

TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE SWISS CONFEDERATION

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The Republic of the Philippines

And

The Swiss Confederation

Hereinafter referred to as the Contracting States

Desiring to improve the effectiveness of cooperation between the Contracting States in the investigation, prosecution and punishment of crime by making provision for mutual legal assistance in criminal matters

Have agreed as follows:

CHAPTER I - GENERAL PROVISIONS

ARTICLE 1

OBLIGATION TO PROVIDE MUTUAL LEGAL ASSISTANCE

1. The Contracting States undertake to provide each other, in accordance with the provisions of this Treaty, the widest measure of mutual legal assistance in any proceedings in respect of offences the punishment of which falls within the jurisdiction of the judicial authorities of the Requesting State.

2. Assistance shall include all measures taken to advance criminal proceedings in the Requesting State:

- (a) taking testimony or other statements;
- (b) producing objects, documents, records or evidence;
- (c) handing over of objects and assets for the purpose of forfeiture or return;
- (d) exchanging information;
- (e) tracing, searching and seizing, as well as freezing and confiscating proceeds of crime;
- (f) serving documents;
- (g) transferring detained persons with a view to interrogation or confrontation; and
- (h) other assistance consistent with the objects of this Treaty mutually acceptable to the Contracting States.

ARTICLE 2

EXCLUSION

This Treaty shall not apply to the following cases:

- (a) extradition, arrest or location of persons prosecuted or convicted of an offence;

- (b) execution of penal judgments.

ARTICLE 3

GROUND FOR REFUSING OR POSTPONING ASSISTANCE

1. Mutual legal assistance in criminal matters may be refused if:

- (a) the request concerns an offence which the Requested State considers a political offence, an offence connected with a political offence, or a fiscal offence;
- (b) the request concerns an offence under military law which is not an offence under ordinary criminal law;
- (c) the Requested State considers that the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of its country;
- (d) the request concerns facts on the basis of which that person has been finally acquitted or convicted in the Requested State for an essentially similar offence, provided the penalty possibly imposed is currently being carried out or has already been carried out;
- (e) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, sex, religion, nationality or political opinions; or
- (f) there are substantial grounds for believing that the prosecution of the accused person in the Requesting State is not in conformity with the guarantees contained in the International Covenant on Civil and Political Rights of December 16, 1966.

2. The Requested State may postpone mutual legal assistance if the execution of the request would interfere with penal proceedings under way in that State.

3. Before denying or postponing mutual legal assistance in accordance with this Article, the Requested State shall:

- (a) promptly inform the Requesting State of the reasons for considering the denial or postponement of assistance; and
- (b) consider whether assistance can be given on such terms and conditions as it deems necessary. If so, those terms and conditions shall be complied with in the Requesting State.

CHAPTER II - OBTAINING EVIDENCE

ARTICLE 4

APPLICABLE LAW

1. A request shall be executed in accordance with the law of the Requested State.

2. If the Requesting State desires the application of a specific procedure with regard to the execution of a request for mutual legal assistance, it shall expressly so request, and the Requested State shall comply with the request if its law does not prohibit it.

ARTICLE 5

COMPULSORY MEASURES

The execution of a request involving compulsory measures shall be granted. However, mutual legal assistance may be denied if the facts described in the request do not correspond to the elements, other than intent or negligence, of an offence punishable under the law of the Requested State, had it been committed there.

ARTICLE 6

PROVISIONAL OR URGENT MEASURES

1. Upon explicit request by the Requesting State, provisional measures including tracing, searching, seizing and freezing shall be ordered by the competent authority of the Requested State to preserve the existing situation, to safeguard threatened legal interests or to protect jeopardized evidence, if the proceedings envisaged by the request do not appear obviously inadmissible or inappropriate under the law of the Requested State.
2. If any delay were to jeopardize the proceedings and if there is sufficient information so as to determine whether all the conditions are met, the Requested State may likewise order these measures as soon as a request is announced. These measures shall be lifted if the Requesting State does not make the request within the deadline set.

