

法規名稱：Agreement on Mutual Legal Assistance in Criminal Matters between The Taipei Economic and Cultural Office in the Philippines And The Manila Economic and Cultural Office in Taiwan

簽訂日期：民國 102 年 04 月 19 日

生效日期：民國 102 年 09 月 12 日

The Taipei Economic and Cultural Office in the Philippines (TECO) and The Manila Economic and Cultural Office in Taiwan (MECO), hereinafter referred to as "The Parties";

Desiring to improve the effective cooperation of the law enforcement authorities of the territories represented by either Party through mutual legal assistance in criminal matters on the basis of mutual respect, reciprocity, and mutual benefit;

Adhering to their respective laws and regulations;

Have agreed as follows:

Article 1 Scope of Assistance

1. The Parties shall, in accordance with this Agreement and the laws of the territories that they represent, provide mutual legal assistance through the relevant authorities of the territories they represent, in connection with the investigation, prosecution, prevention of offenses and in proceedings related to criminal matters.
2. Assistance shall include:
 - a) taking the testimony or statements of persons;
 - b) providing documents, records, and articles of evidence;
 - c) locating or identifying persons;
 - d) serving documents;
 - e) facilitating requests for searches and seizures;
 - f) deportation;
 - g) assisting in proceedings related to immobilization and confiscation of assets or collection of fines; and
 - h) any other form of assistance not contrary to the laws of the territory represented by the Requested Party.
3. The Parties shall make the best efforts to provide assistance

- even if the conduct that is the subject of the investigation, prosecution, or proceeding in the territory represented by the Requesting Party would not constitute an offense under the laws of the territory represented by the Requested Party.
4. This Agreement is intended solely for mutual legal assistance between the Parties. The provisions of this Agreement 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 Request for Assistance

1. Requests for assistance to the relevant authorities of the territory represented by either Party will be received by the other Party for its consideration and endorsement to its central channel/agency.
2. The central channel/agency for the territories represented by the Parties are:
 - a) For TECO: the Ministry of Justice or persons designated by the Ministry of Justice.
 - b) For MECO: the Department of Justice or persons designated by the Department of Justice.
3. The Parties will communicate directly with each other for the purposes of this Agreement.

Article 3 Grounds for Refusal or Postponement of Assistance

1. Assistance may be refused if:
 - a) the request relates to a political offence;
 - b) the request relates to an offense under military law that would not be an offense under the ordinary criminal law of the territory represented by the Requested Party;
 - c) the execution of the request would prejudice the security, public order, or similar essential interests of the territory represented by the Requested Party;
 - d) the request is made pursuant to Article 14 and Article 18 and relates to conduct which, if committed in the territory

- represented by the Requested Party, would not be an offense in that territory; or
- e) the execution of the request requires steps to be taken that would be inconsistent with the law of the territory represented by the Requested Party.
2. Assistance may be postponed if the immediate execution of the request would interfere with an ongoing investigation, prosecution or criminal proceedings in the territory represented by the Requested Party.
3. Before refusing a request for assistance, the Parties shall consult with each other to determine whether assistance may be given subject to such terms and conditions as the authorities of the territory represented by the Requested Party deem necessary. If the Requesting Party accepts the assistance subject to those terms and conditions, the authorities of the territory represented by it shall comply with the conditions.
4. If the Requested Party refuses or postpones the execution of a request for assistance, it shall inform the Requesting Party of the reasons for such refusal or postponement.

Article 4 Form and Contents of Requests

1. A request for assistance shall be in writing. In urgent situations, a request may be made orally, but in such cases the request shall be confirmed in writing within ten (10) days. The request shall be in the language used in the territory represented by the Requested Party. Nevertheless, upon request, the same may be in the English language.
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 offenses that relate to the matter and any punishment that might be imposed for each offense;

- 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 or recorded;
 - f) a list of questions to be asked of a witness or a defendant;
 - 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 territory represented by the Requesting Party will be entitled; and
 - i) any other information that may be brought to the attention of the Requested Party to facilitate its execution of the request.
4. If the Requested Party considers the contents contained in the request not sufficient to enable the request to be dealt with, it may request additional information.
5. No form of certification or authentication will be required for a request for assistance or its supporting documents.

Article 5 Execution of Requests

1. The Requested Party shall execute the request or arrange for its execution through the competent authorities of the

- territory it represents. Requests for assistance and the method of execution specified in the request shall be carried out in the manner provided for by the laws of the territory represented by the Requested party.
2. The authorities of the territory represented by the Requested Party shall use their best efforts to keep confidential a request and its contents if such confidentiality is requested by the Requesting Party. If the request cannot be executed without breaching such confidentiality, the Requested party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.
 3. The Requested Party shall respond to reasonable inquiries by the Requesting Party on progress toward execution of the request.
 4. The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request. If the request is denied, the Requested Party shall inform the Requesting Party of the reasons for the denial in writing.

