



Philippines No. 2 (2010)

Treaty

on Mutual Legal Assistance in Criminal Matters
between the United Kingdom of Great Britain and Northern
Ireland and the Republic of the Philippines

London, 18 September 2009

[The Agreement is not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
March 2010*

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**TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND THE REPUBLIC OF THE PHILIPPINES**

The United Kingdom of Great Britain and the Northern Ireland and the Republic of the Philippines, hereinafter referred to as the Contracting States;

DESIRING to improve the effectiveness of co-operation between the Contracting States in the investigation, prosecution and suppression of crime by making provision for mutual legal assistance in criminal matters;

HAVING DUE REGARD for human rights and the rule of law;

MINDFUL of the guarantees under their respective legal systems which provide an accused person with the right to a fair trial, including the right to adjudication by an impartial tribunal established pursuant to law;

Have agreed as follows:

ARTICLE 1

Scope of Assistance

1. The Contracting States undertake to provide each other, in accordance with the provisions of this Treaty, and in conformity with their respective domestic laws, the widest possible measure of mutual legal assistance in the investigation, prosecution and suppression of criminal offences and in proceedings related to criminal matters.

2. Assistance shall include:

- (a) taking testimony or statements from persons;
- (b) providing documents, records and items of evidence;
- (c) exchanging information;
- (d) effecting service of documents;
- (e) executing searches and seizures;
- (f) 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;
- (g) locating and identifying witnesses and suspects;

- (h) facilitating the personal appearance of witnesses;
- (i) effecting the temporary transfer of persons in custody to appear as witnesses;
- (j) return of assets, in accordance with domestic law of the Requested State;
- (k) sharing of assets in accordance with this Treaty; and,
- (l) such other assistance as may be agreed between the Central Authorities.

3. Assistance shall be provided without regard to whether the conduct that is the subject of the request would be punishable under the domestic laws of both Contracting States. Where a request is made for search and seizure of evidence, restraint or confiscation of the proceeds of crime, the Requested State may render the assistance in accordance with its domestic law.

ARTICLE 2

Grounds for Refusal or Postponement of Assistance

1. Assistance may be refused if:
 - (a) the offence is regarded by the Requested State as being of a political nature or an offence only under military law;
 - (b) there are substantial grounds for believing that the request for assistance has been made for the purpose of investigating, prosecuting or punishing a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that person's position may be prejudiced for any of those reasons;
 - (c) the request relates to a person who, if proceeded against in the Requested State for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction;
 - (d) the Requested State considers that the execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests, or is otherwise inconsistent with its domestic law; or
 - (e) the provision of assistance would, or would be likely to prejudice an investigation or criminal proceeding in the Requested State or endanger the safety of any person.

2. 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.

3. The Requested State may postpone the execution of the request if its immediate execution would interfere with any ongoing criminal proceedings in the Requested State.

4. Before refusing a request for assistance, the Requested State shall consider whether assistance may be granted subject to certain conditions. If the Requesting State accepts assistance subject to the conditions imposed under this Article, it shall comply with such conditions.

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

ARTICLE 3

Designation of Central Authorities

1. Central Authorities shall be established by the Contracting States.

2. For the United Kingdom, the Central Authorities for the purposes of sending requests shall be:

- (a) the Secretary of State; and
- (b) the Lord Advocate (for matters pertaining to Scotland).

3. For the United Kingdom, the Central Authorities for the purpose of receiving requests shall be:

- (a) the Secretary of State;
- (b) the Lord Advocate (for matters pertaining to Scotland); and/or
- (c) Her Majesty's Revenue and Customs.

4. For the Republic of the Philippines, the Central Authority shall be the Department of Justice.

5. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

6. The Contracting States may, at any time, designate any other authority as a Central Authority for the purposes of this Treaty. Notification of such a designation will take place by exchange of diplomatic notes.

