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*Session*

SENATE

TREATY DOC.  
104-1

TREATY WITH THE REPUBLIC OF KOREA ON  
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND  
THE REPUBLIC OF KOREA ON MUTUAL LEGAL ASSISTANCE IN  
CRIMINAL MATTERS, SIGNED AT WASHINGTON ON NOVEMBER  
23, 1993, TOGETHER WITH A RELATED EXCHANGE OF NOTES  
SIGNED ON THE SAME DATE



JANUARY 12, 1995.—Treaty was read the first time and, together with  
the accompanying papers, referred to the Committee on Foreign Rela-  
tions and ordered to be printed for the use of the Senate  
U.S. GOVERNMENT PRINTING OFFICE



## LETTER OF TRANSMITTAL

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THE WHITE HOUSE, *January 12, 1995.*

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the Government of the United States of America and the Government of the Republic of Korea on Mutual Legal Assistance in Criminal Matters, signed at Washington on November 23, 1993, with a related exchange of notes signed the same date. Also transmitted for the information of the Senate is the report of the Department of State with respect to this Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties that the United States is negotiating in order to counter criminal activities more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of modern criminals, including members of drug cartels, "white-collar" criminals, and terrorists. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the treaty includes: (1) taking testimony or statements of persons; (2) providing documents, records, and articles of evidence; (3) serving documents; (4) locating or identifying persons or items; (5) transferring persons in custody for testimony or other purposes; (6) executing requests for searches and seizures; (7) assisting in forfeiture proceedings; and (8) rendering any other form of assistance not prohibited by the laws of the Requested States.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.



## LETTER OF SUBMITTAL

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DEPARTMENT OF STATE, WASHINGTON, November 17, 1994.  
The PRESIDENT,  
*The White House.*

THE PRESIDENT: I have the honor to submit to you the Treaty between the United States of America and the Republic of Korea on Mutual Legal Assistance in Criminal Matters (the "Treaty"), signed at Washington on November 23, 1993, together with a related exchange of notes signed on the same date. I recommend that the Treaty and the related exchange of notes be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with Argentina, The Bahamas, Canada, Italy, Mexico, Morocco, the Netherlands, Spain, Switzerland, Thailand, Turkey, the United Kingdom (concerning the Cayman Islands), and Uruguay. Other similar treaties have been signed and ratified by the United States (but have not yet entered into force) with Belgium, Colombia, and Jamaica. In addition, treaties with Nigeria and Panama have been transmitted to the Senate and await Senate consideration. This Treaty contains many provisions similar to those in the other treaties. It will enhance our ability to investigate and prosecute a variety of offenses, including violent crimes, drug trafficking, and fraud and other white-collar crimes. The Treaty is designed to be self-executing and will not require implementing legislation.

Article 1 contains a non-exhaustive list of the major types of assistance to be provided under the Treaty, including taking the testimony or statements of persons; providing documents, records, and articles of evidence; serving documents; locating or identifying persons or items; transferring persons in custody for testimony or other purposes; executing requests for searches and seizures; assisting in forfeiture proceedings; and any other form of assistance not prohibited by the laws of the Requested State. The scope of the Treaty includes not only criminal offenses, but also proceedings related to criminal matters, which may be civil or administrative in nature. The article makes it clear that the Treaty is not designed to be utilized by nongovernmental parties or institutions who seek evidence for use in solely private matters. Similarly, the Treaty is not intended to create any right in a private person to suppress or exclude evidence.

Article 2 provides for the establishment of Central Authorities and defines the Central Authorities for purposes of the Treaty. For the United States, the Central Authority is the Attorney General or a person designated by the Attorney General. For the Republic

of Korea, the Central Authority is the Minister of Justice or a person designated by the Minister of Justice.

Article 3 sets forth the circumstances under which a State may deny assistance under the Treaty. A request may be denied if it relates to a political or military offense that would not be a crime under ordinary criminal law, or if the Central Authority of the Requested State has substantial grounds to believe that compliance with the request would promote prosecution or punishment based on race, religion, nationality or political opinion. In addition, a request may be denied if its execution would prejudice the security or similar essential interests of the Requested State.

Article 3 also gives the Requested State the discretion to deny assistance if the conduct that is the subject of the request would not constitute an offense under the laws of the Requested State. This basis for denial, however, does not apply if the conduct in question falls under one of 23 categories of serious crimes described in the annex to the Treaty, for which assistance must be provided without regard to whether the conduct would be punishable under the laws of the Requested State.

