

TREATY BETWEEN THE REPUBLIC OF KOREA AND THE SOCIALIST REPUBLIC OF VIETNAM ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Republic of Korea and the Socialist Republic of Vietnam (hereinafter referred to as "the Parties"),

Desiring to improve the effectiveness of cooperation between the two countries in the field of mutual legal assistance in criminal matters on the basis of mutual respect for sovereignty, equality and mutual benefit,

Have agreed as follows:

Article 1
Scope of Application

1. The Parties shall, in accordance with the provisions of this Treaty, grant each other assistance in criminal matters.
2. For the purposes of this Treaty, "criminal matters" means investigations, prosecutions or proceedings relating to any offence, including offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters, the punishment of which at the time of the request for assistance falls within the jurisdiction of the Requesting Party.
3. Assistance shall include:
 - (a) taking evidence or statements from persons;
 - (b) providing information, documents, records and articles of evidence;
 - (c) locating or identifying persons or items;
 - (d) serving documents;
 - (e) executing requests for search and seizure;
 - (f) making arrangements for persons to give evidence or assist in criminal investigations, prosecutions or proceedings in the Requesting Party;
 - (g) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities; and
 - (h) other assistance consistent with the object of this Treaty which is not inconsistent with the law of the Requested Party.
4. Assistance granted under this Treaty does not include:
 - (a) the extradition, or the arrest or detention for that purpose, of any person;
 - (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party and this Treaty;
 - (c) the transfer of persons in custody to serve sentences;
 - (d) the transfer of proceedings in criminal matters.

Article 2
Other Assistance

This Treaty shall not affect any existing obligations between the Parties, whether pursuant to other treaties, arrangements, or otherwise, nor prevent the Parties from providing assistance to each other pursuant to other treaties, arrangements, or otherwise.

Article 3
Central Authority

1. The Parties at all times shall each have a person who, or an authority which, is designated as the Central Authority to transmit and receive requests for the purposes of this Treaty.

2. The following persons or authorities are hereby designated to be the Central Authorities at the commencement of this Treaty:

(a) For the Republic of Korea, the Central Authority is the Minister of Justice or an official designated by that Minister ;

(b) For the Socialist Republic of Vietnam, the Central Authority is the Prosecutor-General of the People's Supreme Procuracy or an official designated by that Prosecutor-General.

3. Each Party shall notify the other of any change of its Central Authority referred to in paragraph 2 of this Article.

4. The Central Authorities shall normally communicate directly with one another, but may, if they choose, communicate through the diplomatic channel.

Article 4 **Contents of Requests**

1. Requests for assistance shall:

(a) specify the purpose of the request and the nature of the assistance sought;

(b) identify the person, agency or authority that initiated the request;

(c) include a description of the nature of the criminal matter, including a summary of the relevant facts and laws and applicable penalties;

(d) include a statement indicating the current status of the investigation or proceeding; and

(e) include a statement specifying any time frame within which compliance with the request is desired.

2. Requests for assistance, where relevant and so far as possible, shall also include:

(a) the identity, nationality and location of the person or persons who are the subject of, or who may have information relevant to, the criminal matter;

(b) where the request is for assistance under Article 10,

(i) a description of the matters about which persons are to be examined including, where appropriate, any questions that the Requesting Party wishes to be put to those persons; and

(ii) a description of any documents, records or articles of evidence to be produced and, where relevant, a description of the appropriate person to be asked to produce them;

(c) where the request is for assistance under Article 11 or 12, information about the allowances and expenses to which a person traveling to the Requesting Party would be entitled;

(d) where the request is for assistance under Article 15 or 16, a description of the material sought and, where relevant, its likely location;

(e) where the request is for assistance under Article 16,

(i) a statement outlining the basis of the Requesting Party's belief that proceeds of crime may be located in its jurisdiction, and

(ii) the court order, if any, sought to be enforced and a statement about the status of that order;

(f) where the request is for assistance that may lead to or result in the discovery or recovery of proceeds of crime, a statement as to whether a special arrangement under paragraph 5 of Article 16 is sought;

(g) a statement outlining any particular requirement or procedure that the Requesting Party may have, or wish to be followed in giving effect to the request, including details of the manner or form in which any information, evidence, document or item is to be supplied;

(h) a statement setting out the wishes, if any, of the Requesting Party concerning the confidentiality of the request, and the reasons for those wishes;

(i) where an official of the Requesting Party intends traveling to the Requested Party in connection with the request, information about the purpose of that person's visit, the proposed time frame and travel arrangements; and

(j) any other supporting information, evidence or documents that is necessary to enable, or may assist, the Requested Party to give effect to the request.

3. A request, any supporting documentation and any communications made pursuant to this Treaty, shall be in the language of the Requesting Party and be accompanied by a translation into the language of the Requested Party or in the English language.

4. If the Requested Party considers that the information contained in a request is not sufficient to enable the request to be dealt with in accordance with this Treaty, it may request additional information.

5. A request shall be made in writing except that the Requested Party may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing within twenty (20) days unless the Requested Party agrees otherwise.

