



Third Study Commission Questionnaire 2023
Taiwan

RESPONSE FROM THE JUDGES ASSOCIATION OF REPUBLIC OF CHINA (TAIWAN)

For 2023, the Third Study Commission, which focuses on Criminal Law, decided to study "Mutual cooperation in the investigation of criminal cases and in the presentation of evidence".

In order to facilitate discussion and to assist us in learning from colleagues, we ask that each country answers the following questions:

1. **Does your country have any legislation, or regulations, and/or court rules of procedure that are relevant to the topic of our focus this year - mutual cooperation in the investigation of criminal cases and in the presentation of evidence in a criminal proceeding at court? Please explain.**

Pertaining to international mutual legal assistance in criminal matters, treaties signed between Taiwan(Republic of China) and the requesting/requested country will take precedence. If such treaties or applicable provisions in such treaties do not exist, *the Mutual Legal Assistance in Criminal Matters Act* (hereinafter referred to as *the Act*) shall apply. Furthermore, any assistance to be granted in accordance with the Act shall be provided based on the principle of reciprocity. In cases where there are issues to which no provisions of the Act are applicable, the Code of Criminal Procedure and other laws shall apply.

The Act, which came into effect on May 4th, 2018, facilitates transnational criminal procedures related to investigation, prosecution, adjudication, enforcement, or juvenile protection proceedings. However, it does not cover matters of extradition or the transfer of sentenced persons between countries or jurisdictions. Specifically, the Act allows for the request or granting of the following types of legal assistance:

- Obtaining evidence
- Service of document
- Search
- Seizure

- Immobilization of assets
- Implementation of final and irrevocable judgment or order for confiscation of assets or collection of proceeds value relating to a criminal offense
- Restitution of proceeds of crime
- Other types of assistance not contradictory to the law of Taiwan.

It is worth noting that giving the unique relationship between Taiwan (aka Republic of China) and Mainland China (aka People's Republic of China), when it comes to mutual cooperation in criminal matters between/among Taiwan, Mainland China, Hong Kong and Macao, *the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement* is implemented in place of the Act.

2. In your country, when a crime is being investigated does the judiciary have any role (a) in the request for information from a foreign state and/or (b) in the provision of information to a foreign state?

Pursuant to Articles 7, 8, and 30 of the Act, any request seeking mutual legal assistance made by foreign countries to Taiwan (or vice versa) shall be filed in the form of a written Letter of Request via the Ministry of Foreign Affairs to the Ministry of Justice in Taiwan. In the case of an emergency, a request may be filed directly with the Ministry of Justice.

The judiciary is not responsible for taking or making request for information to investigate crime, as collecting evidence, and building a case are the duties of law enforcement officers and prosecutors. Nevertheless, the courts or the judiciary may still have substantial involvement to various extent depending on the matters at hand, whether it be the court giving assistance to or requesting assistance from the investigation bodies of a foreign state. For example, during the investigation stage, if the prosecutor deems that a search or communication surveillance is necessary, he/she shall apply for a search or communication surveillance warrant to the court; the court then decides whether to grant or to deny the warrant.

3. If your answer to either 2 (a) or 2 (b) is yes, what legislation, regulations or rules of procedure apply to the decision of a judge involved at the investigation stage?

Judges must always abide by the *Code of Criminal Procedure*. Considering the different nature of matters present, other statutes such as the *Communication Security and Surveillance Act*, *Habeas Corpus Act* should also be followed in addition.

4. **What is the legislation or court rules that relate to the taking of evidence from a witness in a foreign state, or the giving of evidence from a witness in your country to a court in a foreign country? Please explain these including the role played by a judge in both scenarios.**

Different scenarios and corresponding legal provisions are as follow:

- (1) Request made by foreign state to examine a witness in Taiwan, with the interview/examination process led by prosecutors or judges in Taiwan :

- Article 17 of the Act

§1. When the Requesting Party requests to interview or hear an accused, a witness, an expert witness, or any other related persons in connection with the request, the pertinent facts, questions list, and their general description shall be included in the Letter of Request.

§2. The Assisting Body may permit the virtual presence of the Requesting Party during the interview or hearing, through a simultaneous audio-video link.

§3. During the interview or hearing referred to in the last preceding paragraph, the Requesting Party may, where necessary, request the Assisting Body to pose additional questions which are not included in the questions list attached to the Letter of Request, upon the permission of the Assisting Body.

- Article 18 of the Act

§1. Persons from the Requesting Party may be allowed to appear at the scene of the implementation of the request, upon the consent of the Assisting Body.