Before denying assistance under Article 3, the Central Authority of the Requested State is required to consult with its counterpart in the Requesting State to consider whether assistance can be given subject to such conditions it deems necessary. If the Requesting State accepts assistance subject to conditions, it shall comply with the conditions. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4 prescribes the form and content of written requests under the Treaty, specifying in detail the information required in each case. The article specifies further information to be provided to the extent necessary and possible to assist in locating individuals and effecting particular types of assistance. Unless otherwise agreed, all requests and supporting documents shall be in the language of the Requested State.

Article 5 requires the Requested State to comply promptly with a request, or to transmit it to the authorities with jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute a request. The Courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

Requests are to be executed in accordance with the laws of the Requested State unless the Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

If the Central Authority of the Requested State determines that execution of the request would interfere with an ongoing criminal investigation or proceeding, it may postpone execution or, after consultations with the Requesting State, impose conditions on such execution. If the Requesting State accepts assistance subject to such conditions, it shall comply with them.

Article 5 further requires the Requested State, if so requested, to use its best efforts to keep confidential a request and its contents,

and to inform the Requesting State if the request cannot be executed without breaching confidentiality.

Article 6 apportions between the two States the costs incurred in executing a request. Generally, each State shall bear the expenses incurred within its territory in executing a request.

Article 7 obliges the Requesting State not to use any information or evidence obtained under the Treaty for purposes unrelated to the proceedings stated in the request without prior consent of the Requested State. If the Requested State requests that information or evidence furnished be kept confidential, the Requesting State is required to use its best efforts to comply with the conditions specified. Once information is made public in the Requesting State in accordance with the Treaty, no further limitations on use apply.

Article 8 provides that the Requested State may compel, if necessary, the taking of testimony or production of documents or other evidence in its territory on behalf of the Requesting State. The article requires the Requested State, upon request, to inform the Requesting State in advance of the date and place of the taking of testimony.

Article 8 also requires the Requested State to permit the presence of any persons specified in the request (such as the accused, counsel for the accused, or other interested persons) and to permit such persons to question the person whose testimony is being taken or, if such direct questioning is not permitted, to submit questions to the appropriate authority. In the event that a person whose testimony or evidence is being taken asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall be taken and the claim made known to the Requesting State for resolution by its authorities.

Finally, Article 8 provides a mechanism for authentication of documentary evidence produced pursuant to this article and provides that no further authentication or certification shall be necessary in order for such information to be admissible in evidence in proceedings in the Requesting State.

Article 9 requires that the Requested State provide the Requesting State with copies of publicly available records or information of government departments and agencies. The Requested State may further provide copies of other records or information in the possession of a government department or agency but not publicly available, to the same extent and under the same conditions as it would to its own law enforcement or judicial authorities. Article 9 requires authentication of documents furnished in the manner specified in the request and confirms their admissibility in evidence in the Requesting State if so authenticated.

Article 10 provides a mechanism for the Requesting State to invite the voluntary appearance and testimony in its territory of a person located in the Requested State. The Central Authority of the Requested State is required to invite the person to appear and to promptly inform the Requesting State of the person's response.

Article 11 provides for the voluntary transfer to one State of a person in custody in the other State for purposes of assistance under the Treaty, provided that the person in question and both States agree. The article establishes the express authority and the obligation of the Requesting State to maintain the person trans-

ferred in custody unless otherwise authorized by the Requested State. It further obligates the Requesting State to return the person to the Requested State as soon as circumstances permit or as otherwise agreed by the States, without the need for extradition proceedings.

Article 12 provides that a person voluntarily appearing in the Requesting State pursuant to Article 10 or 11 shall be immune from criminal prosecution, detention, or any restriction of personal liberty, and shall not be subject to service of process while he is in the Requesting State. This "safe conduct" is limited to acts or convictions that preceded the person's departure from the Requested State. Any safe conduct provided under this article shall cease 15 days after the person's presence is no longer required in the Requesting State or whenever the person voluntarily enters that State after leaving it.

Article 13 requires the Requested State to use its best efforts to ascertain the location or identity of persons or items specified in a request.

