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Fifth Anniversary of the Enforcement of Cross-strait Mutual Legal Assistance Agreement: the Effectiveness of Mutual Judicial Cooperation

From the enforcement of "Cross-strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement" (hereinafter referred to as the "Agreement") on June 25, 1998 till the end of May, 2014, the numbers of mutual assistance requests made between the Ministry of Justice (MOJ), the main liaison body, its designated judicial police and the departments of mainland Gong (Public Security), Jian (Prosecutors), Fa (Court), Si (Ministry of Justice) have reached 53,260, containing 44,618 cases of mutual completion at a completion rate of 83.77%. The average monthly number of completed cases was more than 700, with six criminals repatriated from mainland China every month. The numbers of daily roundtrip service of judicial documents between both sides was 20 cases. The quantities are far greater than those of any country cooperating with us, and this situation is continuing to grow fast and significantly. For example, in terms of mutual requests for cross-strait arrest and repatriation, delivery of documents, investigation and collection of evidence, there were 7,482 cases in 2011 which increased to 9,087 cases in 2012 and even reached 12,623 cases in 2013. Numbers of the requests under the Agreement have increased nearly 60% in the past three years.

Over the past five years, both sides have not only achieved effective performance in the fight against telecommunications fraud, cross-border drug crimes, repatriation of criminals, returning the proceeds of crime, and transfer of sentenced persons, so as to maintain the cross-strait communication order, but also strengthened dialogue regarding laws and enhancing judicial efficiency through business exchange and training between the law enforcement officials of both sides.

Results since the implementation of the Agreement are described as follows:

I. Cooperation in Combating Illegal Cross-Border Crimes

The Prosecutors and judicial police authorities of both sides have actively

combated all kinds of cross-border crimes, particularly the crackdown on 47 cases of "telecom scam" which endangers the public most. Such results have produced the effect of deterrence of the said crime. According to the statistics, cases of domestic telecom scam in 2012 were reduced to 3,191 compared to those in 2011, for a drop of 13.51%, while the property damage was reduced to more than NTD 600 million, a 12.68% drop. Moreover, the cases of "telecom scam" have been reduced to 2,677 in 2013 compared to those in 2012, a drop of 13.11%, while the total value of property loss was reduced to more than NTD 400 million compared to last year, a drop of 11.57%. The "Ad hoc group for illegal pyramid scheme of Guangxi Nanning" established by Taiwan High Prosecutors Office in 2013 has, through the cooperation mechanism of the Agreement, jointly investigated illegal pyramid schemes with the Economic Crime Investigation Office of Ministry of Public Security of China as well as performed multiple synchronized seizures in Taiwan. This project mobilized 744 police and prosecutors to search 202 premises with the result of cracking 32 scam groups and arresting 206 defendants.

In April, 2013, both sides set the fighting against cross-board drug crimes as a major investigation and seizure task. Based on mutual intelligence exchange and investigation cooperation, such joint action has investigated and made seizures in 39 drug cases, with 234 suspects captured, in which the seized drugs such as heroin, Ketamine and precursor raw materials were up to 3,000 kg; meanwhile, a "Joint Cross-strait Sea Seizing Drug Action" was also launched which demonstrated effectiveness at cracking the biggest "container smuggling heroin case."

II. The arrest and repatriation of fleeing criminals from mainland China

By the end of May, 2014, 354 criminals have been repatriated from mainland China according to the personnel repatriation mechanism set up in the Agreement at an average of six persons repatriated per month, including high-speed rail explosives suspects Hu Tsung-hsien, former chairman of ZTE Bank Wang Zhi-xiong, former legislator Kuo Ting-tsai, former Changhua County Council Speaker Bai Hung-shen and former mayor of Xikou village of Chiayi County Liu Ban-shi.