7. In cases of urgency, requests may be transmitted via the International Criminal Police Organization (Interpol).

ARTICLE 4

Form, Language and Contents of Requests

1. A request for assistance shall be made in writing except in urgent cases. In urgent cases, the request for assistance may be made by secure fax or email, but shall be confirmed in writing within thirty (30) working days from receipt of the request unless the Requested State agrees otherwise.
2. The request shall include the following:
 - (a) the name and address of the authority conducting the proceedings to which the request relates;
 - (b) the subject matter and nature of the proceedings for the purposes of which the request is made;
 - (c) a description of the offence to which the request relates including its applicable penalty;
 - (d) a summary of the information giving rise to the request;
 - (e) a description of the evidence or other assistance sought;
 - (f) the purpose for which the evidence or other assistance is sought; and
 - (g) details of any timeframe within which compliance with the request is desired.
3. To the extent necessary and possible, a request shall also include:
 - (a) the identity, date of birth, nationality and location of any person from whom evidence is sought;
 - (b) the identity, date of birth, nationality and location of a person to be served, that person's relationship to the proceedings, and the manner in which the service is to be made;
 - (c) available information on the identity and whereabouts of a person to be located;
 - (d) a precise description of the place 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 or expert;
- (g) a description of any particular procedures to be followed in executing the request;
- (h) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting State will be entitled;
- (i) requirements for confidentiality; and
- (j) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

4. Where the request involves the presence of a person in the Requesting State, as provided for under Article 13 (Attendance of Person in the Requesting State) or Article 14 (Transfer of Persons in Custody) of this Treaty, the request shall include information on the extent of immunity, if any, to be afforded to the person while he or she is in the Requesting State.

5. 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 to provide additional information.

6. All requests, supporting documents and any communication made pursuant to this Treaty shall be in the English language.

ARTICLE 5

Execution of Requests

1. The Central Authority of the Requested State shall endeavour to promptly execute the request or arrange for its execution through its competent authorities.

2. A request for assistance shall be executed in accordance with the domestic law of the Requested State and, to the extent not prohibited by its domestic law, in the manner specified by the Requesting State.

3. The Requested State may make appropriate arrangements to ensure the interests of the Requesting State are adequately represented in court proceedings.

4. The Requested State shall promptly inform the Requesting State of any circumstances which are likely to cause a significant delay in responding to a request.

5. The Requested State shall promptly inform the Requesting State of a decision not to comply in whole or in part with a request for assistance and the reason or reasons for that decision.

6. The Central Authority of the Requested State may facilitate the participation in the execution of the request of such persons as are specified in the request.

7. After the request has been executed, the competent authority shall forward to the Central Authority of the Requested State the information and evidence gathered.

8. 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.

ARTICLE 6

Confidentiality, Limitations on Use and Data Protection

1. The Requested State shall, upon request, keep confidential the request for assistance, its contents and supporting documents, and any response to such a request.

2. If the request cannot be executed without breaching confidentiality, the Requested State shall so inform the Requesting State, which shall then determine whether, and the extent to which, it wishes the request to be executed.

3. The Requesting State shall not use or disclose any information or evidence obtained under this Treaty for any purpose other than for the proceedings stated in the request without the prior consent of the Requested State.

4. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation under the domestic law of the Requesting State to use or disclose such information for the purpose of judicial proceedings. The Requesting State shall, wherever possible, notify the Requested State in advance of any such disclosure.

5. Either Contracting State may refuse to transfer personal data obtained as a result of the execution of a request made under this Treaty where the transfer of such data is prohibited under its domestic law.

6. Either Contracting State that transfers personal data obtained as a result of the execution of a request made under this Treaty may require the Contracting State to which the data have been transferred to give information on the use made of such data.

ARTICLE 7

Legalisation Requirements

1. Documents, transcripts, records, statements and other materials shall be exempted from any legalisation requirements, including certification or authentication by consular or diplomatic officers.
2. Documents, transcripts, records, statements and other materials which are to be transmitted to the Requesting State shall only be certified if the Requesting State so requests. For that purpose, certification by the Central Authority of the Requested State shall be sufficient.

ARTICLE 8

Return of Documents, Records or Items of Evidence

The Central Authority of the Requesting State shall return any documents or articles furnished to it in the execution of a request under this Treaty as soon as is practicable unless the Central Authority of the Requested State waives the return of the documents or articles. If agreed upon by the Central Authorities, such documents, records, or items shall instead be disposed of in a mutually acceptable manner.

ARTICLE 9

Obtaining Testimony or Evidence

1. A person in the territory of the Requested State from whom testimony or evidence is required pursuant to this Treaty may be compelled, if necessary, to appear in order to testify or produce documents, records, or articles of evidence by summons or such other method as may be permitted under the domestic law of the Requested State.
2. If under Article 5(5) (Execution of Requests) of this Treaty the Requested State has permitted the presence of specified persons during the execution of the request, then, subject to the domestic law of the Requested State, such persons may be permitted to present questions to be asked of the person giving testimony or producing evidence.
3. A person from whom testimony or evidence is to be taken in the Requested State pursuant to a request under this Article may decline to give testimony or produce evidence where the domestic law of the Requested State so provides and shall not be subject to any legal penalty as a result.