Article 14 requires the Requested State to use its best efforts to effect service of any documents relating to or forming part of a request under the Treaty. The article further requires that, unless otherwise agreed, any request for the service of a document inviting a person to appear in the territory of the Requesting State be received by the Requested State no later than 30 days before the scheduled appearance. The Requested State is required to return proof of service.

Article 15 obligates the Requested State to execute requests for search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State. The article further provides for the certification of the continuity of custody, and the identity and integrity of any such item in order to preserve its admissibility in evidence in the Requesting State. In addition, Article provides that the Central Authority of the Requested State may impose conditions on the transfer of the seized items to protect third-party interests in the property.

Article 16 obliges the Requesting State to return to the Requested State as soon as possible any documents, records, or items furnished under the Treaty if the Requested State so requests.

Article 17 provides that, if one State becomes aware of fruits or instrumentalities of offenses that are located in the territory of the other State and may be forfeitable or otherwise subject to seizure under the laws of the other State, it may so inform the other State. Article 17 also obligates the States to assist one another to the extent permitted by their respective laws in proceedings involving the forfeiture of the proceeds and instrumentalities of crime. The article further permits the States to agree to share forfeited assets, or the proceeds of their sale, to the extent permitted by their respective laws and upon such terms as they deem appropriate.

Article 18 states that assistance and procedures provided in the Treaty shall not prevent the granting of assistance under any other international convention or bilateral agreement between the two States. The article also states that the Treaty shall not prevent the

granting of assistance available under the national laws of either State.

Article 19 provides that the Central Authorities of the two States shall consult, at times mutually agreed upon, concerning the most effective means to implement the provisions of the Treaty.

Article 20 provides that the Treaty shall be ratified and shall enter into force upon exchange of instruments of ratification. The article also includes a provision that allows for requests under the Treaty to be actionable even if the relevant acts or omissions occurred prior to the date the Treaty entered into force. In addition, Article 20 allows either State to terminate the Treaty with six months written notice to the other State.

In an exchange of diplomatic notes accompanying the Treaty, the two States agree to utilize one of three certificates of authenticity for business records or foreign public documents requested pursuant to the Treaty. The exchange of notes will enter into force at the same time as the Treaty.

A Technical Analysis explaining in detail the provisions of the Treaty is being prepared by the United States negotiating delegation, consisting of representatives from the Departments of Justice and State, and will be transmitted separately to the Senate Committee on Foreign Relations.

The Department of Justice joins the Department of State in recommending approval of this Treaty by the Senate as soon as possible.

Respectfully submitted,

STROBE TALBOTT.

TREATY  
BETWEEN  
THE UNITED STATES OF AMERICA AND  
THE REPUBLIC OF KOREA  
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United States of America and the  
Government of the Republic of Korea,

Desiring to improve the effectiveness of both countries in  
the prevention, investigation, and prosecution of crime through  
cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

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Article 1  
Scope of Assistance

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the prevention, investigation, and prosecution of offenses, and in proceedings related to criminal matters.

2. Assistance shall include:

- a. taking the testimony or statements of persons;
- b. providing documents, records, and articles of evidence;
- c. serving documents;
- d. locating or identifying persons or items;
- e. transferring persons in custody for testimony or other purposes;
- f. executing requests for searches and seizures;
- g. assisting in forfeiture proceedings; and
- h. any other form of assistance not prohibited by the laws of the Requested State.

3. This Treaty is intended solely for mutual legal assistance between the Contracting Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

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Article 2  
Central Authorities

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. For the United States of America, the Central Authority shall be the Attorney General or such persons designated by him. For the Republic of Korea, the Central Authority shall be the Minister of Justice or such persons designated by him.
3. For the purposes of this Treaty, the Central Authorities shall communicate directly with one another, or through the diplomatic channel.

Article 3  
Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:
  - a. the request relates to a political offense or to an offense under military law which would not be an offense under ordinary criminal law;
  - b. there are substantial grounds leading the Central Authority of the Requested State to believe that compliance would facilitate the prosecution or punishment of the person to whom the request refers on

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account of his race, religion, nationality or political opinions;

c. the execution of the request would prejudice the security or similar essential interests of the Requested State; or

d. except as provided in paragraph 2 below, the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would not constitute an offense under the laws of the Requested State.

