



**LAWS**  
**ON**  
**INTERNATIONAL COOPERATION**  
**IN CRIMINAL MATTERS**

**THAILAND**

ASEAN COMMUNITY MISSIONS CENTRE  
INTERNATIONAL AFFAIRS DEPARTMENT  
OFFICE OF THE ATTORNEY GENERAL







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**MUTUAL ASSISTANCE IN  
CRIMINAL MATTERS**





**THE ACT**  
**ON**  
**MUTUAL ASSISTANCE IN CRIMINAL MATTERS**  
**B.E. 2535 (1992)\***

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**BHUMIBOL ADULYADEJ, REX.**  
**Given on the 31<sup>st</sup> Day of March B.E. 2535 (1992)**  
**Being the 47<sup>th</sup> Year of the Present Reign**

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His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is appropriate to have a law on mutual assistance in criminal matters;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly acting as the Legislative Parliament, as follows:

**Section 1** This Act shall be called "the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992)".

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\* Unofficial Translation

**Section 2**<sup>1</sup> This Act shall come into force after ninety days upon its publication in the Government Gazette.

**Section 3** This Act shall replace all other laws, regulations, rules, decrees, and any other announcements already provided for in or inconsistent with this Act.

**Section 4** In this Act:

Assistance means assistance regarding investigation, inquiry, prosecution, forfeiture of property and other proceedings relating to criminal matters;

Requesting State means the state seeking assistance from the Requested State;

Requested State means the state receiving the request seeking assistance from the Requesting State;

Central Authority means the person having authority and function to be the coordinator in providing assistance to a foreign state or in seeking assistance from a foreign state under this Act;

Competent Authority means the official having authority and function in rendering assistance to a foreign state in response to a request sent to him from the Central Authority under this Act.

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<sup>1</sup> Published in the Government Gazette, Vol. 109, Part 40, Page 27, dated 7th April B.E. 2535 (1992).

**Section 5<sup>2</sup>** The Prime Minister and the Attorney General shall take charge under this Act. The Prime Minister shall have the power to issue Ministerial Regulations and the Attorney General shall have the power to issue regulations or notifications for compliance with this Act, provided that such issuances are in connection with their respective powers and duties.

Such Ministerial Regulations, regulations or notifications shall come into force upon their publication in the Government Gazette.

## **CHAPTER 1**

### **CENTRAL AUTHORITY**

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**Section 6** The Central Authority shall be the Attorney General or the person designated by him.

**Section 7** The Central Authority shall have the following authority and functions:

(1) To receive the request seeking assistance from the Requesting State and transmit it to the Competent Authority;

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<sup>2</sup> Section 5 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

(2) To receive the request seeking assistance presented by the agency of the Royal Thai Government and deliver it to the Requested State;

(3) To consider and determine whether to provide or seek assistance;

(4) To follow and expedite the performance of the Competent Authority in providing assistance to a foreign state for the purpose of expeditious conclusion;

(5) To issue regulations or announcements for the implementation of this Act;

(6) To carry out any other acts necessary for the success of providing or seeking assistance under this Act.

**Section 8** There shall exist a board comprising of representatives from the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Justice, the Office of the Attorney General, as well as not more than four of other distinguished persons designated by the Prime Minister and one public prosecutor designated by the Board as its Secretary. The Board shall provide opinion to assist the Central Authority in consideration and determination of providing assistance to, or seeking assistance from foreign states where such matter may affect national sovereignty or security, crucial public interests, international relation, or relate to a political or military offence.

When assistance is sought under Section 10 or Section 36 and the process under Section 11 has already been completed, the Central Authority shall promptly refer the matter to the Board for its opinion unless the Board has resolution otherwise.

If there is a dissent between the opinion of the Board and the determination of the Central Authority, the latter shall refer the case to the Prime Minister for his ruling in accordance with Section 11 paragraph 5 or Section 38 paragraph 2 as the case may be.

## **CHAPTER 2**

### **PROVIDING OF AND SEEKING FOR ASSISTANCE**

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#### **PART 1**

##### **General Provisions**

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**Section 9** Assistance to a foreign state shall be subject to the following conditions:

(1) Assistance may be provided even if there exists no mutual assistance treaty between Thailand and the Requesting State, providing that such state commits to assist Thailand under the similar manner when requested;

(2) The act on which the request is based must be an offence punishable under Thai laws unless when Thailand and the

Requesting State have a mutual assistance treaty between them and the treaty otherwise specifies, providing, however, that assistance must be conformed to the provisions of this Act;

(3) A request may be refused if it affects national sovereignty or security, or other crucial public interests of Thailand, or relates to a political offence;

(4) Assistance shall not be related to a military offence.

**Section 10** The state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The state having no such treaty shall submit its request through a diplomatic channel.

A request for assistance shall be made in conformity with the forms, regulations, means and conditions set by the Central Authority.

**Section 11** Upon the receipt of the request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for assistance under this Act, has gone through the correct procedure, and is accompanied by all appropriate supporting documents.

If such request is eligible for assistance, has gone through the correct procedure, and is accompanied by all appropriate supporting documents, the Central Authority shall transmit it to the Competent Authority for further actions.

If such request is not eligible for assistance or assistance is subject to some essential conditions, or if it has not been correctly processed or is not accompanied by all appropriate supporting documents, the Central Authority shall inform the Requesting State of the refusal and its reasons or shall indicate to the Requesting State the essential conditions or the causes of being unable to execute the request.

If the Central Authority is of the view that the execution of a request may interfere with the investigation, inquiry, prosecution, or other criminal proceedings pending in Thailand, he may postpone the execution of the said request or may execute it under certain conditions and notify the Requesting State accordingly.

A determination of the Central Authority with regard to assistance shall be final, unless the Prime Minister otherwise alters.

**Section 12**<sup>3</sup> The Central Authority shall transmit the request for assistance from a foreign state to the following Competent Authority for further execution:

(1) A request for taking statement of persons or providing documents or items of evidence which is out-of-court execution; a request for delivery of documents; a request for the search; a request for locating a person; and a request for freezing or seizure of documents or articles for the purpose of gathering of evidence shall

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<sup>3</sup> Section 12 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

be transmitted to the Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation, the Secretary General of the Public Sector Anti-Corruption Commission or the Secretary General of the National Anti-Corruption Commission.

(2) A request for questioning of witnesses, documentary evidence or physical evidence which is conducted in court; a request for freezing or seizure of property for the purpose of forfeiture of property or demand for payment in lieu of forfeiture of property against any person; and a request for freezing, seizure or forfeiture of property or demand for payment in lieu of forfeiture of property as per a judgment or an order of courts in a foreign state shall be transmitted to the Public Prosecutor.

(3) A request for transfer or receipt of transfer of a person under custody to assist proceedings at the stage concerning the authorities or at the trial stage shall be transmitted to the Director General of the Department of Corrections.

(4) A request for initiating criminal proceedings shall be transmitted to the Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation or the Public Prosecutor.

Where it is deemed appropriate, the Central Authority may transmit the request for assistance from a foreign state to the officials or the authorities in accordance with other laws for further execution in relation to the request mentioned in first paragraph.



**Section 13** Upon the receipt of the request for assistance from the Central Authority, the Competent Authority shall execute such request and, after completion, submit a report together with all documents and articles concerned to the Central Authority.

In case of impediment or impossibility to execute the request, the Competent Authority shall report to the Central Authority the causes thereof.

**Section 14** When the Competent Authority has executed a request and reported the result of such execution to the Central Authority, the Central Authority shall deliver all documents and articles concerned to the Requesting State.

**Section 14/1**<sup>4</sup> In case where coordination is made by a foreign state asking for provision of data relating to the commission of an offence, or data relating to any property for the purpose of investigation, inquiry, prosecution or judicial proceedings, if the Central Authority considers that such data may be provided under this Act, including the fact that it is a case of necessity, urgency, and with a reasonable grounds, the Central Authority may deliver such data in accordance with the criteria, methods and conditions as prescribed by the Central Authority, provided that such foreign state shows that the assistance will be provided in a similar manner. The provisions relating to the provision of assistance upon request shall apply *mutatis mutandis* to the data which is to be delivered under this Section.

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<sup>4</sup> Section 14/1 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

## **PART 2**

### **Inquiry and Producing Evidence**

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**Section 15** Upon the receipt of the request for assistance from a foreign state in taking statement of persons or gathering evidence located in Thailand at the stage of inquiry, the Competent Authority shall direct an inquiry official to execute such request.

The inquiry official shall have the power to take statement of persons or to gather evidence as requested under paragraph one and, if necessary, to search and seize any documents or articles in accordance with rules, means, and conditions set forth in the Criminal Procedure Code.

When the inquiry official has finished taking statement of persons or gathering evidence, he shall report and deliver all evidence derived therefrom to the Competent Authority.

**Section 16** If the mutual assistance treaty between Thailand and the Requesting State requires a document to be authenticated, the Competent Authority shall have the power to instruct the person in charge of keeping the said documents to attest it in accordance with the forms and means specified in the treaty or as defined by the Central Authority.

**Section 17**<sup>5</sup> Upon the receipt of the request for assistance from a foreign state to take evidence in Thai Court, the Competent Authority shall notify the Public Prosecutor to execute such request.

The Public Prosecutor shall have the power to file a petition to the Court that has jurisdiction over the location where a person who will be a witness or a person who takes possession of or keeps documentary or physical evidence has domicile or address within the jurisdiction of the Court to take such evidence; and the Court shall have the power to conduct witness testimonial proceedings in accordance with the provisions in the Criminal Procedure Code.

Once the taking of evidence is complete, the Court shall send the witness testimony as well as other evidence in the case file to the Public Prosecutor who is the petitioner to be forwarded to the Competent Authority for further execution.

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<sup>5</sup> Section 17 Paragraph 3 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

### **PART 3**

#### **Provision of Documents and Information in the Possession of Government Agencies**

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**Section 18** Upon the receipt of the request for assistance from a foreign state to provide documents or information in the possession of the agencies of the Royal Thai Government, the Central Authority shall transmit the request to the agency having such documents or information in its possession, and the said agency shall submit the said documents or information to the Central Authority.

