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GUIDELINES AND PROCEDURES IN THE NEGOTIATION OF INTERNATIONAL AGREEMENTS WITH FOREIGN LAW ENFORCEMENT AGENCIES OR ORGANIZATIONS

PNP MEMORANDUM CIRCULAR NO. 2011-014, May 26, 2011

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1. REFERENCES:

a. Executive Order No. 459 entitled: “Providing for the Guidelines in the Negotiation of International Agreements and Its Ratification”.
b. Executive Order No. 292, otherwise known as the Administrative Code of 1987, (which provides that the Department of Foreign Affairs shall be the lead agency that shall advise and assist the resident in planning, organizing, directing, coordinating and evaluating the total national effort in the field of foreign relations);
c. Department Order No. 21-99, Department of Foreign Affairs;
d. Memorandum from ASEC Victor G Garcia dated December 17, 2007 with subject: Treaty/MOA and MOU Terminologies;
e. Philippine Treaty Law and Practice by J. Eduardo Malaya and Maria Antonina Mendoza-Oblena; and
f. Article II, Section 2 and 7, 1987 Philippine Constitution.

2. PURPOSE AND SCOPE:

This Circular prescribes the guidelines and procedures in the negotiation of international agreementsz or Memorandum of Agreement/Memorandum of Understanding entered into by the Philippine National Police.

3. POLICY:

The guidelines and procedures in the negotiation of international agreements or MOA/ MOU shall be in accordance with the guidelines provided for in Executive Order 459 and with endorsement/approval of the Chief, PNP.

4. OBJECTIVES:

a. To provide guidelines and procedures in the negotiation of International Agreements or MOA/MOU; and
b. To ensure that International Agreements or MOA/MOU entered into by the PNP with Foreign Police Agencies/Organizations are sufficient in form and substance and are in accordance with all existing laws, rules, and regulations of the country.

5. DEFINITION OF TERMS:

For purposes of this circular, the following terms shall mean:

a. Capacity Building - refers to training, education, workshops, seminars or any similar activities geared towards the enhancement of the skills and knowledge of personnel in pursuit of their mandate.
b. Exchange of Information - an act or an instance of giving and receiving of data/information reciprocally between the PNP and its counterpart/organization.
c. Executive Agreements - similar to treaties except that they do not require legislative concurrence.

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d. Expenses - administrative or operating cost that may be incurred and defrayed by each party in the implementation of the international agreement.
e. Foreign Counterpart - refers to foreign Police or Law Enforcement Agencies.
f. Foreign Organization ñ refers to government or non government organization registered outside the country.
g. Full Powers - authority granted by a Head of State or Government to a delegation head enabling the latter to bind his country to the commitments made in the negotiations to be pursued.
h. International agreement - shall refer to a contract or understanding, regardless of nomenclature, entered into between the PNP and other foreign counterparts/organization in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments.
i. Joint Police Activities - refers to activities involving investigation, police operations mutually participated and agreed by both parties.
j. Memorandum of Understanding (MOU) Format - is used where the parties have agreements on general principles of cooperation. MOUs describe broad concepts of mutual understanding, goals and plans shared by the parties. Thus, MOUs are non-legally binding instruments, while treaties/MOAs create legally binding rights and obligations. An MOU likewise may list the obligations of both sides, but performance and compliance are on a best-effort basis.
k. National Interest - advantage or enhanced prestige or benefit to the country as defined by its political and/or administrative leadership.
l. Subject of Agreement - the subject of the international agreement as defined in the circular shall be limited to exchange of information, coordination, cooperation on law enforcement activities, joint police activities, and capacity building of personnel of contracting parties but shall not include subjects covered by extradition and mutual assistance treaties.
m. Treaties - international agreements entered into by the Philippines which require legislative concurrence after executive ratification. This term may include compacts like conventions, declarations, covenants and acts.
n. Treaty/Memorandum of Agreement (MOA) Format - is used when the agreement describes the specific responsibilities of, or actions to be undertaken by each of the parties with the view to the accomplishment of their goals, and the availability of recourse to enforcement action in case of non-compliance with its terms.

6. GUIDING PRINCIPLES:

Prior to any meeting or negotiation relative to an international agreement, the concerned unit/office must secure authorization from the Chief, PNP who shall then seek authorization from the President through the Secretary of Foreign Affairs. The request for authorization shall be in writing, proposing the composition of the Philippine delegation and recommending the range of positions to be taken by that delegation. In case of negotiations of agreements, changes of national policy or those involving international arrangements of a permanent character entered into the name of the Government of the Republic of the Philippines, the authorization shall be in the form of Full Powers and formal instructions. In cases of other agreements, a written authorization from the President shall be sufficient.

