

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**Treaty on Mutual Legal Assistance in Criminal Matters between
Australia and the Socialist Republic of Viet Nam**

(Sydney, 2 July 2014)

Not yet in force
[2014] ATNIF 22

Australia and the Socialist Republic of Viet Nam (“the Parties”)

DESIRING to extend to each other the widest measure of cooperation to combat crime;

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

HAVE AGREED as follows:

ARTICLE 1
SCOPE OF APPLICATION

- (1) The Parties shall, in accordance with this Treaty and their respective laws, grant to each other assistance in investigations or proceedings in respect of criminal matters.
- (2) Criminal matters include matters connected with offences against a law relating to taxation, customs duties, foreign exchange control and other revenue matters.
- (3) Assistance granted under this Treaty shall include:
 - (a) taking evidence and obtaining statements of persons, including the execution of letters rogatory;
 - (b) providing documents, records, and evidence;
 - (c) locating and identifying persons;
 - (d) executing requests for search and seizure;
 - (e) locating, restraining and forfeiting the proceeds and/or instruments of crime;
 - (f) seeking the consent of persons to be available to give evidence or to assist in investigations in the Requesting Party, and where such persons are in custody, arranging for their temporary transfer to that Party;
 - (g) service of documents;
 - (h) collection of forensic material;
 - (i) exchanging of information; and

- (j) other assistance consistent with the objects of this Treaty which is not inconsistent with the laws of the Requested Party.
- (4) Assistance granted under this Treaty shall not include:
- (a) the extradition of any person;
 - (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the laws of the Requested Party and this Treaty; and
 - (c) the transfer of persons in custody to serve sentences.

ARTICLE 2
OTHER ASSISTANCE

This Treaty shall not derogate from obligations between the Parties whether pursuant to other treaties or arrangements or otherwise, or prevent the Parties providing assistance to each other pursuant to other treaties or arrangements or otherwise.

ARTICLE 3
CENTRAL AUTHORITY

- (1) The Parties shall each appoint a Central Authority for the purpose of facilitating this Treaty.
- (2) The Central Authority of Australia shall be the Attorney-General's Department, Canberra. The Central Authority of the Socialist Republic of Viet Nam shall be the Supreme People's Procuracy. The Central Authorities may communicate directly with each other.
- (3) Either Party shall notify the other of any change to its appointed Central Authority.
- (4) Requests for assistance shall be made through the Central Authority which shall arrange for the prompt carrying out of requests under this Treaty.

ARTICLE 4
REFUSAL OF ASSISTANCE

- (1) Assistance shall be refused if:

- (a) the Requested Party is of the opinion that the request, if granted, would prejudice its sovereignty, security, national interest or other essential interests, or would be contrary to the fundamental principles of its domestic laws and international agreements to which it is a party; or
- (b) the request relates to the investigation, prosecution or punishment of a person for an offence where the person:
 - (i) has been acquitted or pardoned by a competent tribunal or authority; or
 - (ii) has been finally convicted and has served or is serving the sentence imposedin the Requested Party, Requesting Party or elsewhere, in respect of that offence or of another offence constituted by the same act or omission; or
- (c) the request relates to an offence for which the person could no longer be prosecuted by reason of a lapse of time according to the laws of the Requested Party; or
- (d) the request relates to:
 - (i) the investigation, prosecution or punishment of a person for an offence where the acts or omissions alleged to constitute that offence would not, had they taken place within the jurisdiction of the Requested Party, have constituted an offence at the time at which the request was received; or
 - (ii) the confiscation or restraining of the proceeds and/or an instrument of such an offence; or
- (e) the Requested Party considers that the request relates to:
 - (i) the investigation, prosecution or punishment of a person for an offence of a political character; or
 - (ii) the confiscation or restraining of the proceeds and/or an instrument of such an offence; or
- (f) the Requested Party considers that the request relates to:
 - (i) the investigation, prosecution or punishment of a person for an act or omission which, had it occurred within the jurisdiction of the

Requested Party, would have constituted an offence under the military law of the Requested Party but not also an offence under the ordinary criminal law of the Requested Party; or

(ii) the confiscation or restraining of the proceeds and/or an instrument of such an offence; or

(g) the Requested Party considers that 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, sexual orientation, religion, nationality or political opinions or that that person's position may be prejudiced for any of these reasons; or

(h) the Requested Party considers that there are substantial grounds for believing that, if the request was granted, any person would be in danger of being subjected to torture.