**Section 19** If the documents or information sought under Section 18 should not be publicly disclosed, and the agency possessing such documents or information considers that it is impossible to disclose, or the said documents or information should not be disclosed or may be disclosed under certain conditions, the said agency shall inform the Central Authority of the causes thereof or the conditions for the disclosure of such documents or information.

**Section 20** In providing documents according to the request for assistance from a foreign state under this part, the official in charge of keeping such documents shall attest them, in accordance with the forms and means set by the Central Authority unless the treaty specifies otherwise, in which the provisions of the treaty shall apply.

**PART 4**  
**Serving Documents**

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**Section 21** Upon the receipt of the request for assistance from a foreign state to serve legal document, the Competent Authority shall execute such request and report the result thereof to the Central Authority.

If the legal document to be served under the request calls for the appearance of a person before an official or the Court in the Requesting State, the Competent Authority shall serve the said document upon the recipient for a reasonable time prior to the scheduled appearance.

The result of serving documents shall be reported in accordance with the forms and means set by the Central Authority unless the treaty specifies otherwise, in which the provisions of the treaty shall apply.

**Section 22** The provisions regarding penalty in case of non-compliance with the order of the official or of the Court shall not be applied to the person served with a legal document calling for his appearance before the official or the Court in the Requesting State, if he is not a national of such state.

**PART 5**  
**Search, Freezing or Seizure<sup>6</sup>**

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**Section 23<sup>7</sup>** Upon receipt of a request for assistance from a foreign state to search, freeze, seize and deliver an article for the benefit of gathering of evidence, in case where there are grounds to issue a search warrant or an order for freezing or seizure of the article according to the laws, the Competent Authority may request the Court to issue a search warrant or an order for freezing or seizure of such article.

**Section 24<sup>8</sup>** The provisions in the Criminal Procedure Code shall *mutatis mutandis* apply to the issuance of a search warrant or an order for freezing or seizure and the search, freezing or seizure under this Part; and such actions may be undertaken even though the commission of offences causing the search, freezing or seizure did not occur in the Kingdom.

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<sup>6</sup> Part 5 Search, Freezing or Seizure, Section 23 through Section 25 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

<sup>7</sup> Section 23 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

<sup>8</sup> Section 24 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

**Section 25**<sup>9</sup> The Competent Authority who conducts the search, freezing or seizure of an article in response to the request for assistance shall make a written document certifying of the maintenance, appearance, character and completeness of conditions of such article, and shall deliver the article searched, frozen, or seized together with such certificate thereof to the Central Authority for further execution.

Such certificate shall be made in accordance with the forms and methods prescribed by the Central Authority.

## **PART 6**

### **Transferring of Person in Custody to Assist Proceedings at the Stage Concerning the Authorities or at the Trial Stage**<sup>10</sup>

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**Section 26**<sup>11</sup> Upon receipt of a request for assistance from a foreign state to transfer a person in custody in Thailand to testify as a witness in court or to assist the authority in the

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<sup>9</sup> Section 25 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

<sup>10</sup> Part 6 Transferring of Person in Custody to Assist Proceedings at the Stage Concerning the Authorities or at the Trial Stage as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

<sup>11</sup> Section 26 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

investigation and inquiry as a witness in the Requesting State or to request a transfer of a person in custody in the Requesting State to provide assistance in the same manner in Thailand, if the Central Authority considers that such transfer is necessary and the said person in custody consents thereto, the Central Authority shall notify the Competent Authority to transfer the said person to the Requesting State or to receive the said person from the Requesting State into Thailand.

The transfer, receipt and custody of a person under Paragraph 1 shall be in accordance with the criteria, methods and conditions prescribed in the Ministerial Regulations.

**Section 27**<sup>12</sup> The period, during which a person is transferred to assist the proceedings at the stage concerning the authorities or at the trial stage in a foreign state and under the custody of the Requesting State, shall be deemed as the period of such person's custody in Thailand.

**Section 28**<sup>13</sup> The Competent Authority shall have power to keep the person transferred from a foreign state in custody to assist the proceedings at the stage concerning the authorities or at the trial stage throughout the period of the said person's presence in Thailand. When such person has completely assisted the

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<sup>12</sup> Section 27 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

<sup>13</sup> Section 28 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).



proceedings at the stage concerning the authorities or at the trial stage, the Competent Authority shall notify the Central Authority accordingly.

**Section 29** Upon the receipt of the report from the Competent Authority under Section 28, the Central Authority shall promptly return the transferred person to the Requesting State.

**Section 29/1**<sup>14</sup> Upon receipt of a request for assistance from a foreign state to allow the person in custody in the Requesting State or in a third country to travel through Thailand to assist the proceedings at the stage concerning the authorities or at the trial stage in the Requesting State and the Central Authority considers that the assistance may be provided, the Central Authority shall notify the Competent Authority to facilitate the travelling of such person.

The person under Paragraph 1 shall travel through Thailand within a period prescribed by the Central Authority. When such time limit has elapsed, in case such person failed to travel to the Requesting State or a third country, the Central Authority shall have power to order such person to return to the country from which such person has initially travelled.

The Requesting State shall incur responsibility of keeping the person under Paragraph 1 in custody during travelling through Thailand, unless otherwise agreed by the Requesting State and the Central Authority.

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<sup>14</sup> Section 29/1 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

## **PART 7**

### **Locating Persons**

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**Section 30** Upon the receipt of the request for assistance from a foreign state to locate a person believed to be in Thailand and required by the Requesting State for the purpose of investigation, inquiry, prosecution or other criminal proceedings, the Competent Authority shall proceed to locate the said person and inform the result thereof to the Central Authority.

## **PART 8**

### **Initiating Proceedings upon Request**

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**Section 31** Upon the receipt of the request for assistance from a foreign state which is competent to initiate criminal proceedings but wishes the same to be initiated in Thailand, the Central Authority, if the case is subject to the jurisdiction of the Thai Court, shall consider whether it is appropriate to initiate the criminal proceedings as requested. If so, he shall direct the Competent Authority to proceed in accordance with the provisions in the Criminal Procedure Code and shall direct the said Competent Authority to report to him the result thereof.

## **PART 9**

### **Freezing, Seizure or Forfeiture of Property and Compulsory Payment in Lieu of Forfeiture of Property<sup>15</sup>**

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**Section 32<sup>16</sup>** Upon the receipt of the request for assistance from a foreign state to freeze or seize any property as per an order of freezing or seizure of property issued by the Competent Authority of the Requesting State for the benefit of forfeiture of property or compelling any person to make payment in lieu of forfeiture of property; and in case where the court in the foreign state has not yet issued its judgment or order to freeze or seize such property, the Competent Authority shall file an application to the court that such property is located in its jurisdiction, or to the court that the person who has ownership in such property has domicile in its jurisdiction, or to the court that such person who may have to make payment in lieu of forfeiture of property has domicile in its jurisdiction, or to the court that such person was found within its jurisdiction, as the case may be, to issue its order to freeze or seize such property. In such case, if the Competent Authority is entitled to file an

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<sup>15</sup> Part 9 Freezing, Seizure or Forfeiture of Property and Compulsory Payment in Lieu of Forfeiture of Property, Section 32 through Section 35 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

<sup>16</sup> Section 32 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

application to at least two courts, the Competent Authority may file an application to one of any of those courts.

The Court shall urgently consider the application under Paragraph 1. In case where the statement of the Competent Authority or the evidence adduced by the Competent Authority or the evidence summoned and taken by the Court hereunder is satisfactory as follows, the Court may issue its order to freeze or seize such property:

(1) Such property may be frozen, seized or forfeited; or such person may be compelled to make payment in lieu of forfeiture of property under the Thai laws;

(2) Such property may be forfeited or executed to compel any person to make payment in lieu of forfeiture of property as per the judgment of a court in the foreign state; and

(3) There is reasonable grounds to believe that such property may be disposed of, distributed, transferred, concealed, or hidden, and thus prevented from being forfeited or compelled to make payment in lieu of forfeiture of property, or that such property may be rendered useless or devalued, and thus possibly causing the forfeiture of such property or demand for payment in lieu of forfeiture of property to be invalid.

In case where the Court has issued its order to dismiss the application, such order shall be final. However, the Court's order to freeze or seize the property may be appealed to the Appeal Court; and the judgment or order of the Appeal Court shall be final.

The real owner of property who is subject to the Court's freezing or seizure order under Paragraph 2 may promptly file an application with the Court to cancel such order. In case where it appears to the Court that such person did not connive at the action which caused the foreign state to make the request under Paragraph 1 or did not take action which is considered as a cause under Paragraph 2, the Court shall cancel such order. Such order of the Court shall be final. However, the Court's order to dismiss the application of the real owner may be appealed to the Appeal Court; and the judgment or order of the Appeal Court shall be final.

The fact that the Court issues its order to dismiss the application or cancel the freezing or seizure order issued as per the application shall not deprive the Competent Authority of their rights to resubmit an application asking the Court to issue a freezing or seizure order against such property, if there is new significant evidence which might cause the Court to issue a freezing or seizure order against such property.

**Section 33**<sup>17</sup> Upon the receipt of the request for assistance from a foreign state to freeze or seize any property as per an order prior to an issuance of a judgment of the foreign court, or to forfeit the property or to compel any person to make payment in lieu of forfeiture of property as per the foreign judgment or order which

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<sup>17</sup> Section 33 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

is not yet final, the Competent Authority shall file an application to the Court that such property is located in its jurisdiction, or to the court that the person who has the ownership or possession of such property has domicile in its jurisdiction, or to the court that such person who has to make payment in lieu of forfeiture of property has domiciled in its jurisdiction, or to the court that such person was found within its jurisdiction, as the case may be, to issue its order to freeze or seize such property or the property of such person. In such case, if the Competent Authority is entitled to file an application to at least two courts, the Competent Authority may file an application to one of any of those courts.