III. Actively chasing proceeds of crimes to return to victims

Under the contact, coordination and arrangement between MOJ and the Supreme People's Court of China (SPC), a total of 17 Taiwanese victims of fraud cases obtained more than NTD 11 million , , seized by mainland China in June, 2013. In November of the same year, MOJ jointly established a "Cross-strait Task Force for Coordinating and Handling Illegal Proceeds" with the Ministry of Public Security of

China (MPS) to deal with matters concerning the investigation, confiscation and returning of illegal benefits between both sides. In April of this year, both sides cooperated again to return the defrauded money to victims, including five mainland Chinese citizens who received about more than NTD 620,000 in return. Now, both sides, through the mutual legal assistance mechanism, have committed to seize and return crime assets to compensate the victims' losses in order to really benefit the citizens.

IV. Improving the legal system to complete the first-batch transfer of the sentenced persons

Giving consideration to both humanitarian and correction, the Agreement has set regulations for issues regarding transferring sentenced persons, having them serve uncompleted terms of sentences in their own country. Later, owing to the legislation of "Transfer of Sentenced Persons Act" in 2013 and its entry into effect on July 23 of the same year as well as through several negotiations with Ministry of Justice of China in operating procedure determination, the first batch of three Taiwanese sentenced inmates serving in Putian prison of China were finally transferred to Taiwan and, in accordance with the conversion of sentences by court, sent to Taipei prison to serve their remaining sentences .

V. Assisting investigation and evidence collection to protect the public interests

The determination of fact shall rely on evidence. Over the past five years, cross-strait cooperation has completed 644 cases of investigation and evidence collection assistance, including obtaining depositions, providing documentary evidence, physical evidence, determining the registered identity of related persons, inquest, identification, inspection, visits, surveys, etc., which are all helpful for the investigation and trial of contentious cases (events) and the protection of the public interest. For example, one citizen of Changhua County applied for NTD 1.6 million insurance for his unmarried young brother's death due to automobile traffic. After being coordinated through the investigation and evidence gathering channel by MOJ, the said person was proved to be the fourth line beneficiary in " The Compulsory Automobile Liability Insurance Law" ,since his grandparents, originally living in mainland China, had passed away. Therefore, the court ordered that the insurance company should pay the requested settlement, NTD 1.6 million. Another case was the one of denying children filed by a man who, after being married to a mainland Chinese spouse for 20 years, unexpectedly found that there was an unknown eldest daughter registered under his household registration. Through the investigation and evidence collection of cross-strait mutual legal assistance, it was found that the

current residence of the registered girl in the plea filed by the spouse was verified to be an intentionally wrong residence report which, in accordance with the regulations of burden of proof provided for in the "Code of Civil Procedure", interfered with the identification in a disputed paternity; the court recognized the man in favor of the non-confirmation of such legitimate child.

VI. Professional exchange of law enforcement to lead the dialogue of laws and regulations

According to requirements of Article 2 "Operational Contacts" stipulated in the Agreement, the judicial authorities on both sides have mutually conducted exchange activities such as "Personnel Visiting," "Practice Seminar," "Studies Program," "Exchange of Professional Publications." So far, since the Agreement came into effect until this year, China has sent hundreds of public security polices and prosecutors to Taiwan to participate in study programs organized by MOJ, which covers issues of cross-border drug crimes, telecommunications fraud, food safety and human trafficking. From 2013 onwards, MOJ has organized prosecutors to lecture legal and juridical systems for China National Prosecutors Colleges and public security institutions to highlight our country's emphasis on procedural justice and human rights as well as to enhance the dialogue exchange of rule of law of both sides.

The five years implementation of the Agreement, which under the communication framework agreed by both sides, has not only taken both authorities attribute into account, but also complied with our operating mode of such mutual legal assistance. Either in the implementation rate (completion rate) or the implementation of time effectiveness (speed), our country has shown a good efficiency. In the future, we will continue to implement and deepen cooperation matters specified in the Agreement, sustain to complete the relevant legal system, ensure the functioning compliance with the requirement of the Agreement and safeguard the public interests.