Article 6 Costs

1. The Requested Party shall pay the costs relating to the execution of the request, but the Requesting Party shall bear:
 - a) the allowances or expenses for the travel of persons under Article 10 of this Agreement in accordance with the laws and the regulations of the territory represented by the Requesting Party;
 - b) the allowances or expenses for persons who travel to and from, or stay in the territory represented by the Requested Party under Article 8(3) of this Agreement;
 - c) the costs of establishing and operating video conferencing or television links and the interpretation and transcription of such proceedings pursuant to Article 11 of this Agreement;

- d) the expenses and fees of experts; and
 - e) the costs of translation, interpretation, and transcription.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult with each other to determine the terms and conditions under which the request can be executed.

Article 7 Limitations on Use

1. The Requesting Party or the authorities of the territory it represents may not use the information, documents or objects obtained pursuant to this Agreement for purposes other than those specified in the request without the previous written consent of the authorities of the territory represented by the Requested Party. The authorities of the Requesting Party shall comply with any conditions imposed in the further use of the information or evidence.
2. The Requested Party may request that information or evidence furnished under this Agreement be kept confidential or used only subject to such terms and conditions it may specify. If the Requesting Party accepts the information or evidence subject to such conditions, the relevant authorities of the territory represented by the Requesting Party shall comply with the conditions.
3. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the Parties' respective laws. The Requesting Party shall notify the Requested Party in advance of any such proposed disclosure.
4. Information or evidence that has been made public in the territory represented by the Requesting Party in accordance with paragraphs 1, 2 or 3 may thereafter be used for any purpose.

Article 8 Testimony or Evidence in the Territory Represented by the Requested Party

1. A person in the territory represented by the Requested Party from whom evidence is requested pursuant to this Agreement may be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence. A person, who gives false testimony or statement, either orally or in writing, in execution of a request, shall be subject to prosecution and punishment in the territory represented by the Requested Party in accordance with the criminal laws of that territory.
2. Upon request, the Requested Party shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.
3. The authorities of the territory represented by the Requested Party shall permit the presence of such persons as specified in the request during the execution of the request and shall allow such persons to pose questions to the person giving the testimony or evidence and to make a verbatim transcript in a manner agreed to by the authorities of the territory represented by the Requested Party.
4. If the person referred to in paragraph 1 of this Article asserts a claim of immunity, incapacity, or privilege under the laws of the territory represented by the Requesting Party, the claim shall be made known to the Requesting Party for resolution by the authorities of that territory.
5. Evidence produced in the territory represented by the Requested Party pursuant to this Article or that is the subject of testimony taken under this Article may be authenticated in accordance with the Parties' respective laws.

Article 9 Records of the Territories Represented by the Parties

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

the territory it represents.

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

Article 10 Testimony in the Territory Represented by the Requesting Party

1. When the Requesting Party requests the appearance of a person in the territory it represents the Requested Party shall invite the person to appear before the appropriate authority of the territory represented by the Requesting Party. The Requesting Party shall indicate the extent to which the expenses will be paid. The Requested Party shall promptly inform the Requesting Party of the response of the person.
2. A person who consents to provide assistance pursuant to this Article:
 - a) shall not be prosecuted, detained, subject to service of process or of any other restriction of personal liberty in the territory represented by the Requesting Party for any acts, omissions or convictions which preceded such person's entry into the territory represented by the Requesting Party;
 - b) shall not be obliged to give evidence or assist in any investigation, prosecution, or proceeding other than that to which the request relates except with the prior consent of the authorities of the territory represented by the Requested Party and such person; and
 - c) shall not be subject to prosecution based on his testimony

- except that such person shall be subject to charges for contempt or perjury.
3. The person whose presence is requested may decline to comply with the request if the Requesting Party does not grant such assurances.
 4. The safe conduct provided for under this Article shall cease seven (7) days after the Requesting Party has notified the Requested Party that the person's presence is no longer required or when the person, having left the territory represented by the Requesting Party, voluntarily returns. The Requesting Party may, in its discretion, extend this period up to fifteen (15) days if it determines that there is good cause to do so.
 5. A person who does not consent to give evidence pursuant to this Article shall not, by reason thereof, be liable to any legal penalty or coercive measure by the courts or authorities of the territory represented by the Requesting or Requested Party.

Article 11 Examining Witness by Video Conference

1. A person within the territory of the Requested Party may give evidence in proceedings in the Requesting Party by video conference.
2. Where a witness is to be examined by video conference, the procedures shall be conducted before an appropriate authority in the Requested Party.
3. The examining shall be supervised by a competent authority of the Requesting Party and evidence shall be given:
 - a) in accordance with the domestic law of the Requesting Party or the Requested Party; and
 - b) in accordance with any other measures for the protection of the witness which have been agreed between the Parties.
4. At the examining procedure the appropriate authority of the Requested Party 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 examining 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 the technical conditions under which the examining took place; and
- e) transmitting the record of the examining as referred to in this Article as soon as is practicable after the conclusion of the examining.