ARTICLE 7

LIMIT ON USE

1. Any information, documents or objects obtained through the means of mutual legal assistance according to this Treaty shall not be used for investigative purposes nor be introduced into evidence in the Requesting State in any proceeding relating to an offence for which assistance is not admissible.
2. Any further use shall be subject to approval by the Requested State. This approval is not necessary if:
 - (a) the facts which are the basis of the request constitute another offence for which mutual legal assistance would be granted; or
 - (b) the foreign criminal proceeding is directed against other persons having participated in committing the offence.

ARTICLE 8

PRESENCE OF PERSONS PARTICIPATING IN THE PROCEEDINGS

On the express request of the Requesting State, the Central Authority of the Requested State shall state the date and place of execution of the request. Officials and interested persons of the Requesting State may be present if the Requested State consents.

ARTICLE 9

DEPOSITIONS OF WITNESSES IN THE REQUESTED STATE

1. Witnesses shall be heard in accordance with the law of the Requested State. However, they may also refuse to testify if the law of the Requesting State allows them to do so.
2. If their refusal to testify is based on the law of the Requesting State, the Requested State shall send the matter to the Requesting State for decision. Reasons shall be given for that decision.
3. A witness invoking the right to refuse to testify cannot be the subject of any legal penalty in the Requesting State for that reason.

ARTICLE 10

TRANSMISSION OF OBJECTS, DOCUMENTS, RECORDS OR EVIDENCE

1. Upon request, the Requested State shall transmit objects, documents, records or evidence to the Requesting State.
2. The Requested State may transmit certified copies of documents, records or evidence requested. If the Requesting State expressly requests the transmission of originals, the Requested State shall make every effort to

comply with the request.

3. Rights claimed by third parties to objects, documents, records or evidence in the Requested State shall not prevent their transmission to the Requesting State.

4. The Requesting State is required to return what was transmitted as quickly as possible or at the latest after the end of the proceedings unless the Requested State expressly waives the return thereof.

ARTICLE 11

HANDING OVER OF OBJECTS OR ASSETS FOR THE PURPOSE OF FORFEITURE OR RETURN

Upon request and in accordance with the national law of the Requested State, the objects or assets subject to a precautionary seizure may be handed over to the Requesting State after the conclusion of the mutual legal assistance proceeding for the purpose of forfeiture or return to the person entitled.

ARTICLE 12

RECORDS OF COURTS OR INVESTIGATING AUTHORITIES

The Requested State shall make available to the authorities of the Requesting State its records of courts or investigating authorities, including judgments and decisions, on the same conditions and to the same extent as it does to its own authorities.

ARTICLE 13

JUDICIAL RECORDS AND EXCHANGE OF INFORMATION FROM JUDICIAL RECORDS

1. The Requested State shall communicate extracts from the information relating to judicial records, requested from it by the judicial authorities of the Requesting State and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.

2. In any case other than that provided for in paragraph 1 of this Article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the Requested State.

3. Either Contracting State shall, at least once a year, inform the other Contracting State of all criminal convictions and subsequent measures in respect of nationals of the latter State, entered in the judicial records.

ARTICLE 14

LAYING OF INFORMATION FOR PURPOSES OF PROSECUTION OR CONFISCATION

1. Information laid by one Contracting State with a view to prosecution in the courts of the other Contracting State or to confiscation in relation to an offence shall be communicated between the Central Authorities.

2. The Central Authority of the Requested State shall notify the Requesting State of any action taken on such information and shall forward a copy of the record of any verdict pronounced.

3. The provisions of Article 28 shall apply to information laid under paragraph 1 of this Article.

ARTICLE 15

SPONTANEOUS INFORMATION

1. Within the limits of its national law and without prejudice to its own investigations or proceedings, a Contracting State may, without prior request, forward to the other Contracting State information or evidence obtained within the framework of its own investigations, when it considers that the disclosure of such information might assist the receiving State in initiating or carrying out investigations or proceedings, or might lead to a request by that State under this Treaty.

