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

The Socialist Republic of Viet Nam and the Republic of Cuba (hereinafter referred to as the Parties),

Desiring to enhancing their cooperation to effectively combat crimes,

Having due regard for human rights and the rule of law,

Have agreed as follows:

Article 1

Scope of Assistance

1. The Parties shall, in accordance with this Treaty and their respective domestic laws, provide to each other the widest mutual assistance in criminal matters.

2. Such assistance may consist of:

a) Serving documents;

b) Summoning the witness, the expert;

c) Taking and providing evidence;

d) The transfer of proceedings in criminal matters;

e) Facilitating sentenced persons in the Requested Party to appear in the Requesting Party to assist in investigations or give evidence;

f) Taking measures to trace, restrain, freeze, seize or confiscate proceeds and/or instrumentalities of crime;

g) Exchanging information;

h) Any other form of assistance consistent with the objects of this Treaty which is not inconsistent with the law of the Requested Party.

3. This Treaty does not apply to:

a) The extradition, or the arrest or detention of any person with a view to extradite the person;

b) The enforcement in the Requested Party of criminal judgments imposed in the Requesting Party, except to the extent permitted by the law of the Requested Party and this Treaty;

c) The transfer of sentenced persons to serve sentences.

Article 2
Central Authority

1. Each Party shall designate a Central Authority for the purpose of the implementation of this Treaty.

2. The following agencies are designated as the Central Authorities as this Treaty comes into effect:

a) The Central Authority of the Socialist Republic of Viet Nam shall be the Supreme People's Procuracy.

b) The Central Authority of the Republic of Cuba shall be the Ministry of Justice.

3. Each Party shall inform the other of any change of its Central Authority provided in paragraph 2 of this Article.

4. The Central Authorities shall directly communicate with each other to implement this Treaty. Where necessary, the Parties may communicate through the diplomatic channel.

Article 3
Content and form of requests

1. The letter of request for assistance shall include:

a) The name and address of the office by which the request is made;

b) The name and address of the requested office or its head office to which the request is sent;

c) The name of a person and his/her permanent residence or office address, the official name and address of an entity or organization or its head office to whom or which the request relates;

d) A description of the assistance sought the purpose of the request, the nature and relevant facts of the case, the provision and punishment of the applicable law, the progress of the investigation, prosecution or court proceedings and the time limit within which the request should be executed.

2. The letter of request for assistance may include:

a) The identity, nationality and domicile of the person [the accused] to whom the case relates or the other who knows information sought that is related to the said case;

b) Matters for which an interrogation seeks, a list of questions posed and, in cases of a request for the obtaining of evidence, a description of documents, records or items of evidence rendered and, if necessary, a description and identity of the person who is required to render such documents, records or items of evidence;

c) The nature of tasks, a list of questions and requirements for the summoned witness or expert;

d) In case of a request for search, seizure, tracing or confiscation of proceeds and/or instrumentalities of crime, a description of searched property and premises, the grounds to believe that the proceeds and/or instrumentalities of crime is existing in the Requested Party and is possibly under the jurisdiction of the Requesting Party and the enforcement of orders or judgments of the court to which the request relates;

e) Measures applicable to the request that would likely result in locating or seizing proceeds and/or instrumentalities of crime;

f) Requirements or procedures that the Requesting Party wishes to be followed to facilitate the execution of the request, including forms or manners in which information, evidence, documents or items are provided;

g) The degree of confidentiality required and the reasons thereof;

h) The purpose, intended date and schedule of the trip if competent officer(s) of the Requesting Party wishes to travel to the territory of the Requested Party for the purpose of the execution of the request;

i) The criminal judgment or order of a court and other documents, articles of evidence or information necessary for the execution of the request.

3. If the Requested Party considers that the information contained in the letter of request is not sufficient to enable the request to be dealt with under this Treaty, it shall request additional information in writing and set a specific date on which such additional information is received;

4. The request shall be made in writing. However, in urgent cases and permitted by the Requested Party, it may be made in another form but shall be promptly confirmed in writing thereafter.

5. The letter of request and its supporting document shall be in the language of the Requesting Party and accompanied by a translation into the language of the Requested Party or into English language.

Article 4

Refusal or postponement of assistance

1. Assistance shall be refused under this Treaty in any of the following circumstances:

a) The request is inconsistent with an international agreement of which the Requested Party is the member or inconsistent with the law of the Requested Party;

b) The request would prejudice sovereignty, national security of the Requested Party;

c) The request relates to the prosecution of a person for an offence in respect of which the offender has been finally convicted, acquitted or pardoned in the Requested Party;

d) The request relates to an offence that could be no longer prosecuted by reason of lapse of time under the law of the Requested Party;

e) The request relates to an act or omission that does not constitute an offence under the law of the Requested Party.

2. Assistance may be postponed by the Requested Party if the execution of the request would interfere an ongoing investigation, prosecution, court proceedings or enforcement of judgment in the territory of the Requested Party.

3. Before refusing a request or postponing its execution under this Article, the Requested Party shall:

a) Promptly inform the Requesting Party of reason(s) for any refusal or postponement; and

b) Consult with the Requesting Party of whether assistance may be provided subject to certain conditions as the Requested Party deems necessary.

