

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

The Republic of the Philippines and Australia

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.

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 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.