

TREATY BETWEEN AUSTRALIA AND THE REPUBLIC OF THE PHILIPPINES ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

AUSTRALIA AND THE REPUBLIC OF THE PHILIPPINES

DESIRING to extend to each other the widest measure of cooperation in the investigation, prosecution, and suppression of crime,

HAVE AGREED as follows:

Article 1

Scope of application

1. The Contracting States shall, in accordance with the provisions of this Treaty, grant and provide to each other assistance in all matters relating to investigations or proceedings in respect of criminal matters.
2. For purposes of this Treaty, criminal matter includes:
 - (a) a criminal matter relating to revenue (including taxation and customs duties);
 - (b) a criminal matter relating to foreign exchange control;
 - (c) a criminal matter relating to graft and corruption, unlawfully acquired or acquiring property, bribery, frauds against the public treasury, or malversation or fraudulent conversion of public funds or property;
 - (d) a matter relating to the forfeiture or confiscation of property in respect of an offence;
 - (e) a matter relating to the imposition or recovery of a pecuniary penalty in respect of an offence; and
 - (f) a matter relating to the restraining of dealings in property, or the freezing of assets that may be forfeited, confiscated or used to satisfy a pecuniary penalty imposed in respect of an offence.
3. Such assistance shall consist of:
 - (a) taking of evidence;
 - (b) provision of documents, other records and information, and the obtaining of statements of persons;
 - (c) location and identification of persons and property;

- (d) execution of requests for search and seizure;
- (e) measures to locate, restrain and forfeit the proceeds of crime and to recover pecuniary penalties in respect of offences including restraining of dealings in property or the freezing of assets alleged to be related to a criminal matter;
- (f) making prisoners available to give evidence or to assist investigations;
- (g) making other persons available to give evidence or to assist investigations;
- (h) service of documents including judicial documents; and
- (i) other assistance consistent with the objects of this Treaty which is not inconsistent with the law of the Requested State.

4. Assistance shall not include:

- (a) the arrest or detention of any person with a view to extradition; and
- (b) the execution in the Requested State of criminal judgments imposed in the Requesting State other than in accordance with this Treaty.

Article 2

Other assistance

This Treaty shall not affect subsisting obligations between the Contracting States pursuant to other treaties or arrangements or otherwise nor prevent the Contracting States from providing assistance pursuant to such treaties or arrangements.

Article 3

Central offices

1. Each Contracting State shall designate a Central Office which shall transmit and receive requests for the purpose of this Treaty. Until the Contracting State concerned designates another authority, the Central Office for Australia shall be the Attorney-General's Department, Canberra and the Central Office for the Republic of the Philippines shall be the Department of Justice, Manila.
2. Requests for assistance shall be transmitted to and received by the Central Offices through the diplomatic channel. The Central Offices shall arrange for the prompt carrying out of such requests. In cases of urgency, requests for assistance may be made directly between the Central Offices.

Article 4

Refusal of assistance

1. Assistance shall be refused if:

(a) the request relates to an offence that is regarded by the Requested State as:

(i) an offence of a political character, provided that graft and corruption, unlawfully acquired or acquiring property, bribery, frauds against the public treasury, or malversation or fraudulent conversion of public funds or property shall not per se be regarded as offences of a political character; or

(ii) an offence solely under its military law which is not an offence under its ordinary criminal law;

(b) the request relates to an offence in respect of which the offender has been finally acquitted or pardoned;

(c) the request relates to an offence in respect of which the offender has served the sentence imposed, except that assistance shall not be refused if the request relates to forfeiture of property in relation to a criminal matter or the recovery of a pecuniary penalty arising out of criminal conduct;

(d) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing, or otherwise causing prejudice to a person on account of that person's race, sex, religion, nationality or political beliefs; or

(e) the Requested State is of the opinion that the request, if granted, would seriously impair its sovereignty, security, national or similar interests.

2. Assistance may be refused if:

(a) the request relates to an offence where the acts or omissions alleged to constitute that offence would not, if they had taken place within the jurisdiction of the Requested State, have constituted an offence;

(b) the request relates to an offence which is committed outside the territory of the Requesting State and the law of the Requested State does not provide for the punishment of an offence committed outside its territory in similar circumstances;

(c) the request for assistance relates to an offence which, had it been committed in the Requested State, could no longer be prosecuted by reason of lapse of time or any other reason; or

(d) the provision of the assistance sought could prejudice an investigation or proceeding in the Requested State, endanger the safety of any person or impose an excessive burden on the resources of that State.

