

# Act on International Assistance in Investigations

(Act No. 69 of May 29, 1980)

## Chapter I General Provisions

### (Definitions)

Article 1 In this Act, the meanings of the terms set forth in the following items are as prescribed in those items:

- (i) the term "assistance" means to provide a foreign state, at its request, with the evidence it needs to investigate a criminal case (this includes transfer of a sentenced inmate to act as a witness);
- (ii) the term "requesting country" means a foreign state that has requested assistance from Japan;
- (iii) the term "offense for which assistance is requested" means the offense mentioned as the subject of an investigation in a request for assistance by a requesting country;
- (iv) the term "transfer of a sentenced inmate to act as a witness" means an international transfer of a person who is under detention as part of the execution of a sentence, when a treaty provides that such a person should be transferred in order to appear in person as a witness during the examination in criminal proceedings.

### (Restrictions on Assistance)

Article 2 Assistance may 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 found to have been made with a view to investigating a political offense;
- (ii) 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, unless otherwise provided by treaty;
- (iii) with regard to the request relating to the examination of a witness or provision of articles of evidence, when the requesting country does not clearly demonstrate in writing that the evidence is essential to the investigation, unless otherwise provided by treaty.

### (Receipt of Requests and Sending of Evidence)

Article 3 (1) A request for assistance is to be received, and evidence is to be sent to the requesting country, by the Minister of Foreign Affairs; provided, however that the Minister of Justice is to 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 sends evidence to a requesting country pursuant to the proviso of the preceding paragraph, the Minister of Justice may ask the Minister of Foreign Affairs for the cooperation needed to implement the matters in connection with the assistance.

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

Article 4 On receiving a request for assistance, the Minister of Foreign Affairs is to forward the Minister of Justice the written request for assistance or a document that the Minister of Foreign Affairs has prepared certifying that such a request has been made, with the related documents and an opinion, unless any of the following applies:

- (i) the request has been made based on a treaty but the formality of the request is found not consistent with the requirements of the treaty;
- (ii) the request has been made with no basis on a treaty, and there is no guarantee by the requesting country that it will honor requests of the same sort by Japan.

## **Chapter II Collection of Evidence**

(Measures to Be Taken by the Minister of Justice)

Article 5 (1) Unless the following paragraph applies, the Minister of Justice is to take one of the following steps as regards a request for assistance other than the transfer of a sentenced inmate to act as a witness, so long as none of the items of Article 2 (any item in Article 2 or 4 when the Minister of Justice receives a request for assistance pursuant to the proviso of Article 3, paragraph (1)) applies, and the Minister finds it appropriate to honor the request:

- (i) send the related documents to the chief prosecutor of whichever district public prosecutor's office found to be appropriate, and order the chief prosecutor to collect the evidence needed for the assistance;
- (ii) send documents concerning the request for assistance to the National Public Safety Commission;
- (iii) send documents concerning the request for assistance to the commandant of the Japan Coast Guard or to the head of any other national agency at which persons who are to exercise the duties of judicial police officials are positioned, as provided by Article 190 of the Code of Criminal Procedure (Act No. 131 of 1948).

- (2) When the request is to be provided with a trial document of which the court, a public prosecutor, or a judicial police officer has custody, the Minister of Justice is to send documents concerning the request for assistance to the custodian of the trial document.
- (3) The Minister of Justice may conduct an inquiry on the whereabouts of any relevant person and other necessary matters, when the Minister finds it necessary to take the measures provided in paragraph (1) or any other measures in relation to the assistance.

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

Article 6 Upon being sent documents as referred to in Article 5, paragraph (1), item (ii), the National Public Safety Commission is to send the relevant documents to whichever prefectural police found to be appropriate, and to instruct it to collect the evidence needed for the assistance.

(Measures to Be Taken by the Chief Prosecutor)

Article 7 (1) Upon receiving an order as referred to in Article 5, paragraph (1), item (i) the chief prosecutor must have a public prosecutor at that office take measures to collect the evidence needed for the assistance.

(2) Upon being instructed as referred to in Article 6, the superintendent general or the chief of the prefectural police (hereinafter referred to as the "chief of police") must have a judicial police officer of the prefectural police take the measures referred to in the preceding paragraph.

(3) Upon being sent documents as referred to in Article 5, paragraph (1), item (iii) the head of a national agency must have whichever of that agency's judicial police officers found to be appropriate take the measures referred to in paragraph (1).

