

Act on International Assistance in Investigation and Other Related Matters (Tentative translation)

(Act No. 69 of May 29, 1980)

Chapter I General Provisions

(Definitions)

Article 1 In this Act, the meanings of the terms listed in the following items shall be as prescribed respectively in those items:

- (i) The term "assistance" means to provide a foreign state, at its request, with the evidence necessary for the country to investigate a criminal case, including transfer of a sentenced inmate for testimony;
- (ii) The term "requesting country" means a foreign state which has made a request to Japan for assistance;
- (iii) The term "offense for which assistance is requested" means any offense which is mentioned in a request for assistance by the requesting country as being the subject of investigation;
- (iv) The term "transfer of a sentenced inmate for testimony" means an international transfer of a person who is confined for execution of a sentence, in accordance with a treaty which provides that such a person should be transferred in order to enable appearance as a witness for witness examination in criminal proceedings.

(Restrictions on Assistance)

Article 2 Assistance shall not be provided in any of the following circumstances:

- (i) When the offense for which assistance is requested is a political offense, or when the request for assistance is deemed to have been made with a view to investigating a political offense;
- (ii) Unless otherwise provided by a treaty, when the act constituting the offense for which assistance is requested would not constitute a crime under laws and regulations of Japan were it to be committed in Japan;
- (iii) With respect to a request for examination of a witness or provision of articles of evidence, unless otherwise provided by a treaty, when the requesting country does not clearly demonstrate in writing that the evidence is essential to the investigation.

(Receipt of Requests and Sending of Evidence)

Article 3 (1) A request for assistance shall be received, and evidence shall be forwarded to the requesting country, by the Minister of Foreign Affairs; except

that the Minister of Justice shall carry out these tasks when a treaty confers the authority to receive requests for assistance on the Minister of Justice or when the Minister of Foreign Affairs gives consent in an emergency or under other special circumstances.

- (2) When the Minister of Justice receives a request for assistance or forwards evidence to the requesting country pursuant to the proviso of the preceding paragraph, the Minister of Justice may ask the Minister of Foreign Affairs for cooperation necessary for the execution of matters relating to the assistance.

(Measures to Be Taken by the Minister of Foreign Affairs)

Article 4 Upon receiving a request for assistance, the Minister of Foreign Affairs shall, except where any of the following applies, send to the Minister of Justice the written request for assistance or a certification prepared by the Minister of Foreign Affairs of the fact that such a request has been made, as well as related documents, with the opinion of the Minister of Foreign Affairs attached:

- (i) When a request has been made based on a treaty but the form of the request does not conform to the requirements of the treaty;
- (ii) When a request has been made without being based on a treaty but there is no guarantee from the requesting country that it will honor requests of the same sort from Japan.

Chapter II Collection of Evidence

(Measures to Be Taken by the Minister of Justice)

Article 5 (1) With respect to a request for assistance in matters other than a transfer of a sentenced inmate for testimony, except where any item in Article 2 (any item in Article 2 or 4 when the Minister of Justice receives a request for assistance pursuant to the proviso of paragraph (1) of Article 3) applies, the Minister of Justice shall, when none of the provisions of the following paragraph applies and the Minister of Justice deems it appropriate to honor the request, take one of the following measures:

- (i) Send the related documents to the Chief Prosecutor of an appropriate district public prosecutors office and order the Chief Prosecutor to collect the evidence necessary for assistance;
- (ii) Send the documents concerning the request for assistance to the National Public Safety Commission;
- (iii) Send the documents concerning the request for assistance to the Commandant of the Japan Coast Guard, or to the head of other national agencies to which judicial police officials belong as provided by Article 190 of the Code of Criminal Procedure (Act No. 131 of 1948).

- (2) With respect to a request for provision of a document pertaining to the trial which is in the custody of a court, a public prosecutor or a judicial police officer, the Minister of Justice shall send the documents pertaining to the request for assistance to the custodian of the document pertaining to the trial.
- (3) The Minister of Justice may conduct an inquiry on the whereabouts of any relevant person and other necessary matters, when the Minister of Justice deems it necessary in order to take the measures provided in paragraph (1) or any other measures relating to the assistance.

(Measures to Be Taken by the National Public Safety Commission)

Article 6 Upon receiving the documents set forth in paragraph (1), item (ii) of Article 5, the National Public Safety Commission shall send the documents concerned to an appropriate Prefectural Police, and instruct it to collect the evidence necessary for the assistance.