2. The Requested State shall, with respect to the categories of conduct described in the Annex to this Treaty, provide assistance without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

3. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

4. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

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Article 4  
Form and Content of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing promptly thereafter unless the Central Authority of the Requested State agrees otherwise. The request and any accompanying documents shall be in the language of the Requested State unless otherwise agreed.

2. The request shall include the following:

- a. the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- b. a description of the subject matter and the nature of the investigation, prosecution, or proceeding, including the specific criminal offenses which relate to the matter;
- c. a description of the evidence, information, or other assistance sought; and
- d. a statement of the purpose for which the evidence, information, or other assistance is sought.

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

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- a. information on the identity and location of any person from whom evidence is sought;
- b. 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;
- c. information on the identity and whereabouts of a person to be located;
- d. a precise description of the place or person to be searched and of the items to be seized;
- e. a description of the manner in which any testimony or statement is to be taken and recorded;
- f. a list of questions to be asked of a witness;
- g. a description of any particular procedure to be followed in executing the request;
- h. information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and
- i. any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

Article 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, transmit it

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to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. When necessary, the request shall be presented to the appropriate authority by the persons appointed by the Central Authority of the Requested State.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching the requested confidentiality, the Central Authority of the

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Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the requested assistance is not provided, the Central Authority of the Requested State shall supply the reasons for this outcome to the Central Authority of the Requesting State.

#### Article 6

##### Costs

The Requested State shall assume all costs relating to the execution of the request within its territory, except for the fees of expert witnesses, the costs of translation and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which fees, allowances, and expenses shall be paid by the Requesting State.

Article 7

Limitations on Use

1. The Requesting State shall not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Requested State.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting State shall use its best efforts to comply with the conditions specified.

3. Information or evidence which has been made public in the Requesting State in accordance with paragraph 1 or 2 may thereafter be used for any purpose.

Article 8

Testimony or Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce any item, including documents, records, and any other articles of evidence.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

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3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and may allow such persons to question the person whose testimony or evidence is being taken. In the event that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the persons whose testimony or evidence is being taken.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Documents, records, and any other articles of evidence produced in the Requested State pursuant to this Article or which are the subject of testimony taken under this Article shall be certified or authenticated in accordance with procedures specified in the request. If certified or authenticated in such manner, they shall be admissible in evidence as proof of the truth of the matters set forth therein in accordance with the laws of the Requesting State.

#### Article 9

##### Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of publicly available documents, records, or

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information in the possession of government departments and agencies in the Requested State.

2. The Requested State may provide copies of any documents, records, or information which are in the possession of a government department or agency in that State but which are not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. Documents, records and copies thereof produced pursuant to this Article shall be certified or authenticated in accordance with the procedures specified in the request. If certified or authenticated in such manner, they shall be admissible in evidence as proof of the truth of the matters set forth therein in accordance with the laws of the Requesting State.

#### Article 10

##### Testimony in the Requesting State

The Requested State shall invite a person in that State to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.

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Article 11

Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is needed for purposes of assistance under this Treaty shall be transferred from the Requested State for that purpose if both the person and the Central Authority of the Requested State consent to the transfer.

2. A person in the custody of the Requesting State whose presence in the Requested State is needed for purposes of assistance under this Treaty may be transferred to the Requested State if the person consents and if the Central Authorities of both States agree.

3. For purposes of this Article:

- a. the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;
- b. the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
- c. the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and

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d. the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

Article 12  
Safe Conduct

1. A person present in the Requesting State pursuant to Articles 10 or 11 shall not be subject to service of process, or be detained, prosecuted or subjected to any restriction of personal liberty by reason of acts or convictions which preceded that person's departure from the Requested State.

2. The safe conduct provided for by this Article shall cease fifteen days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or if the person has left the Requesting State and voluntarily returned to it.

Article 13  
Location or Identification of Persons or Items

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request and believed to be in the Requested State.

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Article 14

Service of Documents

1. The Requested State shall use its best efforts to effect service of any documents relating to or forming part of any request for assistance made by the Requesting State under the provisions of this Treaty.

2. Unless otherwise agreed, any request for the service of a document inviting the appearance of a person before an authority in the Requesting State must be received by the Central Authority of the Requested State not later than thirty days before the date set for any appearance.

