

No. 26166

**CHINA
and
FRANCE**

Agreement on judicial assistance in civil and commercial matters (with annex). Signed at Beijing on 4 May 1987

Authentic texts: Chinese and French.

Registered by China on 26 September 1988.

**CHINE
et
FRANCE**

Accord d'entraide judiciaire en matière civile et commerciale (avec annexe). Signé à Beijing le 4 mai 1987

Textes authentiques : chinois et français.

Enregistré par la Chine le 26 septembre 1988.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ ON JUDICIAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS BETWEEN THE PEOPLE'S REPUBLIC OF CHINA AND THE FRENCH REPUBLIC

The Government of the People's Republic of China, on the one hand, and the Government of the French Republic, on the other,

Desiring to promote cooperation in the judicial area between the two States on the basis of mutual respect for national sovereignty and also equality and reciprocal advantage,

Have decided to conclude an Agreement on judicial assistance in civil and commercial matters.

For this purpose, the two Parties have agreed on the following provisions:

CHAPTER I. GENERAL PROVISIONS

Article 1. JUDICIAL PROTECTION

1. Nationals of one Contracting Party shall give, within the territory of the other Party, the same judicial protection as the latter accords to its own nationals, and shall have the right of access to the courts of that other Contracting Party in civil and commercial matters under the same conditions as those which the latter provides to its own nationals.

2. The courts of one Contracting Party may not require a security deposit for legal costs from nationals of the other Party by reason of their status as aliens.

3. The two preceding paragraphs shall apply equally to bodies corporate constituted or authorized in accordance with the laws and regulations of either Contracting Party.

Article 2. SCOPE OF JUDICIAL ASSISTANCE

For purposes of this Agreement, judicial assistance in civil and commercial matters shall include:

- (1) Transmittal and service of judicial and extra-judicial documents;
- (2) Execution of letters rogatory concerning investigations and the obtaining of evidence;
- (3) Recognition and execution of judicial decisions which have become *res judicata* and of arbitral awards in civil and commercial matters;
- (4) Information, at the request of either Contracting Party, on the laws and regulations of each State regarding civil and commercial matters and information and documentation concerning judicial practice in civil and commercial proceedings.

Article 3. CENTRAL AUTHORITIES

1. Subject to the other provisions set forth in this Agreement, judicial assistance shall be granted by the central authorities designated or established respectively by the two Contracting Parties.

¹ Came into force on 8 February 1988, i.e., the fortieth day following the date of the last of the notifications (effected on 28 September and 30 December 1987) by which the Parties had informed each other of the completion of the required procedures, in accordance with article 30.

2. The central authorities of the two Contracting Parties shall transmit to one another any requests under the provisions of article 2, paragraphs 1, 2 and 4 of this Agreement as well as the outcome of the execution of the requests.

3. The two Contracting Parties shall inform each other of the name and address of the central authorities they have respectively designated or established.

Article 4. LAW APPLICABLE TO JUDICIAL ASSISTANCE

Unless otherwise specified in this Agreement, the Contracting Parties shall apply their domestic laws respectively for judicial assistance measures executed in their territory.

CHAPTER II. TRANSMITTAL AND SERVICE OF JUDICIAL AND EXTRA-JUDICIAL DOCUMENTS

Article 5. IMPLEMENTATION

Requests for service of judicial and extra-judicial documents shall be made in writing by the central authority of the requesting Party. The central authority of the requested Party shall effect service on the addressee residing in its territory.

Article 6. FORM AND LANGUAGE

Requests for service shall be drawn up on forms, a model of which is attached to this Agreement; the blanks shall be filled out in the French and Chinese languages. Judicial and extra-judicial documents to be served shall be sent in duplicate, accompanied by a translation into the language of the requested Party.

Article 7. MEANS OF EXECUTION

1. The central authority of the requested Party shall decide, according to the provisions of its domestic law, what is the most appropriate channel for service of judicial and extra-judicial documents.

2. Both Contracting Parties are free to have judicial and extra-judicial documents addressed to their own nationals in the territory of the other Party served by their diplomatic or consular missions accredited to the other Party.

Article 8. ADDRESS SEARCH

If the address of the intended recipient of the document is incomplete or inaccurate, the central authority of the requested Party shall nevertheless try to comply with the request. To this end, it may ask the requesting Party for supplementary information so as to be able to identify and search for the person in question. When the address cannot be found despite such efforts, the central authority of the requested Party must so inform the requesting Party and return the judicial and extra-judicial documents.

Article 9. PROOF OF SERVICE

1. Proof of service of a document shall be furnished by means of a receipt drawn up on a form, a model of which is annexed to this Agreement. The blanks shall be filled out in the French and Chinese languages.