(2) Assistance may be refused if:

(a) provision of the assistance sought:

(i) could prejudice an investigation or proceeding in the Requested Party; or

(ii) would, or would be likely to, prejudice the safety of any person; or

(iii) would impose an excessive burden on the resources of the Requested Party.

(b) the request relates to the investigation, prosecution or punishment of a person for an offence in respect of which the death penalty may be imposed or executed unless the Requesting Party undertakes that the death penalty will not be imposed or, if imposed, will not be carried out.

(3) In case the request is refused, the Requested Party shall, to the extent possible, inform the Requesting Party of the reasons for the refusal.

(4) Before refusing to grant a request for assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, it shall comply with those conditions.

ARTICLE 5
CONTENTS OF REQUESTS

- (1) Requests for assistance shall include:
- (a) a description of the assistance sought and the purpose for which it is sought;
 - (b) the name and contact details of the competent authority conducting the investigation or proceedings to which the request relates;
 - (c) a summary of the criminal case, the applicable laws and punishment and progress of the investigation, prosecution or court proceedings;
 - (d) a description of the acts or omissions alleged to constitute the offence;
 - (e) in asset recovery matters—the order of the competent authority, if any, sought to be enforced and a statement to the effect that it is a final order;
 - (f) details of any particular procedure or requirement that the Requesting Party wishes to be followed, including whether sworn or affirmed evidence or statements are required;
 - (g) any requirements for confidentiality or limitations on the use of information; and
 - (h) any time limits within which compliance with the request is sought.
- (2) Requests for assistance, to the extent necessary and possible, shall also include:
- (a) the identity, nationality, date of birth and location of the person or persons who are the subject of, or who may have information relevant to, the investigation or proceedings to which the request relates;
 - (b) a description of the documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked to produce them;
 - (c) written information about the safety, health, accommodation and travel conditions, allowances and expenses, time limit and other specific conditions relating to the appearance of a person of the Requested Party in the Requesting Party; and

- (d) other information which may facilitate execution of the request.
- (3) Requests, supporting documents and other communications made pursuant to this Treaty shall be in the language of the Requesting Party and accompanied by a translation into the language of the Requested Party.
- (4) If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information, and a time limit for the provision of such additional information.

ARTICLE 6
EXECUTION OF REQUESTS

- (1) Requests for assistance shall be carried out in accordance with the laws of the Requested Party and, to the extent those laws permit, in the manner requested by the Requesting Party. The Requested Party shall inform the Requesting Party of the outcome of the execution of the request.
- (2) The Requested Party may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in the jurisdiction of that Party.
- (3) The Requested Party shall promptly inform the Requesting Party of circumstances, when they become known to the Requested Party, which are likely to cause a significant delay in responding to the request.
- (4) The Requested Party shall promptly inform the Requesting Party if the Requested Party is unable to comply in whole or in part with a request for assistance and, to the extent possible, the reasons for that non-compliance.

ARTICLE 7
RETURN OF MATERIAL TO REQUESTED PARTY

Where required by the Requested Party, the Requesting Party shall return the material provided under this Treaty when it is no longer needed for the investigation or proceeding to which the request relates.

ARTICLE 8
PROTECTING CONFIDENTIALITY AND LIMITATIONS ON THE USE
OF EVIDENCE AND INFORMATION

- (1) The Requested Party, if requested, shall keep the application for assistance, the contents of a request and its supporting documents, and the fact of granting such assistance, confidential.
- (2) If the request cannot be executed without breaching confidentiality, the Requested Party shall inform the Requesting Party, which shall then determine whether the request should be executed.
- (3) The Requesting Party, if requested, shall keep information and evidence provided by the Requested Party confidential, except to the extent that the evidence and information is needed for the investigation or proceeding to which the request relates.
- (4) The Requesting Party shall not use or disclose information or evidence obtained under this Treaty, nor anything derived from either, for any purpose other than those stated in the request, without the prior consent of the Requested Party.

ARTICLE 9
SERVICE OF DOCUMENTS

- (1) The Requested Party shall effect service of documents which are transmitted to it for this purpose by the Requesting Party.
- (2) A request to effect service of a document requiring the appearance of a person shall be made to the Requested Party at a reasonable time before the date on which the appearance is required. A person who fails to comply with a document requiring his or her appearance shall not thereby be liable to any penalty or coercive measure pursuant to the laws of the Requesting Party or Requested Party unless he or she subsequently voluntarily enters the territory of the Requesting Party and is there again duly served.
- (3) The Requested Party may effect service of any document by mail or, if the Requesting Party requests, in any other manner required by the laws of the Requesting Party which is not inconsistent with the laws of the Requested Party.