§2. In the circumstance of the preceding paragraph, Paragraph 3 of the last preceding Article shall apply if the Requesting Party finds it necessary to request the Assisting Body to pose additional questions.

- (2) Request made by foreign state to arrange a witness examination out of Taiwan, with the prosecutors or judges of that foreign state leading the interview/examination process :

- Article 19 of the Act

§1. Upon request, ROC (Taiwan) may arrange the requested persons to appear in a designated place out of its territory, in order to give testimony, statement, expert opinion, or other forms of assistance. The Requesting Party shall indicate in the Letter of Request the willingness of paying the expenses so incurred for the arrangement and the time duration

needed for the assistance.

- §2. Any person who is the accused or suspect of the requested case or subjected to travel ban or other personal liberty restriction under the laws of ROC (Taiwan) should not be included in the list of arranged persons as referred to in the preceding paragraph.
 - §3. The request as referred to in Paragraph 1 shall not be executed without voluntary consent of the person involved, and no compulsory force shall be imposed in implementing such request.
 - §4. The Requesting Party shall give the assurance on the following matters concerning the person who has been asked to assist:
 - (1) Such person shall not be prosecuted, detained, punished, forced to appear, or subjected to travel ban or any other personal liberty restriction in that territory for any criminal offenses which preceded such person's requested appearance in the designated territory of the Requesting Party. Nor is the person forced to give any testimony, statement, expert opinion, or other form of assistance that is beyond the scope of the original request.
 - (2) In the case of refusing or failing to appear or testify after entering the designated place, the person concerned shall not by reason thereof be prosecuted, detained, punished, or subjected to travel ban or other unfavorable measure.
- (3) Request made by Taiwan to examine a witness in foreign states, with the interview/examination process led by either the prosecutors/judges of Taiwan or of the foreign state:
- Article 31 of the Act
 - §1. When requesting an assistance from the Requested Party for interviewing or hearing the accused, witness, expert witness, or any other related persons of the criminal case, ROC (Taiwan) may, in compliance with the law of the Requested Party, transmit the interview or hearing to ROC (Taiwan) through a simultaneous audio-video link.
 - §2. During the transmission as specified in the preceding paragraph, ROC (Taiwan) may, upon the permission of Requested Party, request to pose additional questions not included in the question list attached to the Letter of Request, where such a need arises.
 - Article 177 of the Code of Criminal Procedure
 - §1. If a witness is unable to appear or there are other necessary circumstances, after considering the opinion of the party or defense attorney, he may be examined where he is found or in the court of the

judicial district in which he resides.

- §2. In circumstances specified in the preceding section, if there is audio and video transmission technical equipments that can communicate between the place where the witness is located and the court, the court may conduct the examination by utilizing the said technology if the court deems appropriate to do so.
- §3. In conducting the examination specified in the preceding two sections, the party, defense attorney, and agent may be present and may examine the witness; the court shall send notice in advance regarding the date and place of examination.
- §4. The provisions of the preceding two sections shall apply mutatis mutandis to the investigation stage.

5. **As a judge, if you receive a request for assistance from a foreign country, whether at the investigation stage or in the context of a court proceeding (a hearing or a trial), is it relevant to your determination of whether and how to assist that the basic human rights, principles of natural justice, and/or rules of procedural fairness that exist in your country are respected? Please explain.**

When providing mutual assistance to a foreign country, it is crucial that the rules of the Taiwanese jurisdiction are complied with. This includes acting in accordance with basic human rights, principles of natural justice and rules of procedural fairness.

6. **Describe your own personal experience(s) as a judge that are relevant to the topic of our focus this year, whether it be presiding over an extradition hearing (a request to extradite an accused person to another country in order to be prosecuted in that other country), or receiving evidence in a court proceeding in your country from a witness who is testifying from another country and with the help of court officials in that other country, or helping to arrange for a witness in a court proceeding in another country to testify from a place in your own country, or responding to a request for assistance from an international court such as The Hague, or something else. These are just examples of things that you may have experienced; they are not meant to be exhaustive.**

As a presiding judge, my personal experiences regarding transnational mutual

cooperation in court procedure are mostly about obtaining evidence, and service of document. Under the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement, I can file a request with the Straits Exchange Foundation (ROC) through the Ministry of Justice. Then, the Straits Exchange Foundation will pass the request to the Association for Relations Across the Taiwan Straits (PROC), which, in turn, will hand over the issue to the responsible officers.