3. The Requested State shall return a proof of service in the manner specified in the request.

Article 15

Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and delivery of any item, including documents, records, or other articles of evidence, to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

2. Upon request, every official who has custody of a seized article shall certify, in accordance with procedures specified in the request, the continuity of custody, the

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identity of the article, and the integrity of its condition. Such certification shall be admissible in evidence as proof of the truth of the matters set forth therein.

3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 16  
Return of Items

If required by the Central Authority of the Requested State, the Central Authority of the Requesting State shall return as soon as possible any documents, records, or articles of evidence furnished to it in execution of a request under this Treaty.

Article 17  
Assistance in Forfeiture Proceedings

1. If the Central Authority of one Contracting Party becomes aware of fruits or instrumentalities of offenses which are located in the territory of the other Contracting Party and may be forfeitable or otherwise subject to seizure under the laws of that Contracting Party, it may so inform the Central Authority of the other Contracting Party. If that other

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Contracting Party has jurisdiction in this regard, it may present this information to its authorities for a determination as to whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other Contracting Party on the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the fruits and instrumentalities of offenses. This may include action to restrain temporarily the disposition of the fruits or instrumentalities of offenses pending further proceedings.

3. A Requested State in control of forfeited proceeds or instrumentalities shall dispose of them in accordance with its law. To the extent permitted by its laws and upon such terms as it deems appropriate, either Contracting Party may transfer forfeited assets or the proceeds of their sale to the other Contracting Party.

#### Article 18

#### Compatibility with Other Treaties, Agreements or Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Contracting Party through the provisions of other international agreements to which it may be a party, or through

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the provisions of its national laws. The Contracting Parties may also provide assistance pursuant to any bilateral agreement, arrangement, or practice which may be applicable.

Article 19  
Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to enable the most effective use to be made of this Treaty.

Article 20  
Ratification, Entry into Force, and  
Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force upon the exchange of instruments of ratification.

3. This Treaty shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.

4. Either Contracting Party may terminate this Treaty by means of written notice to the other Contracting Party. Termination shall take effect six months following the date of notification.

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

DONE at Washington this twenty-third day of November 1993, in duplicate, in the English and Korean languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA

*Warren Christopher*

FOR THE REPUBLIC OF KOREA

*한승규*

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ANNEX

Both Contracting Parties agree to provide assistance in investigations, prosecutions, and proceedings concerning the following categories of conduct without regard to whether the conduct which is the subject of the investigation, prosecution or proceeding would constitute an offense under the laws of the Requested State:

1. Illicit traffic in narcotic drugs and psychotropic substances, including but not limited to all offenses connected with, arising from, related to or resulting from any narcotics activity described in the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, the 1972 Protocol Amending the Single Convention, or the 1988 United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
2. Racketeering activity, including, in the case of a request from the United States: (a) using income derived from a pattern of criminal activity to establish, operate, or acquire an interest in an enterprise engaged in or affecting interstate commerce; (b) acquiring or maintaining control of or an interest in such an enterprise through a pattern of criminal activity or collection of illegal debt; or (c) conducting or participating in the conduct of such an enterprise's affairs through a pattern of criminal activity or collection of unlawful debt; or, in the case of

a request from Korea, organizing or joining a group the purpose of which is the commission of a crime;

3. Money laundering, including (a) failing to make or causing another to fail to make to the Government a report which is required by law to be made in respect of a transfer of currency or other financial transaction; (b) converting, transferring, or receiving property knowing that such property is derived from a criminal offense, for the purpose of concealing or disguising the illicit origin of such property or of assisting any person involved in the commission of such offense to evade the legal consequences of his actions; or (c) concealing or disguising the true nature, source, location, disposition, or movement or ownership of property knowing that such property is derived from a criminal offense;

4. Any violent criminal activity described in the Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking) done at the Hague December 16, 1970; the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo September 14, 1963; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aircraft (Sabotage), done at Montreal September 23, 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, done at New York December 14, 1973; the International Convention Against the

Taking of Hostages, done at New York December 17, 1979; or in any other treaty or convention to which both States are parties and the purpose of which is to prevent or repress a specific category of offenses and which imposes an obligation to either extradite the offender or submit the matter to the competent authorities for decision as to prosecution;

5. Offense relating to the willful issuance of a bad (illicit) check, including the issuance of a check under a false name or without having made arrangements with a financial institution, or after transactions have been suspended by such an institution; and the willful failure to honor the check;