- (4) The Requested Party shall forward to the Requesting Party proof of service of the documents. If service cannot be effected, the Requesting Party shall be informed and advised of the reasons.

ARTICLE 10
TAKING OF EVIDENCE

- (1) Where a request is made for the purpose of a proceeding in relation to a criminal matter in the Requesting Party, the Requested Party shall, upon request, take the evidence of witnesses for transmission to the Requesting Party.
- (2) For the purposes of this Treaty, the giving or taking of evidence shall include the production of documents, records or other material.
- (3) A request under this Article shall specify the subject matter about which evidence is to be taken, including any questions to be put to persons from whom evidence is to be taken.
- (4) The Requested Party, upon the request of the Requesting Party, may allow such persons as specified in the request to participate in taking of evidence, subject to the laws and procedures of the Requested Party.
- (5) Live video or audio links or other appropriate communication facilities may be used in accordance with the laws and procedures of the Requested Party for the purpose of executing this Article if it is expedient to do so.
- (6) A person who is required to give evidence in the Requested Party under this Article may decline to give evidence where either:
 - (a) the laws of the Requested Party would permit that witness to decline to give evidence in similar circumstances in proceedings originating in the Requested Party; or
 - (b) the laws of the Requesting Party would permit that witness to decline to give evidence in the proceedings in the Requesting Party.
- (7) If any person claims that there is a right to decline to give evidence under the laws of the Requesting Party, the Central Authority of that Party shall, upon request, provide a certificate to the Central Authority of the Requested Party as to the existence of that right. In the absence of evidence to the contrary, the certificate shall provide sufficient evidence as to the existence of that right.

ARTICLE 11
OBTAINING OF VOLUNTARY STATEMENTS OF PERSONS

- (1) The Requested Party shall, upon request, endeavour to obtain voluntary statements of persons for the purpose of an investigation or proceeding in relation to a criminal matter in the Requesting Party.
- (2) A request under this Article shall specify the subject matter about which statements are sought, including any questions to be put to persons from whom statements are to be taken.

ARTICLE 12
AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE
OR TO ASSIST INVESTIGATIONS

- (1) A person in custody in the Requested Party may, at the request of the Requesting Party and in accordance with this Article, be temporarily transferred to the Requesting Party to assist investigations or to give evidence.
- (2) The Requested Party shall not transfer a person in custody to the Requesting Party unless the person consents to that transfer, and the Parties have previously reached a written agreement on the conditions of the transfer.
- (3) While the person transferred is required to be held in custody under the laws of the Requested Party, the Requesting Party shall hold that person in custody and shall return that person in custody to the Requested Party at the conclusion of the matter in relation to which transfer was sought under paragraph 1 of this Article or at such earlier time as the person's presence is no longer required. The period of custody in the territory of the Requesting Party shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the Requested Party.
- (4) Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in Article 13 of this Treaty.

ARTICLE 13
AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE
OR ASSIST INVESTIGATIONS

- (1) The Requesting Party may request the assistance of the Requested Party in obtaining a person's consent to:
 - (a) appear as a witness in proceedings in relation to a criminal matter in the Requesting Party unless that person is the person charged; or
 - (b) assist investigations in relation to a criminal matter in the Requesting Party.
- (2) The Requested Party shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting Party, request the person to consent to appear as a witness in proceedings or to assist investigations.

ARTICLE 14
SAFE CONDUCT

- (1) Subject to paragraph 2 of this Article, where a person is in the Requesting Party pursuant to a request made under Articles 12 or 13 of this Treaty:
 - (a) that person shall not be:
 - (i) detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party; or
 - (ii) subject to any civil suit, being a civil suit to which the person could not be subjected if the person were not in the Requesting Partyin respect of any act or omission which preceded the person's departure from the Requested Party; and
 - (b) that person shall not, without that person's consent, be required to give evidence in any proceeding or to assist any investigation other than the proceeding or investigation to which the request relates.
- (2) Paragraph 1 of this Article shall cease to apply if that person, being free to leave, has not left the Requesting Party within a period of fifteen (15) days, or any longer period otherwise agreed by the Parties, after that person has been officially notified that that person's presence is no longer required or, having left, has voluntarily returned.

- (3) Any person who consents to give evidence or assist an investigation pursuant to Articles 12 or 13 of this Treaty shall not be subject to prosecution based on his or her testimony, except for perjury, contempt of court and the making of false declarations.
- (4) A person shall not be subject to any penalty or mandatory restriction of personal liberty for declining to give evidence or to assist investigations in accordance with Articles 12 or 13 of this Treaty.