(Measures to Be Taken by the Chief Prosecutor)

- Article 7 (1) When a Chief Prosecutor receives an order set forth in paragraph (1), item (i) of Article 5, he/she shall have a public prosecutor in the office take measures to collect the evidence necessary for assistance.
- (2) When the Superintendent General or the chief of Prefectural Police (hereinafter referred to as "Chief of Police") is instructed pursuant to the provision of Article 6, he/she shall cause a judicial police officer of the Prefectural Police to take the measures set forth in the preceding paragraph.
 - (3) When the head of a national agency receives the documents set forth in paragraph (1), item (iii) of Article 5, he/she shall have an appropriate judicial police officer of the agency take the measures set forth in paragraph (1).

(Measures to Be Taken by a Public Prosecutor)

- Article 8 (1) With regard to the collection of evidence necessary for assistance, a public prosecutor or a judicial police officer may take the following measures;
- (i) To ask any person concerned to appear before them and interview the person;
 - (ii) To request an expert opinion;
 - (iii) To make an inspection;
 - (iv) To ask the owner, possessor or custodian of a document or other materials to submit it;
 - (v) To ask a public office, or a public or private organization to make reports on necessary matters;
 - (vi) To request in writing, the person engaged in the business of providing facilities operating electronic communications for the use of the communications of other persons or the person establishing facilities

operating electronic communications capable of intermediating the transmissions of many, unspecified persons for the purpose of its own business, to not erase transmission history of specified necessary electromagnetic records out of the electromagnetic records pertaining to the transmission source, the transmission destination, the date and time of the transmission and other transmission history of the electronic communications which are recorded in the course of business, for a period not exceeding 30 days (in case of an extension, a period not exceeding a total of 60 days).

- (2) With regard to the collection of evidence necessary for assistance, a public prosecutor or a judicial police officer may, if it is deemed to be necessary, undertake seizure, seizure ordering records, search, or inspection of evidence, upon a warrant issued by a judge.
- (3) A public prosecutor or a judicial police officer may, when the evidence to be collected pursuant to the preceding two paragraphs is a business document or item (hereinafter in this paragraph refers to a document or any other item that is prepared or retained in the course of business) and a request for assistance in certification regarding the manner of preparation and retention of such business document or item has been made, request the person who has prepared or retained such business document or item, or any other person who is deemed to have professional knowledge regarding its preparation or retention, to submit a certificate of the matters asked for in the request.
- (4) When requesting submission of a certificate pursuant to the provision of the preceding paragraph, a public prosecutor or a judicial police officer shall notify the person whom they have asked for a certificate that submission of a false certificate may result in criminal punishment.
- (5) A public prosecutor or a judicial police officer may have a public prosecutor's assistant officer or a judicial police official take the measures set forth in paragraphs (1) to (3) inclusive.

(Penal Provision)

Article 9 A person who submits a false certificate in response to a request for submission of a certificate in accordance with paragraph (3) of Article 8 shall be punished by imprisonment with work for not more than a year or a fine of not more than 500,000 yen; except that this shall not apply when such conduct of the person constitutes a crime under the Penal Code (Act No. 45 of 1907).

(Request for Examination of a Witness)

Article 10 A public prosecutor may request a judge for examination of a witness when any of the following applies:

- (i) When the request for assistance is for examination of a witness;

- (ii) When the person concerned has refused to appear or to make statements in response to an interview in accordance with paragraph (1) of Article 8;
- (iii) When a person who has been requested to submit a certificate pursuant to paragraph (3) of Article 8 has refused to do so.

(Request for Issuance of a Warrant)

Article 11 A request for issuance of a warrant or examination of a witness shall be accompanied with the document set forth in item (iii) of Article 2; except that this shall not apply when a treaty provides otherwise.

(Jurisdiction of the Court)

Article 12 A request for issuance of a warrant or examination of a witness shall be made to a judge of the district court that has jurisdiction over the place where the office to which the requesting person belongs is located, while the filing of an appeal to a measure taken by a judicial police official concerning the seizure or the restoration of a seized article shall be made to the district court that has jurisdiction over the place where that judicial police official has exercised his/her duties.