6. Fraud against the Government or against individuals, including behavior which has the effect of depriving the Government, its agencies, or its citizens of money, valuable property, or the ability to conduct their affairs free from false statements and deceit;

7. Fraudulent securities practices, including the use by any person of any means, directly or indirectly, in connection with the offer, purchase, or sale of any security: (a) to employ any device, scheme, or artifice to defraud; (b) to willfully make any misleading statement; or (c) to willfully engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

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8. Insider trading, including the offer, purchase, or sale of securities by any person while in possession of material non-public information directly or indirectly relating to the securities offered, purchased, or sold, in breach of a legally binding duty or trust or confidence;
9. Foreign Corrupt Practices, including the corrupt offering, paying, or making of inducements to any foreign official or foreign political party, official thereof, or candidate for foreign political office to assist such person in obtaining or retaining business for himself or in directing business to any other person;
10. Tax evasion or fiscal fraud, including making a false statement, whether written or oral, or intentionally failing to make a report or declaration as required by law, to government authorities in matters concerning customs duties or taxes;
11. Environmental crimes, including conduct directed at the destruction, defacing, deterioration, or harming of the earth's environment;
12. Export control offenses, including conduct tending to evade the laws controlling the export of goods or arms;
13. Criminal exploitation of children, whether for sexual or other purposes, including commercial dealing in child pornography;
14. Offenses against bankruptcy laws;
15. Offenses against the laws relating to corporations or

companies, including offenses committed by officers, directors, and promoters;

16. Any offense against the laws relating to firearms, weapons, or explosives of any type;

17. Offenses against the laws relating to protection of intellectual property, copyrights, patents, or trademarks;

18. Offenses against the laws relating to immigration and nationality (including fraudulent acquisition or use of a passport or visa) and alien smuggling;

19. Offenses against the laws relating to the control of exportation or importation of goods of any type, or the international transfer of funds;

20. Offenses against the laws relating to prohibition of private monopolies or unfair business transactions or practices;

21. Offenses against the laws relating to the protection of computers or computer systems, computer data, or computer security (to include passwords or other related devices);

22. Offenses under multilateral international conventions binding on both Parties for which offenders must be prosecuted or extradited;

23. Any offense derived from conduct described in this Annex or subject to mutual assistance in accordance with this Treaty where United States federal jurisdiction is based upon interstate transport or use of the mails, telecommunications, or other interstate facilities;

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24. Any attempt or conspiracy to commit, aiding or abetting, or participation as accessory after the fact to any offense derived from conduct described in this Annex or subject to mutual assistance in accordance with this Treaty;

25. Any offense under the law in the Requesting State which is connected with the commission of one or more offenses derived from the conduct described in this Annex or subject to mutual assistance in accordance with this Treaty; or

26. Such further offenses as may from time to time be agreed upon by exchange of diplomatic notes between the Contracting Parties.

DEPARTMENT OF STATE  
WASHINGTON  
November 23, 1993

Excellency,

I have the honor to refer to the Mutual Legal Assistance Treaty Between the United States of America and the Republic of Korea, signed at Washington on November 23, 1993, and in particular to express the understanding of the Government of the United States of America with respect to Articles 8(5) and 9(3) of the Treaty.

These two provisions state that evidence obtained under the Treaty should be authenticated in accordance with the procedures specified in the request, and if certified or authenticated in this manner, the evidence shall be admissible in evidence as proof of the matters stated therein in accordance with the laws of Requesting State.

During the course of the negotiations, each side achieved a greater understanding and appreciation of the legal principles that are generally applied by the courts of the other in deciding issues dealing

His Excellency

Han Sung-Joo,

Minister of Foreign Affairs,

Republic of Korea.

with the admission into evidence of various types of records made or maintained in the course of a regularly conducted business activity or by an official government agency in reference to matters entrusted to it by law.

Taking appropriate account of the applicable domestic laws of both Contracting Parties as to admissibility of such documentary evidence, and recognizing that the establishment of uniform procedures for certifying or authenticating evidence that has been secured under the Treaty will enhance the likelihood that such evidence will ultimately be accepted by the courts, representatives of the Korean Ministry of Justice and United States Department of Justice who participated in the negotiation of the Treaty have jointly developed three certificate forms which are attached to this Note.