3. Before refusing to grant a request for assistance the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

Article 5

Contents of requests

1. Requests for assistance shall include:

- (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
- (b) a description of the nature of the criminal matter including a statement setting out the relevant laws;
- (c) a description of the essential acts or omissions, or matters alleged or sought to be ascertained, except in cases of requests for service of documents;
- (d) the purpose for which the request is made and the nature of the assistance sought;
- (e) details of any particular procedure or requirement that the Requesting State wishes to be followed;
- (f) the requirements, if any, of confidentiality and the reasons therefore; and
- (g) specification of any time limit within which compliance with the request is desired.

2. Requests for assistance, to the extent necessary and insofar as possible, shall also include:

- (a) the identity, nationality and whereabouts of the person or persons who are the subject of the investigation or proceedings;
- (b) a statement as to whether sworn or affirmed evidence or statements are required;
- (c) a description of the information, documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;
- (d) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled; and
- (e) a description of any property sought to be restrained, frozen or forfeited.

3. All documents submitted in support of a request shall be in English or accompanied by an official translation in English.

4. If the Requested State considers that the information contained in the request is not sufficient for the purposes of this Treaty, that State may request the Requesting State for additional information.

Article 6

Execution of requests

1. To the extent permitted by its law, the Requested State shall provide such assistance as specified in the request and shall respond as soon as practicable.

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

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

4. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance and the reason for that decision.

Article 7

Return of material to Requested State

Where required by the Requested State, the Requesting State shall return the material provided by the Requested State after the completion of the proceedings to which the request relates.

Article 8

Protecting confidentiality and restricting use of evidence and information

1. The Requesting State, if so requested, shall protect the confidentiality of the evidence and information provided by the Requested State, except to the extent required for the investigation and proceeding described in the request.

2. The Requested State, if so requested, shall keep the request for assistance, its contents and supporting documents, and the fact of granting of such assistance, confidential. If the request cannot be executed without breaching confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.

3. The Requesting State shall not use evidence obtained, nor information derived therefrom, for purposes other than those stated in a request without the prior consent of the Requested State.

Article 9

Service of documents

A request to effect service of a document requiring the appearance of a person shall be made not less than 30 days before the date on which the personal appearance is required. In urgent cases, the Requested State may waive this requirement.

Article 10

Taking of evidence

1. The Requested State shall take the evidence of witnesses for transmission to the Requesting State if a request is made for the purpose of a proceeding in relation to a criminal matter in the Requesting State.
2. The giving or taking of evidence shall include the production of documents, records or other material.
3. The request for assistance under this Article shall indicate the nature of the questions to be put to the witnesses or the subject matter about which they are to be examined.
4. The parties to the relevant proceedings in the Requesting State, their legal representatives or representatives of the Requesting State may, subject to the laws of the Requested State, appear and question the person giving evidence in accordance with this Article.
5. A person who is required to give evidence in the Requested State under this Article may decline to give evidence where either:
 - (a) the law of the Requested State permits that witness to decline to give evidence in similar circumstances in proceedings originating in the Requested State; or
 - (b) where the law of the Requesting State permits that witness to decline to give evidence in such proceedings in the Requesting State.
6. If any person claims that there is a right to decline to give evidence under the law of the Requesting State, the Requested State shall, with respect thereto, rely on a certificate of the Central Office of the Requesting State as prima facie proof of the existence of that right.

Article 11

Obtaining of statements of persons

Where a request is made for the obtaining of statements of persons for the purpose of an investigation or proceeding in relation to a criminal matter in the Requesting State, the Requested State shall endeavour to obtain such statements.

Article 12

Availability of prisoners to give evidence or assist investigations

1. A prisoner in the Requested State may at the request of the Requesting State be temporarily transferred to the Requesting State to give evidence or to assist investigations.
2. The Requested State shall not transfer a prisoner to the Requesting State unless the prisoner consents.
3. While the original sentence of a prisoner in the Requested State has not expired, the Requesting State shall hold the prisoner in custody and shall return that prisoner in custody to the Requested State at the conclusion of the proceedings in relation to which the transfer to the Requesting State is sought under paragraph 1 of this Article or at such earlier time as the prisoner's presence is no longer required.
4. Where the sentence imposed on a person transferred under this Article expires whilst the person is in the Requesting State, that person shall thereafter be treated as a person referred to in Article 13.

