

Law No. 08/2007/QH12

Law on Mutual Legal Assistance

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended and supplemented by Resolution No. 51/2001/QH10;

The National Assembly hereby passes the Law on Mutual Legal Assistance.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This law provides for principles, competence, and procedures of executing legal assistance in civil and criminal matters, extradition and transfer of sentenced person between Vietnam and foreign countries; responsibilities of state agencies of Vietnam in mutual legal assistance.

Article 2. Scope of application

This Law shall apply to Vietnamese agencies, organizations and individuals and foreign agencies, organizations and individuals involved in mutual legal assistance with Vietnam.

Article 3. Application of laws

1. Mutual legal assistance shall be carried out according to the provisions of this Law, other provisions of law of Vietnam and international treaties to which Vietnam is a party; for legal assistance matters which are not provided for by this Law, provisions of the laws on civil procedure, the laws on criminal procedures or other relevant legal provisions of Vietnam shall apply.

2. Foreign laws shall be applied only if this application is provided for by international treaties to which Vietnam is a party.

Article 4. Principles on mutual legal assistance

1. Mutual legal assistance shall be carried out on the principle of respect for each other's independence, sovereignty and national territorial integrity, non-intervention in each other's internal affairs, equality and mutual benefit in compliance with the Constitution and law of Vietnam, and international treaties to which Vietnam is a party.

2. In case Vietnam and the foreign state concerned has not yet signed or acceded to any international treaty concerning mutual legal assistance, the legal assistance shall be performed on the principle of reciprocity, provided that this does not contradict Vietnamese laws and in compliance with international law and practice.

Article 5. Languages

1. In case an international treaty on mutual legal assistance exists between Vietnam and a foreign state, language used in mutual legal assistance shall be the language stipulated in the international treaty.

2. In case no international treaty on mutual legal assistance exists between Vietnam and a foreign state, the request for mutual legal assistance and supporting documents shall be accompanied by a translation of the request and the supporting documents into the language of accepted to the requested state.

3. The agency making a request for mutual legal assistance to the competent agency of a foreign state shall translate the request into the language stipulated in paragraphs 1 and 2 of this Article.

Article 6. Request and form of executing a request for mutual legal assistance

1. Request for mutual legal assistance is a written request of a Vietnamese or foreign competent agency for executing one or a number of forms of legal assistance provided for by the law of the state concerned or international treaties to which Vietnam is a party.

2. Mutual legal assistance shall be provided on the request of a Vietnamese or foreign competent agency.

Article 7. Consular legalization of request and supporting documents

1. Consular legalization means the certification by the Ministry of Foreign Affairs, Vietnamese diplomatic or consulate agencies, or other Vietnamese agencies abroad authorized to perform the consular function, of signatures and/or seals on documents made, issued or certified by a foreign authority, for their use in Vietnam.

2. Request and supporting documents made, issued or certified by the competent authority of a foreign country according to the law of that country shall be recognized by the competent authorities of Vietnam, if the request and supporting documents have been legalized.

Article 8. Summon and protection of witnesses and experts

1. During a proceeding, the relevant Vietnamese agency which is conducting the proceedings may summon a witness or an expert in a foreign country according to this Law and international treaties to which Vietnam is a party.

2. The summon shall specify conditions for acting as a witness or an expert and commitment of protecting the witness's or expert's life and health and providing him or her with travel, meal and accommodation expenses.

3. The witness or the expert shall be entitled to simpler entry and exist procedures.

4. The witness or the expert summoned to Vietnam shall not be arrested, detained or proceeded against for the following acts which he or she has committed before he or she arrived in Vietnam:

a) Giving testimonies or expert opinions on the case for which he or she has been summoned to Vietnam;

b) A criminal offence committed in Vietnam;

c) Relationship with the person who is under criminal investigation, prosecution or trial;

d) Involvement in any other civil or administrative lawsuit in Vietnam.

5. The protection referred to in paragraph 4 of this Article shall terminate if such person does not leave the territory of Vietnam within 15 days as from the date of receiving the written notice from the competent authority of Vietnam that his or her presence in Vietnam is no longer necessary. This time limit does not include the time during which the person was not able to leave Vietnam due to unavoidable reasons.

Article 9. Handing-over of documents, objects and monies

The handing-over of documents, objects and monies in connection with mutual legal assistance activities shall be in accordance with the law of Vietnam.