(Measures Taken by the Public Prosecutor)

Article 8 (1) The public prosecutor or a judicial police officer may take the following measures in connection with collecting the evidence needed for the assistance:

- (i) asking any person concerned to appear before them and interview the person;
- (ii) commissioning an expert opinion;
- (iii) making an inspection;
- (iv) asking the owner, person in possession, or custodian of a document or other material to submit it;
- (v) asking a public office or a public or private organization for a report on the needed matters;
- (vi) requesting in writing to a person that is in the business of providing an

electronic communications infrastructure for the communications of other persons or with a person that maintains, for its own business purposes, an electronic communications infrastructure that is capable of acting as the medium for communications among non-specific groups of persons or large numbers of persons, specifying which of the electronic or magnetic records are needed from among the records on the senders, recipients, dates, and times of electronic communications, and other pieces of transmission history that the person has recorded in the course of business and asking the person not to erase them for a period not exceeding 30 days (for a period not exceeding a total of 60 days, if this is extended).

- (2) Upon finding it to be necessary, the public prosecutor or a judicial police officer may undertake a seizure, seizure under an order to allow recording, a search, or an inspection of evidence, pursuant to a warrant issued by a judge, in connection with collecting the evidence needed for the assistance.
- (3) When the evidence to be collected pursuant to the preceding two paragraphs is a business document or item (meaning a document or other item that is prepared or stored in the course of business; the same applies hereinafter in this paragraph) and there is a request for assistance in certifying how that business document or item has been prepared or stored, a public prosecutor or a judicial police officer may ask the person that has prepared or is storing it, or any other person found to have professional knowledge regarding its preparation or storage, to submit a certificate of the information asked for in the request.
- (4) When asking a person to submit a certificate pursuant to the preceding paragraph, a public prosecutor or a judicial police officer must notify the person whom they have asked for a certificate that submission of a false certificate could 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) through (3).

#### (Penal Provisions)

Article 9 A person submitting a false certificate when asked to submit a certificate under paragraph (3) of the preceding Article is subject to imprisonment for not more than a year or a fine of not more than 500,000 yen; provided, however, that this does not apply when the conduct of the person constitutes a crime under the Penal Code (Act No. 45 of 1907).

#### (Request to Examine a Witness)

Article 10 The public prosecutor may request a judge to examine a witness when any of the following applies:

- (i) the request for assistance concerns the examination of a witness;
- (ii) the person concerned has refused to appear in person or to give a statement when interviewed as under Article 8, paragraph (1);
- (iii) a person who has been requested to submit a certificate pursuant to Article 8, paragraph (3) has refused to do so.

(Request for a Warrant)

Article 11 A request for a warrant or a request to examine a witness must be submitted with a document as referred to in Article 2, item (iii); provided, however, that this does not apply when treaty provides otherwise.

(Jurisdiction of the Court)

Article 12 A request for a warrant or a request to examine a witness must be made to a judge of the district court with jurisdiction in the locality of the office to which the requesting person belongs, and an appeal against a measure taken by a judicial police official in connection with the seizure or return of a seized article must be filed with the district court with jurisdiction in the locality where the judicial police official performs the duties thereof.

(Application Mutatis Mutandis of the Code of Criminal Procedure)

Article 13 Beyond as specifically prescribed in this Act, the provisions of the Code of Criminal Procedure (limited to Part I, Chapter II and Chapters V through XIII; Part II, Chapter I; Part III, Chapters I and IV; and Part VII) and laws and regulations on the costs of criminal proceedings apply mutatis mutandis to measures taken by the public prosecutor, a public prosecutor's assistant officer, or a judicial police official; to the issuance of warrants by a judge or the examination of witnesses; and to decisions rendered by a court or a judge, insofar as their 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 needed to provide assistance, the chief prosecutor must promptly send the collected evidence with the prosecutor's opinion to the Minister of Justice. The same applies once the head of a national agency as referred to in Article 5, paragraph (1), item (iii) has completed the collection of evidence.
- (2) When a chief of police has completed the collection of the evidence needed to provide assistance, the Prefectural Public Safety Commission must promptly send the collected evidence together with its opinion to the National Public Safety Commission.
- (3) Upon being sent evidence as referred to in the preceding paragraph, the

National Public Safety Commission is to promptly send the evidence with its opinion 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, must promptly send the trial document or a certified transcript of it with the custodian's opinion to the Minister of Justice; when the custodian is unable to do so, the custodian must return the documents concerning the request for assistance to the Minister of Justice.
- (5) Upon being sent evidence under paragraph (1),(3), or the preceding paragraph and finding that it is necessary to do so, the Minister of Justice is to determine the conditions with which the requesting country must comply with respect to the use or return of the evidence.
- (6) When a requesting country does not assure that it will comply with the conditions referred to in the preceding paragraph, the Minister of Justice is not to provide the assistance.

(Notification When Assistance Will Not Be Provided)

Article 15 When, after the measures set forth in Article 5, paragraph (1), item (ii) or (iii) or paragraph (2) have been taken, the Minister of Justice finds that it is inappropriate to provide assistance, the Minister must notify the person who has been sent the documents concerning the request for assistance of this without delay.

