

No. 48538

**Japan
and
Republic of Korea**

Treaty between Japan and the Republic of Korea on mutual legal assistance in criminal matters. Tokyo, 20 January 2006

Entry into force: *26 January 2007 by the exchange of instruments of ratification, in accordance with article 19*

Authentic texts: *English, Japanese and Korean*

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**Japon
et
République de Corée**

Traité d'entraide judiciaire en matière pénale entre le Japon et la République de Corée. Tokyo, 20 janvier 2006

Entrée en vigueur : *26 janvier 2007 par échange des instruments de ratification, conformément à l'article 19*

Textes authentiques : *anglais, japonais et coréen*

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[ENGLISH TEXT – TEXTE ANGLAIS]

TREATY BETWEEN
JAPAN AND THE REPUBLIC OF KOREA
ON MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS

Japan and the Republic of Korea (hereinafter referred to as "the Parties"),

Desiring to establish more effective cooperation between both countries in the area of mutual legal assistance in criminal matters,

Desiring that such cooperation will contribute to combating crime in both countries,

Have agreed as follows:

Article 1

1. Each Party shall, upon request by the other Party, provide mutual legal assistance (hereinafter referred to as "assistance") in connection with investigations, prosecutions and other proceedings in criminal matters in accordance with the provisions of this Treaty.

2. Assistance shall include the following:

(1) taking testimony, statements or items, including through the execution of search and seizure;

(2) examining persons, items or places;

(3) locating or identifying persons, items or places;

(4) providing items in the possession of the legislative, administrative or judicial authorities of the requested Party as well as the local authorities thereof;

(5) presenting an invitation to a person whose appearance in the requesting Party is sought;

(6) transfer of a person in custody for testimony or other purposes;

(7) serving judicial documents;

(8) assisting in proceedings related to forfeiture and immobilization of proceeds or instrumentalities of criminal offenses; and

(9) any other assistance permitted under the laws of the requested Party and agreed upon between the Central Authorities of the Parties.

The term "items" as used in this Treaty means documents, records and articles of evidence.

Article 2

1. Each Party shall designate the Central Authority that is to perform the functions provided for in this Treaty. For Japan, the Central Authority shall be the Minister of Justice or the National Public Safety Commission or persons designated by them. For the Republic of Korea, the Central Authority shall be the Minister of Justice or a person designated by that Minister.

2. Requests for assistance under this Treaty shall be made by the Central Authority of the requesting Party to the Central Authority of the requested Party.

3. The Central Authorities of the Parties shall communicate directly with one another for the purposes of this Treaty.

Article 3

1. The Central Authority of the requested Party may refuse assistance if the requested Party considers that:

- (1) a request relates to a political offense;
- (2) the execution of a request would impair its security or other essential interests;
- (3) a request does not conform to the requirements of this Treaty;
- (4) there are well-founded reasons to suppose that the request for assistance has been made with a view to prosecuting or punishing a person by reason of race, religion, nationality, ethnic origin, political opinions or sex, or that that person's position may be prejudiced for any of those reasons; or
- (5) the conduct that is the subject of the investigation, prosecution or other proceeding in the requesting Party would not constitute a criminal offense under the laws of the requested Party.

2. Before refusing assistance pursuant to paragraph 1, the Central Authority of the requested Party shall consult with the Central Authority of the requesting Party to consider whether assistance can be provided subject to such conditions as the requested Party may deem necessary. If the requesting Party accepts such conditions, the requesting Party shall comply with them.

3. If assistance is refused, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party of the reasons for the refusal.

Article 4

1. The Central Authority of the requesting Party shall make a request in writing. However, the Central Authority of the requesting Party may make a request by any other reliable means of communication if the Central Authority of the requested Party considers it appropriate to receive a request by that means. In such cases, the Central Authority of the requesting Party shall provide supplementary confirmation of the request in writing promptly thereafter, if the Central Authority of the requested Party so requires. A request shall be accompanied by a translation into the language of the requested Party or, in case of urgency, into the English language unless otherwise agreed between the Central Authorities of the Parties.

2. A request shall include the following:

(1) the name of the authority conducting the investigation, prosecution or other proceeding;

(2) the facts pertaining to the subject of the investigation, prosecution or other proceeding; the nature and the stage of the investigation, prosecution or other proceeding; and the text of the relevant laws of the requesting Party;

(3) a description of the assistance requested; and

(4) a description of the purpose of the assistance requested.

3. To the extent necessary and possible, a request shall also include the following:

(1) information on the identity, nationality and whereabouts of any person from whom testimony, statements or items are sought;

(2) a description of the manner in which testimony, statements or items are to be taken or recorded;

(3) a list of questions to be asked of the person from whom testimony, statements or items are sought;

(4) a precise description of persons or places to be searched and of items to be sought;

(5) information regarding persons, items or places to be examined;

(6) a description of the manner in which an examination of persons, items or places is to be conducted and recorded, including the format of any written record to be made concerning the examination;

(7) information regarding persons, items or places to be located or identified;

(8) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(9) a description of any particular procedure to be followed in executing the request;

(10) information on the allowances and expenses to which a person whose appearance is sought before the appropriate authority in the requesting Party will be entitled;

(11) a description of the reason for confidentiality concerning the request; and

(12) any other information that should be brought to the attention of the requested Party to facilitate the execution of the request.

4. If the requested Party considers that the information contained in a request for assistance is not sufficient to meet the requirements under this Treaty to enable the execution of the request, the Central Authority of the requested Party may request that additional information be provided.

Article 5

1. The requested Party shall promptly execute a request in accordance with the relevant provisions of this Treaty. The competent authorities of the requested Party shall take every possible measure in their power to ensure the execution of a request.