Chapter III

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Article 17. Forms of mutual legal assistance in criminal matters

Forms of mutual legal assistance in criminal matters between Vietnam and foreign states shall include:

1. Service of documents and other records and documents concerning mutual legal assistance in criminal matters;

2. Summon of witnesses, experts, and persons who have rights and obligations in the case;

3. Collection and provision of evidence;

4. Criminal prosecution;
5. Exchange of information; and
6. Other forms of mutual legal assistance in criminal matters.

Article 18. Dossier of request for legal assistance in criminal matters

1. A dossier of request for legal assistance in criminal matters shall include the following documents:

- a) A letter of the competent agency conducting criminal proceedings requesting for legal assistance in criminal matters; and
- b) The request for legal assistance in criminal matters stipulated in Article 19 of this Law.

2. The dossier of request for legal assistance in criminal matters shall be submitted in three sets as stipulated by this Law and the law of the requested State. The dossier shall be made in the language stipulated in Article 5 of this Law.

Article 19. Request for legal assistance in criminal matters

1. A request for legal assistance in criminal matters shall include the following particulars:

- a) Date of and place of the request;
- b) Name and address of the agency making the request;
- c) Name and address or head office of the requested agency;
- d) Full name and address of residence or working place of the individual; name and address or head office of the agency or organization directly relating to the request; and
- e) Purposes of the request; a brief description of the criminal case and related circumstances, the applicable article and punishment; progress of the investigation, prosecution and trial; and time limit within which compliance with the request is desired.

2. A request for legal assistance in criminal matters may, in addition to the particulars listed in paragraph 1 of this Article, and depending on each particular case, according to the requirement by the Vietnamese or foreign competent agency, include the following particulars:

- a) Identity, nationality and whereabouts of the person sought or of those who are in possession of the information relating to the case;
- b) For a request for collection of evidence, matters to be examined; questions to be posed to that person; a description of the documents, records or exhibits to be provided and, if

possible, a description of the identity of the person requested to produce those documents, records or exhibits;

c) Actions to be done by, and questions to be posed to the witness or expert to be summoned;

d) For a request for search, seizure, trace or confiscation of asset of crime, a description of the asset sought and place where the asset may be found; grounds on which the requesting State believes that the asset of crime is located in the requested State and may be under jurisdiction of that State;

e) For a request for legal assistance in criminal matters, which may lead to the discovery and recovery of proceeds of crime, measures to be taken;

f) Requirements and procedures that the requesting state wants to be followed to ensure successful execution of the request and methods or modes of providing exhibits or articles;

g) Requirement for keeping the request confidential;

h) If a competent person of the requesting State must travel to the territory of the requested State for purposes concerning the request for legal assistance in criminal matters, the purposes, estimated time and schedule of the travel; and

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

3. If the information stated in the request for legal assistance in criminal matters under paragraphs 1 and 2 of this Article is insufficient for the request to be executed, the competent agency of the requested State may require in writing additional information from the requesting State and shall fix time limit for the provision of such additional information.

Article 20. Out-going requests

1. The agencies conducting criminal proceedings of Vietnam may, in dealing with a criminal case, make requests for legal assistance in the following criminal matters:

a) Service of documents upon a person residing in the requested state;

b) Summon of a witness or an expert who is present in the requested state;

d) Collection of evidence located in the requested state necessary for dealing with a criminal case in Vietnam;

c) Criminal prosecution of a person residing in the state of his or her nationality; and

e) Other criminal matters stipulated by the law of Vietnam.

2. A request for legal assistance in criminal matters sent to a foreign country must be made in writing as stipulated by this Law.

Article 21. Refusal or postponement of the execution of a foreign request for legal assistance in criminal matters

1. A foreign request for legal assistance in criminal matters shall be refused in one of the following circumstances:

a) It is not in conformity with the obligations of Vietnam under the international treaties to which Vietnam is a party and Vietnamese laws;

b) The execution of the request may jeopardize the sovereignty or national security of Vietnam;

c) The request is for prosecution of a person for a criminal conduct of which that person has been convicted, acquitted or granted a general or special reprieve in Vietnam;

d) The request relates to a criminal conduct for which the statute of limitations has elapsed according to the Penal Code of Vietnam;

e) The request relates to a law violation which does constitute a criminal offence under the Penal Code of Vietnam.