4. Where a person so compelled asserts a claim of immunity, incapacity or privilege under the domestic law of the Requesting State, the Requesting State shall be informed of such a claim and the testimony or evidence shall be taken unless the Requesting State accepts the validity of the claim.

ARTICLE 10

Hearing by Video Conference

1. A person within the territory of the Requested State may give evidence in proceedings in the Requesting State by video conference.

2. If access to the technical means for video conferencing is not available in either Contracting State, such means may be made available by the other Contracting State by agreement.

3. Where a witness is to be heard by video conference, the hearing shall be conducted before an appropriate authority in the Requested State.

4. The hearing shall be supervised by a judicial authority of the Requesting State and evidence shall be given:

- (a) in accordance with the domestic law of the Requesting State; and
- (b) in accordance with any other measures for the protection of the witness which have been agreed between the Contracting States.

5. At the hearing the appropriate authority of the Requested State shall be responsible for:

- (a) ensuring there is appropriate interpretation of proceedings;
- (b) establishing the identity of the witness;
- (c) intervening, where necessary, to safeguard the rights of the witness;
- (d) drawing up a record of the hearing which shall include the following information:
 - (i) the date and place of the hearing;
 - (ii) the identity of the person heard;
 - (iii) the identities and functions of anyone else participating in the hearing;
 - (iv) details of any oaths taken; and

- (v) the technical conditions under which the hearing took place; and
- (e) transmitting the record of the hearing as referred to in this Article as soon as is practicable after the conclusion of the hearing.

ARTICLE 11

Provision of Publicly Available Documents and Other Records

1. The Requested State shall, upon request, provide the Requesting State with copies of publicly available records that are in the possession of authorities in the Requested State.
2. The Requested State may provide the Requesting State with copies of documents or records in the possession of authorities in the Requested 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.

ARTICLE 12

Service of Documents

1. The Requested State shall, upon request and insofar as is possible, effect service of any process issued or made for the purposes of criminal proceedings.
2. Any person who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently that person voluntarily enters the territory of the Requesting State and is there again duly summoned.
3. The Requesting State shall transmit a record for the service of a document requiring the appearance of a person before an authority in the Requesting State at a reasonable time before the scheduled appearance.
4. The Requested State shall, wherever possible, return a proof of service in the manner specified in the request.

ARTICLE 13

Attendance of Persons in the Requesting State

1. Where a person is situated in the Requested State, that State may assist in arranging the attendance of that person, subject to his or her consent, in the Requesting State:

- (a) to assist in the investigation in relation to a criminal matter; or
- (b) to appear in proceedings in relation to a criminal matter in the Requesting State, unless that person is the person charged.

2. The Requesting State may make arrangements to ensure, so far as is possible, that a person attending in the territory of the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions in the Requesting State that preceded that person's departure from the territory of the Requested State.

3. The Requested State may, if satisfied that appropriate arrangements for that person's safety will be made by the Requesting State, invite the person to give or provide evidence or assistance in relation to a criminal matter in the Requesting State. The person shall be informed of details of any immunity as required by Article 4(4) (Form, Language and Contents of Requests) of this Treaty and any expenses or allowances payable.

4. The Requested State shall promptly communicate in writing to the Requesting State the person's response and, if the person consents, take any steps necessary to facilitate that person's attendance in the Requesting State.

ARTICLE 14

Transfer of Persons in Custody

1. Where a request is received by the Requested State for the transfer of a person in the custody of that State to the territory of the Requesting State for the purpose of providing assistance under this Treaty, that person shall be so transferred if he and the Contracting States consent.

2. The Requesting State shall be responsible for the safety of the person transferred whilst in custody.

3. The Requesting State may make arrangements to ensure, so far as is possible, that a person attending in the territory of the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any further restriction of personal liberty, by reason of any acts or convictions in the

Requesting State that preceded that person's departure from the territory of the Requested State.

4. The Requested State may, if satisfied that appropriate arrangements for that person's safety will be made by the Requesting State, invite the person to give or provide evidence or assistance in relation to a criminal matter in the Requesting State. The person shall be informed of details of any immunity as required by Article 4(4) (Form, Language and Contents of Requests) of this Treaty.

