

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

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.