

TREATY BETWEEN
JAPAN AND THE SOCIALIST REPUBLIC OF VIET NAM
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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Japan and the Socialist Republic of Viet Nam
(hereinafter referred to as "the Parties"),

Desiring to establish more effective cooperation
between both countries in the area of mutual legal
assistance in criminal matters,

Have agreed as follows:

Article 1

Object, purpose and scope of assistance

1. Each Party shall, upon request by the other Party,
provide mutual legal assistance (hereinafter referred to as
"assistance") in connection with investigations,
prosecutions and other proceedings in criminal matters in
accordance with the provisions of this Treaty.

2. Assistance shall include the following:

- (1) taking testimony or statements;
- (2) obtaining items, including through the execution
of search and seizure;
- (3) examining persons, items or places;
- (4) locating or identifying persons, items or places;
- (5) providing items in the possession of the public
authorities;
- (6) presenting an invitation to a person whose
appearance in the requesting Party is sought;
- (7) temporary transfer of a person in custody for
testimony or other purposes;
- (8) serving documents related to criminal
proceedings;
- (9) assisting in proceedings related to confiscation
and immobilization of proceeds or
instrumentalities of criminal offenses; and

- (10) any other assistance permitted under the laws of the requested Party and agreed upon between the Central Authorities of the Parties.

The term "items" as used in this Treaty means documents, records and articles of evidence.

3. This Treaty is intended solely for assistance between the Parties. The provisions of this Treaty neither create a new right nor affect a pre-existing right on the part of a private person to impede the execution of a request or to suppress or exclude any evidence.

Article 2 Central Authorities

1. Each Party shall designate the Central Authority that is to perform the functions provided for in this Treaty. For Japan, the Central Authority shall be the Minister of Justice or the National Public Safety Commission or persons designated by them. For the Socialist Republic of Viet Nam, the Central Authority shall be the Supreme People's Procuracy.

2. Requests for assistance under this Treaty shall be made by the Central Authority of the requesting Party to the Central Authority of the requested Party.

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

Article 3 Grounds for refusal of assistance

1. The Central Authority of the requested Party may refuse assistance if the requested Party considers that:

- (1) the request relates to an offense of a political nature;
- (2) the execution of the request would impair its sovereignty, security or other essential interests;
- (3) the request does not conform to the requirements of this Treaty;

- (4) there are well-founded reasons to suppose that the request for assistance has been made with a view to prosecuting or punishing a person by reason of race, religion, nationality, ethnic origin, political opinions or sex, or that such person's position may be prejudiced for any of those reasons;
- (5) the conduct that is the subject of the investigation, prosecution or other proceedings in the requesting Party would not constitute a criminal offense under the laws of the requested Party;
- (6) the request for assistance relates to the prosecution of a person for an offence where the person has been convicted or acquitted in the requested Party in respect of that offense or another offense constituted by the same conduct;
- (7) the prosecution or the imposition of punishment for the offense for which assistance is requested would not be permitted by lapse of time under the laws of the requested Party; or
- (8) it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

2. Before refusing assistance pursuant to paragraph 1, the Central Authority of the requested Party shall consult with the Central Authority of the requesting Party when the requested Party considers that assistance may be provided subject to certain conditions. If the requesting Party accepts such conditions, the requesting Party shall comply with them.

3. If assistance is refused, the Central Authority of the requested Party shall promptly inform the Central Authority of the requesting Party of the reasons for the refusal.

Article 4
Content and form of requests

1. The Central Authority of the requesting Party shall make a request in writing. However, the Central Authority of the requesting Party may make a request by any other reliable means of communication if the Central Authority of the requested Party considers it appropriate to receive a request by that means. In such cases, the Central Authority of the requesting Party shall provide supplementary confirmation of the request in writing promptly thereafter. A request shall be accompanied by a translation into the language of the requested Party or, in case of urgency, into the English language unless otherwise agreed between the Central Authorities of the Parties.

2. A request shall include the following:

- (1) the name of the authority conducting the investigation, prosecution or other proceedings;
- (2) the facts pertaining to the subject matter of the investigation, prosecution or other proceedings;
- (3) the nature and the stage of the investigation, prosecution or other proceedings;
- (4) the text of the relevant laws of the requesting Party;
- (5) a description of the assistance requested; and
- (6) a description of the purpose of the assistance requested.

