

**TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS  
BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE  
KINGDOM OF SPAIN**

The Republic of the Philippines and the Kingdom of Spain, hereinafter referred to as the Contracting Parties;

Wishing to maintain and strengthen the ties that unite the two countries;

Desiring to provide for more effective cooperation between them in the investigation and prosecution of crimes;

Recognizing the need to improve coordination and mutual legal assistance in criminal matters in general, in accordance with their national laws and regulations;

Have agreed as follows:

**ARTICLE 1  
SCOPE OF ASSISTANCE**

1. The Contracting Parties 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:

- a) taking the testimony or statements of persons;
- b) providing documents, records, and items of evidence;
- c) serving documents;
- d) locating or identifying persons or property;
- e) transferring persons in custody for testimony or other purposes;
- f) executing requests for searches and seizures;
- g) freezing of assets;
- h) assisting in proceedings related to forfeiture of assets, restitution, and collection of fines;
- i) instituting criminal proceedings; and
- j) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct which is subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offence under the laws of the Requested State. However, when the assistance sought involves the carrying out of measures under paragraph 2 (f)

or paragraph 2 (h) of this Article, it shall be necessary that the conduct which is subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offence under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the Contracting Parties. The provisions of this Treaty shall not give rise to a 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. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the Republic of the Philippines, the Central Authority shall be the Department of Justice. For the Kingdom Spain, the Central Authority shall be the Ministry of Justice.

3. The Central Authorities shall communicate directly with each other, or through the diplomatic channel, for the purposes of this Treaty.

4. The Contracting Parties shall notify each other of any changes in the designation of their respective Central Authorities.

## **ARTICLE 3 GROUNDS FOR DENYING ASSISTANCE**

1. The Requested State may deny assistance if:

- (a) the request relates to a political offence;
- (b) the request refers to an offence considered to be exclusively military in the Requested State;
- (c) the execution of the request would prejudice its sovereignty, security, public order or similar essential interests;
- (d) there are substantial grounds to believe that the request for assistance has been made to investigate or prosecute a person for reasons of his race, religion, nationality, ethnic origin, political opinion or sex or that the request is being made to subject that person to any other form of discrimination; or
- (e) the request is not made in conformity with the Treaty.

2. For the purposes of this Agreement, in no case shall the following be considered political offences:

- (a) terrorist attacks against the life of a Head of State or Government or a member of his family;
- (b) any offence related to terrorism; or
- (c) war crimes and crimes committed against the peace and security of mankind.

3. Before denying assistance pursuant to this Article, the Requested State shall consult with the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

4. If the Requested State denies assistance pursuant to this Article, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

#### **ARTICLE 4**

#### **FORM AND CONTENT OF REQUESTS**

1. A request for assistance shall be in writing with the exception that the Requested State may accept a request in another form in case of urgency. In the latter case, the request shall be confirmed in writing within ten days thereafter unless the Requested State agrees otherwise. The request and its supporting documents shall be in both English and Spanish.

2. The request shall include the following:

- (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offences which relate to the matter;
- (c) a description of the evidence, information, or other assistance sought; and
- (d) a statement of the purpose for which the evidence, information, or other assistance is sought.

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

- (a) information on the identity and location of any person from whom evidence is sought;
- (b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (c) information on the identity and whereabouts of a person to be located;
- (d) a precise description of the place or person to be searched and of the articles to be seized;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked of a witness;
- (g) a description of any particular procedure to be followed in executing the request;
- (h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled;

(i) a description of any property sought to be restrained, frozen or forfeited; and

(j) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

## **ARTICLE 5**

### **EXECUTION OF REQUESTS**

1. The Requested State shall execute in accordance with its national law a request concerning criminal matters made by the competent judicial authority of the Requesting State.

2. The Requested State shall be limited to providing certified true copies of the records or documents requested. However, on a request for the transmission of originals, best efforts shall be made to comply with the request.

3. If the Requested State determines that the execution of the request would interfere with any ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or it may make execution subject to conditions determined necessary after consultations with the Central Authority of the Requesting State.

4. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

5. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested State shall inform in writing the Central Authority of the Requesting State of the reasons for the denial.

## **ARTICLE 6**

### **EXPENSES**

The Requested State shall pay all expenses relating to the execution of the request, except for the fees of witnesses and experts, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 11 and 12, which shall be paid by the Requesting State.

## **ARTICLE 7**

### **LIMITATIONS ON USE**

The Requesting State may not use the evidence obtained for purposes other than those specified in the request, without the previous written consent of the Requested State.

## **ARTICLE 8**

### **THE HANDING OVER OF PROCEDURAL DOCUMENTS AND THE SERVICE OF WRITS IN CRIMINAL MATTERS**

1. The Requested State shall proceed to hand over the procedural documents and to effect the service of writs that were transmitted to it for this purpose by the Requesting State. Service may be effected by simple transmission of the document or decision to the person to be served. If the Requesting State explicitly so requests,

the Requested State shall effect the service in the manner provided under its own law for the analogous service of documents or in a special manner consistent with such law.

2. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a written statement by the competent authority of the Requested State that service has been effected, specifying the form and date of such service. Either of these documents shall be immediately transmitted to the Requesting State.

3. If the handing over or service is unable to be effected, the Requested State shall immediately inform the Requesting State about the reason therefor.

4. Summons to appear addressed to an accused person who is in the territory of the Requested State must be served at least thirty (30) days before the date set for appearance.

## **ARTICLE 9**

### **TAKING TESTIMONY OR EVIDENCE IN THE REQUESTED STATE**

1. A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contain a note of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the Requesting State and is there again duly summoned.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and, to the extent allowed by its laws, shall permit such persons to question the person giving the testimony or evidence.

## **ARTICLE 10**

### **RECORDS OF GOVERNMENT AGENCIES**

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested State.

2. The Requested State may provide copies of records, including documents or information in any form, which are in the possession of a government department or agency in that State but which are not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

3. To the same extent and under the same conditions as they would be available to its own judicial authorities, the Requested State shall provide excerpts or information concerning a final judgment of conviction requested by judicial authorities of the Requesting State necessary for a criminal case.

## **ARTICLE 11**

### **TESTIMONY IN THE REQUESTING STATE**