2. The execution of a foreign request for legal assistance in criminal matters may be postponed if the execution of that request would cause obstacle to the investigation, prosecution, trial, or the enforcement of a judgment in Vietnam.

3. After it decided to refuse or postpone the execution of a request under paragraphs 1 and 2 of this Article, the Supreme People's Procuracy shall inform the requesting State of the reasons therefore and measures to be taken.

Article 22. Procedures for making a request for legal assistance in criminal matters to a foreign country

1. The agency conducting criminal proceedings of Vietnam shall make a dossier of request for legal assistance in criminal matters to foreign competent authority according to the provisions of Article 18 of this Law and transmit it to the Supreme People's Procuracy.

2. Within 10 working days of receipt of the dossier of request, the Supreme People's Procuracy shall record it in the Register of requests for legal assistance in criminal matters, check its validity and send it to the competent authority of the foreign state according to an international treaty to which Vietnam and that foreign state are parties, or through the diplomatic channels. If the request is not valid, the Supreme People's Procuracy shall return it to the agency which has made the request and specify reasons therefore.

3. Within 5 working days of receipt of the document informing the results of the request's execution sent by the foreign competent authority, the Supreme People's Procuracy shall transmit the document to the agency which has made the request.

Article 23. Procedures for receiving and processing a foreign request for legal assistance in criminal matters

1. Within 15 days of receipt of a request for legal assistance in criminal matters sent by a foreign competent authority, the Supreme People's Procuracy shall record it in the Register of requests for legal assistance in criminal matters, check its validity and transmit it to the agency conducting criminal proceedings of Vietnam for execution. If the request is not valid, the Supreme People's Procuracy shall return it to the competent authority of the requesting State and shall specify reasons therefore.

2. Within 5 working days of receipt of the document informing the results of request's execution sent by the agency conducting criminal proceedings of Vietnam, the Supreme People's Procuracy shall send it to the competent authority of the requesting State according to an international treaty to which Vietnam and that foreign state are parties, or through the diplomatic channels.

3. If the request for legal assistance in criminal matters cannot be executed or cannot be executed within the time limit required by the foreign competent authority, or cannot be executed without additional conditions, the agency conducting criminal proceedings of Vietnam shall inform in writing the Supreme People's Procuracy of the reasons therefore for it to notify the competent authority of the requesting State.

Article 24. Service of documents at foreign request

1. The requesting State, which wishes a summon to be served upon a witnesses or an expert who is residing in Vietnam, shall send the request to the Supreme People's Procuracy at least in 90 days prior to the date on which the person must be present in the requesting State. The procedures for receiving the summon shall be in accordance with the provisions of Article 23 of this Law.

2. Immediately after the request is served, the agency which served the request must send the Supreme People's Procuracy a certificate of the service for the latter to forward it to the requesting State. If the service was not possible, the reason therefore must be given in writing.

Article 25. Temporary transfer of persons in custody to give evidence

1. A person who is serving his or her prison sentence in Vietnam may be transferred temporarily to the competent authority of the requesting State to give evidence in a criminal case in the requesting State.

2. The agencies conducting criminal proceedings of Vietnam shall transfer a person who is serving his or her prison sentence under paragraph 1 of this Article only on the following conditions:

a) The person consents to the transfer and to give evidence in the requesting State;

b) The competent authority of the requesting State must confirm in writing that it shall ensure the protection of life, health, travel, accommodation and meal , time and manner of receiving and returning the person and other specific conditions for the surrender specified by the agencies conducting criminal proceedings of Vietnam. This confirmation shall be made according to the provisions of the Vietnamese law and international law governing the temporary transfer of a person who is serving his or her sentence to give evidence in a foreign country. The temporarily transferred person must be returned to the agency conducting criminal proceedings of Vietnam on the time confirmed.

3. The time period during which the surrendered person stayed in the requesting State shall be deducted from the term of his or her sentence.

Article 26. Provision of information

Upon a request of the competent authority of Vietnam or of a foreign country, the Supreme People's Procuracy shall request the agencies conducting criminal proceedings of Vietnam or of a foreign country to provide information relating to a request for legal assistance in criminal matters, or a copy of the final court's judgment or decision against a citizen of the requesting State.

Article 27. Use of information and evidence in mutual legal assistance in criminal matters

1. Information or evidence provided by the agencies conducting criminal proceedings of Vietnam shall be used for the purposes specified in the request for legal assistance in criminal matters only, and shall not be disclosed or transmitted to any third party, except with the prior written consent of the competent authority of Vietnam.