7. STEPS IN THE NEGOTIATION OF INTERNATIONAL AGREEMENT:

a. Lead unit/office shall formulate a draft International Agreement in coordination/ consultation with DFA to ensure that if shall not violate the country’s foreign policy. It shall also ensure that words are carefully chosen in formulating an MOA/MOU to properly indicate the intent to conclude a legally or non-legally binding instrument. However, in an instance where a proposed agreement was offered by a foreign counterpart or organization, lead unit/office shall immediately conduct study and review in coordination/ consultation with DFA. The following are terminologies used in treaties/MOAs and MOUs:

TREATY/MOA

MOU

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Article Paragraph

Agree Decide, accept, approve

Agreement Arrangement (s), understanding(s)

Agreed Decided, accepted, approved

Authentic Equally valid

Authoritative Equally valid

Clause Paragraph, sub-paragraph

Conditions Provisions

Continue in force Continue to have effect

Done Signed

Enter into force Come into effect, come into operation

Mutually agreed Jointly decided

Obligations Commitments

Parties Participants, Governments

Preamble Introduction

Rights Benefits

Shall Will

Terms Provisions

Undertake Carry out

Undertakings Understandings

b. After the draft International Agreement is formulated and before proceeding to the negotiation, lead unit/office with the consent of the Chief, PNP shall secure authorization from the President through the Secretary of Foreign Affairs. The request for authorization duly signed/endorsed by the CPNP shall be in writing; proposing the composition of the Philippine delegation and recommending the range of positions to be taken by that delegation (The proposed agreement offered by foreign counterpart shall follow the same procedure).

c. Once authority to negotiate is secured, lead unit/office shall initiate negotiation/ discussion with foreign counterpart/organization on the substance and form of the proposed draft International Agreement.

d. When the negotiation has generated a mutually accepted Agreement, lead unit/office shall forward a copy of the draft Agreement to DPL (Attention: IAIAD) who in turn shall forward the draft Agreement to Legal Service for Legal Opinion. In case the Legal Service finds legal problems/conflicts on the said draft agreement, DPL shall inform the lead unit/ office of the legal opinion with advise for the latter to re-negotiate the draft agreement with foreign counterpart/organization in order to conform with the legal opinion.

e. Upon securing the final draft, TDPL shall forward the same to the Chief, PNP for his information and approval. Once approved, the Lead Agency/Office shall prepare the necessary arrangement for the signing of the Agreement.

f. After the agreement was signed, the lead unit/office shall furnish an original copy to TDPL. Thereafter, TDPL

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shall forward a copy of the international agreement to the Department of Foreign Affairs for the preparation of the ratification papers. The transmittal shall include the highlights of the Agreement and the benefits which will accrue to the Philippines arising from them.

8. SIGNATORY TO INTERNATIONAL AGREEMENT (MOA/MOU):

If the scope of cooperation or coordination provided in the International Agreement covers the entire PNP organization, the C, PNP shall be signatory in the MOA/MOU document. However, if the MOA/MOU covers only a particular area or affair, the head of the unit/office concerned shall be the signatory, provided that the said officer is authorized by the President. The negotiating panel shall be present during the signing ceremony as witnesses.

9. EFFECTIVITY CLAUSE:

The international agreement enters into force only upon compliance with domestic ratification requirements.

The DFA determines whether an international agreement or any amendment thereto, shall be given provisional effect. Provisional entry into force is allowed only if it is shown that a pressing national interest will be upheld.

An international agreement, which requires the concurrence of the Senate, may not be given provisional effectivity in keeping with ARTICLE VII, Section 21 of the Constitution.

11. NOTIFICATION/DISSEMINATION TO CONCERNED AGENCIES:

Upon its receipt of the Instrument of Ratification (and the Senate Resolution concurring in the ratification made by the President, if applicable), the Office of Legal Affairs of DFA notifies the concerned offices and agencies of the date signature of the Instrument of Ratification as well as the date of the Senate Resolution, if applicable.

TDPL shall coordinate with DFA for the dissemination of the duly executed international agreement to concerned PNP Unit/Office.

12. PENAL CLAUSE:

Any PNP personnel who violates the provision of this Circular shall be held administratively liable for less Grave Neglect of Duty pursuant to NAPOLCOM Memo Circular No. 2007-001 and shall be penalized accordingly.
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13. REPEALING CLAUSE:

All existing policies, rules and regulation inconsistent herewith modified or repealed accordingly.

14. EFFECTIVITY:

This Memorandum Circular shall take effect after fifteen (15) days from filing of a copy thereof at the University of the Philippines Law Center in consonance with Section 3 and 4, Chapter 2, Book VII and Executive Order No. 292, otherwise known as “The Revised Administrative Code of 1987”.

Adopted: 26 May 2011

(SGD.) ATTY. RAUL M. BACALZO, Ph.D.
Police Director General
Chief, PNP

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