



Treaty Series No.8 (2010)

Treaty

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

Hanoi, 13 January 2009

[The Treaty entered into force on 30 September 2009]

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

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Vietnam (hereinafter referred to as “the Parties”):

Desiring to improve the effectiveness of the law enforcement authorities of both countries in criminal proceedings, and to combat crime in a more effective way as a means of protecting their respective democratic societies and common values;

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

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

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1

Scope of Assistance

1. The Parties shall provide the widest measure of mutual legal assistance, in accordance with the provisions of this Treaty and in conformity with their respective domestic laws, for the purpose of criminal proceedings.
2. Mutual assistance may also be afforded in proceedings in respect of acts which are punishable under the domestic law of the requesting or the requested Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.
3. Assistance shall include:
 - (a) taking the testimony or statements of persons including by video-conference or television;
 - (b) providing documents, records, and other evidentiary material;
 - (c) serving documents;

- (d) locating or identifying persons where required as part of a wider request for evidence;
- (e) transferring persons in custody according to article 12 (Transfer of Persons in Custody);
- (f) executing requests for search and seizure;
- (g) identifying, tracing, restraining, seizing, confiscating and disposal of proceeds of crime and assistance in related proceedings;
- (h) return of assets;
- (i) sharing of assets in accordance with Chapter II;
- (j) such other assistance as may be agreed between the Central Authorities.

ARTICLE 2

Definitions

1. "Criminal proceedings" means the investigation, prosecution and adjudication of criminal offences, including the restraint, seizure or confiscation of proceeds of crime and instrumentalities of crime.
2. "Instrumentalities of crime" means any property which has been, is or is intended to be used in connection with the commission of an offence.
3. "Assets" includes money and all kinds of moveable or immoveable and tangible or intangible property, and includes any interest in such property.
4. "Proceeds of crime" means any assets derived or realised, directly or indirectly, by any person as a result of criminal conduct, or the value of any such assets.

ARTICLE 3

Central Authorities

1. Central Authorities shall be established by both Parties.
 - (a)
 - (i) For the United Kingdom, the Central Authorities for the purpose of sending requests shall be:

- (aa) the Secretary of State;
 - (bb) the Lord Advocate (for matters pertaining to Scotland).
 - (ii) For the United Kingdom, the Central Authorities for the purpose of receiving requests shall be:
 - (aa) the Secretary of State;
 - (bb) the Lord Advocate (for matters pertaining to Scotland) and/or
 - (cc) Her Majesty's Revenue and Customs.
 - (b) For the Socialist Republic of Vietnam, the Central Authority shall be the People's Supreme Procuracy.
2. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.
3. The Parties may at any time designate any other authority as a Central Authority for the purposes of this Treaty. Notification of such a designation will take place by exchange of diplomatic notes.
4. In cases of urgency, requests may be transmitted via the International Criminal Police Organization (Interpol).

ARTICLE 4

Refusal of Assistance

1. The Central Authority of the Requested Party may refuse assistance if:
- (a) the execution of the request would prejudice the sovereignty, security, ordre public or other essential interests of the Requested Party;
 - (b) the request relates to a person who, if proceeded against in the Requested Party for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction;
 - (c) the request relates to an offence that is regarded by the Requested Party as a military offence;
 - (d) the request relates to criminal proceedings which are politically motivated; or

- (e) the conduct to which the request relates fails to satisfy a requirement of the domestic law of the Requested Party requiring the establishment of dual criminality.

2. Before refusing assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to conditions the Requested Party deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested Party refuses assistance, it shall inform the Central Authority of the Requesting Party of the reasons for refusal.

ARTICLE 5

Form and Content of Requests

1. A request for assistance shall be in writing. The request shall be in the language of the Requesting Party accompanied by a translation into the language of the Requested Party, unless otherwise agreed.

2. The request shall include the following:

- (a) the name and address of the authority conducting the criminal proceedings to which the request relates;
- (b) the subject matter and nature of the proceedings for the purposes of which the request is made;
- (c) a summary of the information giving rise to the request, including the applicable penalty and a statement and text of the relevant laws;
- (d) a description of the evidence or other assistance sought and details of any court or other deadlines; and
- (e) the purpose for which the evidence or other assistance is sought.

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

- (a) the identity, date of birth, nationality and location of any person from whom evidence is sought;
- (b) the identity, date of birth, nationality and location of a person to be served, that person's relationship to the proceedings, and the manner in which the service is to be made;

- (c) available information on the identity and whereabouts of a person to be located;
- (d) a precise description of the place to be searched and of the articles to be seized;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked of a witness or expert;
- (g) a description of any particular procedures to be followed in executing the request;
- (h) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled;
- (i) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request; and
- (j) requirements for confidentiality.