The Court shall urgently consider the application under Paragraph 1. In case where the statement of the Competent Authority or the evidence adduced by the Competent Authority or the evidence taken by the Court hereunder is satisfactory as follows, the Court may issue its order to freeze or seize such property or the property of such person:

(1) Such property may be frozen, seized or forfeited; or such person may be compelled to make payment in lieu of forfeiture of property under the Thai laws;

(2) The foreign court has jurisdiction to adjudicate the case in which such judgment or order is issued; and

(3) There is reasonable grounds to believe that such property may be disposed of, distributed, transferred, concealed or hidden thus preventing the enforcement of a judgment or an order

of the foreign court or that such property may be rendered useless or devalued, thus possibly causing the enforcement of a judgment or an order of a court in the foreign state to be invalid.

If the Court issues an order to dismiss the application, such order shall be final. However, the Court's order to freeze or seize the property may be appealed to the Appeal Court; and the judgment or order of the Appeal Court shall be final.

The real owner of property who is subject to the Court's freezing or seizure order or the person whose property is frozen or seized under Paragraph 2 may promptly file an application with the Court to cancel such order. In case where it appears to the Court that such person did not connive at the action which caused the foreign state to make the request under Paragraph 1 or did not take action which is considered as a cause under Paragraph 2, the Court shall cancel such order; such order of the Court shall be final. However, the Court's order to dismiss the application of the real owner or the person whose property is frozen or seized may be appealed to the Appeal Court; the judgment or order of the Appeal Court shall be final.

The fact that the Court issues an order to dismiss the application or cancels freezing or seizure order issued as per the application shall not deprive the Competent Authority of their rights to resubmit an application to the Court to issue a freezing or seizure order against such property or the property of such person, if there is new significant evidence which might cause the Court to issue a freezing or seizure order against such property or the property of such person.

**Section 34**<sup>18</sup> Upon the receipt of the request for assistance from a foreign state to forfeit the property or to compel any person to make payment in lieu of forfeiture of property as per the final judgment or order of the foreign court, the Competent Authority shall file an application to the Court that such property was located in its jurisdiction, or to the court that the person who has the ownership or possession of such property has domicile in its jurisdiction, or to the court that such person who has to make payment in lieu of forfeiture of property has domicile in its jurisdiction, or to the court that such person was found within its jurisdiction, as the case may be, to issue its judgment to forfeit such property or to demand such person to make payment in lieu of forfeiture of the property as per the final judgment or order of a court in the foreign state. In such case, if the Competent Authority is entitled to file an application to at least two courts, the Competent Authority may file an application to one of any of those courts.

Regarding the execution under Paragraph 1, if necessary, the Competent Authority may conduct an inquiry or assign any inquiry official to conduct an inquiry on his/her behalf.

Upon the receipt of an application, the Court shall issue a summons to the Competent Authority and all related parties to appear before the Court. Once such persons are heard, if it is satisfied

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<sup>18</sup> Section 34 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).



as follows, the Court shall render a judgment to forfeit the property or to compel such person to make payment in lieu of forfeiture of the property as provided in the final judgment or order of such foreign court, as deemed appropriate.

(1) Such property may be forfeited; or such person may be compelled to make payment in lieu of forfeiture of property under the Thai laws; and

(2) The foreign court has jurisdiction to adjudicate the case in which such judgment or order is issued.

In case where it appears that, in the adjudication of such case, the foreign court did not give an opportunity to the accused, the alleged offender, or the real owner of property to assert a defence or to prove his/her rights; or such case proceedings are contrary to the general principle of the procedure laws, the Court shall dismiss such application.

**Section 35**<sup>19</sup> Regarding the freezing, seizure or forfeiture of property and compel for payment in lieu of forfeiture of the property in accordance with the provisions contained in this Part, the Court may render its judgment or order even though the commission of an offence causing the freezing, seizure or forfeiture of the property or the demand of payment in lieu of forfeiture of such property has not occurred in the Kingdom. The Court shall render a judgment to

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<sup>19</sup> Section 35 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

forfeit the property or compel to make payment in lieu of forfeiture of the property even though the offender is deceased, in case where it appears to the Court that the judgment or order of a court of the foreign state has been final before such person is dead.

**Section 35/1**<sup>20</sup> Regarding the inquiry, filing of an application, consideration, judgment, appeal and issuance of orders relating to the freezing, seizure or forfeiture of the property and demand for payment in lieu of forfeiture of the property as prescribed in the judgment, the provisions of the Criminal Procedure Code and the Criminal Code governing forfeiture of the property shall be applied *mutatis mutandis*.

**Section 35/2**<sup>21</sup> The property which is to be forfeited and money which is to be paid in lieu of forfeiture of the property upon the Court's judgment under this Part shall devolve to the State; but the Court may render a judgment issuing that such property shall not be used or shall be destroyed. Except when it is otherwise prescribed by the bilateral treaty between Thailand and the Requesting State, the provisions prescribed in such treaty shall prevail. However, the management of such property or money is prohibited if it is contrary to public order or good morals.

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<sup>20</sup> Section 35/1 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

<sup>21</sup> Section 35/2 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

In case where the forfeited property or money to be paid in lieu of forfeiture of the property upon the Court's judgment must be returned to the Requesting State as prescribed in the treaty under Paragraph 1, the Central Authority shall file an application asking the Court to issue an order to submit such property or money to the Central Authority to return to the Requesting State.

The forfeited property or money to be paid in lieu of forfeiture of the property upon the Court's judgment which must be returned to the Requesting State, after deduction of expenses spent by Thailand on execution relating to the forfeiture or demand of payment in lieu of forfeiture of the property and necessary expenses for the return of such property or money to the Requesting State, shall be returned to the Requesting State by the Central Authority. Unless otherwise prescribed by the treaty under Paragraph 1, the provisions prescribed in the treaty shall prevail.

Fruits of the property or money under Paragraph 2 which have occurred during the period when such property or money has not yet been returned to the Requesting State shall devolve to the State.

## **PART 10**

### **Seeking Assistance**

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**Section 36** An agency wishing to seek assistance from a foreign state shall present the matter to the Central Authority.

**Section 36/1**<sup>22</sup> In case where Thailand requests for assistance in the offence which is the cause of action leading to such request for an assistance and such offence punishable by death according to the Thai law but the punishment for such offence is not to the extent of death penalty according to the law of the Requested State; and it is necessary for the Government to give assurances of non-execution, a negotiation to give such assurances may be carried out. In this respect, if the Court imposes a death sentence, the government shall proceed in accordance with the provisions of law to execute the judgment by means of life imprisonment in lieu of death sentence. The commutation of sentence shall not be granted to such person on whatever grounds except for the royal pardon.

**Section 37** A request for assistance from a foreign state and all documents to be sent therewith shall be made in accordance with forms, rules, means, and conditions set by the Central Authority.

**Section 38** The Central Authority shall consider whether it is appropriate to request assistance from a foreign state, taking into account of regulations, details, facts and supporting documents, and shall then notify the requesting agency of his determination.

The determination of the Central Authority with regard to the request for assistance shall be final unless the Prime Minister directs otherwise.

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<sup>22</sup> Section 36/1 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

**Section 39** The requesting agency shall comply with the commitment of Thailand towards the Requested State regarding the use of information or evidence for the purposes specified in the request.

The requesting agency shall also comply with the commitment of Thailand towards the Requested State regarding the confidentiality of the requested information or evidence unless such information or evidence is necessary for a public trial of the case arising from the investigation, inquiry, prosecution or other criminal proceedings in connection with the criminal case specified in the request.

**Section 40** A person coming to Thailand for the purpose of giving statement or testimony in accordance with this Act shall not be served with summons for any case against him, be detained, or be subject to any other restriction of personal liberty by reason of any acts which preceded his departure from the Requested State.

The rights in paragraph 1 shall cease when the person, having had the opportunity to leave Thailand within fifteen days after notification from the agency that his presence was no longer required, nonetheless continues staying in Thailand, or voluntarily makes a return after having left Thailand.

**Section 41**<sup>23</sup> Regarding the admissibility of evidence obtained from a foreign state, the provisions of the Criminal Procedure Code shall be applied *mutatis mutandis*.

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<sup>23</sup> Section 41 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016).

**CHAPTER 3**  
**COSTS**

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**Section 42** All costs related to the provisions of assistance to a foreign state and the request for assistance from a foreign state shall be governed by rules, means, and conditions set forth in the Ministerial Regulations.

Counter-signature  
Anand Panyarachun  
Prime Minister

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**Remarks:** The reason for the proclamation of this Act is that, as crimes presently are committed jointly as a network throughout many states' territories and the criminal justice administration of each state cannot decisively prevent and suppress them solely, prevention and suppression of such crimes need mutual assistance. Accordingly, it is appropriate to specify measures regarding provision and receipt of mutual assistance in criminal matters for the benefit of aforementioned crime prevention and suppression. It is thus necessary to enact this Act.

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS (NO.2)  
B.E. 2559 (2016)<sup>24</sup>

**Remarks:** The reason for the proclamation of this Act is that, as the Attorney General being the Central Authority in accordance to the law on mutual assistance in criminal matters plays a role and is vested with power and duties which are important under such law, it is appropriate to empower the Attorney General to take charge under this Act in connection with his/her respective power and duties. Also, some provisions in the law on mutual assistance in criminal matters are still inconsistent with current mutual assistance in criminal matters, i.e. the Central Authority is unable to delivered the request for assistance from a foreign state to the official or the Authority according to other laws for execution relating to the request for assistance, and the Central Authority has no authority to provide data relating to the commission of offences or property to a foreign state for the purpose of investigation, inquiry, prosecution, or judicial proceedings without a request from such foreign state, thus resulting in a limitation on the provision of mutual assistance. These cause the mutual assistance limited. The current procedures of search or seizure of property for the benefit of gathering of evidence and for the ultimate goal of forfeiture of property cannot prevent removal of proceeds of crimes. Moreover, the stipulation on the negotiation for assurance of the non-execution of death sentence is deemed as the mechanism in requesting for assistance in an offence which is the cause of action leading to such request and punishable by death according to Thai laws but the punishment for such offence is not to the extent of death penalty according to the law of the Requested State. Transfer of a person in custody also does not cover transfer of a person in custody for the purpose of assisting the proceedings at the stage concerning the authority. Forfeiture and seizure of property, still, do not cover compulsory payment in lieu of forfeiture of property as per the judgment or the order issued by the foreign court. Accordingly, it is appropriate to amend and add the aforementioned provisions to enhance efficiency of mutual assistance in criminal matters. It is thus necessary to enact this Act.