(Application Mutatis Mutandis of the Code of Criminal Procedure)

Article 13 In addition to those items specifically provided for in this Act, the provisions of the Code of Criminal Procedure (limited to Chapter II and Chapters V to XIII of Part I, Chapter I of Part II, Chapters I and IV of Part III, and Part VII), and of laws and regulations concerning the costs of criminal proceedings, shall apply mutatis mutandis to the measures taken by a public prosecutor, a public prosecutor's assistant officer or a judicial police official, to the issuance of a warrant and the examination of a witness by a judge, and to the decision rendered by a court or a judge, insofar as such application is not incompatible with the nature of the proceedings.

(Measures upon Completion of Disposition)

- Article 14 (1) When the Chief Prosecutor has completed the collection of evidence necessary for the assistance, he/she shall promptly send the collected evidence with his/her opinion attached, to the Minister of Justice. When the head of a national agency set forth in paragraph (1), item (iii) of Article 5 has completed the collection of evidence, the same shall apply.
- (2) When a Chief of Police has completed the collection of evidence necessary for the assistance, the Prefectural Public Safety Commission shall promptly send the collected evidence with its opinion attached, to the National Public Safety Commission.
- (3) Upon receiving the evidence pursuant to the provision set forth in the

preceding paragraph, the National Public Safety Commission shall promptly send the evidence with its opinion attached, to the Minister of Justice.

- (4) The custodian of a document relating to the trial who has received the documents concerning a request for assistance pursuant to the provision of paragraph (2) of Article 5, shall promptly send the document or a certified transcript thereof with his/her opinion attached, to the Minister of Justice; but when he/she is unable to do so, he/she shall return the documents concerning the request for assistance to the Minister of Justice.
- (5) When, after receiving the evidence set forth in paragraph (1),(3), or the preceding paragraph, the Minister of Justice deems it to be necessary, he/she shall determine conditions that the requesting country shall observe with respect to the use or return of the evidence.
- (6) When the requesting country does not assure that it will observe the conditions set forth in the preceding paragraph, the Minister of Justice shall not provide the assistance.

(Notification When Assistance Is Not Provided)

Article 15 When the Minister of Justice, after taking the measures set forth in paragraph (1), item (ii) or (iii) of Article 5, or in paragraph (2) of Article 5, deems it to be inappropriate to provide assistance, he/she shall, without delay, notify the person who has received the documents concerning the request for assistance to such effect.

(Consultation)

Article 16 (1) The Minister of Justice shall consult the Minister of Foreign Affairs when making a decision not to provide assistance upon finding that the request falls under item (i) of Article 4 or that honoring the request would be inappropriate, or when setting conditions in accordance with paragraph (5) of Article 14.

- (2) When the Minister of Justice takes any of the measures set forth in the items of paragraph (1) of Article 5, he/she shall consult the National Public Safety Commission and the head of the national agency set forth in item (iii) of that paragraph, according to their jurisdiction, except when the agency to collect the evidence is clear from the documents pertaining the request for assistance, such as when the examination of a witness is requested.

(Rules of the Supreme Court)

Article 17 Besides the provisions of this chapter, the necessary procedural rules concerning issuance of warrants, examination of a witness, and appeals shall be determined by the Supreme Court.

(Cooperation with the International Criminal Police Organization)

Article 18 (1) The National Public Safety Commission may, on receiving a request for cooperation from the International Criminal Police Organization in investigating a criminal case of a foreign state, take one of the following measures:

- (i) Give instructions to a Prefectural Police which is deemed to be appropriate to make the necessary inquiry;
 - (ii) Send the documents concerning the request for cooperation to the head of the national agency set forth in paragraph (1), item (iii) of Article 5.
- (2) The provision of Article 2 (except for item (iii)) shall apply mutatis mutandis to the case set forth in the preceding paragraph.
- (3) The National Public Safety Commission may, when it deems necessary in order to take the measures set forth in paragraph (1), cause an official of the National Police Agency conduct an inquiry into the whereabouts of a person concerned and other necessary matters.
- (4) With regard to the measures set forth in paragraph (1), the National Public Safety Commission shall consult the head of the national agency set forth in item (ii) of paragraph (1), according to its jurisdiction, except when the agency to conduct inquiry is obvious in the request.
- (5) The National Public Safety Commission shall hear the opinion of the Minister of Justice when it is to take the measure set forth in paragraph (1).
- (6) The Chief of Police of the Prefectural Police who has received the directions pursuant to item (i) of paragraph (1) shall order a police official of the Prefectural Police to take the measures necessary for the inquiry.
- (7) The head of a national agency who has received the documents pertaining to a request for cooperation pursuant to the provision of item (ii) of paragraph (1) may order an official of the agency who is a judicial police official to take the measures necessary for the inquiry in connection with the request.
- (8) With regard to the inquiry set forth in the preceding two paragraphs, a police officer or an official of the national agency in the preceding paragraph may: question any person concerned; make an inspection; ask the owner, possessor or custodian of a document and other articles to present it; or ask a public office, or a public or private organization to make a report on a necessary matter.

