

COMPILATION OF CONSTITUTIONAL AND LEGISLATIVE PROVISIONS ON TREATY PRACTICE OF THE REPUBLIC OF THE PHILIPPINES

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IMPORTANT NOTES

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This document was last amended in December 2012.

1. The 1987 Constitution of the Republic of the Philippines

Article II, Section 2:

The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

...

Article VII, Section 21:

No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

...

Article VIII, Section 4(2):

All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

...

Note:

The full text of the Philippines' Constitution can be accessed on the website of the Official Gazette of the Republic of the Philippines at:

<http://www.gov.ph/the-philippine-constitutions/>

2. Other Instruments related to treaty Practice

Executive Order 459 providing for the Guidelines in the Negotiation of International Agreements and Its Ratification (1997)

WHEREAS, the negotiations of international agreements are made in pursuance of the foreign policy of the country;

WHEREAS, Executive Order No. 292, otherwise known as the Administrative Code of 1987, provides that the Department of Foreign Affairs shall be the lead agency that shall advise and assist the President in planning, organizing, directing, coordinating and evaluating the total national effort in the field of foreign relations;

WHEREAS, Executive Order No. 292 further provides that the Department of Foreign Affairs shall negotiate treaties and other agreements pursuant to the instructions of the President, and in coordination with other government agencies;

WHEREAS, there is a need to establish guidelines to govern the negotiation and ratification of international agreements by the different agencies of the government;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order:

SECTION 1. Declaration of Policy.

It is hereby declared the policy of the State that the negotiations of all treaties and executive agreements, or any amendment thereto, shall be coordinated with, and made only with the participation of, the Department of Foreign Affairs in accordance with Executive Order No. 292. It is also declared the policy of the State that the composition of any Philippine negotiation panel and the designation of the chairman thereof shall be made in coordination with the Department of Foreign Affairs.

SECTION 2. Definition of Terms.

- a. International agreement — shall refer to a contract or understanding, regardless of nomenclature, entered into between the Philippines and

another government in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments.

- b. Treaties — international agreements entered into by the Philippines which require legislative concurrence after executive ratification. This term may include compacts like conventions, declarations, covenants and acts.
- c. Executive Agreements — similar to treaties except that they do not require legislative concurrence.
- d. Full Powers — authority granted by a Head of State or Government to a delegation head enabling the latter to bind his country to the commitments made in the negotiations to be pursued.
- e. National Interest — advantage or enhanced prestige or benefit to the country as defined by its political and/or administrative leadership.
- f. Provisional Effect — recognition by one or both sides of the negotiation process that an agreement be considered in force pending compliance with domestic requirements for the effectivity of the agreement.

SECTION 3. Authority to Negotiate.

Prior to any international meeting or negotiation of a treaty or executive agreement, authorization must be secured by the lead agency from the President through the Secretary of Foreign Affairs. The request for authorization shall be in writing, proposing the composition of the Philippine delegation and recommending the range of positions to be taken by that delegation. In case of negotiations of agreements, changes of national policy or those involving international arrangements of a permanent character entered into in the name of the Government of the Republic of the Philippines, the authorization shall be in the form of Full Powers and formal instructions. In cases of other agreements, a written authorization from the President shall be sufficient.

SECTION 4. Full Powers.

The issuance of Full Powers shall be made by the President of the Philippines who may delegate this function to the Secretary of Foreign Affairs.

The following persons, however, shall not require Full Powers prior to negotiating or signing a treaty or an executive agreement, or any amendment thereto, by virtue of the nature of their functions:

- a. Secretary of Foreign Affairs;
- b. Heads of Philippine diplomatic missions, for the purpose of adopting the text of a treaty or an agreement between the Philippines and the State to which they are accredited;
- c. Representatives accredited by the Philippines to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

SECTION 5. Negotiations.

- a. In cases involving negotiations of agreements, the composition of the Philippine panel or delegation shall be determined by the President upon the recommendation of the Secretary of Foreign Affairs and the lead agency if it is not the Department of Foreign Affairs.
- b. The lead agency in the negotiation of a treaty or an executive agreement, or any amendment thereto, shall convene a meeting of the panel members prior to the commencement of any negotiations for the purpose of establishing the parameters of the negotiating position of the panel. No deviation from the agreed parameters shall be made without prior consultations with the members of the negotiating panel.

SECTION 6. Entry into Force and Provisional Application of Treaties and Executive Agreements.

- a. A treaty or an executive agreement enters into force upon compliance with the domestic requirements stated in this Order.
- b. No treaty or executive agreement shall be given provisional effect unless it is shown that a pressing national interest will be upheld thereby. The Department of Foreign Affairs, in consultation with the concerned agencies, shall determine whether a treaty or an executive agreement, or any amendment thereto, shall be given provisional effect.

SECTION 7. Domestic Requirements for the Entry into Force of a Treaty or an Executive Agreement.

The domestic requirements for the entry into force of a treaty or an executive agreement, or any amendment thereto, shall be as follows:

A. Executive Agreements.

- i. All executive agreements shall be transmitted to the Department of Foreign Affairs after their signing for the preparation of the ratification papers. The transmittal shall include the highlights of the agreements and the benefits which will accrue to the Philippines arising from them.
- ii. The Department of Foreign Affairs, pursuant to the endorsement by the concerned agency, shall transmit the agreements to the President of the Philippines for his ratification. The original signed instrument of ratification shall then be returned to the Department of Foreign Affairs for appropriate action.

B. Treaties.

- i. All treaties, regardless of their designation, shall comply with the requirements provided in sub-paragraph 1 and 2, item A (Executive Agreements) of this Section. In addition, the Department of Foreign Affairs shall submit the treaties to the Senate of the Philippines for concurrence in the ratification by the President. A certified true copy of the treaties, in such numbers as may be required by the Senate, together with a certified true copy of the ratification instrument, shall accompany the submission of the treaties to the Senate.
- ii. Upon receipt of the concurrence by the Senate, the Department of Foreign Affairs shall comply with the provision of the treaties in affecting their entry into force.

SECTION 8. Notice to Concerned Agencies.

The Department of Foreign Affairs shall inform the concerned agencies of the entry into force of the agreement.

SECTION 9. Determination of the Nature of the Agreement.

The Department of Foreign Affairs shall determine whether an agreement is an executive agreement or a treaty.

SECTION 10. Separability Clause.

If, for any reason, any part or provision of this Order shall be held unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 11. Repealing Clause.

All executive orders, proclamations, memorandum orders or memorandum circulars inconsistent herewith are hereby repealed or modified accordingly.

SECTION 12. Effectivity.

This Executive Order shall take effect immediately upon its approval.

DONE in the City of Manila, this 25th day of November, in the year of Our Lord, Nineteen Hundred and Ninety-Seven.

Note:

The full text of the Executive Order can be accessed on the official website of the Government Procurement Policy Board of The Philippines:
http://www.gppb.gov.ph/laws_rules/laws/EO_459-1997.pdf