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

- (1) information on the identity and location of any person from whom testimony, statements or items are sought;
- (2) a description of the manner in which testimony, statements or items are to be obtained or recorded;
- (3) a list of questions to be asked of the person from whom testimony or statements are sought;
- (4) a description of persons or places to be searched and of items to be sought;

- (5) information regarding persons, items or places to be examined;
- (6) a description of the manner in which an examination of persons, items or places is to be conducted and recorded, including the format of any written record to be made concerning the examination;
- (7) information regarding persons, items or places to be located or identified;
- (8) information on the identity and location of a person to be informed of an invitation, and the person's relationship to the proceedings;
- (9) information on the allowances and expenses to which a person whose appearance is sought before the appropriate authority in the requesting Party will be entitled;
- (10) a description of any particular procedure to be followed in executing the request other than those referred to in sub-paragraphs (2) and (6);
- (11) a description of the proceeds or instrumentalities of criminal offenses, the location thereof, and the identity of the owner thereof;
- (12) an explanation of the necessity for confidentiality concerning the request;
- (13) the time limit within which the request is desired to be executed; and
- (14) any other information that should be brought to the attention of the requested Party to facilitate the execution of the request.

4. If the requested Party considers that the information contained in a request for assistance is not sufficient to meet the requirements under this Treaty to enable the execution of the request, the Central Authority of the requested Party may request that additional information be provided.

Article 5
Execution of requests

1. The requested Party shall promptly execute a request in accordance with the relevant provisions of this Treaty. The competent authorities of the requested Party shall take every possible measure in their power to ensure the execution of a request.

2. A request shall be executed in accordance with the provisions of this Treaty and the laws of the requested Party. The manner or particular procedure described in a request referred to in paragraph 3(2), 3(6) or 3(10) of Article 4 shall be followed to the extent it is not prohibited by the laws of the requested Party, and where it deems appropriate.

3. If the execution of a request is deemed to interfere with an ongoing investigation, prosecution or other proceedings in the requested Party, the Central Authority of the requested Party may postpone the execution. The Central Authority of the requested Party shall consult with the Central Authority of the requesting Party when the requested Party considers that the request can be executed subject to certain conditions. If the requesting Party accepts such conditions, the requesting Party shall comply with them. The Central Authority of the requested Party shall inform the Central Authority of the requesting Party of the reasons for the postponement of the execution.

4. The requested Party shall make its best efforts to keep confidential the fact that a request has been made, the contents of a request, the outcome of the execution of a request and other relevant information concerning the execution of a request if such confidentiality is requested by the Central Authority of the requesting Party. If a request cannot be executed without disclosure of such information, the Central Authority of the requested Party shall so inform the Central Authority of the requesting Party, which shall then determine whether the request should nevertheless be executed.

5. The Central Authority of the requested Party shall respond to reasonable inquiries by the Central Authority of the requesting Party concerning the status of the execution of a request.

6. The Central Authority of the requested Party shall promptly inform the Central Authority of the requesting Party of the result of the execution of a request, and shall provide the Central Authority of the requesting Party with the testimony, statements or items obtained as a result. If a request cannot be executed in whole or in part, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party of the reasons therefor.

Article 6 Costs

1. The requested Party shall bear all costs related to the execution of a request, unless otherwise agreed between the Central Authorities of the Parties.

2. Notwithstanding the provisions of paragraph 1, the requesting Party shall bear the fees of an expert witness, the costs of translation, interpretation and transcription, the allowances and expenses related to travel of persons pursuant to Articles 14 and 15 and the costs of an extraordinary nature.

3. If it becomes apparent that expenses of an extraordinary nature are required to execute a request, the Central Authorities of the Parties shall consult to determine the conditions under which the request will be executed.

Article 7 Limitation on use and confidentiality

1. The requesting Party shall not use any testimony, statements or items provided under this Treaty other than in the investigation, prosecution or other proceedings described in a request without prior written consent of the Central Authority of the requested Party.

2. The Central Authority of the requested Party may request that testimony, statements or items provided under this Treaty be kept confidential or be used only subject to other conditions it may specify. If the requesting Party agrees to such confidentiality or accepts such conditions, it shall comply with them.

3. The requesting Party shall make its best efforts to protect testimony, statements or items provided under this Treaty against unlawful access, use and modification, loss or misuse.

Article 8
Returning items

1. The Central Authority of the requested Party may request that the requesting Party transport and maintain items provided under this Treaty in accordance with the conditions specified by the Central Authority of the requested Party, including the conditions deemed necessary to protect third-party interests in the items to be transferred.