2. The agencies conducting criminal proceedings of Vietnam must apply appropriate measures to keep confidential the fact of a request for legal assistance in criminal matters, its contents and supporting documents, as well as criminal procedural actions to be taken under the request. If the request cannot be executed without breaching confidentiality requirements stipulated by the laws on protection of state secrets, the Supreme People's Procuracy must so inform in writing the requesting State and may agree with the foreign the competent authority on alternative measures, if any.

3. In sending a request for legal assistance in criminal matters to a foreign country, the Supreme People's Procuracy must request the foreign competent authority to take the following measures to:

a) Keep confidential the information and evidence provided by Vietnam and use that information and evidence solely for the purposes stated in the request; and

b) Ensure that the information and evidence are protected against unauthorized modification, change, disclose or other misuse.

Article 28. Request for criminal prosecution; handing over of files and exhibits of a criminal case to a foreign country

1. For a criminal case involving a foreign national, who has committed an offence in the territory of Vietnam and has escaped to a foreign country and the competent authority of that foreign country refuses to extradite the person to Vietnam, the agency conducting criminal proceedings of Vietnam, which is dealing with the case, shall transmit the case file to the Supreme People's Procuracy for the latter to request the competent authority of the foreign state, where the foreign national is present, for prosecution. In deciding to transfer the case file, the Supreme People's Procuracy may decide to transfer the exhibits of the case.

2. The Supreme People's Procuracy shall stipulate specific conditions for the receipt and handing over of the files and exhibits of a criminal case.

Article 29. Dealing with foreign request for prosecution of a Vietnamese citizen in Vietnam

The Supreme People's Procuracy shall consider a request of the foreign competent authority for further criminal prosecution of a Vietnamese who has committed an offence in the foreign country and is currently present in Vietnam, according to the following procedures:

1. If the case is in the investigation stage and within the jurisdiction of an agency conducting criminal proceedings of the province or city under central government (hereafter referred to as 'at the provincial level'), the request shall be transmitted to the People's Procuracy at the provincial level, where the Vietnamese citizen had his or her last place of residence before leaving Vietnam, for requesting the investigation agency at the same level to investigate the case; if the case is within the jurisdiction of an investigation agency of the Ministry of Public Security, the request shall be transmitted to that agency for investigation.

2. If the case is in the prosecution stage and within the jurisdiction of a People's Procuracy at the provincial level, the request shall be transmitted to the People's Procuracy at the provincial level, where the Vietnamese citizen had his or her last place of residence before leaving Vietnam, for prosecution.

3. The investigation, prosecution and trial of a case stipulated in this Article shall be conducted according to the provisions of the criminal procedural laws of Vietnam.

Article 30. Execution of foreign requests for investigation against foreign citizens in Vietnam

Within 5 working days of receipt of a request from the competent authority of a foreign country for investigation against a foreign citizen residing in Vietnam, the Supreme

People's Procuracy shall transmit the request to the competent investigating agency of Vietnam for investigation. The results of the investigation shall be transmitted to the Supreme People's Procuracy for it to send them to the requesting State.

Article 31. Costs relating to legal assistance in criminal matters

Costs relating to the execution of a request for legal assistance in criminal matters between Vietnam and a foreign country shall be born by the requesting State, except otherwise agreed. If Vietnam is to bear the costs, they shall be paid by the state budget.

Chapter VI

Responsibilities of state agencies in mutual legal assistance

Article 61. Responsibility of the Government in mutual legal assistance

1. Carry out uniformly the state administration of mutual legal assistance activities;
2. Direct the governmental agencies in their mutual legal assistance activities; coordinate with the Supreme People's Court and the Supreme People's Procuracy in mutual legal assistance activities; and
3. Report annually to the National Assembly on mutual legal assistance activities.

Article 62. Responsibility of the Ministry of Justice

1. Assist the Government in carrying out the state administration of mutual legal assistance activities;
2. Receive, send, monitor and urge the execution of requests for mutual legal assistance in civil matters;
3. Exchange information on laws and practices concerning mutual legal assistance with foreign central authorities according to international treaties to which Vietnam is a party;
4. Propose for conclusion of, accession to and implementation of international treaties concerning mutual legal assistance; propose for amendments and improvement of Vietnamese legislation concerning mutual legal assistance; and
5. Submit annual report to the Government on mutual legal assistance activities.