2. The providing State may, pursuant to its national law, impose conditions on the use of such information by the receiving State.

CHAPTER SERVICE OF WRITS AND RECORDS OF JUDICIAL VERDICTS - APPEARANCE OF WITNESSES, EXPERTS AND PROSECUTED PERSONS

ARTICLE 16

SERVICE OF WRITS AND RECORDS OF JUDICIAL VERDICTS

1. The Requested State shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the Requesting State.

2. Service may be effected by simple transmission of the writ or record to the person to be served. If the Requesting State expressly requests, service shall be effected by the Requested State in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

3. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the Requested State that service has been effected and stating the form and date of such service. Either of these documents shall be sent immediately to the Requesting State. The Requested State shall, if the Requesting State so requests, state whether service has been effected in accordance with the law of the Requested State. If service cannot be effected, the reasons shall be communicated in writing immediately to the Requesting State.

4. The request for service of a document to summon a prosecuted or accused person who is in the territory of the Requested State shall be transmitted to the Central Authority of that State at the latest thirty days before the date set for appearance.

ARTICLE 17

APPEARANCE OF WITNESSES OR EXPERTS IN THE REQUESTING STATE

1. If the Requesting State considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the document to summon and the Requested State shall invite the witness or expert to appear.

2. The Requested State shall, without delay, communicate in writing to the Requesting State the reply of the witness or expert to the invitation.

3. A witness or expert who agrees to appear in the Requesting State may require that State to grant an advance for his travel and accommodation expenses.

ARTICLE 18

FAILURE TO APPEAR AND ALLOWANCES FOR APPEARANCE

1. A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the Requesting State and is there again duly summoned.

2. The allowances, including subsistence, to be paid and the traveling expenses to be refunded to a witness or expert by the Requesting State shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the Contracting State where the hearing is intended to take place.

ARTICLE 19

SAFE CONDUCT

1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the Requesting State shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that State in respect of acts or convictions anterior to his departure from the territory of the Requested State.
2. A person, whatever his nationality, summoned before the judicial authorities of the Requesting State to answer for acts forming the subject of proceedings against him shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the Requested State and not specified in the summons.
3. The immunity provided for in this Article shall cease when the witness or expert or prosecuted person, having had, for a period of thirty consecutive days from the date when his presence is no longer required by the judicial authorities, an opportunity of leaving the Requesting State, has nevertheless remained in that territory, or having left it, has returned.

ARTICLE 20

EXTENT OF TESTIMONY IN THE REQUESTING STATE

1. A person appearing on a summons in the Requesting State may be compelled to give testimony or to produce an article of evidence unless under the law of either Contracting State he has a right to refuse.
2. Article 7 and Article 9, paragraphs 2 and 3, shall apply by analogy.

ARTICLE 21

TRANSFER OF DETAINED PERSONS

1. A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the Requesting State shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the Requested State and subject to the provisions of Article 19 insofar as these are applicable.
2. Transfer may be refused if:
 - (a) the person in custody does not consent;
 - (b) his presence is necessary at criminal proceedings pending in the territory of the Requested State;
 - (c) transfer is liable to prolong his detention; or
 - (d) there are other overriding grounds for not transferring him to the territory of the Requesting State.

3. The transferred person shall remain in custody in the territory of the Requesting State, unless the Requested State applies for his release.

4. For the purpose of this Article, the person transferred shall receive credit for service of the sentence imposed in the Requested State for the period of time served in the custody of the Requesting State.

ARTICLE 22

HEARING BY VIDEO CONFERENCE

1. If a person is in one Contracting State's territory and has to be heard as a witness or expert by the judicial authorities of the other Contracting State, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for

in paragraphs 2 to 7 of this Article.