Article 13

Availability of other persons to give evidence or assist investigations

1. The Requesting State may request the assistance of the Requested State in making a person available to appear as a witness in proceedings in relation to a criminal matter in the Requesting State unless that person is the person charged, or to assist investigations in relation to a criminal matter in the Requesting State.
2. The Requested State shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting State, request the person to consent to appear as a witness in proceedings or to assist in the investigations.

Article 14

Safe conduct

1. A person who consents to give evidence or assist an investigation in the Requesting State under Articles 12 or 13 shall not be detained, prosecuted or punished in the Requesting State for any offence or be subject to any civil suit in respect of any act or omission which preceded the person's departure from the Requested State, or, without the person's consent, be required to give evidence in proceedings other than the proceeding to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if that person, not being a prisoner detained under Article 12, being free to leave, has not left the Requesting State within a period of thirty days after that person has been officially notified that that person's presence is no longer required or, having left, has returned.

3. A person appearing before an authority in a Requesting State pursuant to a request under Articles 12 or 13 shall not be subject to prosecution based on the testimony given except that that person shall be subject to the laws of that State in relation to contempt and perjury.

4. A person who does not consent to a request pursuant to Articles 12 or 13 shall not by reason thereof be liable to any penalty or be subjected to any coercive measure notwithstanding any contrary statement in the request.

Article 15

Provision of publicly available and official documents

1. The Requested State shall provide copies of documents and records that are open to public access as part of a public register, or otherwise, or that are available for purchase by the public.

2. The Requested State may, in its discretion, provide copies of any official document or record in the same manner and under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

Article 16

Certification and authentication

1. A request for mutual assistance and the supporting documents thereto, as well as documents or other material supplied in response to such a request, shall be authenticated in accordance with paragraph 2.

2. A document is authenticated for the purposes of this Treaty if it purports to be:

(a) signed or certified by a Judge, Magistrate or other officer in or of the relevant Contracting State; and

(b) verified by oath or affirmation or sealed with an official or public seal of the relevant Contracting State or of a Minister of State, or of a Department or officer of the Government, of the relevant Contracting State.

Article 17

Search and seizure

1. The Requested State shall insofar as its law permits carry out requests for search, seizure and delivery of any material to the Requesting State provided the request contains information that would justify such action under the law of the Requested State.

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

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

Article 18

Restraint and forfeiture of property

1. The Requested State shall, upon request, endeavour to ascertain whether property which may become the subject of a forfeiture order or which may be required to satisfy a pecuniary penalty order is located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.

2. Where pursuant to paragraph 1 such property is found, the Requested State shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, that property pending a final determination in respect of that property by a Court of the Requesting State.

3. The Requested State shall give effect to a pecuniary penalty order in respect of an offence, or to a forfeiture order in respect of the crime, made by a Court of the Requesting State and shall return or deliver the property obtained as a result of giving effect to such orders to the Requesting State.

4. Where the property referred to in paragraph 3 of this Article is real property the Requested State shall sell that property and deliver the proceeds of the sale to the Requesting State.

Article 19

Subsidiary arrangements

The Central Office of each Contracting State may enter into subsidiary arrangements with each other consistent with the purposes of this Treaty and with the laws of both Contracting States.

Article 20

Representation and expenses

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

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

(a) the expenses associated with conveying any person to or from the territory of the Requested State, and any fees, allowances or expenses payable to that person whilst in the Requesting State pursuant to a request under Articles 12 or 13; and

(b) the expenses associated with conveying custodial or escorting officers.

Article 21

Consultations

The Contracting States shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either generally or in relation to a particular case.

Article 22

Entry into force and termination

1. This Treaty shall enter into force thirty days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

2. This Treaty shall apply to requests made pursuant to it whether or not the relevant acts or omissions occurred prior to this Treaty entering into force.

3. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

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

DONE at Canberra on the twenty-eighth day of April, One Thousand nine hundred and eighty eight in two originals in English.

FOR AUSTRALIA:

FOR THE REPUBLIC OF THE PHILIPPINES:

LIONEL BOWEN

SEDFREY A. ORDONEZ

Notes to this effect were exchanged 5 October-19 November 1993. The Treaty entered into force 19 December 1993.