Chapter III Transfer of a Sentenced Inmate for Testimony Regarding a Domestic Sentenced Inmate

(Decision of Transfer of a Sentenced Inmate for Testimony)

Article 19 (1) When the requesting country, in accordance with a treaty, requests the transfer of a sentenced inmate for testimony regarding a domestic

sentenced inmate (hereinafter refers to a person who is confined in Japan for execution of a sentence of imprisonment with or without work, or of an assistance punishment set forth in item (ii) of Article 2 of the Act on the Transnational Transfer of Sentenced Persons (Act No. 66 of 2002)), the Minister of Justice shall make a decision of transfer of the sentenced inmate for testimony with a fixed period for transfer of the domestic sentenced inmate, if neither item (i) nor (ii) of Article 2, nor any of the following (with respect to cases where the Minister of Justice receives a request for assistance in accordance with the proviso of paragraph (1) of Article 3, neither item (i) nor (ii) of Article 2, item (i) of Article 4, nor any of the following) applies, and where the Minister of Justice deems it appropriate to honor the request:

- (i) When the domestic sentenced inmate does not consent in writing;
- (ii) When the domestic sentenced inmate is under the age of 20;
- (iii) When the requested period for transfer of the domestic sentenced inmate exceeds 30 days;
- (iv) When a case regarding a crime that the domestic sentenced inmate has committed is pending in a Japanese court.

- (2) The provisions of paragraphs (5) and (6) of Article 14, and paragraph (1) of Article 16 shall be applied mutatis mutandis to where a request for transfer of a sentenced inmate regarding a domestic sentenced inmate has been made. Any technical provisions for such application shall be set forth in a Cabinet order.
- (3) The Minister of Justice shall, when having made the decision set forth in paragraph (1), order the warden of the penal institution in which the domestic sentenced inmate is imprisoned to hand over the inmate in accordance with the decision, and shall notify the domestic sentenced inmate to such effect.

(Measures Relating to a Handover)

- Article 20 (1) The Minister of Justice shall send a permit of custody, to the Minister of Foreign Affairs when having made the order pursuant to paragraph (3) of Article 19.
- (2) The Minister of Foreign Affairs, upon receipt of the permit of custody in accordance with the preceding paragraph, shall send it to the requesting country immediately.
 - (3) Notwithstanding the provisions of the preceding two paragraphs, when the Minister of Justice receives a request for assistance pursuant to the proviso of paragraph (1) of Article 3, the sending of the permit of custody to the requesting party shall be done by the Minister of Justice.
 - (4) The warden of the penal institution who has received the order set forth in paragraph (3) of Article 19 shall, when an official of the requesting country requests handover of the domestic sentenced inmate by showing a permit of

custody, hand over the domestic sentenced inmate.

- (5) The official of the requesting country who has received the handover of the domestic sentenced inmate in accordance with the provision in the preceding paragraph shall promptly escort the domestic sentenced inmate to the requesting country.

(Treatment of the Period of Transfer of a Domestic Sentenced Inmate)

Article 21 The period for which a domestic sentenced inmate has been made subject to the transfer of a sentenced inmate for testimony (excluding the period in which the inmate was not detained) shall be deemed as a period served for the purpose of execution of the sentence.

