

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF  
THE PHILIPPINES AND THE GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC  
OF CHINA CONCERNING MUTUAL LEGAL ASSISTANCE IN  
CRIMINAL MATTERS**

The Government of the Republic of the Philippines and the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("the Hong Kong Special Administrative Region") having been duly authorized by the Central People's Government of the People's Republic of China;

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution and suppression of crimes such as public corruption and narcotics trafficking;

Have agreed as follows:

**ARTICLE I  
SCOPE OF ASSISTANCE**

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

(2) Assistance shall include:

- (a) identifying and locating persons;
- (b) serving of documents;
- (c) the obtaining of evidence, articles or documents;
- (d) executing requests for search and seizure;
- (e) facilitating the personal appearance of witnesses;
- (f) effecting the temporary transfer of persons in custody to appear as witnesses;
- (g) obtaining production of judicial or official records;
- (h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities and recovering 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;
- (i) providing information, documents and records;
- (j) delivery of property, including lending of exhibits; and

(k) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.

(3) For the purposes of this Agreement, criminal matter includes:

(a) a criminal matter relating to revenue (including taxation and customs duties);

(b) a criminal matter relating to graft and corruption, unlawfully acquired or acquiring property, bribery, frauds against the public treasury, misappropriation or fraudulent conversion of public funds or property;

(c) a matter relating to the forfeiture or confiscation of property in respect of an offence;

(d) a matter relating to the imposition or recovery of a pecuniary penalty in respect of an offence; and

(e) 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.

(4) Assistance under this Agreement may be granted in connection with offences against a law related to taxation, custom duties, foreign exchange control or other revenue matters but not in connection with non-criminal proceedings relating thereto.

(5) This Agreement is intended solely for mutual assistance between the Parties. The provisions of this Agreement 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 II CENTRAL AUTHORITY**

(1) Each Party shall establish a Central Authority.

(2) The Central Authority for the Hong Kong Special Administrative Region shall be the Secretary for Justice or his duly authorized officer. The Central Authority of the Republic of the Philippines shall be the Secretary of Justice or his duly authorized officer.

(3) Requests under this Agreement shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

## **ARTICLE III OTHER ASSISTANCE**

This Agreement shall not affect subsisting obligations between the Parties pursuant to other agreements, arrangements or practices or otherwise nor prevent the Parties from providing assistance pursuant to such agreements, arrangements, or practices.

**ARTICLE IV**  
**LIMITATIONS ON COMPLIANCE**

(1) The Requested Party shall refuse assistance if:

- (a) the request for assistance impairs the sovereignty, security or public order of the Republic of the Philippines or, in the case of the Hong Kong Special Administrative Region, the People's Republic of China;
- (b) the request for assistance relates to an offence of a political character;
- (c) the request for assistance relates to an offence only, under military law;
- (d) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, religion, sex, nationality or political opinions;
- (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been acquitted or has served the sentence imposed or has been pardoned in the Requested Party;
- (f) it is of the opinion that the granting of the request would seriously impair its essential interests;
- (g) the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence.

(2) The Requested Party may refuse assistance if:

- (a) 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 offence had been committed within the jurisdiction of the Requested Party;
- (b) the Requesting Party cannot comply with any conditions relating to confidentiality or limitation as to the use of material provided;
- (c) the request for assistance relates to the prosecution or punishment of a person for an offence which is committed outside the area under the jurisdiction of the Requesting Party and the law of the Requested Party does not provide for the punishment of an offence committed in similar circumstances;  
or
- (d) the provision of the assistance sought could prejudice an investigation or proceeding in the Requested Party, or endanger the safety of any person or impose an excessive burden on the resources of that Party.

## **ARTICLE V REQUESTS**

(1) Requests shall be made in writing except in urgent cases. In urgent cases, requests maybe be made orally, but shall be confirmed in writing as soon as practicable.

(2) Requests for assistance shall include:

- (a) the name of the authority on behalf of which the request is made;
- (b) a description of the purpose of the request and the nature of the assistance requested;
- (c) a description of the nature of the investigation, prosecution, offence or criminal matter and whether or not proceedings have been instituted;
- (d) the court order, if any, or a certified copy thereof, sought to be enforced and a statement to the effect that it is a final order;
- (e) where proceedings have been instituted, details of the proceedings;
- (f) a summary of the relevant facts and laws;
- (g) any requirements for confidentiality;
- (h) details of any particular procedure the Requesting Party wishes to be followed; and
- (i) details of the period within which the request should be complied with.

(3) 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 of 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 Party will be entitled; and
- (e) a description of any property sought to be restrained, frozen or forfeited.

(4) All documents submitted in support of a request shall be in, or accompanied by a translation into, an official language of the Requested Party.

## **ARTICLE VI EXECUTION OF REQUESTS**

(1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.

(2) A request shall be executed in accordance with the law of the Requested Party and, to the extent not prohibited by the law of the Requested Party, in accordance with the directions stated in the request so far so practicable.

(3) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

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

(5) The Requested Party may postpone execution of the request if it would interfere with an ongoing investigation or prosecution or proceeding in relation to a criminal matter or a related civil matter in the Requested Party. Where the requests relates to the delivery of documents, the Requested Party shall upon request provide certified copies of those documents.

(6) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority:

(a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and

(b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

(7) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph 6(b) of this Article, it shall comply with those terms and conditions.

## **ARTICLE VII LIMITATIONS OF USE**

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

(2) The Requested Party, if so requested, shall keep the request for assistance, its contents and supporting documents, and the fact of