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<sup>24</sup> Published in the Government Gazette, Vol. 133, Part 33 A, Page 1, dated 21st April B.E. 2559 (2016)

**MINISTERIAL REGULATION**

**B.E. 2537 (1994)**

**Issued under the Act on Mutual Assistance in Criminal Matters**

**B.E. 2535 (1992)**

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By virtue of the powers conferred by Section 5 and Section 26 paragraph two of the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), the Prime Minister hereby issues this Ministerial Regulation as follows:

**CHAPTER 1**

**TRANSFERRING OF PERSONS IN CUSTODY IN THAILAND  
TO TESTIFY IN THE REQUESTING STATE**

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**Article 1** When the Central Authority receives the request from a foreign state for assistance in transferring a person kept in custody in Thailand to testify in the Requesting State:

(1) If the Central Authority or the Prime Minister, as the case maybe, gives a final decision that the execution of the request is necessary and such request is eligible for providing assistance, as well as is processed in accordance with regulation provided by law and is accompanied by all appropriate and accurate supporting documents required by relevant regulations, when there is no ground



to postpone or cease such execution, the Central Authority shall notify such decision and shall transmit the request together with all accompanied documents to the following authorities to inquire for the consent of the person kept in custody.

(a) If such person is kept in custody under supervision of the Department of Corrections, the request shall be transmitted to the Director-General of the Department of Corrections for execution.

(b) If such person is kept in custody under supervision of other authority, the request shall be transmitted to the Director-General of the Department of Corrections for notifying the Head of such authority, who shall carry on further execution and shall report the result thereof to the Director-General of the Department of Corrections.

The inquiry shall be made using the "Form CA 1" attached to this Ministerial Regulation.

In transmitting the request and related documents according to Article (1), the Central Authority shall clearly and accurately clarify all relevant fact, as well as the rights and duties of the person kept in custody according to the law, treaty, or commitment made towards Thailand by the Requesting State.

(2) If the Central Authority or the Prime Minister gives the final decision that the execution of the request is unnecessary, or the request is not eligible for providing assistance, or the assistance may be granted but subject to some required conditions, or the request is not processed in accordance with the procedure

regulated by law or is not accompanied by accurate and appropriate supporting documents, or there is any reason that the execution of request must be postponed or ceased, the Central Authority shall inform the Requesting State of the refusal of assistance with the reason thereof, or the necessary condition required for granting the assistance, or the impediment.

**Article 2** When the person kept in custody gives a consent to be transferred to testify in the Requesting State but thereafter desires to revoke such consent, he may submit his revocation in writing, prior to his departure from Thailand, to the Director-General of the Department of Corrections or the Head of other authority in charge of his custody, as the case may be. If the revocation is made towards the Head of other authority, such Head of other authority shall promptly inform the matters to the Director-General of the Department of Corrections.

If there is any expense arising from the transferring process prior to the revocation of consent under paragraph one and thus Thailand or the Competent Authority is bound to be responsible for, then the person who revokes his consent shall be responsible for such expense.

**Article 3** The Director-General of the Department of Corrections shall expeditiously notify the result of the inquiry for consent as stated in Article 1 (1), and shall return the request together with the "Inquiry Form For Consent" and all relevant documents to the Central Authority.

In case where the person kept in custody gives his consent to be transferred for testimonial purposes but revokes his consent thereafter pursuant to Article 2 paragraph one, the Director-General of the Department of Corrections shall promptly inform the Central Authority thereof.

**Article 4** Upon the receipt of a notification pursuant to Article 3, the Central Authority shall proceed as follows:

(1) If the person kept in custody gives no consent or revokes the consent to be transferred, the Central Authority shall notify the Requesting State of the refusal of assistance together with the reason thereof;

(2) If the person kept in custody gives a consent to be transferred for testimonial purpose, the Central Authority shall notify the Requesting State of the acceptance to provide assistance, as well as notify and transmit to the Director-General of the Department of Corrections of the request, Inquiry Form for Consent, and all relevant documents for transferring the said person to the Requesting State.

**Article 5** Upon the receipt of a notification from the Central Authority for transferring a person kept in custody to testify in the Requesting State, the Director-General of the Department of Corrections shall proceed as follows:

(1) If the person is kept in custody under supervision of the Department of Corrections, the Director-General of the Department of Corrections shall transfer such person to the Requesting State.

(2) If the person is kept in custody under supervision of other authority, the Director-General of the Department of Corrections shall notify the Heads of the said authority to transfer such person to the Department of Corrections for further proceeding.

**Article 6** While the Director-General of the Department of Corrections or the Head of other authority in which the person who gives a consent to testify in a foreign state being kept in custody, as the case maybe, still proceeds with procedure according to Article 5, if such person revokes his consent pursuant to Article 2 paragraph one prior to his departure from Thailand, the Director-General of the Department of Corrections shall promptly inform the Central Authority, who shall then inform the Requesting State of the refusal to provide assistance together with reason thereof.

**Article 7** Upon the receipt of a notification from the Requesting State to return the person transferred to testify in the Requesting State pursuant to Article 5 to Thailand, the Central Authority shall notify the Director-General of the Department of Corrections to arrange the admission of the transferred person.

If the said person is kept in custody under supervision of the other authority according to Article 5 (2), the Director-General of the Department of Corrections shall transfer that person to the said other authority after admitting him from the Requesting State.

**Article 8** Regarding the transfer or return of the transferred person according to Article 5 or 7, the Central Authority shall coordinate with the Requesting State, the Director-General of the Department of Corrections, or the Heads of other Competent Authority in order to arrange the transfer, place, travel document, period of time, officer in charge or any necessary fact required for the transfer or return of the said person according to Article 5 or 7.

After the execution of transfer or return of the person kept in custody pursuant to Article 5 or 7, the Director-General of the Department of Corrections shall expeditiously inform the Central Authority.

**CHAPTER 2**  
**ADMISSION OF PERSONS KEPT IN CUSTODY**  
**IN THE REQUESTING STATE TO TESTIFY IN THAILAND**

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**Article 9** Upon the receipt of a request from a foreign state for assistance in transferring a person kept in custody in the Requesting State to testify in Thailand,

(1) If the Central Authority or the Prime Minister gives a final decision that the execution of the request is necessary and such request is eligible for providing assistance, as well as is processed in accordance with regulation provided by law and is accompanied by all appropriate and accurate supporting documents required, the Central Authority shall proceed as follows :

(a) inform the Requesting State of the acceptance to provide assistance;

(b) notify the Director-General of the Department of Corrections to admit such person; and

(c) notify the Executive Director of the Office of Criminal Litigation to advise the competent public prosecutor to conduct the testimony.

(2) If the Central Authority or the Prime Minister has the final determination that the request is unnecessary or is not eligible for providing assistance, or the assistance may be granted but subject to some required conditions, or the request is not processed in accordance with procedure regulated by law or is not accompanied by accurate and appropriate supporting documents, the Central Authority shall inform the Requesting State of the refusal of assistance together with reasons thereof, or the necessary condition required for granting the assistance, or impediment.

**Article 10** In admitting the person to testify in Thailand pursuant to Article 9, the Director-General of the Department of Corrections shall have the power to detain that person in prison or detention place of the Department. However, if the said person is a juvenile, he shall be transferred to the Juvenile Observation Center pursuant to the Act on Setting up of the Juvenile and Family Court and the Procedure.

In the presence of a special circumstance that the detention under paragraph one is inappropriate or a treaty otherwise specifically provided, or if the Requesting State requests to agree otherwise, the Central Authority may notify the Director-General of the Department of Corrections of the matter in order to transfer such person to be detained in a more appropriate place.

**Article 11** When the person kept in custody completes his testimony, the public prosecutor in charge thereof shall expeditiously inform the Executive Director of the Office of Criminal Litigation, the Director-General of the Department of Corrections, and the Central Authority to arrange the return of that person.

If it is necessary to return the said person to the Requesting State prior to the completion of his testimony, the Central Authority shall notify the Director-General of the Department of Corrections to promptly arrange the return.

**Article 12** The admission of person kept in custody in the Requesting State to testify in Thailand and the return of such person shall be governed by Article 8, *mutatis mutandis*.

**CHAPTER 3**  
**MISCELLANEOUS**

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**Article 13** For the purpose to implement this Ministerial Regulation, the Director-General of the Department of Corrections or the Heads of other Competent Authority shall have authority to regulate the procedure related to the transfer or admission of the person kept in custody and all other matters concerned thereto.

The Central Authority shall be informed of those regulations in paragraph one.

**Article 14** For the purpose of expeditious and effective transfer or admission of persons kept in custody pursuant to Article 26 of the Act on Mutual Assistance in Criminal Matters, other authorities involved shall assist the Director-General of the Department of Corrections or the Heads of the authorities in charge of the said transfer or admission.

**Article 15** If there exists any problem as regards the implementation of this Ministerial Regulation, the Director-General of the Department of Corrections or the Heads of other authorities involved shall inform the Central Authority who shall resolve the problem and then report the result thereof to the Prime Minister.



Issued on the 8<sup>th</sup> day of February, B.E. 2537 (1994)

(Mr. Chuan Leekpai)  
Prime Minister

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**Remark** : This Ministerial Regulation is issued due to the consideration that section 26 paragraph two of the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) requires the issuance of Ministerial Regulation to regulate the rules, Means, and conditions for the transfer or admission of the person kept in custody to testify in a foreign state or Thailand.