Article 12 Location or Identification of Persons or Items

If the Requesting Party seeks the location or identity of persons or items in the territory represented by the Requested Party, the authorities of the territory represented by the Requested Party shall use their best efforts to ascertain the location or identity of the persons or items.

Article 13 Service of Documents

1. The authorities of the territory represented by the Requested Party shall use their best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting Party.
2. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the territory represented by the Requesting Party within a reasonable time before the scheduled appearance.
3. The Requested Party shall return a proof of service in the manner specified in the request.

Article 14 Search and Seizure

1. The Requested Party shall facilitate and assist in the execution of a request for the search, seizure, and delivery of any item to the Requesting Party if the request includes the information justifying such action under the laws of the territory represented by the Requested Party.
2. The Requested Party shall provide such information as may be required by the Requesting Party 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 Party may require that the Requesting Party agree to the terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 15 Return of Items

The Requested Party may require the return of the items, including documents, records, or articles of evidence, furnished to the Requesting Party in the execution of a request for assistance under this Agreement.

Article 16 Exchange of Criminal Records

Upon request, the Requested party shall provide the Requesting party with the past criminal records and information of sentences, if any, in the territory of the Requested party of their citizens that are subject of investigation or prosecution in the territory of the Requesting party.

Article 17 Deportation

Upon request, the Requested Party shall facilitate in the deportation of the nationals of the Requesting Party who are involved in crimes perpetrated within the territory of the Requesting Party in accordance with each Party's domestic laws and subject to consultation under Article 21 of this Agreement.

Article 18 Restraint, Forfeiture and Confiscation of Property

1. The Parties shall assist each other in proceedings involving the identification, tracing, restraint, seizure and confiscation of the proceeds and instruments of crime in accordance with the domestic laws of the Requested Party. This may include action to immobilize temporarily the proceeds or instruments pending further proceedings.
2. In addition to the provisions contained in Article 4 of this Agreement, 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; and
 - d) details of any third party interests in the property; or
 - e) a certified true copy of the restraint or confiscation order made by the competent authority and statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself.

Article 19 Asset Sharing

1. One Party may make a request for asset sharing when its assistance in accordance with the provisions of this Agreement has materially led, or is expected to lead, to confiscation.
2. Subject to each Party's domestic laws, the Requested Party shall assist in the proceedings before the relevant authorities in the determination of the proportion of the assets to be shared in accordance with the extent of the assistance afforded by the Requesting Party, unless the value of the realized assets or the assistance rendered by the Requesting Party is de minimis.
3. In appropriate cases where there are identifiable victims, consideration of the rights of victims may take precedence

over asset sharing between the Parties. The rights claimed by bona fide third parties over these assets shall be respected as well.

Article 20 Compatibility with Other Agreement

Assistance and procedures set forth in this Agreement shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable MOUs, agreements or arrangements. The Parties may also provide assistance pursuant to any arrangement, agreement, or practice which may be applicable.

Article 21 Consultation

The Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Agreement. The Parties may also agree on such practical measures as may be necessary to facilitate the implementation of this Agreement.

Article 22 Effectivity; Termination

1. This Agreement shall become effective on the thirtieth day after the date of the last notification on the fulfillment by the Parties of their respective internal procedures. If either Party gives a termination notice, cooperation and assistance in accordance with this Agreement will continue with respect to all requests for assistance that were made, or information provided, before the effective date of notification (as indicated in the notice but no earlier than the date the notice is sent) until the Requesting party terminates the matter for which assistance was requested. In the event of the termination of this Agreement, information, documents or items of evidence obtained under this Agreement will continue to be treated confidentially in the manner prescribed under Article 7(2) of this Agreement.
2. Either Party may terminate this Agreement by means of written notice to the other Party. Termination shall take effect six

- (6) months following the date of receipt of such notification.
3. This Agreement applies to any request presented upon its effectivity even if the relevant offenses occurred before this Agreement becomes effective.

In WITNESS WHEREOF, the undersigned being duly authorized thereto, have signed this Agreement.

DONE on this 19th day of April, 2013 in the City of Taipei in duplicate in the Chinese and English languages, both versions being equally authentic.

Taipei Economic and
Cultural Office in the
Philippines

Manila Economic and Cultural
Office in Taiwan

Raymond L. S. Wang
Representative

Antonio I. Basilio
Resident Representative

Witnessed by:

Dr. Wu Chen-huan
Deputy Minister
Ministry of Justice

Richardo V. Paras III
Chief of State Counsel
Department of Justice