2. The Central Authority of the requested Party may request that the requesting Party return any items provided under this Treaty in accordance with the conditions specified by the Central Authority of the requested Party, after such items have been used for the purpose described in a request.

3. The requesting Party shall comply with a request made pursuant to paragraph 1 or 2. When such a request has been made, the requesting Party shall not examine the items without the prior consent of the Central Authority of the requested Party if the examination impairs or could impair the items.

Article 9
Taking testimony or statements

1. The requested Party shall take testimony or statements. The requested Party shall employ compulsory measures in order to do so, if such measures are necessary and the request includes information justifying those measures under the laws of the requested Party.

2. The requested Party shall, to the extent not contrary to its laws, make its best efforts to make possible the presence of such persons as specified in a request for taking testimony or statements during the execution of the request, and shall allow such persons to submit questions to be posed to the person from whom testimony or statements are sought.

3. (1) If a person, from whom testimony or statements are sought pursuant to this Article, asserts a claim of immunity, incapacity or privilege under the laws of the requesting Party, testimony or statements shall nevertheless be taken.

- (2) In cases where testimony or statements are taken in accordance with sub-paragraph (1), they shall be provided, together with the claim referred to in that sub-paragraph, to the Central Authority of the requesting Party for resolution of the claim by the competent authorities of the requesting Party.

Article 10
Obtaining items

1. The requested Party shall obtain items. The requested Party shall employ compulsory measures, including search and seizure, in order to do so, if such measures are necessary and the request includes information justifying those measures under the laws of the requested Party.

2. The requested Party shall make its best efforts to make possible the presence of such persons as specified in a request for obtaining items during the execution of the request.

3. (1) If a person, from whom items are sought pursuant to this Article, asserts a claim of immunity or privilege under the laws of the requesting Party, items shall nevertheless be obtained.

- (2) In cases where items are obtained in accordance with sub-paragraph (1), they shall be provided, together with the claim referred to in that sub-paragraph, to the Central Authority of the requesting Party for resolution of the claim by the competent authorities of the requesting Party.

Article 11
Examining persons, items or places

1. The requested Party shall examine persons, items or places. The requested Party shall employ compulsory measures in order to do so, if such measures are necessary and the request includes information justifying those measures under the laws of the requested Party.

2. The requested Party shall make its best efforts to make possible the presence of such persons as specified in a request for examining persons, items or places during the execution of the request.

Article 12
Locating or identifying persons, items or places

The requested Party shall make its best efforts to locate or identify persons, items or places.

Article 13
Providing items in the possession
of the public authorities

1. The requested Party shall provide the requesting Party with items that are in the possession of the public authorities of the requested Party and are available to the general public.

2. The requested Party may provide the requesting Party with items that are in the possession of the public authorities of the requested Party and are not available to the general public, to the same extent and under the same conditions as such items would be available to its competent authorities.

Article 14
Presenting an invitation to a person

1. The requested Party shall present an invitation to a person in the requested Party whose appearance is sought before the appropriate authority in the requesting Party.

2. The Central Authority of the requesting Party shall inform the Central Authority of the requested Party of the extent to which the allowances and expenses for the appearance under paragraph 1 will be paid by the requesting Party. The Central Authority of the requested Party shall promptly inform the Central Authority of the requesting Party of the response of the person whose appearance is sought.

Article 15
Temporary transfer of persons in custody

1. A person in custody of the requested Party whose presence in the territory of the requesting Party is necessary for testimony or other purposes shall be temporarily transferred for those purposes to the requesting Party, if the person consents and if the Central Authorities of the Parties agree, when permitted under the laws of the requested Party.

2. (1) The requesting Party shall keep the person transferred pursuant to paragraph 1 in the custody of the requesting Party, unless permitted by the requested Party to do otherwise.

- (2) The requesting Party shall immediately return the person transferred to the requested Party, as agreed beforehand, or as otherwise agreed between the Central Authorities of the Parties.
- (3) The person transferred shall receive credit for service of the sentence imposed in the requested Party for the time served in the custody of the requesting Party, including the time of transfer.

Article 16
Safe conduct

1. A person whose appearance is sought before the appropriate authority in the requesting Party under Article 14 or a person transferred to the requesting Party under Article 15 shall not be subject to detention, prosecution, punishment or any restriction of personal liberty in its territory by reason of any conduct or conviction that precedes the departure from the requested Party of the person, nor shall the person be obliged to give testimony, statements or items in any proceeding or to assist in any proceeding other than the proceeding which is specified in the request, unless the person consents and the Central Authorities of the Parties agree otherwise.