**Inquiry Form for Consent of Persons Kept in Custody in Thailand  
to be Transferred to Testify in the Requesting State**

\_\_\_\_\_

Declare at .....

Date .....

1. I (Mr./Mrs./Ms.) ....., aged .....  
presently kept in custody at ..... under the offence of .....  
I am still kept in custody for the remaining period of ...year(s).....month(s).....day(s).

I have been inquired by (name)..... official position  
of ....., that (Requesting State)..... requested  
Thailand to transfer me to testify in (country)..... in (case)  
....., and when I complete my function, the Requesting  
State shall return me to Thailand, I have also been informed of the relevant and accurate facts,  
rights and duties pursuant to the laws, treaty, or the Requesting State's commitments to Thailand  
on the matters.

I (consent or do not consent) ..... to be transferred to  
....., hence undersign/finger-print in the presence of witnesses.

(Signature or fingerprint) ..... Person kept in custody

(signature) ..... Witness

(signature) ..... Witness

2. I (Mr./Mrs./Ms.) ....., aged .....  
address ..... telephone .....  
a guardian and related to the above-named person in custody as .....  
(consent or do not consent) ..... to allow the said person to be transferred to  
(country)..... hence undersign/finger-print in the presence of witnesses.

(Signature or fingerprint) ..... Guardian

(signature) ..... Witness

(signature) ..... Witness

3. I (Mr./Mrs./Ms.) ..... , official position of ..... , (office) ..... has inquired for the consent of (name of the person kept in custody) ..... with the reply of (consent or not consent) ..... , including the consent of his/her guardian with the reply of (consent or not consent) ..... to allow the said person to be transferred to ..... hence have those persons signed/ fingerprinted in the above mentioned paragraph 1 and 2 in the presence of witnesses.

(signature) ..... Inquirer and Recorder

- Remark :**
- (1) Paragraph 2 shall be filled particularly in case that the person who gives the consent in accordance with Article 1 is a juvenile kept in custody
  - (2) Undesired words or phrases shall be crossed out

**MINISTERIAL REGULATION**

**No. 2 B.E. 2537 (1994)**

**issued under the Act on Mutual Assistance in Criminal Matters**

**B.E. 2535 (1992)**

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By virtue of section 5 and 42 of the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), the Prime Minister hereby issues this Ministerial Regulation as follows :

**Article 1** All costs related to providing assistance to a foreign state shall be managed as follows :-

(1) If there is a mutual assistance treaty between Thailand and the Requesting State and the treaty specifies the cost issue, it shall be managed as stated in the treaty.

(2) If the Requesting State intends or agrees to bear the cost, such cost shall be borne by that state.

(3) If the cost, which the Requesting State shall bear according to the treaty or intention or agreement as stated in paragraph (1) or (2), as the case maybe, does not include all costs, the outstanding amount shall be paid from the budget of the authority in charge of the process in Section 12.

**Article 2** All costs related to seeking assistance from a foreign state, which shall be borne by Thailand, shall be paid from the budget of the agency seeking assistance, in section 36, and subject to the amount informed to that agency by the Central Authority.

Issued on the 8<sup>th</sup> day of February, B.E. 2537 (1994)

(Mr. Chuan Leekpai)  
Prime Minister

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**Remark :** This Ministerial Regulation is issued due to the consideration that section 42 of the Act on Mutual Assistance in Criminal Matter B.E. 2535 (1992) requires the issuance of Ministerial Regulation to regulate the rules, means, and conditions regarding the costs of providing assistance to or seeking assistance from a foreign state.

**REGULATION OF THE CENTRAL AUTHORITY  
ON PROVIDING AND SEEKING ASSISTANCE UNDER  
THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS  
B.E. 2537 (1994)**

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By virtue of the power conferred by section 7 (5), section 10 paragraph two, section 16, section 20, section 21 paragraph three, section 25 paragraph two, and section 37 of the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), the Central Authority hereby declares the Regulation as follows :

**Article 1** This Regulation shall be called the Regulation of the Central Authority on Providing and Seeking Assistance under the Act on Mutual Assistance in Criminal Matters B.E. 2537 (1994).

**Article 2** This Regulation shall come into force on the day after its publication in the Government Gazette.

**Article 3** The providing and seeking of assistance under the Act on Mutual Assistance in Criminal Matters shall be proceeded in accordance with this Regulation, unless a treaty specifies otherwise in which case the provisions of the treaty shall prevail.

**Article 4** If there are problems regarding compliance with this Regulation, the state agency which provides assistance to or seeks assistance from a foreign state shall notify the Central Authority for consideration of resolving the problems and the Central Authority shall report the result thereof to the Prime Minister.

**CHAPTER 1**  
**PROVIDING ASSISTANCE TO A FOREIGN STATE**

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**PART 1**  
**Requests**

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**Article 5** A request from a foreign state for assistance of Thailand under the Act on Mutual Assistance in Criminal Matters B.E. 2537 (1994) shall contain, at a minimum, the following details:

- (1) the name of the authorities of the Requesting State which seeks assistance;
- (2) the matter of the request, including details and other information which may be useful for the execution of the request;
- (3) the purpose of and necessity for seeking assistance;
- (4) such other details as required for each category of the requests as specified in Article 6 to Article 13 of this Regulation, as the case may be.

If there is no mutual assistance treaty between Thailand and the Requesting State, the Requesting State shall commit to provide assistance to Thailand in similar manner when so requested.

The request together with supporting documents, if made in a language other than Thai or English, shall be accompanied by the authenticated Thai or English translation.

**Article 6** A request for assistance in conducting an inquiry or taking evidence shall specify the name and habitation of the witness or the person who has in possession the articles or documents required for use as evidence, together with a list of questions for interrogation sought. In case of a request for taking evidence in Thai Court, a copy of the indictment shall also be attached.

**Article 7** A request for assistance in the production and provision of documents or information in the possession of the state agency shall describe such documents or information and the name of the agency having them in possession, including the purpose for which the said documents or information will be used.

**Article 8** A request for assistance in serving legal documents shall be accompanied by such documents and shall clearly stipulate the name and habitation of the person upon whom the documents will be served.

**Article 9** A request for assistance in searching and seizing an article shall describe facts or evidence for issuing a search warrant for, conducting the search of, or carrying out the seizure of the article, and the identity and location of the article or the habitation of the person having it in possession in details sufficient for being acted upon, including the purpose for which the said article will be used.



**Article 10** A request for assistance in transferring a person kept in custody for testimonial purposes shall be made in the following manner :

(1) A request for transferring of a person kept in custody in Thailand to testify as a witness in the Requesting State shall specify the name of such person, place of custody, the facts of the case presently on trial in the Requesting State and the issues for his testimony, including his rights and duties under the laws, the treaties, or commitments of the Requesting State towards Thailand;

(2) A request for transferring a person kept in custody in the Requesting State to testify as a witness in Thailand shall specify the name of such person and be accompanied by the documents evidencing his consent for giving testimony as a witness in Thailand, including the facts related to the remaining period of custody, the case presently on trial in Thailand and a list of questions which the public prosecutor in charge of the testimony is to examine.

**Article 11** A request for assistance in locating a person shall state the name, identity and residence or the place which is reasonably believed to be the habitation of such person, including the connection between him and the investigation, inquiry, prosecution or any other proceedings relating to criminal matters in the Requesting State.

**Article 12** A request for assistance in initiating criminal proceedings shall indicate evidence that the Requesting State is competent to initiate criminal proceedings with respect to the case in its territory but wishes to initiate such case which is subject to the jurisdiction of Thai Court in Thailand, and describe evidence with information sufficient for being acted upon, including the name, identity, and habitation of the alleged offender against whom the criminal proceedings in Thailand will be initiated, as far as possible.

**Article 13** A request for assistance in forfeiting or seizing property shall provide the description of the property and its location or the habitation of the person having it in possession, in detail sufficient for being acted upon.

In case of the request for forfeiting the property, it shall be accompanied by the original or the authenticated copy of the final judgment of the Court of the Requesting State forfeiting such property. In case of the request for seizing the property, it shall be accompanied by the original or authenticated copy of the order of the Court of the Requesting State seizing such property before the Court makes a judgment or a final judgment of its forfeiture.

**PART 2**  
**Execution of the Request**

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**Article 14** Authentication of the documents obtained from the inquiry or the taking of testimony under Section 16 and authentication of the documents produced or provided in response to a request for assistance from a foreign state under Section 20 shall be made in writing, conforming to the Certificate of Authentication of Document or Form CD. 1 attached to this Regulation, and shall be accompanied by an authenticated translation in English; however, if the document to be provided to the Requesting State is a copy one, then, the official in charge of keeping such document shall attest each page of such document in English, sign his name and state his position.

**Article 15** Report of the result of the service of legal documents under Section 21 shall be made in writing, conforming to the "Report on the Service of Legal Documents" or "Form SD. 1 " attached to this Regulation, and shall be accompanied by an authenticated translation in English.

**Article 16** Certificate of the continuity of custody of the articles, the description of their identity and the integrity of their condition under Section 25 shall be made in writing, conforming to the "Certificate of Custody, Identity, Description and Integrity of the Condition of the Articles" or "Form IA. 1" attached to this Regulation, and shall be accompanied by an authenticated translation in English.

**CHAPTER 2**  
**SEEKING FOR ASSISTANCE FROM A FOREIGN STATE**

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**Article 17** A request for assistance from a foreign state shall contain, at a minimum, the following details :

(1) the name of the agency seeking assistance from a foreign state;

(2) the matters of the request including details and other information which may be useful for the execution of the request;

(3) the purpose and necessity for seeking assistance;

(4) such other details as required for each category of the requests as specified in Article 6 to Article 13 of this Regulation, as the case may be, *mutatis mutandis*.

