

October 16, 2000

**TREATY BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE  
PEOPLE'S REPUBLIC OF CHINA CONCERNING MUTUAL LEGAL  
ASSISTANCE IN CRIMINAL MATTERS**

The Republic of the Philippines and the People's Republic of China, hereinafter referred to as "The Parties";

With a view to improving the effective cooperation between the two countries in respect of mutual legal assistance in criminal matters on the basis of mutual respect for sovereignty and equality and mutual benefit,

Have agreed as follows:

**ARTICLE 1  
SCOPE OF ASSISTANCE**

1. The Parties shall provide, in accordance with the provisions of this Treaty, mutual assistance in the investigation and prosecution of criminal offenses and in proceedings related to criminal matters.

2. Assistance shall include:

- (a) serving documents;
- (b) identifying and locating persons;
- (c) obtaining evidence, articles or documents;
- (d) taking testimonies or statements from persons;
- (e) executing requests for search and seizure;
- (f) facilitating the personal appearance of witnesses;
- (g) effecting the temporary transfer of persons in custody to appear as witnesses;
- (h) obtaining originals or copies of judicial or official records;
- (i) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities, including restraining of dealings in property or the freezing of assets alleged to be related to a criminal matter;
- (j) providing and exchanging information on law, documents and records;
- (k) lending of exhibits;
- (l) obtaining and providing expert evaluations;
- (m) conducting judicial inspections or examining sites or objects;

(n) notifying results of criminal proceedings and supplying criminal records; and

(o) other forms of assistance consistent with the objects of this Treaty which are not inconsistent with the laws of the Requested Party.

3. This Treaty does not apply to:

(a) the extradition of any person; and

(b) the execution of criminal judgments, verdicts or decisions rendered in the Requesting Party except to the extent permitted by the laws of the Requested Party and this Treaty.

4. This Treaty is intended solely for mutual assistance between the Parties. The provisions of this Treaty shall not give rise to any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

## **ARTICLE 2 CENTRAL AUTHORITIES**

1. For the purpose of this Treaty, the Central Authorities designated by the Parties shall communicate directly with each other.

2. The Central Authority for the Republic of the Philippines shall be the Department of Justice. The Central Authority for the People's Republic of China shall be the Ministry of Justice.

3. Should either Party change its designated Central Authority, it shall inform the other Party of such change through diplomatic channels.

## **ARTICLE 3 REFUSAL OR POSTPONEMENT OF ASSISTANCE**

1. The Requested Party may refuse to provide assistance if:

(a) the request relates to conduct which would not constitute an offense under the laws of the Requested Party;

(b) the request is considered by the Requested Party as relating to a political offense;

(c) the request relates to an offense which is a purely military offense;

(d) there are substantial grounds for the Requested Party to believe that the request has been made for the purpose of investigation, prosecution, imposition of punishment or other proceedings against a person on account of that person's race, sex, religion, nationality or political opinions, or that that person's position may be prejudiced for any of those reasons;

(e) the Requested Party is conducting or has terminated criminal proceedings or has already rendered a final judgment against the same suspect or accused for the same offense as related to in the request;

(f) the Requested Party considers that the assistance requested lacks substantial connection with the case;

(g) the Requested Party determines that the execution of the request would impair its sovereignty, security, public order or other essential public interests, or would be contrary to the fundamental principles of its national laws;

(h) the request for assistance relates to the prosecution of a person who could no longer be prosecuted by reason of lapse of time or for any other reason if the offense had been committed within the jurisdiction of the Requested Party;

(i) the Requesting Party cannot comply with any conditions relating to confidentiality or limitation as to the use of material provided;

(j) the provision of the assistance sought could endanger the safety of any person or impose an excessive burden on the resources of the Requested Party.

2. The Requested Party may postpone to provide assistance if execution of a request would interfere with an ongoing investigation, prosecution or other proceedings in the Requested Party.

3. Before refusing a request or postponing its execution, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.

4. If the Requested Party refuses or postpones to provide assistance, it shall inform the Requesting Party of the reasons for the refusal or postponement.

#### **ARTICLE 4 FORM AND CONTENT OF REQUESTS**

1. A request shall be made in writing and be affixed with the signature or seal of the Central Authority of the Requesting Party. In urgent situations, the Requested Party may accept a request in other forms and the Requesting Party shall confirm the request in writing promptly thereafter.