4. If the Requesting Party accepts assistance subject to the conditions provided in paragraph 3.b of this Article, it shall comply with them.

Article 5

Execution of requests

1. The Requested Party shall promptly execute the request in accordance with its law and, in so far as it is not inconsistent with its law, in the manner requested by the Requesting Party.

2. Upon request, the Requested Party shall inform the Requesting Party of the date and place of the execution of the request for assistance.

3. The Requested Party shall promptly inform the Requesting Party of circumstances which are likely to cause a delay in executing the request.

4. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of results of assistance.

Article 6

Service of documents

1. The Requested Party shall, in so far as its law permits, effect service of documents.

2. A request for serving a document requiring the attendance of a witness or expert shall be sent to the Requested Party not less than ninety (90) days before the date on which the attendance is required in the Requesting Party. In urgent cases, the Requested Party may waive this requirement.

3. The Requested Party shall send to the Requesting Party proof of service of the document. If service cannot be affected, the Requesting Party shall be informed of the reason(s).

Article 7

Provision of information

1. The Requested Party shall provide copies of documents, records or information related to mutual legal assistance in criminal matters.

2. The Requested Party may provide the copy of any document, record or information in the same manner and condition as provided to its competent authorities.

3. The Requested Party may provide copies of original documents or records, except in cases the Requesting Party requires the originals.

Article 8

Return of materials to the Requested Party

The Requesting Party shall, upon request of the Requested Party, return the materials provided under this Treaty when they are no longer necessary to the criminal matters specified in the request.

Article 9

Search and seizure

The Requested Party shall, in so far as its law permits, carry out search warrants against persons or premises to search and seize materials, documents or items of evidence

in criminal cases in the Requesting Party. In this circumstance, the right of bona fide third parties is respected and protected.

Article 10

Taking evidence and obtaining statements

1. The Requested Party shall, upon request and in consistent with its law, obtain testimonies or statements of persons or require them to produce items of evidence for the transmission to the Requesting Party.

2. A person who is called upon to give evidence in the Requested Party under this Article may decline to give evidence where either:

a) The law of the Requested Party permits or requires that person to decline to give evidence in similar circumstances in procedures commencing in the Requested Party; or

b) The law of the Requesting Party permitsor requires that person to decline to give evidence in similar circumstances in procedures commencing in the Requesting Party.

3. If any person in the Requested Party claims that there is a right or obligation to decline to give evidence under the law of the Requesting Party, the Central Authority of the Requesting Party shall, upon request, provide a formal certification of that right or obligation to the Central Authority of the Requested Party as to the existence of that right or obligation. In the absence of evidence to the contrary, such formal certification shall be sufficient evidence of the matters stated in it.

4. For the purpose of this Article, the giving or taking of evidence shall include the production of documents, records or other materials.

Article 11

Temporary transfer of sentenced persons to assist in investigations or give evidence in the Requesting Party

1. A sentenced person in the Requested Party may be, upon the request of the Requesting Party, temporarily transferred to assist in investigations or give evidence in the Requesting Party.

2. The Requested Party shall only transfer the sentenced person to the Requesting Party if:

a) That person consents to the transfer to assist in investigations or give evidence; and

b) The Requesting Party agrees to comply with specific conditions required by the Requested Party concerning the custody and safety of the transferred person.

3. 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 the person provided in Article 12 of this Treaty.

4. The transferred person under this Article shall be returned to the Requested Party in the manner the Parties have arranged at the conclusion of the matter in relation to which the transfer was sought or at such earlier time as the person's presence is no longer required. The period during which such person was transferred and under custody in the Requesting Party shall count towards the period of his/her imprisonment.

Article 12

Arrangement of other persons to assist in investigations or give evidence in the Requesting Party

1. Upon the request of the Requesting Party, the Requested Party may invite a person who is not subject to Article 11 of this Treaty to travel to the Requesting Party to assist in investigations or give evidence in the Requesting Party.

2. The Requested Party shall, if satisfied with arrangements for the person's safety under an assurance in writing made by the Requesting Party, invite that person to assist in investigations or give evidence in the Requesting Party. That person shall be informed of accommodation, travelling and any expenses or allowances payable in the Requesting Party. The Requested Party shall inform the Requesting Party of the person's response and, if the person consents, take steps necessary to execute the request.

Article 13

Safe conduct

1. The person present in the Requesting Party under the request subject to Articles 11 and 12 of this Treaty:

a) Shall not be detained, prosecuted or punished in the Requesting Party, not also subjected to any civil suit if such civil suit cannot be commenced without the person's presence in the Requesting Party, in respect of any act or omission of the person that is alleged to have occurred before the person's departure from the Requested Party.

b) Shall not, without that person's consent, give evidence in any criminal procedure or assist in any investigation other than the criminal matters in respect of which the request is made.

2. The 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) consecutive days after that person has been officially notified that his/her presence is no longer required or, having left, has voluntarily returned.