If there exists no mutual assistance treaty between Thailand and the Requested State, Thailand shall commit to provide assistance to the Requested State in similar manner when so requested.

Such a request together with supporting documents shall be accompanied by the authenticated translation in the language of the Requested State or in English.

Declared on the 19<sup>th</sup> day of January, B.E. 2537 (1994)

(signature)      Ophars Arunin  
(Mr. Ophars Arunin)  
Attorney General

In the capacity of Central Authority

(ครุฑ)  
(Garuda)

ร.อ. ๑  
CD. 1

หนังสือรับรองความถูกต้องแท้จริงของเอกสาร  
Certificate of Authentication of Documents

ข้าพเจ้า ซึ่งได้ลงลายมือชื่อไว้ท้ายหนังสือนี้ ในฐานะเจ้าหน้าที่ผู้มีหน้าที่เก็บรักษาเอกสาร (ระบุ  
I, the undersigned, in my capacity as the keeper of (specify the documents or list  
เอกสารหรือจัดทำบัญชีเอกสารแนบท้าย).....  
the documents in the schedule hereto attached).....  
.....

ขอรับรองว่า เอกสารดังกล่าวข้างต้นที่แนบมาพร้อมกับหนังสือนี้เป็นต้นฉบับ หรือสำเนาที่ถูกต้องแท้จริง  
do hereby certify that the above mentioned documents hereto attached are originals or true  
ตรงกับต้นฉบับหรือคู่ฉบับซึ่งเก็บรักษาไว้ที่.....  
and correct copies of the originals or duplicates kept at  
ประเทศ.....  
Country

ให้ไว้ ณ วันที่..... พ.ศ. ....  
Given on B.E. ....

(ลายมือชื่อ).....  
(Signature)

(พิมพ์ชื่อเต็ม)  
(Full name)  
(ตำแหน่ง)  
(Position)

หมายเหตุ ให้ขีดฆ่าคำหรือข้อความที่ไม่ต้องการออก  
Remarks Delete where inapplicable

บัญชีเอกสารท้ายแบบ รอ. ๑  
Schedule attached to form CD. 1

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....
7. ....
8. ....
9. ....
10. ....

(ลายมือชื่อ).....  
(Signature)

(พิมพ์ชื่อเต็ม)  
(Full name)  
(ตำแหน่ง)  
(Position)

สอ. ๑  
SD. 1

(ครุฑ)  
(Garuda)

หนังสือแจ้งผลการดำเนินการส่งเอกสารทางกฎหมาย  
Report on Service of Legal Documents

ข้าพเจ้า ซึ่งได้ลงลายมือชื่อไว้ท้ายหนังสือนี้ ในฐานะเจ้าหน้าที่ผู้มีอำนาจ ได้จัดส่งเอกสาร  
I, the undersigned, in my capacity as the competent authority, had already served  
(ระบุเอกสารหรือจัดทำบัญชีเอกสารแนบท้าย).....  
(specify the documents or list the documents in the schedule hereto attached)

ตามคำร้องขอของ (ระบุชื่อหน่วยงาน).....  
at the request of (name of agency)  
ประเทศ.....ให้แก่ (ระบุชื่อและที่อยู่ของผู้รับ).....  
Country on (specify the name of the person served and his address)

หมายเลขโทรศัพท์ (ของผู้รับ) .....หมายเลขโทรสาร (ของผู้รับ).....  
Telephone (of the person served) Facsimile (of the person served)  
เมื่อวันที่.....เดือน.....ปี.....แล้ว  
on date month year  
ผลปรากฏว่า (ให้ระบุว่าส่งได้หรือส่งไม่ได้ ในกรณีที่ไม่ได้ให้ระบุเหตุผล).....  
The result is that the service was (accomplished or not accomplished; If not accomplished, please  
specify the reason or cause thereof).

(ลายมือชื่อ).....  
(Signature)

(พิมพ์ชื่อเต็ม)  
(Full name)  
เจ้าหน้าที่ผู้มีอำนาจ  
Competent Authority

(วัน เดือน ปี)  
(date, month, year)

บัญชีเอกสารท้ายแบบ สอ. ๑  
Schedule attached to form SD. 1

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(พิมพ์ชื่อเต็ม)  
(Full name)  
เจ้าหน้าที่ผู้มีอำนาจ  
Competent Authority



(ครุฑ)  
(Garuda)

วิส. ๑  
IA. 1

หนังสือรับรองการเก็บรักษา รูปพรรณ ลักษณะ และความบริบูรณ์แห่งสภาพของสิ่งของ  
**Certificate of Custody, Identity, Description and  
Integrity of the Condition of the Articles**

ข้าพเจ้า ซึ่งได้ลงลายมือชื่อไว้ท้ายหนังสือนี้ ในฐานะเจ้าหน้าที่ผู้มีอำนาจ ขอรับรองว่า ข้าพเจ้า  
I, the undersigned, in my capacity as the competent authority, do hereby certify that I  
ได้ดำเนินการให้มีการค้นและยึดสิ่งของตามคำร้องขอของ

had exercised the power to conduct the search and seizure of articles at the request of  
(ระบุชื่อหน่วยงาน).....ประเทศ.....  
(name of agency) Country

และได้เก็บรักษาสิ่งของนั้นไว้ ซึ่งมีรูปพรรณ ลักษณะ และความบริบูรณ์แห่งสภาพของสิ่งของ ตามบันทึก  
รายละเอียดแห่งการค้นและบัญชีรายละเอียดสิ่งของที่ค้นได้ที่แนบมาพร้อมกับหนังสือนี้  
and have custody of the articles which have the identity, description and integrity of the condition  
in accordance with the note of the particulars of the search and the detailed inventory of the  
articles found in the course of the search hereto attached.

ข้าพเจ้าขอส่งมอบสิ่งของดังกล่าวข้างต้นให้แก่ผู้ประสานงานกลางพร้อมกับหนังสือนี้ ตามมาตรา  
๒๕ ในสภาพเช่นเดียวกับที่ข้าพเจ้าได้รับมาจากการค้นและยึด หรือในสภาพที่เปลี่ยนแปลงไปในช่วงที่  
สิ่งของอยู่ในความครอบครองของข้าพเจ้า โดยมีรายละเอียดการเปลี่ยนแปลงสภาพตามบันทึกคำชี้แจงแนบท้าย

I do hereby relinquish the above mentioned articles together with this certificate to the  
Central Authority in accordance with section 25 in the same condition as when I received them  
or in the different condition which was changed while in my custody as described in details in  
the Note hereto attached.

ให้ไว้ ณ วันที่.....พ.ศ. ....  
Given on B.E.

(ลายมือชื่อ).....  
(Signature)

(พิมพ์ชื่อเต็ม)  
(Full name)  
เจ้าหน้าที่ผู้มีอำนาจ  
Competent Authority

บันทึกคำชี้แจงเกี่ยวกับการเปลี่ยนสภาพ  
ของสิ่งของที่ยึดได้ท้ายแบบ รส. ๑  
Note on the change in condition of the articles seized  
as attached to form IA. 1

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(ลายมือชื่อ) .....  
(Signature)

(พิมพ์ชื่อเต็ม)  
(Full name)  
เจ้าหน้าที่ผู้มีอำนาจ  
Competent Authority

## **EXTRADITION**



**EXTRADITION ACT**

**B.E. 2551 (2008)\***

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**BHUMIBOL ADULYADEJ, REX.**

**Given on the 30<sup>th</sup> Day of January B.E. 2551 (2008)**

**Being the 63<sup>rd</sup> Year of the Present Reign**

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His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that

Whereas it is appropriate to revise the law on extradition;

This Act contains certain provisions in relation to restricting individual rights and liberty that Section 29, Section 32, Section 33 and Section 34 of the Constitution of the Kingdom of Thailand so permit by virtue of law,

His Majesty the King is, therefore, graciously pleased to direct that an Act be enacted by and with the advice and consent of the National Legislative Assembly as follows:

**Section 1** This Act shall be called "Extradition Act, B.E. 2551 (2008)".

**Section 2** This Act shall enter into force after the period of 180 days as from the date of its publication in the Royal Gazette has elapsed.

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\* Unofficial Translation

**Section 3** The Extradition Act, B.E. 2472 (1929) shall be repealed.

**Section 4** This Act shall be enforced upon the extradition that is not contradictory to or consistent with provisions of the treaty respecting extradition between the Government of Thailand and Foreign Country or international organization.

**Section 5** In this Act:

“Requesting State” means country, territory or international organization that requests extradition from Thailand;

“Requested State” means country, territory or international organization that Thailand requests extradition from.

“Central Authority” means the Attorney General or the person designated by the Attorney General having power and duty to coordinate the extradition for the Requesting State and the request for extradition to Thailand including other concerned activities.

“Competent Authority” means public prosecutor, corrections official, administrative or police official or other official having power and duty in the execution of extradition of each own part as notified by the Central Authority.

**Section 6** The Minister of Foreign Affairs and the Minister of Justice shall take charge of the execution under this Act and be empowered to issue the Ministerial Regulation for implementing this Act in accordance with the part of power and duty of each Ministry.

Such Ministerial Regulation upon publishing in the Royal Gazette shall come into force.

## **Chapter 1**

### **General Provisions on Extradition**

**Section 7** An offence to be extraditable must be a criminal one that both the law of the Requesting State and Thailand establish it to be a criminal offence having punishment by death or imprisonment or deprivation of liberty in other forms from one year upward, accordingly, whether it be the offence of the same chapter or designation under the law of both States.

The commission of other offences with punishment by imprisonment or deprivation of liberty in other forms less than one year may be the basis for requesting extradition if it relates to the offence for which the extradition has been granted whether the request has been made at the same time with the initial request or afterward.

**Section 8** The extradition shall commence with the extradition request from the Requesting State.

The extradition request from the Requesting State having an extradition treaty with Thailand shall be transmitted to the Central Authority. Where the Requesting State has no extradition treaty with Thailand, it shall be transmitted through the diplomatic channels.