2. The Requested State shall agree to the hearing by video conference provided that the use of the video conference is not contrary to its fundamental principles. If the Requested State has no access to the technical means for videoconferencing, such means may be made available to it by the Requesting State by agreement between them.

3. The Judicial authority of the Requested State shall summon the person concerned to appear in accordance with the forms prescribed by its legislation.

4. With reference to hearing by video conference, the following rules shall apply:

(a) a judicial authority of the Requested State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both identification of the person to be heard and respect for the fundamental principles of the law of the Requested State. If the Judicial authority of the Requested State decides that during the hearing the fundamental principles of the law of the Requested State are infringed, it shall immediately take the necessary measures for the continuation of the hearing according to the above-mentioned principles;

(b) measures extending to the protection of the person to be heard may be agreed between the Central Authorities;

(c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the Requesting State in accordance with its own laws;

(d) at the request of the Requesting State the Requested State shall ensure that the person to be heard is assisted by an interpreter, if necessary; and

(e) the person to be heard may claim the right not to testify according to Article 9.

5. Without prejudice to any measures agreed for the protection of persons, the judicial authority of the Requested State shall on conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the Central Authority of the Requested State to the Central Authority of the Requesting State.

6. Each Contracting State shall take the necessary measures to ensure that its national law applies where witnesses or experts are being heard within its territory in conformity with this Article and refuse to testify when under an obligation to testify or do not testify according to the truth, in the same way as if the hearing took place in a national procedure.

7. Each Contracting State may at its discretion also apply the provisions of this Article, where appropriate and with the agreement of its competent judicial authorities, to hearings by video conference involving an accused person or suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Central Authorities concerned, in conformity with their national law and relevant international instruments, including the International Covenant on Civil and Political Rights. Hearings of accused persons or suspects shall only be carried out with their consent.

CHAPTER IV - PROCEDURE

ARTICLE 23

CENTRAL AUTHORITY

1. For the purposes of this Treaty, the Central Authority for the Swiss Confederation shall be the Federal Office of Justice of the Federal Department of Justice and Police and for the Republic of the Philippines The Department of Justice.
2. The Central Authority of the Requesting State shall submit requests for mutual legal assistance in criminal matters covered by this Treaty on behalf of its courts or authorities.
3. The Central Authorities of the Contracting States shall communicate directly with each other, or if necessary, through diplomatic channels.

ARTICLE 24

CONTENTS OF REQUESTS

1. A request shall indicate:

- (a) the authority from which it emanates and if necessary, the authority having criminal Jurisdiction in the Requesting State;
- (b) the object of and the reason for the request;
- (c) where possible, the complete name, place and date of birth, nationality and address of the person who is the subject of the criminal proceedings as of the date the request is made; and
- (d) the principal reason why evidence or information is requested, as well as a summary of the relevant facts (date, place and circumstances in which the offence was committed) giving rise to the proceedings in the Requesting State, unless the request is one for service within the meaning of Article 16.

2. In addition, a request shall include in the case of:

- (a) application of foreign law with regard to the execution (Article 4, paragraph 2), the text of the provisions which are applicable in the Requesting State, and the reason for its application;
- (b) participation of parties to the proceedings (Article 8), the designation of the person attending the execution of the request, and the reason for his presence;
- (c) service of writs and records of judicial verdicts and of summons (Articles 16 and 17), the name and address of the person to be served;
- (d) summons of witnesses or experts (Article 17), a statement from which follows that the Requesting State will pay for expenses and allowances and that it will, if requested to do so, pay in advance;
- (e) transfer of detained persons (Article 21), the names of the latter;
- (f) hearings by video conference (Article 22), the reason why it is not desirable or possible for the witness or expert to attend, the name of the judicial authority and of the persons who will be conducting the hearing.