3. The person who does not consent to assist in investigations or give evidence under Articles 11 or 12 of this Treaty shall not be liable to any penalty or be subjected to any coercive measure in the Requesting Party or in the Requested Party.

4. The person who consents to assist in investigations or give evidence under Articles 11 or 12 of this Treaty shall not be prosecuted for that person's statement, except that he/she makes false statements.

Article 14

Proceeds and instrumentalities of crime

1. The Requested Party shall, upon request; endeavor to ascertain whether proceeds and/or instrumentalities of the alleged crime are located in its territory and shall notify the Requesting Party of the results of its inquiries.

2. Where suspected proceeds and/or instrumentalities of crime are found, the Requested Party shall take measures as are permitted by its law to control or confiscate such proceeds and/or instrumentalities of crime. The Requested Party may, to the extent permitted by its law, return the proceeds and/or instrumentalities of crime to the Requesting Party. The return of such proceeds and/or instrumentalities of crime shall only be executed when there is a final determination made by a court or another competent authority of the Requesting Party.

3. In the application of this Article, the rights of relevant bona fide third parties shall be respected and protected under the law of the Requested Party.

4. For the purpose of this Treaty, "proceeds of crime" shall mean any assets derived from or obtained, directly or indirectly, through the commission of an offence; and "instrumentalities of crime" shall mean any property that has been used, being used or intended to be used in the commission of an offence.

Article 15

Service of Documents and Taking of Evidence by Diplomatic or Consular Officials

Either Party may serve documents on and take evidence from its nationals in the territory of the other Party through its Diplomatic Missions or Consular Posts therein, provided that the domestic law of the other Party will not be violated and no coercive measures of any kind are taken.

Article 16

Protection of confidentiality and limitation on use

1. The Requested Party may request to keep confidential the information or evidence provided or sources of such information or evidence. The disclosure or use must be consistent with conditions required.

2. The Requesting Party may request to keep confidential the content of the request for assistance and its supporting documents. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party before the request is executed. The Requesting Party shall then determine whether the request should be nevertheless wholly or partly executed.

3. The Requesting Party shall ensure that information or evidence obtained must be protected against loss, unlawful access, use, modification and disclosure or misuse.

4. Without prior consent of the Requested Party, the Requesting Party shall not use or disclose information or evidence obtained under this Treaty for any purpose other than the purpose specified in the request.

Article 17

Certification and Authentication

1. Not subject to paragraph 2 of this Article, a request for assistance, the documents in support thereof, and documents or materials furnished in response to a request, shall not require any form of certification or authentication.

2. Where, in a particular case, the Requested Party or the Requesting Party requests that documents or materials be authenticated, the documents or materials shall be duly authenticated in the manner provided in paragraph 3 of this Article.

3. Documents or materials are authenticated for the purposes of this Treaty if they purport to be signed by an official of a competent authority and to be sealed with an official seal of that authority under the law of the sending Party.

Article 18

Representation and expenses

1. Unless otherwise provided in this Treaty, the Requested Party shall represent the interests of the Requesting Party during the execution of the request.

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, expenses payable to that person whilst in the Requesting Party pursuant to a request under Articles 11 and 12 of this Treaty;

b) The expenses associated with conveying custodial or escorting officers;

c) The expenses associated with expert;

d) The expenses associated with interpreting, translating and transcription of documents and obtaining images of evidence via video conference or other electronic means from the Requested Party to the Requesting Party;

e) The expenses of an extraordinary nature arising during the execution of the request as the Requested Party requires.

Article 19

Compatibility with other international treaties

This Treaty shall not prevent one Party from providing assistance to the other pursuant to other international treaties or agreements to which they are a party.

Article 20

Consultation

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

Article 21

Settlement of disputes

Any dispute arising from the interpretation or application of this Treaty shall be settled by consultation between the Parties through the diplomatic channel.

Article 22

Entry into force, amendment and termination

1. This Treaty:

a) Shall be ratified and enter into force on the thirtieth (30th) day after the day on which the final notification of fulfilling the domestic legal procedures to ratify the Treaty has been exchanged;

b) Shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date;

c) May be amended subject to mutual consent of the Parties. Where the Treaty is amended and supplemented, the amendments and supplements shall become an integral part of this Treaty.

2. Upon the entry into force of this Treaty, Articles 74 – 78 of the Treaty on Mutual Legal Assistance in Civil, Family, Labour and Criminal Matters 1984 shall cease to have any effect; Articles 1 – 17 of that Treaty shall not apply activities of mutual legal assistance in criminal matters between the Parties.

3. Each Contracting Party may terminate this Treaty by giving a notification to the other Party. Such termination takes effect six (06) months following the date on which it is received by the other Party.

4. Where being terminated, this Treaty shall nevertheless take effect to requests made prior to the day of termination.

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

DONE at La Habana on 29 March 2018 in the Vietnamese, Spanish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE SOCIALIST REPUBLIC OF VIET NAM

LE MINH TRI
PROCURIR GENERAL
SUPREME PEOPLE'S PROCURACY

FOR THE REPUBLIC OF CUBA

MARIA ESTHER REUS GONZALEZ
MINISTER
MINISTRY OF JUSTICE