5. Unless notified to the contrary by the Requested State, the Requesting State shall have the authority and the obligation to keep in custody the person transferred.

6. Where the Requested State advises the Requesting State that the person transferred is no longer required to be held in custody, that person shall be released from custody and be treated as a person to whom Article 13 (Attendance of Persons in the Requesting State) of this Treaty applies.

7. The Requesting State shall return the person transferred to the custody of the Requested State as soon as circumstances permit and in any event no later than the date upon which he would have been released from custody in the territory of the Requested State, unless otherwise agreed by the Contracting States and the person transferred.

8. The Requesting State shall not require the Requested State to initiate extradition proceedings for the return of the person transferred.

9. The period of custody in the territory of the Requested State shall be deducted from the period of detention which the person concerned is, or will be, obliged to undergo in the territory of the Requesting State.

ARTICLE 15

Exchange of Criminal Records

The Contracting States may inform the other of any criminal convictions and subsequent measures recorded in respect of citizens of the other State.

ARTICLE 16

Executing Searches and Seizures

1. The Requested State shall carry out requests for search, seizure and delivery of any evidence to the Requesting State provided the request contains information that would justify such action under the domestic law of the Requested State.

2. The Requested State shall provide such information as may be required by the Requesting State concerning the result of any search, the place of seizure, the circumstances of seizure and the subsequent custody of the evidence seized.

3. The Requested State may require that the Requesting State agrees to any terms and conditions which the Requested State may deem necessary to protect proprietary interests in the evidence to be transferred.

ARTICLE 17

Restraint, Forfeiture and Confiscation of Property

1. The Contracting States shall assist each other in proceedings involving the identification, tracing, restraint, seizure and confiscation of the proceeds and instrumentalities of crime in accordance with the domestic law of the Requested State.

2. In addition to the provisions contained in Article 4 (Form, Language and Content of Requests) of this Treaty, a request for assistance in restraint or confiscation proceedings shall also include:

- (a) details of the property in relation to which co-operation is sought;
- (b) the location of the property and its connection with the subjects of the request;
- (c) the connection, if any, between the property and the offences;
- (d) details of any third party interests in the property; and
- (e) a certified true copy of the restraint or confiscation order made by the court and statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself.

ARTICLE 18

Return of Assets

1. Where an offence has been committed and a conviction has been obtained in the Requesting State, the assets which have been seized by the Requested State may be returned to the Requesting State for the purpose of confiscation, in accordance with the domestic law of the Requested State.

2. The rights claimed by bona fide third parties over these assets shall be respected.

ARTICLE 19

Return of Embezzled Public Funds

When the Requested State seizes or confiscates assets that constitute public funds, whether or not these have been laundered, and which have been embezzled from the Requesting State, the Requested State shall return the seized or confiscated assets, less any costs of realisation, to the Requesting State.

ARTICLE 20

Circumstances in Which Assets May be Shared

Where a Contracting State is in possession of confiscated assets, and it appears to that Contracting State (“the Holding State”) that co-operation has been given by the other Contracting State (“the Co-operating State”), the Holding State may share those assets with the Co-operating State.

ARTICLE 21

Requests for Asset Sharing

1. A Co-operating State may make a request for asset sharing to the Holding State in accordance with the provisions of this Treaty when its co-operation has led, or is expected to lead, to confiscation. A request for asset sharing shall be made no later than one (1) year from the date of entry of the final order of confiscation, unless otherwise agreed between the Contracting States.
2. A request made under paragraph 1 of this Article shall include the details of:
 - (a) the case to which the request relates;
 - (b) the assets to which the request relates;
 - (c) the agency or agencies involved; and
 - (d) the extent and circumstances of the co-operation.
3. On receipt of a request for asset sharing made in accordance with the provisions of this Article, the Holding State shall:
 - (a) consider whether to share assets as set out in Article 20 (Circumstances in which Assets may be Shared) of this Treaty; and
 - (b) inform the Contracting State making the request of the outcome of that consideration.

4. In appropriate cases where there are identifiable victims, consideration of the rights of victims may take precedence over asset sharing between the Contracting States.

ARTICLE 22

Sharing of Assets

1. Where the Holding State agrees to share assets with the Co-operating State, it shall:
 - (a) determine the proportion of the assets to be shared which, in its view, represents the extent of the co-operation afforded by the Co-operating State; and
 - (b) transfer a sum equivalent to that proportion to the Co-operating State in accordance with Article 23 (Payment of Shared Assets) of this Treaty.
2. The Contracting States agree that it may not be appropriate to share where the value of the realised assets or the assistance rendered by the Co-operating State is *de minimis*.