(Consultation)

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

- (2) When the Minister of Justice takes any of the measures referred to in the items of Article 5, paragraph (1), the Minister of Justice must consult with the National Public Safety Commission and the head of the national agency as referred to in item (iii) of that paragraph, according to their jurisdiction, unless the request concerns the examination of a witness or it is otherwise clear from the documents concerning the request for assistance which agency will collect the evidence.

(Rules of the Supreme Court)

Article 17 Beyond as provided in this chapter, the Supreme Court determines the necessary procedural rules concerning issuance of warrants, examination of witness, and appeals.

(Cooperation with the International Criminal Police Organization)

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

- (i) instruct the prefectural police that it finds to be appropriate to make the necessary inquiries;
  - (ii) send documents concerning the request for cooperation to the head of a national agency as referred to in Article 5, paragraph (1), item (iii).
- (2) Article 2 (except for item (iii)) applies mutatis mutandis to a case as referred to in the preceding paragraph.
- (3) On finding it to be necessary to do so in order to take the measures set forth in paragraph (1), the National Public Safety Commission may have a National Police Agency official conduct an inquiry into the whereabouts of a person concerned or into any other necessary matters.
- (4) With regard to the measures referred to in paragraph (1), the National Public Safety Commission is to consult with the head of the national agency as referred to in paragraph 1, item (ii), according to its jurisdiction, unless it is clear from the request which agency will conduct the inquiry.
- (5) The National Public Safety Commission is to hear the opinion of the Minister of Justice when it is to take the measure referred to in paragraph (1).
- (6) A chief of prefectural police who has been instructed as referred to in paragraph (1), item (i) is to order a prefectural police to take the measures necessary for the inquiry.
- (7) The head of a national agency who has been sent documents concerning a request for cooperation pursuant to the provisions of item (ii) of paragraph (1) may order an official of the agency who is a judicial police official to take the measures needed for an inquiry in connection with the request.
- (8) With regard to the inquiry as referred to in the preceding two paragraphs, a police officer or an official of a national agency as referred to in the preceding paragraph may question any person concerned; make an inspection; ask the owner, person in possession, or custodian of a document or other article to present it; or ask a public office or a public or private organization for a report on the needed matter.

### **Chapter III Transfer of a Sentenced Inmate to Act as a Witness Regarding an Inmate Serving a Sentence in Japan**

(Decision of Transfer of a Sentenced Inmate to Act as a Witness)

Article 19 (1) When a requesting country requests the transfer of a sentenced inmate to act as a witness regarding an inmate serving a sentence in Japan

(meaning a person who is under detention in Japan as part of the execution of a sentence of imprisonment with or without work, or as part of the execution of cooperative punishment as referred to in Article 2, item (ii) of the Act on the Transnational Transfer of Sentenced Persons (Act No. 66 of 2002); the same applies hereinafter) in accordance with a treaty, the Minister of Justice is to make a decision of the transfer of a sentenced inmate to act as a witness for a fixed period if neither Article 2, item (i) nor (ii) nor any of the following applies (or if the Minister of Justice has received a request for assistance pursuant to the proviso of Article 3, paragraph (1) and neither Article 2, item (i) nor (ii); Article 4, item (i); nor any of the following applies), and the Minister of Justice finds it to be appropriate to honor the request:

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

- (2) Article 14, paragraphs (5) and (6) and Article 16, paragraph (1) apply *mutatis mutandis* to where a request of transfer of a sentenced inmate to act as a witness regarding an inmate serving a sentence in Japan is made. Cabinet Order prescribes the necessary technical replacement of terms for such a case.
- (3) The Minister of Justice must, when having made the decision referred to in paragraph (1), order the warden of the penal institution in which the inmate serving a sentence in Japan is imprisoned to hand over the inmate serving a sentence in Japan in accordance with the decision, and must notify the inmate thereof.

#### (Measures Relating to a Handover)

- Article 20 (1) The Minister of Justice must send a permit of custody to the Minister of Foreign Affairs when having made the order pursuant to paragraph (3) of Article 19.
- (2) Upon being sent a permit of custody as under the preceding paragraph, the Minister of Foreign Affairs must 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 Article 3, paragraph (1), the sending of the permit of custody to the requesting party is to be done by the Minister of Justice.
  - (4) When an official of the requesting country requests handover of an inmate serving a sentence in Japan by showing a permit of custody, the warden of a penal institution who has received an order as referred to in Article 19, paragraph (3) must hand over the inmate serving a sentence in Japan.



(5) The official of the requesting country who has been handed over of an inmate serving a sentence in Japan pursuant to the preceding paragraph is to promptly escort the inmate serving a sentence in Japan to the requesting country.