The extradition request together with documents and evidence shall be in accordance with rules, means and conditions prescribed in the Ministerial Regulation.

The extradition request together with documents and evidence under paragraph 3 to be referred to the Court shall be translated into Thai and also certified to be true.

The Court may, without necessity for the supplement of witness's testimony, admit the extradition request together with documents and evidence under this Section.

**Section 9** The Thai government may consider surrendering a person for prosecution or serving punishment according to the Court's judgment in a criminal case under the Requesting State's jurisdiction to such State pursuant to the request as follows:

(1) Where it is an extraditable offence and not prohibited by the Thai law or not the offence of political character or military offence;

(2) Where there is no extradition treaty between them, when the Requesting State expresses definitely that the extradition will be granted in the same manner upon requested.

The offence of political character in sub-paragraph (1) does not include the followings:

(1) Murdering, inflicting bodily injury or depriving liberty of the King, Queen or Heir Apparent;

(2) Murdering, inflicting bodily injury or depriving liberty of Head of the State, government leader or immediate family members of such person;

(3) Committing of offence not regarded as political offence for the purpose of extradition according to the treaty to which Thailand is a party.



Military offence means specific military criminal offence and not ordinary criminal offence.

**Section 10** Where any person sought for extradition was used to be tried by the Thai Court or the Requesting State's Court for the same conduct as that sought for extradition and the Thai Court or the Requesting State's Court has passed a final decision acquitting such person or convicting such person whose punishment has been served or pardon or amnesty is granted or the statute of limitations is lapsed or there arises any other causes barring the proceedings against such person under the law of the Requesting State, such person shall not be reextradited in respect of such conduct.

**Section 11** Confinement for proceedings or punishment of the extradited person from the Requested State to Thailand in other offence committed prior to executing extradition and surrender of the extradited person from the Requested State to Thailand further to the third State cannot be carried out except for the following matters:

- (1) Such person has traveled out of the Kingdom of Thailand after completion of the extradition process and voluntarily returned to it;
- (2) Such person has not traveled out of the Kingdom of Thailand within 45 days after completion of the extradition process; or
- (3) The Requested State consents.

**Chapter 2**  
**Execution of Extradition Request**

**Part 1**  
**General Provisions**

**Section 12** Execution of extradition request of a Thai national may be carried out in the following matters:

- (1) When it is provided for in the extradition treaty between Thailand and the Requesting State;
- (2) That person consents to the extradition; or
- (3) It is the extradition under the condition of reciprocity that Thailand concludes with the Requesting State.

**Section 13** Where the extradition request is submitted through the diplomatic channels, the Ministry of Foreign Affairs shall consider doing the followings:

- (1) if it is of the opinion that the request will not affect the international relation and there is no other reason not to execute it, the request shall be submitted to the Central Authority for further action;
- (2) if it is of the opinion that the request may affect the international relation or there is other reason that the request may not be executed, the Ministry of Foreign Affairs shall speedily propose such opinion together with the request for consideration of the Cabinet.

Where the Cabinet concurs with such opinion, it shall consider making direction as deemed appropriate. If the Cabinet concurs with execution of the extradition request, the Ministry of Foreign Affairs shall accordingly submit the matter to the Central Authority for further action under this Act.

**Section 14** The Central Authority, upon receiving the extradition request from the Ministry of Foreign Affairs or the Requesting State, shall consider doing as follows:

(1) Where the Central Authority is of the opinion that the request is eligible for execution as stipulated under this Act, the Public Prosecutor shall be notified to petition the Court for issuing the arrest warrant then arrange for delivering the same to the Commissioner-General of the Royal Thai Police or other concerned authorities for further action;

(2) Where the request is not processed in accordance with the procedure or accompanied with improper documents and evidence or executable under certain necessary conditions, the Central Authority shall notify the Requesting State the problem or necessary condition. However, if the execution of the extradition request will affect the prosecution of any other cases or criminal proceedings against such person in Thailand, the Central Authority may defer carrying out or carry out the extradition request by imposing necessary conditions. The Requesting State shall accordingly be notified without delay.

(3) Where the request is not transmitted through the diplomatic channels, the Central Authority shall notify the same to the Ministry of Foreign Affairs for giving opinion before taking further action. The provision of Section 13 (2) shall accordingly be applied *mutatis mutandis*.

(4) Where the Central Authority is of the opinion that the request may affect the international relation or there exists any other reasons that it should not be executed or is not eligible for execution under this Act, the Requesting State or the Ministry of Foreign Affairs shall be so notified for further action as the case may be.

**Section 15** Where there is an urgent necessity, the Requesting State may make a request for provisional arrest and detention of the person sought. Such a request of the Requesting State having an extradition treaty with Thailand shall be transmitted to the Central Authority. Where the Requesting State has no extradition treaty with Thailand, it shall be transmitted through the diplomatic channels.

The request in paragraph 1 shall be in accordance with the regulation stipulated by the Central Authority.

The provision of Section 14 shall be applied *mutatis mutandis* to consideration for the above execution.

**Section 16** Upon arresting the person sought for extradition under the provision of Section 15, they shall, without delay, be brought to the Public Prosecutor for filing a petition with the Court to order detaining the person sought while awaiting a formal extradition request together with accompanying documents and evidence from the Requesting State.

Where the Court does not receive the accusation for the extradition proceedings within 60 days as from the day the person sought was arrested or within the time fixed by the Court but not exceeding 90 days as from the day such person was arrested, they shall be released.

Where the person sought is released under paragraph 2 due to the Requesting State not transmitting the formal extradition request together with necessary documents and evidence under Section 8 or any other reasons, the request for provisional arrest under Section 15 shall be repealed and the Requesting State cannot make a request to rearrest the person sought on the same grounds. However, the refusal or repeal of such request for provisional arrest does not result in forbidding the Requesting State from normally requesting extradition of the person sought.

**Section 17** Where it is deemed appropriate, the Ministry of Foreign Affairs may propose facts and opinion respecting international cooperation or relation to the Central Authority for supplementing consideration. The same, accordingly, shall also include consideration at the appellate stage.

## **Part 2**

### **Extradition Proceedings**

**Section 18** Subject to Section 27, the Public Prosecutor, upon arresting the person sought for extradition, shall bring an action to the Court without delay.

The Court shall conduct the hearing continuously except it deems appropriate to defer the same as requested by the Public Prosecutor or the person sought for extradition. The Court shall accordingly order detaining such person pending the hearing.

The Criminal Procedure Code shall, *mutatis mutandis*, be applied to confinement of the person sought and conduct of the extradition proceedings not otherwise provided by this Act. Where there is a petition for a provisional release, the Court shall inquire whether the Public Prosecutor has any objection whatever. The Court, in case of having objection from the Public Prosecutor, should admit it for supplementing consideration.

The Court, prior to commence the hearing, shall inquire whether the person sought has a lawyer. Where such person has none and requires one, the Court shall appoint one for them and the Criminal Procedure Code shall be applied *mutatis mutandis*.

**Section 19** The Court, on considering the evidence, is of the view that there exists the following matters, it shall order detaining such person for further surrender:

(1) The arrested person is the one whose extradition is sought and not a Thai national or a Thai national but extraditable under the rule in Section 12;

(2) The case is prima facie for accepting the accusation for consideration if such offense is committed inside the Kingdom or regarded by the law to be committed inside the Kingdom; and

(3) The offence sought for extradition is extraditable under this Act and not the one of political character or specifically military offence.

Where the Court considers that the evidence in paragraph 1 is not sufficient, it shall make an order of release and proceed with the release of such person at the end of 72 – hour time period from the reading of such order except that within such time period the Public Prosecutor notifies the intention to appeal, such person shall be detained pending the appeal, which shall be lodged within 30-day period from the day the Court reading the order of release. If the provisional release petition is lodged at the stage of appeal, the provision of Section 18 paragraph 3 shall be applied *mutatis mutandis*.

**Section 20** The person against whom the Court makes an order of detention under Section 19 paragraph 1 shall be prohibited from surrender before completion of 30-day period as from the day the Court making the final order of detention for surrender.

The Public Prosecutor, when there is a reasonable cause to defer surrendering the person against whom the court orders detention for surrender, shall submit a petition to the Court for considering making an order for further detaining such person according to the time period as necessary. Such petition shall be submitted before the completion of the 90-day period as from the day the Court making the final order of detention for surrender.

Where such person is not surrendered within 90 days as from the day the Court making the final order or within the time period the Court permitting extension according to the petition of the Public Prosecutor under paragraph 2, they shall be released.

### **Part 3**

#### **Appeal**

**Section 21** After the First Instance Court has made an order releasing or detaining a person for surrender, the Public Prosecutor or the said person may lodge an appeal against the order to the Appeal Court within the time period of 30 days as from the day the Court reading such order.

The Appeal Court, in considering the appeal, shall determine the objection particularly on the cause requiring the Court to make the order as stipulated in Section 19 by considering whether the First Instance Court has made the order based on sufficient evidence.

The Appeal Court's decision shall be final.



### **Chapter 3**

#### **Surrendering Process**

**Section 22** After the Court has made the final order detaining the person sought for extradition and the Thai government has considered extraditing such person, the surrender of such person to the Requesting State shall be completed within 90 days as from the day the Court making the final order or within the time period the Court permitting the extension according to the Public Prosecutor's petition. In this respect, details as to the day, time, place and means of surrendering such person shall be as stipulated in the Ministerial Regulation.

**Section 23** Where the Requesting State does not undertake to remove the person sought for extradition within the time period under Section 22 without reasonable cause, if it afterwards seeks the extradition of such person for the same offence, the extradition shall be refused.

The provision of Section 25 shall not be applicable to the refusal of extradition under paragraph 1.

