For the United Kingdom of
Great Britain and Northern Ireland:**

HUGO SWIRE

**For the People's Republic of
China:**

XIE HANGSHENG

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