United States requests for copies of business records under Article 8(5) of the Treaty will be authenticated by use of the Certificate of Authenticity of Business Records attached to this Note as Form A-1. Similarly, Korean requests for copies of business records will be authenticated by use of the Certificate of Authenticity of Business Records attached to this Note as Form A-2. Requests for copies of foreign public documents by either party will be authenticated under Article 9(3) by use

of the form entitled Attestation of Authenticity of Foreign Public Documents, attached to this Note as Form B.

I would appreciate a Note from Your Excellency confirming that the understanding described above is also the understanding of the Government of the Republic of Korea. If that is the case, this Note and Your Excellency's reply will constitute an agreement between our respective Governments on this matter, which shall enter into force at the same time the Treaty enters into force.

Accept, Excellency, the assurances of my highest consideration.



Attachments:

- 1 - Form A-1
- 2 - Form A-2
- 3 - Form B

FORM A-1  
(For United States Requests)  
CERTIFICATE OF AUTHENTICITY OF  
BUSINESS RECORDS

I, \_\_\_\_\_, attest on  
(name)

penalty of criminal punishment for false statement or  
false attestation that I am employed

by \_\_\_\_\_

(Name of Business from which documents are sought)  
and that my official title is \_\_\_\_\_.

I further state that each of the records attached  
hereto is the original or a duplicate of the original  
records in the custody of

\_\_\_\_\_

(Name of Business from which documents are sought)

I further state:

A) such records were made, at or near  
the time of the occurrence of the matters set forth,  
by (or from information transmitted by) a person with  
knowledge of these matters;

B) such records were kept in the course  
of a regularly conducted business activity;

C) the business activity made such  
records as a regular practice; and

D) if such record is not the original,

such record is a duplicate of the original.

\_\_\_\_\_  
Signature Date  
Sworn to or affirmed before  
me, \_\_\_\_\_  
(Name)  
a \_\_\_\_\_  
(position of person authorized to administer oaths)  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_  
(Signature)

FORM A-2  
(For Korean Requests)  
CERTIFICATE OF AUTHENTICITY OF  
BUSINESS RECORDS

I, \_\_\_\_\_, attest on  
(name)

penalty of criminal punishment for false statement or  
false attestation that I am employed  
by \_\_\_\_\_ and that my official  
title is \_\_\_\_\_.

I further state that each of the documents or records  
attached hereto is the original or a duplicate of the  
original documents or records in the custody of  
\_\_\_\_\_

(Name of Business from which documents are sought)

I further state that such documents or records were  
made, at or near the time of the occurrence of the  
matters set forth, by (or from information  
transmitted by) a person with knowledge of those  
matters and that if such document or record is not  
the original, such document or record is a duplicate  
of the original.

\_\_\_\_\_  
Signature Date  
Sworn to or affirmed before  
me, \_\_\_\_\_,  
(Name)

a \_\_\_\_\_  
(notary public, judicial officer, etc.)

this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
(Signature)

FORM B  
ATTESTATION OF AUTHENTICITY OF  
FOREIGN PUBLIC DOCUMENTS

I, \_\_\_\_\_,

(name)

attest on penalty of criminal punishment for false  
statement or attestation that my position with the  
Government of \_\_\_\_\_

(country)

is \_\_\_\_\_ and that

(official title)

in that position I am authorized by the law  
of \_\_\_\_\_ to attest that

(country)

the documents attached and described below are true  
and accurate copies of original official records  
which are recorded or filed

in \_\_\_\_\_

(Name of office or Agency)

which is a government office or agency  
of \_\_\_\_\_

(Country)

Description of Document(s):

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Date)

November 23, 1993

Excellency,

I have the honor to acknowledge the receipt of Your Note dated November 23, 1993 which reads as follows:

"Excellency,

I have the honor to refer to the Mutual Legal Assistance Treaty Between the United States of America and the Republic of Korea, signed at Washington on November 23, 1993, and in particular to express the understanding of the Government of the United States of America with respect to Articles 8(5) and 9(3) of the Treaty.

These two provisions state that evidence obtained under the Treaty should be authenticated in accordance with the procedures specified in the request, and if certified or authenticated in this manner, the evidence shall be admissible in evidence as proof of the matters stated therein in accordance with the laws of Requesting State.

During the course of the negotiations, each side achieved a greater understanding and appreciation of the legal principles that are generally applied by the courts of the other in deciding issues dealing

His Excellency

Warren Christopher,

Secretary of State,

United States of America.

with the admission into evidence of various types of records made or maintained in the course of a regularly conducted business activity or by an official government agency in reference to matters entrusted to it by law.