ARTICLE 15

PROVISION OF PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

- (1) The Requested Party shall provide copies of documents and records that are open to public access as part of a public register or otherwise, or that are available for purchase by the public.
- (2) The Requested Party may provide copies of any official document or record in the same manner and under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

ARTICLE 16

CERTIFICATION AND AUTHENTICATION

- (1) A request for assistance under this Treaty, and any documents in support of such a request, shall not require certification or authentication.
- (2) Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as required by the Requesting Party.
- (3) To the extent that the laws of the Requested Party permit, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting Party in order to make them admissible according to the laws of the Requesting Party.

ARTICLE 17

SEARCH AND SEIZURE

- (1) The Requested Party shall, to the extent that its laws permit, carry out requests for search and seizure and delivery of material to the Requesting Party provided the information supplied, including any additional information supplied under

paragraph 4 of Article 5 of this Treaty, would justify such action under the laws of the Requested Party.

- (2) The Requested Party shall provide 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 material seized.
- (3) The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party.

ARTICLE 18

PROCEEDS AND INSTRUMENTS OF CRIME

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds and/or instruments of crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds and/or instruments may be located in its jurisdiction.
- (2) Where, pursuant to paragraph 1 of this Article, suspected proceeds and/or instruments of crime are found, the Requested Party shall upon request give effect to a restraining or freezing order made by a competent authority of the Requesting Party or take such measures as are permitted by its laws to prevent any dealing in, transfer or disposal of those suspected proceeds and/or instruments of crime, pending a final determination in respect of those proceeds and/or instruments by a court of the Requesting Party or the Requested Party.
- (3) In pursuance of a request made under paragraph 1 of this Article, the Requested Party shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.
- (4) The Requested Party shall, to the extent permitted by its laws, give effect to a final order forfeiting or confiscating the proceeds and/or instruments of crime made by a competent authority of the Requesting Party.
- (5) In the application of this Article, the rights of bona fide third parties shall be respected under the laws of the Requested Party.
- (6) At the request of the Requesting Party, the Requested Party may, to the extent permitted by its laws and under any terms and conditions agreed to by the

Parties, transfer all or part of the proceeds and/or instruments of crime, or the proceeds from the sale of such assets to the Requesting Party.

ARTICLE 19
SUBSIDIARY ARRANGEMENTS

The Parties may enter into subsidiary arrangements consistent with the purposes of this Treaty and with the laws of both Parties.

ARTICLE 20
REPRESENTATION AND EXPENSES

- (1) Unless otherwise provided in this Treaty, the Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
- (2) The Requested Party shall meet the cost of fulfilling the request for assistance except that the Requesting Party shall bear:
 - (a) the expenses associated with conveying any person to or from the territory of the Requested Party, and any fees, allowances or expenses payable to that person whilst in the Requesting Party pursuant to a request under Articles 10, 12 or 13 of this Treaty;
 - (b) the expenses associated with conveying custodial or escorting officers; and
 - (c) costs of a substantial or extraordinary nature as agreed pursuant to paragraph 3 of this Article.
- (3) If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult to determine the terms and conditions under which the request shall be executed and the manner in which costs shall be allocated.

ARTICLE 21
CONSULTATION

The Central Authorities shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either generally or in relation to a particular case.

ARTICLE 22
ENTRY INTO FORCE AND TERMINATION

- (1) Each Party shall inform the other by diplomatic note when all necessary steps have been taken for entry into force of this Treaty. This Treaty shall enter into force on the thirtieth day from the date of receipt of the later diplomatic note.
- (2) This Treaty shall apply to requests presented after its entry into force even if the relevant acts or omissions occurred before entry into force of this Treaty.
- (3) Either Party may terminate this Treaty at any time by giving written notice to the other Party through diplomatic channels. Termination shall take effect on the one hundred and eightieth day after the date of receipt of the notice. If this Treaty is terminated, it shall continue to apply to requests made pursuant to this Treaty prior to the termination taking effect.

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

DONE at Sydney in duplicate on the 2nd day of July, Two Thousand and Fourteen in English and Vietnamese, both texts being equally authentic.

FOR AUSTRALIA:

FOR THE SOCIALIST REPUBLIC OF
VIET NAM:

Michael Keenan
Minister for Justice

Nguyen Hoa Binh
Procurator General of the Supreme People's
Procuracy