ARTICLE 6

Execution of Requests

1. The Central Authority of the Requested Party shall promptly execute the request or, when appropriate, shall transmit it to the officials having authority to do so. The competent officials of the Requested Party shall do everything in their power to execute the request.
2. The Requested Party shall comply with the formalities and procedures expressly indicated by the Requesting Party unless otherwise provided for in this Treaty, and provided that such formalities and procedures are not contrary to the domestic law of the Requested Party.
3. If the Central Authority of the Requested Party determines that execution of the request would interfere with ongoing proceedings or prejudice the safety of any person in the territory of the Requested Party, the Central Authority of that Party may postpone execution, or make execution subject to such conditions as are deemed necessary by the Requested State. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.
4. The Central Authority of the Requested Party may facilitate the participation in the execution of the request of such persons as are specified in the request.

5. The Central Authority of the Requested Party may where necessary ask the Central Authority of the Requesting Party to provide further information or to take further steps in order to enable the Requested Party to execute the request. The Requested Party may ask for such further information to be provided in a specific form.

6. The Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party promptly of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.

7. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request.

8. The Requested Party shall, insofar as it is possible under its domestic law, provide the evidence requested in such form as is requested by the Requesting Party.

ARTICLE 7

Spontaneous information

1. The Central Authority of a Party may, without prior request, forward information to the Central Authority of the other Party, when they consider that the disclosure of such information might assist the receiving Party in relation to criminal proceedings, or might lead to a request by that Party under this Treaty.

2. The providing Party may impose conditions on the use of such information by the receiving Party. The receiving Party shall be bound by those conditions.

ARTICLE 8

Costs

1. The Requested Party shall pay all costs relating to the execution of the request, except for the following which shall be paid by the Requesting Party:

- (a) fees of expert witnesses;
- (b) the allowances and expenses incurred pursuant to Articles 10 (Taking Testimony and Producing Evidence in the Territory of the Requested Party) and 11 (Taking Testimony in the Requesting Party);
- (c) the costs of establishing and operating video-conferencing or television links, and the interpretation and transcription of such proceedings;

- (d) the costs of transferring persons in custody pursuant to Article 12 (Transfer of Persons in Custody);
- (e) such costs or resources as it is agreed under paragraph 2 below should be borne by the Requesting Party.

2. If the Central Authority of the Requested Party notifies the Central Authority of the Requesting Party that execution of the request might require costs or other resources of an extraordinary nature, or if it otherwise requests, the Central Authorities shall consult with a view to reaching agreement on the conditions under which the request shall be executed and the manner in which costs shall be allocated.

ARTICLE 9

Confidentiality and Limitations on Use

1. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to.
2. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether and the extent to which it wishes the request to be executed.
3. The Requesting Party shall not use or disclose any information or evidence obtained under this Treaty for any purpose other than for the criminal proceedings stated in the request without the prior consent of the Requested Party.
4. Unless otherwise indicated by the Requested Party when executing the request, information or evidence the contents of which have been disclosed in a public judicial hearing related to the request may thereafter be used for any purpose.
5. Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation under the laws of the Requesting Party to use or disclose such information for the purpose of judicial proceedings. The Requesting Party shall, wherever possible, notify the Requested Party in advance of any such disclosure.

ARTICLE 10

Taking Testimony and Producing Evidence in the Territory of the Requested Party

1. A person in the territory of the Requested Party from whom evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear in order to testify or produce documents, records, or articles of evidence by summons or such other method as may be permitted under the domestic law of the Requested Party.
2. Where a person so compelled asserts a claim of immunity, incapacity or privilege under the laws of the Requesting Party, the Requesting Party shall be informed of such a claim and the evidence shall be taken unless the Requesting Party accepts the validity of the claim.
3. Upon request, the Central Authority of the Requested Party shall notify the Requesting Party of the date when and place where the taking of evidence pursuant to this Article is due occur.
4. If under Article 6(4) (Execution of Requests) of this Treaty the Requested Party has permitted the presence of specified persons during the execution of the request, then, subject to domestic law of the Requested Party, such persons may be permitted to present questions to be asked of the person giving testimony or producing evidence.