2. The recipient shall be required to sign and date the receipt slip. For its part, the competent authority of the requested Party shall be required to indicate on the

receipt the place and date of service, and in the event of non-service, to state why service could not be effected or why the recipient refused to accept the document.

Article 10. FREEDOM FROM CHARGES

The service of judicial and extra-judicial documents shall not give rise to reimbursement of any costs.

Article 11. REFUSAL OF EXECUTION

The requested Party may refuse to execute a request for service of a judicial or extra-judicial document if it believes that such execution is liable to impair its sovereignty or security. In this event, the requested Party must give the requesting Party the reasons for its refusal.

CHAPTER III. LETTERS ROGATORY

Article 12. SCOPE

In civil and commercial matters, the judicial authorities of each Contracting Party may request the judicial authorities of the other Party by a letter rogatory to proceed to such measures of inquiry as they may deem necessary, for example hearings of parties, witnesses, or experts, establishment of evidence, expert evaluation and judicial examination.

Article 13. FORM AND LANGUAGE

Requests regarding letters rogatory shall be submitted on forms a model of which is annexed to this Agreement. The blanks shall be filled out in the French and Chinese languages. Any documents that are attached must be accompanied by a translation into the language of the requested Party.

Article 14. MEANS OF IMPLEMENTATION

1. The courts of the requested Party, which is proceeding to execute a letter rogatory, shall apply the laws of that country as regards the forms to be followed. If necessary, it may apply appropriate enforcement measures as provided by its domestic law.

2. Each Contracting Party has the right to have its diplomatic or consular mission proceed directly to investigate its own nationals in the territory of the other Party. In so doing, it must respect the latter's laws and refrain from any enforcement measures.

Article 15. ADDRESS SEARCH

If documents relating to an investigation cannot be served based on the address provided by the requesting Party, the courts of the requested Party should initiate the necessary measures in order to find the address and satisfy the request. If necessary, it may ask for further information from the requesting Party. If the address cannot be found despite such efforts, the courts of the requested Party, acting through the central authority, should so inform the requesting Party and return all documentation accompanying the letter rogatory.

Article 16. RETURN TRANSMITTAL

The courts of the requested Party shall transmit through the central authorities of the two Parties proof of the execution of letters rogatory as well as, if necessary, information relating thereto.

Article 17. COSTS

The execution of a letter rogatory shall not give rise to reimbursement of any costs. However, compensation of experts, translators and interpreters is the responsibility of the requesting Party.

Article 18. REFUSAL OF EXECUTION

The requested Party may refuse to execute a letter rogatory in full or in part, if it deems that execution might impair its sovereignty, security or public order, or if it deems that such execution does not lie within its competence under domestic law. In such a case, the requested Party must give the requesting Party reasons for its refusal.

CHAPTER IV. RECOGNITION AND EXECUTION OF JUDICIAL DECISIONS AND ARBITRAL AWARDS

Article 19. SCOPE

1. After the entry into force of this Agreement, decisions rendered in civil and commercial matters by the courts of one Contracting Party having the force of *res judicata* shall be recognized and executed in the territory of the other Party, except in the cases listed in article 22.

2. The provisions of the preceding paragraph shall apply under the same conditions to conciliations in civil and commercial matters rendered by the courts of both Contracting Parties as well as to judgements in penal proceedings concerning payment of damages.

Article 20. SUBMISSION OF REQUESTS

The proceedings for recognition or enforcement of decisions rendered by a court of one Contracting Party shall be instituted directly by the applicant in the competent jurisdiction of the other Party.

The central authority of each Contracting Party shall, at the request of the other Party, supply the necessary information, including the name of the competent jurisdiction, the procedures for submission of a request, and any other pertinent information.

Article 21. REQUIRED DOCUMENTATION

The Party requesting recognition or enforcement of a decision in application of this chapter must produce the following documentation:

1. A copy of the decision. If it is not explicitly stated that the decision has acquired the force of *res judicata*, the decision must be accompanied by an official document issued by the court so certifying.
2. The original certificate of service of the decision or any equivalent document in lieu thereof. If the decision is rendered by default, a copy of the summons must be produced to show that the defaulting party was legally summoned to appear.
3. Certified translations of the documents mentioned in the two preceding paragraphs.