ARTICLE 23

Payment of Shared Assets

Unless otherwise agreed, any sum transferred pursuant to Article 22 (1)(b) (Sharing of Assets) of this Treaty shall be paid:

- (a) in the currency of the Holding State;
- (b) by means of an electronic transfer of funds or cheque; and
- (c) to such recipient or recipients as specified by the Central Authority of the Co-operating State.

ARTICLE 24

Imposition of Conditions in Asset Sharing

Where the Holding State transfers any sum pursuant to Article 22(1)(b) (Sharing of Assets) of this Treaty, it may not impose on the Co-operating State any conditions as to the use of that sum, and, in particular, may not require the Co-operating State to share the sum with any other State, organisation or individual.

ARTICLE 25

Spontaneous Information

1. The Central Authority of one of the Contracting States may, without prior request, forward information to the Central Authority of the other Contracting State when it considers that the disclosure of such information might assist the receiving State in initiating or carrying out investigations or proceedings, or might lead to a request by the receiving State under this Treaty.
2. If one of the Contracting States becomes aware that the proceeds or instrumentalities of crime are located in the territory of the other Contracting State and may be liable to restraint, seizure or confiscation under the laws of that Contracting State, it may so inform the Central Authority of the other Contracting State.
3. The providing State may impose conditions on the use of such information by the receiving State. The receiving State shall be bound by these conditions.

ARTICLE 26

Costs and Expenses

1. The Requested State shall pay all costs relating to the execution of the request, except for the following which shall be paid by the Requesting State:
 - (a) fees and reasonable expenses of expert witnesses;
 - (b) the allowances and expenses incurred pursuant to Article 13 (Attendance of Persons in the Requesting State) of this Treaty;
 - (c) the costs of establishing and operating video conferencing or television links and the interpretation and transcription of such proceedings pursuant to Article 10 (Hearing by Video Conference) of this Treaty;
 - (d) the costs of transferring persons in custody pursuant to Article 14 (Transfer of Persons in Custody) of this Treaty; and
 - (e) such other costs or resources as agreed.
2. If the Central Authority of the Requested State notifies the Central Authority of the Requesting State that the execution of the request might require costs or other resources of an extraordinary nature, the Central Authorities shall consult each other with a view to reaching an agreement on the conditions under which the request shall be executed and the manner in which costs shall be allocated.

ARTICLE 27

Compatibility with other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either of the Contracting States from granting assistance to the other Contracting State through the provisions of other international agreements to which it may be a party, or through the provisions of its domestic law. The Contracting States may also provide assistance pursuant to any arrangement, agreement or practice which may be applicable between the law enforcement agencies of the Contracting States.

ARTICLE 28

Consultations

The Contracting States shall consult, orally or in writing, on the application or implementation of this Treaty, in general terms or in a particular case, whenever appropriate. The Contracting States may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 29

Settlement of Disputes

Any dispute regarding the interpretation, application or implementation of this Treaty shall be resolved through the diplomatic channels if the Central Authorities are themselves unable to reach an agreement.

ARTICLE 30

Application

1. This Treaty shall apply to offences committed before or after the date on which it enters into force.
2. This Treaty shall apply:
 - (a) in the territories of the United Kingdom, which consists of Great Britain and Northern Ireland;
 - (b) in the territory of the Republic of the Philippines; and
 - (c) to any other territories for whose international relations one of the Contracting States is responsible or to which this Treaty shall have been extended by Exchange of Notes.

3. The application of this Treaty to any territory in respect of which extension has been made in accordance with paragraph 2(c) of this Article may be terminated by either State giving six (6) months written notice to the other through the diplomatic channel.

ARTICLE 31

Entry into Force and Termination

1. This Treaty shall be subject to ratification and shall enter into force after both the Contracting States have notified each other through diplomatic channels that their respective requirements for the entry into force of this Treaty have been complied with.

2. Either Contracting State may terminate this Treaty at any time by giving notice in writing to the other. In that case, the Treaty shall cease to have effect six (6) months after the date of the receipt of that notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE in two originals at London this 18th day of September 2009 in the English language only.

For the United Kingdom of Great
Britain and Northern Ireland:

For the Republic of the Philippines:

PETER MANDELSON

ALBERTO G ROMULO



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