Article 5

Refusal or Postponement of Assistance

1. Assistance shall be refused if, in the opinion of the Requested Party,

- (a) the request relates to an offence that is regarded by the Requested Party as an offence of a political character or a purely military offence;
- (b) the request relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party;
- (c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinions, or that the request for assistance will result in that person being prejudiced for any of those reasons; or
- (d) the request, if granted, would seriously impair the Requested Party's sovereignty, security, public order or essential interests.

2. Assistance may be refused if, in the opinion of the Requested Party,

- (a) the request relates to the prosecution of a person for an offence for which the person could no longer be prosecuted by reason of the lapse of time if the offence had been committed within the jurisdiction of the Requested Party; or
- (b) the request relates to the prosecution or punishment of a person for conduct that would not, if it had taken place within the jurisdiction of the Requested Party, have constituted an offence.

3. Assistance may be postponed by the Requested Party if the request would interfere with an ongoing investigation, prosecution or proceeding in the Requested Party.

4. Before refusing or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority, shall:

- (a) promptly inform the Requesting Party of the reason for considering refusal or postponement; and
- (b) consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

5. If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph 4 (b), it shall comply with those terms and conditions.

Article 6

Execution of Requests

1. Requests for assistance shall be carried out promptly by the competent authorities of the Requested Party in accordance with the laws of that Party and, to the extent those laws permit, in the manner requested by the Requesting Party.

2. The Requested Party may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in that Party. If this is the case, the Requested Party shall, upon request, provide certified copies of documents.

3. The Requested Party shall promptly inform the Requesting Party of circumstances, when they become known to the Requested Party, which are likely to cause a significant delay in carrying out the request.

Article 7

Return of Material to Requested Party

Where required by the Requested Party, the Requesting Party shall return material provided under this Treaty when it is no longer needed for the criminal matter to which the request relates.

Article 8

Confidentiality and Limitation on Use

1. The Requested Party shall, if so requested, use its best efforts to keep confidential a request for assistance, the contents of the request and its supporting documentation, and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party before executing the request, and the Requesting Party shall advise whether it nevertheless wishes the request to be executed.

2. The Requesting Party shall, if so requested, use its best efforts to keep confidential information and evidence provided by the Requested Party except to the extent that the evidence and information is needed for the criminal matter to which the request relates and where otherwise authorized by the Requested Party.

3. The Requesting Party shall, if so requested, use its best efforts to ensure that the information or evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.

4. The Requesting Party shall not use information or evidence obtained, nor anything derived from either, for purposes other than those stated in a request without the prior consent of the Requested Party.

Article 9

Service of Documents

1. The Requested Party shall, to the extent its laws permit, carry out requests for the service of documents in respect of a criminal matter.

2. A request for service of a summons requiring the appearance of a person as a witness in the Requesting Party shall be made to the Requested Party within forty-five (45) days before the scheduled appearance. In urgent cases, the Requested Party may waive this requirement.

3. The Requested Party shall forward to the Requesting Party proof of service of the documents. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.

4. A person who fails to comply with any process served on him or her shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or Requested Party.

Article 10

Taking of Evidence

1. The Requested Party shall, to the extent its laws permit and upon request, take testimony, or

otherwise obtain statements of persons or require them to produce items of evidence for transmission to the Requesting Party.

2. The Requested Party, to the extent permitted by its law, 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.

3. A person from whom evidence is to be taken in the Requested Party pursuant to a request under this Article may decline to give evidence where:

- (a) the law of the Requested Party would permit or require that person to decline to give evidence in similar circumstances in criminal proceedings originating in the Requested Party; or
- (b) the law of the Requesting Party would permit or require that person to decline to give evidence in such criminal proceedings in the Requesting Party.

4. If any person in the Requested Party claims that there is a right or obligation to decline to give evidence under the law of the Requesting Party, the Central Authority of the Requesting Party shall, upon request, provide a certificate to the Central Authority of the Requested Party as to the existence or otherwise of that right. In the absence of evidence to the contrary, the certificate shall be sufficient evidence of the matters stated in it.

5. For the purposes of this Article, the taking of evidence includes the production of documents or other articles.

Article 11

Transfer of Person in Custody to Give Evidence

1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party to give evidence in criminal proceedings in that Party. For the purposes of this Article, a person in custody also includes a person not detained in prison but who is subject to a sentence imposed for an offence, not being a sentence of a monetary nature.

2. The Requested Party shall transfer a person in custody to the Requesting Party only if:

- (a) the person freely consents to the transfer; and
- (b) the Requesting Party agrees to comply with any conditions specified by the Requested Party relating to the custody or security of the person to be transferred.

3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released.

4. A person who is transferred pursuant to a request under this Article shall be returned to the Requested Party in accordance with arrangements agreed by the Requested Party as soon as practicable after the evidence has been given or at such earlier time as the person's presence is no longer required.

5. A person transferred shall receive credit for service of the sentence imposed in the Requested Party for the time served in the custody of the Requesting Party.