ARTICLE 11

Taking Testimony in the Requesting Party

1. A request under this Treaty may seek assistance in facilitating the appearance of any person in the territory of the Requesting Party for the purpose of giving evidence before a court or of being identified in, or otherwise by his presence assisting, any criminal proceedings.
2. The Central Authority of the Requested Party shall:
 - (a) ask a person whose voluntary appearance in the territory of the Requesting Party is desired whether he agrees to appear; and
 - (b) promptly inform the Central Authority of the Requesting Party of his answer.
3. The Central Authority of the Requesting Party may make arrangements to ensure, so far as is possible, that a person attending in the territory of the Requesting Party pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or

convictions in the Requesting Party that preceded his departure from the territory of the Requested Party.

4. Arrangements made under Paragraph 3 of this Article shall cease fifteen days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or when the person, having left the territory of the Requesting Party, voluntarily returns to it. These arrangements may be extended by agreement between the Parties to take account of circumstances beyond the control of the person appearing which do not include the commission of a criminal offence.

ARTICLE 12

Transfer of Persons in Custody

1. Where a request is received by the Requested Party for the transfer of a person in the custody of that Party to the territory of the Requesting Party for the purpose of providing assistance under this Treaty that person shall be so transferred if he and the Central Authorities of both Parties consent.

2. The Requesting Party shall be responsible for the safety of the person transferred and shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the Requested Party.

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

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

5. The period of custody in the territory of the Requested 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 Requesting Party.

ARTICLE 13

Official Records

1. The Requested Party shall upon request provide the Requesting Party with copies of publicly available records that are in the possession of authorities in the Requested Party.

2. The Requested Party may, in accordance with its domestic law, provide copies of any official records that are in the possession of authorities in that Party but are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities.

ARTICLE 14

Exchange of Criminal Records

Each Party may inform the other of any criminal convictions and subsequent measures recorded in respect of nationals of the other Party.

ARTICLE 15

Service of Documents

1. The Requested Party shall, upon request and insofar as is possible, effect service of:

- (a) any process issued or made for the purposes of criminal proceedings.
- (b) any document issued or made by an authority for the purposes of clemency proceedings.

2. Any person who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the Requesting Party and is there again duly summoned.

3. The Central Authority of the Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority or court in the Requesting Party within a reasonable time before the scheduled appearance.

4. The Requested Party shall return a proof of service whenever possible in the manner specified in the request.

ARTICLE 16

Search and Seizure

1. The Requested Party shall execute a request for the search, seizure and delivery of any article to the Requesting Party if the request includes the

information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party.

2. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances.

3. The Central Authority of the Requested Party may require that the Requesting Party agrees to terms and conditions which the Requested Party may deem necessary to protect third party interests in the item to be transferred.

ARTICLE 17

Return of Documents and Articles

The Central Authority of the Requesting Party shall return any documents or articles furnished to it in the execution of a request under this Treaty as soon as is practicable unless the Central Authority of the Requested Party waives the return of the documents or articles.

ARTICLE 18

Assistance in Confiscation Proceedings

1. The Parties shall assist each other in relation to the identification, tracing, restraint, seizure and confiscation of the proceeds and instrumentalities of crime.

2. In addition to the provisions contained within Article 5 (Form and Content of Requests), a request for assistance in restraint or confiscation proceedings shall also include:

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

3. If the Central Authority of one Party becomes aware that proceeds or instrumentalities of crime are located in the territory of the other Party and may be

liable to restraint, seizure or confiscation under the laws of that Party, it may so inform the Central Authority of the other Party. If the Party so notified has jurisdiction, this information may be presented to its authorities for a determination whether any action is appropriate. The said authorities shall issue their decision in accordance with the laws of their country and the Central Authority of that country shall ensure that the other Party is aware of the action taken.

ARTICLE 19

Return of Assets

1. Where an offence has been committed and a conviction has been obtained in the Requesting Party, the assets which have been seized by the Requested Party may be returned to the Requesting Party for the purpose of confiscation, in accordance with the domestic law of the Requested Party.
2. The rights claimed by bona-fide third parties over these assets shall be respected.
3. The return shall occur once a final judgement has been given in the Requesting Party. However the Requested Party may return the assets before the conclusion of criminal proceedings in accordance with its domestic law.

ARTICLE 20

Return of Embezzled Public Funds

1. When the Requested Party seizes or confiscates assets that constitute public funds, whether or not these have been laundered, and which have been embezzled from the Requesting Party, the Requested Party shall return the seized or confiscated assets, less any costs of realisation, to the Requesting Party.
2. The return shall occur once a final judgement has been given in the Requesting Party. However the Requested Party may return the funds before the conclusion of criminal proceedings in accordance with its domestic law.