(Special Provision to the Act on Penal Detention Facilities and Treatment of Inmates and Detainees)

Article 22 (1) With regard to the application of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (Act No. 50 of 2005), Article 52, paragraph (1) of Article 53 (including the cases where it is applied mutatis mutandis pursuant to paragraph (6) of Article 132 of the Act), paragraph (2) of Article 53, paragraph (1) of Article 85, paragraphs (1), (2) and (4) of Article 98, paragraph (4) of Article 100, paragraphs (3), (5) and (7) of Article 132, paragraph (1) of Article 164 (including the cases where it is applied mutatis mutandis pursuant to paragraph (3) of Article 165 of the Act), paragraph (3) of Article 166 (including the cases where it is applied mutatis mutandis pursuant to paragraph (4) of Article 167 and paragraph (4) of Article 168 of the Act), Articles 171, 174 and 175, the handover of a domestic sentenced inmate to an official of the requesting country pursuant to the provision of paragraph (4) of Article 20 shall not be deemed to be a release.

- (2) Article 54 (except for items (ii) and (iii) of paragraph (1)), Article 55, paragraph (5) of Article 98 (limited to the part pertaining to item (i)), Article 99, paragraphs (4) to (7) inclusive of Article 132 and Article 176 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees shall apply mutatis mutandis to the personal effects left behind, remuneration, prohibited or suspended correspondence, or reproduction of the deleted or erased part of correspondence, in the case of a domestic sentenced inmate, who has been handed over to an official of the requesting country pursuant to paragraph (4) of Article 20, escaping or dying. In this case, the term "any of the items in paragraph (1) of Article 54" in paragraph (5), item (ii) and paragraph (7) of Article 132 of the Act shall be deemed to be replaced with "paragraph (1), item (i) of Article 54", and the term "paragraph (1) of Article 54" in paragraph (6) of Article 132 shall be deemed to be replaced with "paragraph (1) of Article 54 (except for items (ii) and (iii))".

Chapter IV Confinement of a Foreign Sentenced Inmate

(Confinement of a Foreign Sentenced Inmate)

- Article 23 (1) A public prosecutor shall confine, based on a detention notice for received transfer issued in advance, a foreign sentenced inmate (hereinafter refers to a person confined for execution of a sentence of imprisonment with or without work or its equivalent in a foreign state) for whom a decision for examination as a witness in a criminal proceeding in Japan has been made, after receiving the handover of such foreign sentenced inmate from an official of the foreign state for transfer of the sentenced inmate for testimony.
- (2) Paragraphs (1) to (3) inclusive of Article 6 and Article 7 of the Act on Extradition (Act No. 68 of 1953), and Article 71, paragraph (3) of Article 73, Articles 74 and 126 of the Code of Criminal Procedure shall apply *mutatis mutandis* to the detention of a foreign sentenced inmate based on the detention notice for received transfer set forth in the preceding paragraph. Any technical provisions for such application shall be set forth in a Cabinet order.

(Handover to a Foreign Official)

- Article 24 (1) A foreign sentenced inmate who has been handed over from a foreign official for transfer of a sentenced inmate for testimony shall, within 30 days from the date of such a handover, be handed back to the foreign official; except that this shall not apply when the foreign sentenced inmate cannot be handed back in compliance with the term set forth above due to a natural disaster or other unavoidable circumstances.
- (2) A public prosecutor may have a public prosecutor's assistant officer, a police official, a coast guard officer or an assistant coast guard officer escort the foreign sentenced inmate, based on the detention notice for received transfer set forth in paragraph (1) of Article 23, when necessary in handing over the foreign sentenced inmate to the foreign official in accordance with the preceding paragraph. In this case, the provision of Article 74 of the Code of Criminal Procedure shall apply *mutatis mutandis*.

(Suspension of Confinement of a Foreign Sentenced Inmate)

- Article 25 (1) A public prosecutor may, only on the basis of illness or other compelling reasons, suspend the confinement of a foreign sentenced inmate who is confined based on a detention notice for received transfer, with such a person entrusted to a physician or other appropriate person, or with limitation on the residence of such person.
- (2) A public prosecutor may rescind suspension of the confinement at any time when the public prosecutor deems it necessary to do so.

(3) The provision of paragraphs (3) to (5) inclusive of Article 22 of the Act on Extradition shall apply mutatis mutandis to rescission of suspension of the confinement of a foreign sentenced inmate pursuant to the preceding paragraph. Any technical provisions for such application shall be set forth in a Cabinet order.

(Special Provision to the Crimes of Escape)

Article 26 A foreign sentenced inmate who is detained in accordance with paragraph (1) of Article 23 shall be deemed to be an unsentenced person confined on a judge's order for the purpose of application of Articles 97, 98, and 102 (limited to those pertaining to the attempted crime for Articles 97 and 98) of the Penal Code.