ARTICLE 25

EXECUTION OF THE REQUEST

1. Subject to the adoption of provisional or urgent measures pursuant to Article 6, the Central Authority of the Requested State shall, if the request does not conform with the provisions of this Treaty, inform the Central Authority of the Requesting State without delay and ask it to make changes to or complete the request.
2. If the request appears to be in conformity with this Treaty, the Central Authority of the Requested State shall forward it promptly to the competent authority.
3. After the request has been executed, the competent authority shall forward to the Central Authority of the

Requested State the request and the information and evidence gathered. The Central Authority shall be responsible for ensuring that the execution is complete and accurate and shall communicate the results thereof to the Central Authority of the Requesting State.

ARTICLE 26

OBLIGATION TO GIVE REASONS

The Requested State shall give reasons for any refusal to comply, in whole or in part, with a request for assistance.

ARTICLE 27

FORMALITY REQUIREMENTS

1. Documents, transcripts, records, statements and other materials shall be exempted from any legalization or respective formality requirements.
2. Documents, transcripts, records, statements and other materials which are to be transmitted to the Requesting State shall only be certified if the Requesting State so requests. For that purpose, certification by the Central Authority of the Requested State shall be sufficient.
3. Documents, transcripts, records, statements and other materials shall not be required to be certified or authenticated by consular or diplomatic officers.
4. Evidence or documents transmitted by the Central Authority of the Requested State shall be admitted as evidence without further justification or proof of authenticity.

ARTICLE 28

LANGUAGE

1. A request made pursuant to this Treaty by the Swiss Confederation and the accompanying documents shall be written in or translated into English. A request made pursuant to this Treaty by the Republic of the Philippines and the accompanying documents shall be written in or translated into one of the official languages of the Swiss Confederation, specified in each case by the Swiss Central Authority.
2. Paragraph 1 of this Article shall not apply in the case of service of writs and records of judicial verdicts without formal requirements according to Article 16, paragraph 2 first sentence.
3. The translation of the documents made or obtained in executing the request shall be incumbent upon the Requesting State.

ARTICLE 29

COSTS RELATING TO THE EXECUTION OF THE REQUEST

1. The Requesting State shall, at the request of the Requested State, reimburse only the following costs and disbursements incurred in executing a request:
 - (a) allowances, travel costs and reasonable expenses for witnesses and their representatives, if any;
 - (b) costs relating to the transfer of detained persons;
 - (c) fees, travel costs and reasonable expenses for experts;
 - (d) costs relating to hearings by video conference under Article 22: costs for establishing a video link, costs related to the servicing of a video link in the Requested State, the remuneration of interpreters provided by it

and allowances to witnesses and experts and their travelling expenses in the Requested State.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Requested State shall inform the Requesting State thereof to determine the terms and conditions under which the requested assistance can be provided.

CHAPTER V - FINAL PROVISIONS

ARTICLE 30 OTHER AGREEMENTS OR ARRANGEMENTS; NATIONAL LAW

The provisions of this Treaty shall not affect more extensive mutual legal assistance which has been or may be agreed upon between the Contracting States in other agreements or arrangements or which may result from national law.

ARTICLE 31

CONSULTATIONS

The Central Authorities shall exchange views, orally or in writing, on the application or implementation of this Treaty, in general terms or in a particular case, whenever appropriate.

ARTICLE 32

SETTLEMENT OF DISPUTES

Any dispute regarding the interpretation, application or implementation of this Treaty shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach an agreement.

ARTICLE 33

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force on the first day of the second month following the latter date on which the Contracting States have notified each other through diplomatic channels that they have complied with their respective requirements for the entry into force of this Treaty.

2. Either Contracting State may terminate this Treaty at any time by giving notice in writing to the other. In that case the Treaty shall cease to have effect six months after the date of the receipt of that notification.

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

Done at MANILA on the 9[th] of July 2002 in English and German, both texts being equally authentic.

For the Republic of the Philippines

For the Swiss Confederation:

(Sgd.)

(Sgd.)

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