CHAPTER II

SHARING OF CONFISCATED ASSETS OR THEIR EQUIVALENT FUNDS

ARTICLE 21

Circumstances in which Assets may be Shared

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

ARTICLE 22

Requests for Asset Sharing

1. A Co-operating Party may make a request for asset sharing from the Holding Party in accordance with the provisions of this Treaty when its co-operation has led, or is expected to lead, to confiscation. A request for asset sharing shall be made within one year from the date of entry of the final order of confiscation, unless otherwise agreed between the Parties.
2. A request made under paragraph 1 of this Article shall set out the circumstances of the co-operation to which it relates, and shall include sufficient details to enable the Holding Party to identify the case, the assets, and the agency or agencies involved.
3. On receipt of a request for asset sharing made in accordance with the provisions of this Article, the Holding Party shall:
 - (a) consider whether to share assets as set out in Article 21 (Circumstances in which Assets may be Shared) of this Chapter, and
 - (b) inform the Party making the request of the outcome of that consideration.
4. In appropriate cases where there are identifiable victims, consideration of the rights of victims may take precedence over asset sharing between the Parties.

ARTICLE 23

Sharing of Assets

1. Where the Holding Party proposes to share assets with the Co-operating Party, it shall:
 - (a) determine the proportion of the assets to be shared which, in its view, represents the extent of the co-operation afforded by the Co-operating Party; and
 - (b) transfer a sum equivalent to that proportion to the Co-operating Party in accordance with Article 24 (Payment of Shared Assets) of this Chapter.
2. The Parties agree that it may not be appropriate to share where the value of the realised assets or the assistance rendered by the Co-operating Party is *de minimis*.

ARTICLE 24

Payment of Shared Assets

1. Unless otherwise agreed, any sum transferred pursuant to Article 23(1)(b) (Sharing of Assets) of this Chapter shall be paid:
 - (a) in the currency of the Holding Party, and
 - (b) by means of an electronic transfer of funds or cheque.
2. Payment of any such sum shall be made to such recipient or recipients as the Co-operating Party may from time to time specify by notification for the purposes of this Article.

ARTICLE 25

Imposition of Conditions

Unless otherwise agreed, where the Holding Party transfers any sum pursuant to Article 23(1)(b) (Sharing of Assets) above, it may not impose on the Co-operating Party any conditions as to the use of that sum, and in particular may not require the Co-operating Party to share the sum with any other State, organisation or individual.

CHAPTER III

FINAL PROVISIONS

ARTICLE 26

Data Protection

1. Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Treaty where the transfer of such data is prohibited under its domestic law.
2. Personal data transferred from one Party to another as a result of the execution of a request made under the Treaty may be used by the Party to which such data have been transferred, only:
 - (a) for the purpose of criminal proceedings to which the Treaty applies;
 - (b) for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);
 - (c) for preventing an immediate and serious threat to public security.
3. Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.
4. Any Party that transfers personal data obtained as a result of the execution of a request made under the Treaty may require the Party to which the data have been transferred to give information on the use made with such data.

ARTICLE 27

Compatibility with Other Arrangements

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

ARTICLE 28

Consultation

The Central Authorities of the Parties shall consult, at the request of either, concerning the operation of this Treaty either generally or in relation to a particular case. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 29

Application

1. This Treaty shall apply to offences committed before or after the date on which it enters into force.
2. This Treaty shall apply:
 - (a) in relation to the United Kingdom, to Great Britain and Northern Ireland; and to any other territory for the international relations of which the United Kingdom is responsible and to which the Treaty shall have been extended by agreement between the Contracting Parties by exchange of notes; and
 - (b) in relation to Vietnam, to the Socialist Republic of Vietnam.
3. The application of this Treaty to any Territory in respect of which extension has been made in accordance with paragraph 2 of this Article may be terminated by either State giving six months' written notice to the other through the diplomatic channel.

ARTICLE 30

Dispute Settlement

The Parties shall endeavour to settle disputes concerning the interpretation or application of this Treaty by consultation and if necessary via diplomatic channels.

ARTICLE 31

Entry into Force and termination

1. This Treaty shall be subject to ratification and shall enter into force on the date on which the instruments of ratification are exchanged.

2. This Treaty will remain in force for an indefinite period unless terminated by either Party giving written notice of its termination to the other Party through diplomatic channels. Such termination will come into effect six months after the date of receipt of the notice.

3. In case of the termination of this Treaty, it shall continue to apply in relation to requests exchanged prior to the termination coming into force.

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

DONE in duplicate at Hanoi this thirteenth day of January 2009 in the English and Vietnamese languages, both texts being equally authoritative.

**For the Government of the United
Kingdom of Great Britain and
Northern Ireland:**

**For the Socialist
Republic of Vietnam:**

PETER RICKETTS

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