Article 63. Responsibility of the Supreme People's Court

1. Provide guidance to the People's Courts at all levels on how to carry out mutual legal assistance activities;

2. Consider and decide, within its competence, on requests for extradition and transfer of person who is serving a sentence of imprisonment; and

3. Inform every six months and annually the Ministry of Justice of the state of implementation of mutual legal assistance within its jurisdiction.

Article 64. Responsibility of the Supreme People's Procuracy

1. Receive, send, monitor and urge the execution of requests for mutual legal assistance in criminal matters; consider and decide on execution and request the appropriate People's Procuracy or investigation agency to execute requests for mutual legal assistance in criminal matters; refuse or postpone the execution of a request for mutual legal assistance within its competence;

2. Exercise the power of prosecution and supervision of mutual legal assistance activities within its competence;

3. Provide guidance to the People's Procuracies at all levels on how to carry out mutual legal assistance in criminal matters.

4. Propose for conclusion of, accession to and implementation of international treaties concerning mutual legal assistance; propose for amendments and improvement of Vietnamese legislation concerning mutual legal assistance; and

5. Inform every six months and annually the Ministry of Justice of the state of execution of requests for mutual legal assistance in criminal matters.

Article 65. Responsibility of the Ministry of Public Security

1. Receive, send, consider, and execute foreign requests for extradition and transfer of persons who are serving sentences of imprisonment; consider and transmit dossiers of request to the appropriate People's Procuracy and the People's Court and carry out mutual legal assistance activities within its competence.

2. Propose for conclusion of, accession to and implementation of international treaties concerning extradition and transfer of persons who are serving sentences of imprisonment; propose for amendments and improvement of Vietnamese legislation on mutual legal assistance; and

3. Inform every six months and annually the Ministry of Justice of the status of execution of requests for extradition and transfer of persons who are serving sentences of imprisonment.

Article 66. Responsibility of the Ministry of Foreign Affairs

1. Take the lead in and coordinate with concerned ministries and agencies to decide whether to provide assistance on reciprocal basis to the foreign state concerned.

2. Propose for conclusion of, accession to and implementation of international treaties concerning mutual legal assistance; propose for amendments and improvement of Vietnamese legislation on mutual legal assistance;

3. Inform every six months and annually the Ministry of Justice of the status of application of the reciprocity principle in mutual legal assistance with concerned states.

Article 67. Responsibility of Vietnamese representative agencies abroad

1. Execute requests for legal assistance relating to Vietnamese citizens in the host countries at the request of the Vietnamese competent agencies in Vietnam according to the law of Vietnam, international treaties to which Vietnam is a party and not contrary to the law of the host countries;

2. Receive foreign requests for legal assistance and transmit them to the competent authorities in Vietnam; and

3. Transmit requests for legal assistance made by Vietnamese competent authorities to the Ministries of Foreign Affairs of the host countries for further forwarding to the competent authorities of those countries for them to consider whether to execute the requests.

Article 68. Responsibility of the People's Courts at the provincial level

1. Execute foreign requests for legal assistance according to this Law;

2. Consider and decide whether to allow extradition and transfer of persons who are serving sentences of imprisonment according to this Law;

3. Carry out other mutual legal assistance activities within their competence; and

4. Report results of mutual legal assistance activities carried out to the Supreme People's Court.

Article 69. Responsibility of the People's Procuracies at the provincial level

1. Execute foreign requests for legal assistance according to this Law;

2. Carry out other mutual legal assistance activities within their competence.

3. Exercise the power of prosecution and supervision of mutual legal assistance activities within their competence; and

4. Report results of carrying out of mutual legal assistance activities to the Supreme People's Procuracy.

Article 70. Responsibility of the investigation agencies

1. Receive requests for mutual legal assistance in criminal matters, extradition and transfer of persons who are serving sentences of imprisonment transmitted by the competent authorities.

2. Conduct activities concerning mutual legal assistance in criminal matters, extradition and transfer of persons who are serving a sentences of imprisonment according to this Law and other relevant laws.

3. Report results of activities concerning mutual legal assistance in criminal matters, extradition and transfer of persons who are serving a sentences of imprisonment carried out to the competent authorities.

Chapter VII

Final provisions

Article 71. Entry into force

This Law shall enter into force on 1 July 2008.

Article 72. Implementation guidance

The Government shall stipulate guidelines for the implementation of this Law.