2. (1) The safe conduct provided in accordance with paragraph 1 to the person whose appearance is sought before the appropriate authority in the requesting Party under Article 14 shall cease when:
 - (a) fifteen consecutive days have passed after the person was notified in writing by the appropriate authority that the appearance of the person is no longer necessary;
 - (b) the person, having left the requesting Party, voluntarily returns to it; or
 - (c) the person fails to appear before the appropriate authority on the scheduled appearance date due to the reasons other than those arising out of the circumstances beyond the control of the person.
- (2) When the notification is made pursuant to sub-paragraph (1) (a), or when the safe conduct ceases pursuant to sub-paragraph (1) (b) or (1) (c), the Central Authority of the requesting Party shall so inform the Central Authority of the requested Party without delay.

3. The safe conduct provided in accordance with paragraph 1 to the person transferred to the requesting Party under Article 15 shall cease when the person returns to the requested Party.

4. A person who does not appear before the appropriate authority in the requesting Party under Article 14 or a person who does not consent to be transferred to the requesting Party under Article 15 shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting Party, notwithstanding any contrary statement in the request or a document related to the appearance of the person.

Article 17
Proceeds or instrumentalities
of criminal offenses

The requested Party shall assist, to the extent permitted by its laws, in proceedings related to the confiscation of the proceeds or instrumentalities of criminal offenses. Such assistance may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

Article 18
Service of documents

1. The requested Party shall effect service of documents related to criminal proceedings that are transmitted to it for this purpose by the requesting Party.

2. Where a request concerns service of a judicial document requiring the appearance of a person before the appropriate authority in the requesting Party, the request shall be received by the requested Party not less than ninety days before the scheduled appearance date. In urgent cases, the requested Party may waive this requirement. In informing of the result of the execution of such a request in accordance with the provisions of paragraph 6 of Article 5, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party in writing of the fact that the service was effected, as well as the date, place and manner of the service.

3. A person who does not comply with a judicial document requiring the appearance of the person before the appropriate authority in the requesting Party served pursuant to this Article shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting Party, notwithstanding any contrary statement in that document.

Article 19
Providing information

1. The Parties may, without prior request, provide information relating to criminal matters to each other to the extent permitted by the laws of the providing Party.

2. The providing Party may impose conditions on the use of such information by the receiving Party. In such a case, the providing Party shall give prior notice to the receiving Party of the nature of the information to be provided and of the conditions to be imposed. The receiving Party shall be bound by those conditions if it agrees to them.

Article 20
Authentication

Documents transmitted by either Party pursuant to this Treaty which are attested by the signature or seal of a competent authority or the Central Authority of that Party shall be accepted by the other Party without authentication or any other form of certification. At the request of the requesting Party, the documents transmitted pursuant to this Treaty may be certified by the requested Party in another form indicated in the request to the extent not contrary to the laws of the requested Party.

Article 21
Relation to other instruments

Nothing in this Treaty shall prevent either Party from requesting assistance from or providing assistance to the other Party in accordance with other applicable international agreements, or pursuant to its laws that may be applicable.

Article 22
Consultations

1. The Central Authorities of the Parties shall hold consultations for the purpose of facilitating speedy and effective assistance under this Treaty, and may decide on such measures as may be necessary for this purpose.

2. The Parties shall, if necessary, hold consultations on any matter that may arise in the interpretation or implementation of this Treaty.

Article 23
Headings

The headings of the Articles of this Treaty are inserted for convenience of reference only and shall not affect the interpretation of this Treaty.

Article 24
Entry into force and termination

1. This Treaty shall enter into force on the thirtieth day after the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary to give effect to this Treaty have been completed.

2. This Treaty shall apply to any request for assistance presented on or after the date upon which this Treaty enters into force, whether the acts relevant to the request were committed before, on or after that date.

3. This Treaty may be amended by written agreement between the Parties.

4. Either Party may terminate this Treaty at any time by notice in writing 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.

5. Termination of this Treaty shall not be used as a reason for not executing the requests for assistance made prior to the date of the termination of this Treaty.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Treaty.

DONE at Tokyo this 24th day of November, 2021, in duplicate, in the Japanese, Vietnamese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR JAPAN:

山田滝雄

FOR THE SOCIALIST REPUBLIC
OF VIET NAM:

Lê Minh Trí