Article 22. REFUSAL OF RECOGNITION AND ENFORCEMENT

Decisions shall not be recognized or enforced:

1. If the decision is rendered by a court which, according to the relevant rules set forth in the legislation of the requested Party, lacks jurisdiction.
2. If the court of origin, in respect of status or capacity of persons, has applied a law other than that which would have been applicable under the rules of international private law of the requested Party, unless application of the designated law would have produced the same result.
3. If, under the law of the Party where it was rendered, the decision has not acquired the force of *res judicata* or is not enforceable.
4. If the losing party was not legally summoned and, therefore, was unable to appear before the court.
5. If enforcement of the decision impairs the sovereignty or security of the requested Party, or is contrary to its public order.
6. If the decision rendered by a court of the requested Party and having acquired the force of *res judicata* concerns a dispute between the same parties, based on the same evidence and having the same purpose,

or, if the decision which has acquired the force of *res judicata*, rendered by a court of a third State in respect of a dispute between the same parties, based on the same evidence and having the same purpose, has already been recognized by the courts of the requested Party.

Article 23. PROCEDURE

1. The court of the requested Party shall rule on the recognition and enforcement of the decision under the procedures governed by the law of its State.

2. The court of the requested Party shall check whether the decision whose execution is requested is in conformity with the provisions of this chapter, but it shall not conduct an in-depth examination of the decision.

Article 24. EFFECTS

When recognized and enforced, the decision shall produce the same effects in the territory of the requested Party as if it had been rendered by a court of that Party.

Article 25. RECOGNITION AND EXECUTION OF ARBITRAL AWARDS

Each Contracting Party shall recognize and enforce arbitral awards rendered in the territory of the other Party in accordance with the provisions of the New York Convention of 10 June 1958 on the recognition and enforcement of foreign arbitral awards.¹

CHAPTER V. MISCELLANEOUS PROVISIONS

Article 26. EXEMPTION FROM AUTHENTICATION

No authentication shall be required for any document mentioned in this Agreement.

¹ United Nations, *Treaty Series*, vol. 330, p. 3.

Article 27. EXCHANGE OF INFORMATION

1. Each Contracting Party shall, upon request, provide the other Party with information concerning laws currently or previously in force in its State and concerning its judicial practice in civil and commercial matters.

2. In civil and commercial proceedings, the competent authorities of the two States may ask one another for information through the central authorities of the two Parties, and transmit copies of judicial decisions to one another free of charge.

Article 28. MEANS OF PROOF CONCERNING THE LAW

Proof concerning the legislation, regulations, customary law and judicial practice of one of the Contracting Parties may be brought before the courts of the other Party in the form of a certificate issued either by the diplomatic or consular mission or by any qualified authority or person.

Article 29. RESOLUTION OF DISPUTES

Any dispute resulting from implementation of this Agreement shall be resolved through the diplomatic channel.

CHAPTER VI. FINAL PROVISIONS

Article 30. ENTRY INTO FORCE

Each Contracting Party shall notify the other by diplomatic note of the completion of the procedures required by its domestic law for the entry into force of this Agreement.

This Agreement shall enter into force on the fortieth day following the date of the last such notification.

Article 31. DENUNCIATION

Each Contracting Party may denounce this Agreement at any time by notifying the other Party, in writing, through the diplomatic channel, of its intention to do so. The denunciation shall take effect one year after the date of said notification.

IN WITNESS WHEREOF, the representatives of the two Governments, duly authorized, have signed this Agreement and have affixed their seals thereto.

DONE at Peking, on 4 May 1987 in duplicate in the Chinese and French languages, both texts being equally authentic.

For the Government
of the People's Republic
of China:

[WU XUEQIAN]

For the Government
of the French Republic:

[JEAN-BERNARD RAIMOND]

ANNEX
RECEIPT

(AGREEMENT ON JUDICIAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS)

From

Document reference:

The undersigned authority certifies, in accordance with article 9 of the Convention,

1. That the request was executed

Date

At

In the following manner:

Document received by addressee on

SIGNATURE OF ADDRESSEE

2. That the request was not executed for the following reasons:

Done at Date

SIGNATURE AND/OR SEAL

REQUESTING CENTRAL AUTHORITY

REQUESTED CENTRAL AUTHORITY

Reference:
(From receipt)

SUBJECT: Request for service of a judicial or extra-judicial document in implementation of the Agreement on legal assistance in civil and commercial matters of

I have the honour to send you, in duplicate, with a translation, a copy of a document which I would request you to kindly serve on:

I would be grateful if you would return the receipt. Accept, Sir, the assurances of my highest consideration.

SIGNATURE AND/OR SEAL

REQUESTING CENTRAL AUTHORITY

REQUESTED CENTRAL AUTHORITY

Reference:
(Indicate on all correspondence)

SUBJECT: Request for execution of a letter rogatory in implementation of the Agreement on judicial assistance in civil and commercial matters of

I have the honour to send you a letter rogatory
issued by
for purposes of
together with a translation thereof.

I would be grateful if you would ensure that it is executed and return to me any documents pertaining thereto, together with the bill for costs of experts, translators and interpreters, if any.

Accept, Sir, the assurances of my highest consideration.

SIGNATURE AND/OR SEAL