(Treatment of the Period of Transfer of an Inmate Serving a Sentence in Japan)

Article 21 The period during which an inmate serving a sentence in Japan was under transfer of a sentenced inmate to act as a witness (excluding any period during which the inmate was not under detention) is deemed to be a period during which the inmate's sentence was being enforced.

(Special Provisions of 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 53, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 132, paragraph (6) of the Act) and paragraph (2); Article 85, paragraph (1); Article 98, paragraphs (1), (2), and (4); Article 100, paragraph (4); Article 132, paragraphs (3), (5), and (7); Article 164, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (3) of Article 165 of the Act); Article 166, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to Article 167, paragraph (4) and Article 168, paragraph (4) of the Act); and Articles 171, 174, and 175, the handover of an inmate serving a sentence in Japan to an official of the requesting country pursuant to the provision of Article 20, paragraph (4) is deemed not to be a release.

(2) Article 54 (except for paragraph (1), items (ii) and (iii)); Article 55; Article 98, paragraph (5) (limited to the part pertaining to item (i)); Article 99; Article 132, paragraphs (4) through (7); and Article 176 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees apply mutatis mutandis to the personal effects left behind, remuneration, prohibited or suspended correspondence, and reproduction of deleted or erased parts of correspondence, of an inmate serving a sentence in Japan who has been handed over to an official of the requesting country pursuant to Article 20, paragraph (4), in the event that the inmate escapes or dies. In such a case, the phrase "any of the items of Article 54, paragraph (1)" in Article 132, paragraph (5), item (ii) and paragraph (7) of that Act is deemed to be replaced with "Article 54, paragraph (1), item (i)", and the term "Article 54, paragraph (1)" in paragraph (6) of Article 132 is deemed to be replaced with "Article 54, paragraph (1) (except for items (ii) and (iii))".

## Chapter IV Detention of an Inmate Serving a Sentence in a Foreign State

(Detention of an Inmate Serving a Sentence in a Foreign State)

- Article 23 (1) A public prosecutor must detain, based on a detention notice for received transfer that has been issued in advance, an inmate serving a sentence in a foreign state (meaning a person who is under detention in a foreign state as part of the execution of a sentence of imprisonment with or without work or its equivalent; the same applies hereinafter) for whom a decision has been made to be examined as a witness in a criminal proceeding in Japan, after receiving the handover of the sentenced inmate from an official of the foreign state for transfer of a sentenced inmate to act as a witness.
- (2) Article 6, paragraphs (1) through (3) and Article 7 of the Act on Extradition (Act No. 68 of 1953), and Article 71; Article 73, paragraph (3); and Articles 74 and 126 of the Code of Criminal Procedure apply *mutatis mutandis* to the detention of an inmate serving a sentence in a foreign state pursuant to a detention notice for received transfer as referred to in the preceding paragraph. Cabinet Order prescribes the necessary technical replacement of terms for such a case.

(Handover to the Official of a Foreign State)

- Article 24 (1) An inmate serving a sentence in a foreign state who has been handed over from an official of a foreign state for transfer of a sentenced inmate to act as a witness must be handed back to an official of that foreign state within 30 days from the date of such a handover; provided, however, that this does not apply when the inmate serving a sentence in a foreign state cannot be handed back to an official of that foreign state within this period 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 an inmate serving a sentence in a foreign state pursuant to the detention notice for received transfer as referred to in paragraph (1) of Article 23, when this is necessary in handing over the inmate serving a sentence in a foreign state to the official of a foreign state pursuant to the preceding paragraph. Article 74 of the Code of Criminal Procedure applies *mutatis mutandis* in such a case.

(Suspending the Detention of an Inmate Serving a Sentence in a Foreign State)

- Article 25 (1) A public prosecutor may, only due to illness or other compelling reasons, suspend the detention of an inmate serving a sentence in a foreign state who is being detained pursuant to a detention notice for received transfer, entrusting the inmate serving a sentence in a foreign state to a physician or

other person found to be appropriate or restricting the inmate's residence.

(2) A public prosecutor may rescind the suspension of a detention at any time when the public prosecutor finds it necessary to do so.

(3) Article 22, paragraphs (3) through (5) of the Act on Extradition apply mutatis mutandis to the rescission of a suspension on the detention of an inmate serving a sentence in a foreign state pursuant to the preceding paragraph. Cabinet Order prescribes the necessary technical replacement of terms for such a case.

(Special Provisions on the Crimes of Escape)

Article 26 An inmate serving a sentence in a foreign state who is being detained pursuant to Article 23, paragraph (1) is deemed to be an unsentenced person detained on a judge's order for the purpose of applying Articles 97 and 98 of the Penal Code, as well as Article 102 of that Code (limited to the part that concerns attempts at the crimes referred to in Articles 97 and 98).