Article 12

Availability of Other Persons to Give Evidence or Assist in Investigations

1. The Requesting Party may request the assistance of the Requested Party in arranging for the transfer of a person (not being a person to whom Article 11 of this Treaty applies) to the Requesting Party to

give or provide evidence or assistance in respect of a criminal matter in the Requesting Party.

2. The Requested Party shall, if satisfied that satisfactory arrangements for that person's safety will be made by the Requesting Party, invite the person to consent to give or provide evidence or assistance in the Requesting Party. The person shall be informed of any expenses or allowances payable. The Requested Party shall promptly inform the Requesting Party of the person's response and, if the person consents, take all steps necessary to facilitate the request.

Article 13 Safe Conduct

1. Subject to paragraph 2 of this Article, where a person is in the Requesting Party pursuant to a request made under Article 11 or 12 of this Treaty, during the period that the person is required to remain in the Requesting Party for the purposes of the request:

(a) the person shall not be detained, prosecuted or punished in the Requesting Party for any offence, nor be subject to any civil proceedings, being civil proceedings to which the person could not be subjected if the person were not in the Requesting Party, in respect of any act or omission which preceded the person's departure from the Requested Party; and

(b) the person shall not, without the person's consent, be required to give evidence in any criminal proceeding or to assist in any criminal investigation other than the criminal matter to which the request relates.

2. Paragraph 1 of this Article ceases to apply if that person, being free to leave, has not left the Requesting Party within a period of fifteen (15) days after that person has been officially notified that his or her presence is no longer required or, having left, has returned.

3. A person who does not consent to give evidence pursuant to Article 11 or 12 of this Treaty shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or the Requested Party.

4. A person who consents to give evidence pursuant to Article 11 or 12 of this Treaty shall not be subject to prosecution based on his or her testimony, except for perjury or contempt of court.

Article 14 Provision of Information

1. The Requested Party shall provide copies of publicly available documents, records or information that are open to public access.

2. The Requested Party may provide copies of any documents, records or information in the same manner and under the same conditions as they may be provided to its own law enforcement and judicial authorities.

Article 15 Search and Seizure

1. The Requested Party shall, to the extent its laws permit, carry out requests made in respect of a criminal matter in the Requesting Party for the search, seizure and delivery of material to that Party.

2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the material seized.

3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party.

Article 16

Proceeds of Crime

1. For the purposes of this Treaty, "proceeds of crime" means any property suspected, or found by a court to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence, and includes property that is used to commit or to facilitate the commission of an offence.

2. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds of crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.

3. Where, pursuant to paragraph 2, suspected proceeds of crime are found, the Requested Party shall take such measures as are permitted by its law to restrain or confiscate such proceeds.

4. In the application of this Article, the rights of bona fide third parties shall be respected under the law of the Requested Party.

5. The Requested Party shall retain any proceeds of crime that are confiscated unless otherwise agreed in a particular case.

Article 17

Certification and Authentication

1. Subject to paragraph 2, a request for assistance, the documents in support thereof, and documents or materials furnished in response to a request, shall not require any form of certification or authentication.

2. Where, in a particular case, the Requested or Requesting Party requests that documents or materials be authenticated, the documents or materials shall be duly authenticated in the manner provided in paragraph 3.

3. Documents or materials are authenticated for the purposes of this Treaty if they purport to be signed or certified by an official or competent authority under the laws of the Party sending the documents and to be sealed with an official seal of that authority.

Article 18

Subsidiary Arrangements

The Central Authority of each Party may enter into subsidiary arrangements consistent with the purposes of this Treaty and with the laws of both Parties.

Article 19

Representation and Expenses

1. Unless otherwise provided in this Treaty, the Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

2. The Requested Party shall meet the cost of fulfilling the request for assistance except that the Requesting Party shall bear:

- (a) the expenses associated with conveying any person to or from the territory of the Requested Party, and the accommodation expenses of the person and any fees, allowances or other expenses payable to that person while in the Requesting Party pursuant to a request under Article 9, 11 or 12 of this Treaty;
- (b) the expenses associated with conveying custodial or escorting officers;
- (c) fees and expenses of experts and associated with the translation of documents; and
- (d) where required by the Requested Party, exceptional expenses incurred in fulfilling the request.

Article 20

Consultation and Settlement of Disputes

The Parties shall consult promptly, at the request of either, concerning any issue relating to the interpretation, application or implementation of this Treaty, either generally or in relation to a particular case.

Article 21

Entry into Force and Termination

1. This Treaty shall enter into force upon the exchange of the instruments of ratification.
2. This Treaty shall apply to requests whether or not the relevant acts or omissions occurred prior to this Treaty entering into force.
3. Either Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force six (6) months after the date of receipt of that notice. Where notice to terminate this Treaty has been given in accordance with this Article, any request for assistance received before termination shall be dealt with as if the Treaty were still in force unless the Requesting Party withdraws the request.

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

DONE at Seoul on the 15th day of September 2003, in the Korean, Vietnamese, and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA FOR THE SOCIALIST REPUBLIC
OF VIETNAM