2. A request for assistance shall include the following:

(a) the name of the competent authority conducting the investigation, prosecution or other proceedings to which the request relates;

(b) a description of the nature of the relevant case, a summary of the relevant facts thereof and the provisions of laws applicable to the case to which the request relates;

(c) a description of the assistance sought and that of the purpose and relevance for which the assistance is sought; and

(d) the time limit within which the request is desired to be executed.

3. To the extent necessary and possible, a request shall also include the following:

- (a) information on the identity and residence of the person from whom evidence is sought;
- (b) information on the identity and residence of the person to be served and that person's relationship to the proceedings;
- (c) information on the identity and whereabouts of the person to be located or identified;
- (d) description of the place or object to be inspected or examined;
- (e) description of any particular procedure desirous to be followed in executing the request and reasons therefor;
- (f) description of the place to be searched and of the property to be subject to inquiry, freezing and seizure;
- (g) description of the need for confidentiality and the reasons therefor;
- (h) information as to the allowances and expenses to which the person invited to be present in the Requesting Party to give evidence or assist in investigation will be entitled; and
- (i) such other information which may facilitate execution of the request.

4. If the Requested Party considers the contents contained in the request not sufficient to enable it to deal with the request, it may request additional information.

5. Requests and supporting documents made under this Article shall be accompanied by a translation in the language of the Requested Party. Nevertheless, upon request, the above-mentioned requests and supporting documents may be in English.

## **ARTICLE 5 EXECUTION OF REQUESTS**

1. A request shall be promptly executed in accordance with the laws of the Requested Party and, to the extent not prohibited by the laws of the Requested Party, in accordance with the directions stated in the request insofar as practicable.

2. The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request. If the assistance requested cannot be provided, the Requested Party shall inform the Requesting Party of the reasons.

## **ARTICLE 6 CONFIDENTIALITY AND LIMITATION ON USE**

1. The Requested Party shall keep confidential a request, including its contents, supporting documents and any action taken in accordance with the request, if so requested by the Requesting Party. If the request cannot be executed without breaching such confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requesting Party shall keep confidential the information and evidence provided by the Requested Party, if so requested by the Requested Party, or shall

use such information or evidence only under the terms and conditions specified by the Requested Party.

3. The Requesting Party shall not use any information or evidence obtained under this Treaty for any purposes other than for the case described in the request without the prior written consent of the Requested Party.

## **ARTICLE 7 SERVICE OF DOCUMENTS**

1. The Requested Party shall, in accordance with its national laws and upon request, effect service of documents that are transmitted by the Requesting Party. However, the Requested Party shall not be obligated to effect service of a document which requires a person to appear as the accused.

2. The Requested Party shall, after effecting service, provide the Requesting Party a proof of service that shall include the date, place, and means or mode of service, and be affixed with the signature or seal of the authority which served the document. If service cannot be effected, the Requesting Party shall be so informed and be advised of the reasons therefor.

## **ARTICLE 8 TAKING OF EVIDENCE**

1. The Requested Party shall, in accordance with its national laws and upon request, take evidence and transmit it to the Requesting Party.

2. When the request concerns the transmission of documents or records, the Requested Party may transmit certified copies or certified photocopies thereof. However, where the Requesting Party explicitly requires transmission of originals, the Requested Party shall meet such requirement to the extent possible.

3. Insofar as not contrary to the laws of the Requested Party, the documents and other materials to be transmitted to the Requesting Party in accordance with this Article shall be certified in such forms as may be requested by the Requesting Party in order to make them admissible according to the laws of the Requesting Party.

4. Insofar as not contrary to the laws of the Requested Party, the Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to pose questions, through judicial personnel of the Requested Party, to the person from whom evidence is to be taken. For this purpose, the Requested Party shall promptly inform the Requesting Party of the time and place of the execution of the request.

## **ARTICLE 9 REFUSAL TO GIVE EVIDENCE**

1. A person who is required to give evidence under this Treaty may refuse to give evidence if the laws of the Requested Party permit the person not to give evidence in similar circumstances in proceedings originated in the Requested Party.

2. If a person who is required to give evidence under this Treaty asserts a right or privilege of immunity from giving evidence under the laws of the Requesting Party, the Requested Party shall request the Requesting Party to provide a certificate containing the legal basis for invoking such right or privilege. The certificate