Taking appropriate account of the applicable domestic laws of both Contracting Parties as to admissibility of such documentary evidence, and recognizing that the establishment of uniform procedures for certifying or authenticating evidence that has been secured under the Treaty will enhance the likelihood that such evidence will ultimately be accepted by the courts, representatives of the Korean Ministry of Justice and United States Department of Justice who participated in the negotiation of the Treaty have jointly developed three certificate forms which are attached to this Note.

United States requests for copies of business records under Article 8(5) of the Treaty will be authenticated by use of the Certificate of Authenticity of Business Records attached to this Note as Form A-1. Similarly, Korean requests for copies of business records will be authenticated by use of the Certificate of Authenticity of Business Records attached to this Note as Form A-2. Requests for copies of foreign public documents by either party will be authenticated under Article 9(3) by use

of the form entitled Attestation of Authenticity of Foreign Public Documents, attached to this Note as Form B.

I would appreciate a Note from Your Excellency confirming that the understanding described above is also the understanding of the Government of the Republic of Korea. If that is the case, this Note and Your Excellency's reply will constitute an agreement between our respective Governments on this matter, which shall enter into force at the same time the Treaty enters into force.

Accept, Excellency, the assurances of my highest consideration.

Attachments:

- 1 - Form A-1
- 2 - Form A-2
- 3 - Form B

FORM A-1  
(For United States Requests)  
CERTIFICATE OF AUTHENTICITY OF  
BUSINESS RECORDS

I, \_\_\_\_\_, attest on  
(name)

penalty of criminal punishment for false statement or  
false attestation that I am employed

by \_\_\_\_\_

(Name of Business from which documents are sought)  
and that my official title is \_\_\_\_\_.

I further state that each of the records attached  
hereto is the original or a duplicate of the original  
records in the custody of

---

(Name of Business from which documents are sought)

I further state:

A) such records were made, at or near  
the time of the occurrence of the matters set forth,  
by (or from information transmitted by) a person with  
knowledge of these matters;

B) such records were kept in the course  
of a regularly conducted business activity;

C) the business activity made such  
records as a regular practice; and

D) if such record is not the original,

such record is a duplicate of the original.

\_\_\_\_\_  
Signature Date  
Sworn to or affirmed before  
me, \_\_\_\_\_  
(Name)  
a \_\_\_\_\_  
(position of person authorized to administer oaths)  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_  
(Signature)

FORM A-2

(For Korean Requests)

CERTIFICATE OF AUTHENTICITY OF  
BUSINESS RECORDS

I, \_\_\_\_\_, attest on  
(name)

penalty of criminal punishment for false statement or  
false attestation that I am employed  
by \_\_\_\_\_ and that my official  
title is \_\_\_\_\_.

I further state that each of the documents or records  
attached hereto is the original or a duplicate of the  
original documents or records in the custody of

\_\_\_\_\_  
(Name of Business from which documents are sought)

I further state that such documents or records were  
made, at or near the time of the occurrence of the  
matters set forth, by (or from information  
transmitted by) a person with knowledge of those  
matters and that if such document or record is not  
the original, such document or record is a duplicate  
of the original.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Sworn to or affirmed before

me, \_\_\_\_\_,  
(Name)

a \_\_\_\_\_  
(notary public, judicial officer, etc.)

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
(Signature)

FORM B  
ATTESTATION OF AUTHENTICITY OF  
FOREIGN PUBLIC DOCUMENTS

I, \_\_\_\_\_,

(name)

attest on penalty of criminal punishment for false  
statement or attestation that my position with the  
Government of \_\_\_\_\_

(country)

is \_\_\_\_\_ and that

(official title)

in that position I am authorized by the law  
of \_\_\_\_\_ to attest that

(country)

the documents attached and described below are true  
and accurate copies of original official records  
which are recorded or filed

in \_\_\_\_\_

(Name of office or Agency)

which is a government office or agency  
of \_\_\_\_\_

(Country)

Description of Document(s):

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

I have the honor to confirm that the understanding set forth in your Note accords with that of the Government of the Republic of Korea.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.



Han Sung-Joo  
Minister of Foreign Affairs  
Republic of Korea

