

TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

TABLE OF CONTENTS

Article	Provision
Article 1	Scope of Assistance
Article 2	Non-application
Article 3	Limitations on Assistance
Article 4	Designation of Central Authorities
Article 5	Form of Requests
Article 6	Contents of Requests
Article 7	Execution of Requests
Article 8	Limitations on Use of Evidence Obtained
Article 9	Protection of Confidentiality
Article 10	Obtaining Voluntary Statements
Article 11	Obtaining of Evidence
Article 12	Right to Decline to Give Evidence
Article 13	Provision of Publicly Available Documents and Other Records
Article 14	Attendance of Person in the Requesting Party
Article 15	Attendance of Person in Custody in the Requesting Party
Article 16	Safe Conduct
Article 17	Transit of Persons in Custody
Article 18	Search and Seizure
Article 19	Return of Evidence
Article 20	Location or Identification of Persons
Article 21	Service of Documents
Article 22	Assistance in Forfeiture Proceedings
Article 23	Compatibility with Other Arrangements
Article 24	Certification and Authentication

Article 25	Costs
Article 26	Consultation
Article 27	Amendment
Article 28	Settlement of Disputes
Article 29	Reservations
Article 30	Signature, Ratification, Accession, Deposit and Registration
Article 31	Entry into Force, Application and Termination
Article 32	Depositary of Treaty

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Socialist Republic of Vietnam (hereinafter referred to singularly as "the Party" and collectively as "the Parties"):

DESIRING to improve the effectiveness of the law enforcement authorities of the Parties in the prevention, investigation and prosecution of offences through cooperation and mutual legal assistance in criminal matters,

HAVE AGREED as follows:

ARTICLE 1

SCOPE OF ASSISTANCE

1. The Parties shall, in accordance with this Treaty and subject to their respective domestic laws, render to one another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and resulting proceedings.

2. Mutual assistance to be rendered in accordance with this Treaty may include:

- (a) taking of evidence or obtaining voluntary statements from persons;
- (b) making arrangements for persons to give evidence or to assist in criminal matters;
- (c) effecting service of judicial documents;
- (d) executing searches and seizures;
- (e) examining objects and sites;
- (f) providing original or certified copies of relevant documents, records and items of evidence;
- (g) identifying or tracing property derived from the commission of an offence and instrumentalities of crime;

(h) the restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;

(i) the recovery, forfeiture or confiscation of property derived from the commission of an offence;

(j) locating and identifying witnesses and suspects; and

(k) the provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party.

3. This Treaty applies solely to the provision of mutual assistance among the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

4. For the purposes of this Treaty, the expression "instrumentalities of crime" means property used in connection with the commission of an offence or the equivalent value of such property.

ARTICLE 2 NON-APPLICATION

1. This Treaty does not apply to -

(a) the arrest or detention of any person with a view to the extradition of that person;

(b) the enforcement in the Requested Party of criminal judgements imposed in the Requesting Party except to the extent permitted by the law of the Requested Party;

(c) the transfer of persons in custody to serve sentences; and

(d) the transfer of proceedings in criminal matters.

2. Nothing in this Treaty entitles a Party to undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic laws.

ARTICLE 3 LIMITATIONS ON ASSISTANCE

1. The Requested Party shall refuse assistance if, in its opinion -

(a) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;

(b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would have constituted a military offence under the

laws of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party;

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

(d) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person -

(i) has been convicted, acquitted or pardoned by a competent court or other authority in the Requesting or Requested Party;
or

(ii) has undergone the punishment provided by the law of that Requesting or Requested Party,

in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;

(e) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would not have constituted an offence against the laws of the Requested Party except that the Requested Party may provide assistance in the absence of dual criminality if permitted by its domestic laws;

(f) the provision of the assistance would affect the sovereignty, security, public order, public interest or essential interests of the Requested Party;

(g) the Requesting Party fails to undertake that it will be able to comply with a future request of a similar nature by the Requested Party for assistance in a criminal matter;

(h) the Requesting Party fails to undertake that the item requested for will not be used for a matter other than the criminal matter in respect of which the request was made and the Requested Party has not consented to waive such undertaking;

(i) the Requesting Party fails to undertake to return to the Requested Party, upon its request, any item obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;

(j) the provision of the assistance could prejudice a criminal matter in the Requested Party; or

(k) the provision of the assistance would require steps to be taken that would be contrary to the laws of the Requested Party.

2. The Requested Party may refuse assistance if, in its opinion -

(a) the Requesting Party has, in respect of that request, failed to comply with any material terms of this Treaty or other relevant arrangements;

(b) the provision of the assistance would, or would be likely to prejudice the safety of any person, whether that person is within or outside the territory of the Requested Party; or

(c) the provision of the assistance would impose an excessive burden on the resources of the Requested Party.

3. For the purposes of subparagraph 1(8), the following offences shall not be held to be offences of a political nature:

(a) an offence against the life or person' of a Head of State or a member of the immediate family of a Head of State;

(b) an offence against the life or person of a Head of a central Government, or of a Minister of a central Government;

(c) an offence within the scope of any international convention to which both the Requesting and Requested Parties are parties to and which imposes on the Parties thereto an obligation either to extradite or prosecute a person accused of the commission of that offence; and

(d) any attempt, abetment or conspiracy to commit any of the offences referred to in subparagraphs (a) to (c).

4. The Requested Party may restrict the application of any of the provisions made under paragraph 3 according to whether the Requesting Party has made similar provision in its laws.

5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

6. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing criminal matters in the Requested Party.

7. Before refusing a request or postponing its execution pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions.

8. If the Requesting Party accepts assistance subject to the terms and conditions imposed under paragraph 7, it shall comply with such terms and conditions.

9. If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.

10. The Parties shall, subject to their respective domestic laws, reciprocate any assistance granted in respect of an equivalent offence irrespective of the applicable penalty.

ARTICLE 4

DESIGNATION OF CENTRAL AUTHORITIES

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.