**Section 24** Where the person against whom the Court has made the final order of detention for extradition is being prosecuted or serving punishment according to the judgment in Thailand for other offence aside from the offence sought for extradition, the Thai government may take one of the following actions:

- (1) Surrendering such person to the Requesting State;
- (2) Deferring to surrender such person until completing the proceedings or until such person has served the punishment according to the judgment in whole or in part;
- (3) Surrendering provisionally such person to the Requesting State for prosecution according to conditions agreed with the Requesting State and after such person has been surrendered to Thailand, they may be surrendered to the Requesting State once again for serving punishment according to the judgment.

**Section 25** Where there is no extradition to the Requesting State, the Central Authority shall consider notifying the competent authority for further taking criminal action against the person sought for extradition according to the Thai law.

**Section 26** Except the Cabinet otherwise determines, the Central Authority, in case of receiving the extradition request of the same person regardless of the same or different offence, shall consider that extradition of such person should be granted to which Requesting State and under what condition or to such Requesting States before one or after another. The following matters accordingly shall be brought for comparing consideration to supplement exercising discretion:

- (1) The Requesting State has or does not have extradition treaty with Thailand;
- (2) The place of incident;

(3) The gravity of offence having impact on the Requesting State and scale of punishment;

(4) Sequence of request receiving from the Requesting State;

(5) Nationality of the offender;

(6) Interests and readiness of the proceedings;

(7) Other reasons on international relations according to the opinion of the Ministry of Foreign Affairs.

The Requesting State, after the Central Authority has exercised the discretion in whatever manners, shall be notified and steps as stipulated in this Act shall be proceeded.

**Section 27** After the person sought for extradition has been arrested, whether there be a request under this Act, the arresting competent authority shall inquire such person whether to consent to the extradition.

Where the person sought according to paragraph 1 expresses such consent, it shall be prepared in writing according to the form stipulated by the Central Authority. The Public Prosecutor shall then arrange for such person to be brought to the Court by filing a petition for examining such consent promptly. Where the Court is of the opinion that such person has given consent voluntarily, it shall make an order detaining such person for extradition according to Section 22.

Consent given before the Court may not be revoked.

In the examination of the Court, if the person sought revokes his word expressed before the competent authority, it shall make an order detaining such person for carrying out the extradition proceedings further as provided in Chapter 2, Section 2.

**Section 28** Where the extradition proceedings is pending hearing in any Court whatever if the person sought for extradition expresses to the Court the consent to surrender, it shall suspend the hearing and make the order detaining such person for surrender according to Section 22.

Consent given before the Court may not be revoked.

#### **Chapter 4**

##### **Case of Thailand Request for Extradition**

**Section 29** Where Thailand requests extradition on the offence punishable with death according to the Thai law but not up to the punishment of death according to the law of the Requested State and it is of necessity for the Government to give assurances of non-execution, negotiation for the settlement on giving such assurances shall consequently be carried out. In this respect, the Government, if the Court gives a death sentence, shall proceed in accordance with the provision of law for the requirement of execution according to the judgment by means of life imprisonment in lieu of death. The reduction of such person's punishment shall not be granted in whatever grounds except for the pardon.

**Section 30** The Public Prosecutor or the agency requiring extradition shall submit to the Central Authority the request for extradition from the Requested State to Thailand.

Where the Central Authority determines that it is appropriate for the extradition request be made to the Requested State, the matter shall be transmitted to the Public Prosecutor for further making the extradition request and accompanying documents.

The extradition request according to paragraph 1 and accompanying documents shall be in accordance with the regulation as stipulated by the Central Authority.

The determination of the Central Authority in relation to the extradition request shall be held final except the Cabinet passes resolution otherwise.

The Central Authority shall request the extradition from the Requested State having no extradition treaty with Thailand through the diplomatic channels.

The Central Authority shall request the extradition from the Requested State having extradition treaty with Thailand in accordance with the treaty.

**Section 31** The Public Prosecutor, in carrying out the duty according to Section 30, shall have power to search for facts and collect evidence, take statement of persons, make an order summoning any person to give statement to them and carry out other matters as deemed appropriate. Notification may also be made to

competent authorities or other State official to carry out any matters for the benefit of extradition.

The order according to paragraph 1 shall be deemed a lawful requisition of the Public Prosecutor under the Penal Code.

## **Chapter 5**

### **Expenses of Extradition Proceedings**

**Section 32** All expenses concerning the extradition to the Requesting State or the request for extradition to Thailand shall be in accordance with the rules, means and conditions as stipulated in the Ministerial Regulation.

### **Transitory Provisions**

**Section 33** All cases of extradition the Public Prosecutor has filed with the Court before or after the entering into force of this Act shall be proceeded according to the Extradition Act, B.E. 2472 (1929) until completion of the process.

**Section 34** Where the Ministerial Regulation, rule or regulation under this Act has not yet been published or entered into force and in case it is necessary to carry out any matters of extradition, the procedure and provision of the Extradition Act,

B.E. 2472 (1929) and the extradition treaty between Thailand and the Requesting State shall be applied.

Counter-signature

General Surayud Chulanont

Prime Minister

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**Remarks** : The reason for enforcing this Act is due to the long enforcement of Extradition Act, B.E. 2472 (1929) which is unsuitable to the present situation and unable to solving several practical problems resulting in the extradition cannot be carried out effectively coupled with at present the rules and means of operation have developed greatly making it reasonable for improving the said Act properly and effectively, it is thus essential to enact this Act.

**MINISTERIAL REGULATION**  
**on Requirements of the Request, Surrendering Process,**  
**and Expenses of Extradition Proceedings B.E. 2553 (2010)**

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By virtue of the provisions of Section 6, Section 8 paragraph 3, Section 22, and Section 32 of Extradition Act B.E. 2551 (2008), of which comprise provisions concerning restrictions of rights and liberties of person, which shall be exercised by the provision of law in accordance with Section 29 in conjunction with Section 32, Section 33, and Section 34 of the Constitution of the Kingdom of Thailand, the Minister of Foreign Affairs and Minister of Justice have issued Ministerial Regulation as follows:

**CHAPTER 1**  
**THE EXTRADITION REQUEST**

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**Article 1** The extradition request of the Requesting State which has an extradition treaty with Thailand shall be submitted to the Central Authority or through diplomatic channel as stipulated in the treaty. In case where the Requesting State does not have an extradition treaty with Thailand, such request shall be submitted through diplomatic channel.



**Article 2** The extradition request shall be made in writing with the following details, documents, and evidence:

(1) Details as to the person sought for extradition including name, physical identity, nationality, and address of such person or the place in which it is reasonably believed that such person resides in the Kingdom;

(2) Facts relating to the case, and details as to the date, time, and place that the crime is committed;

(3) The law which criminalizes such conduct, the offence, the rate of penalty, and the periods of prescription.

**Article 3** As for the extradition request made for the requested person to stand trial in the Requesting State, apart from the documents and evidence required in Article 2, such request shall also contain the following documents and evidence:

(1) Arrest warrant issued by the court or the competent authority of the Requesting State, or a verified copy of such arrest warrant;

(2) Evidence showing that there is a *prima facie* case to a sufficient degree that the court would accept the charge if such offence were committed in the Kingdom, or it is deemed by law that such offence were committed in the Kingdom.

**Article 4** As for the extradition request made for the convicted person, apart from the documents and evidence required in Article 2, such request shall also contain the following documents and evidence:

- (1) A certified copy of judgment in the Requesting State;
- (2) A statement showing how long the person sought for extradition must continue to serve a sentence.

**Article 5** The request and all documents submitted by the Requesting State must be authenticated by the competent authority of the Requesting State, with its certified Thai translation of such.

**Article 6** In case where the Requesting State does not have an extradition treaty with Thailand, the Requesting State must explicitly show that extradition will be granted to Thailand in the same manner when requested by Thailand.

## **CHAPTER 2**

### **THE SURRENDER OF THE PERSON SOUGHT FOR EXTRADITION**

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**Article 7** Upon the Court making final order to detain the person sought for extradition;

- (1) In case where the request is submitted to the Central Authority, the Central Authority shall coordinate with a competent authority of the Requesting State in order to complete the removal of the person sought for extradition within ninety days from the date the Court issues final order or within the time period the Court grants an extension according to the petition of the Public Prosecutor, and shall notify the Royal Thai Police to surrender the person sought for extradition to the Requesting State.

(2) In case where the request is submitted through the diplomatic channel, the Central Authority shall issue a notification to the Ministry of Foreign Affairs in order to notify the Requesting State to complete the removal of the person sought for extradition within ninety days from the date the Court issues final order or within the time period the Court grants an extension according to the petition of the Public Prosecutor, and shall notify the Royal Thai Police to surrender the person sought for extradition to the Requesting State.

In case where the Ministry of Foreign Affairs has the opinion that the request may affect the international relations or there is another reason that the request may not be executed, the Ministry of Foreign Affairs shall expeditiously propose such opinion together with the extradition request for the Cabinet to consider the matter.

**Article 8** Upon the receipt of a notification from the Central Authority, the Royal Thai Police shall proceed as follows:

(1) Check with the Department of Corrections as to whether the person sought for extradition is under custody in any other criminal case due to other charges and undertake to remove the person sought for extradition, provided that such undertaking to remove the person sought shall be executed during the period of sunrise and sunset;

(2) Verify identity of the person sought for extradition;

(3) Arrange vehicle to transport the person sought for extradition from correctional institution to temporary place of custody

prior to a surrender of such person to a competent authority of the Requesting State, and from temporary place of custody to airport, port or border close to Thailand, as well as provide control and protection escort to such person during the transportation;

(4) Arrange temporary place of custody for the person sought for extradition while awaiting transportation of such person out of the Kingdom;

(5) Comply with relevant immigration laws regarding the removal of the person sought for extradition out of the Kingdom;

(6) Arrange the extradition document to be made in writing and signed by representatives from the Royal Thai Police and the competent authority of the Requesting State;

(7) Surrender the person sought for extradition to the competent authority of the Requesting State; and

(8) Undertake other matters as deemed appropriate and necessary for the benefit of the surrender of the person sought for extradition to the competent authority of the Requesting State.

**Article 9** The surrender of the person sought for extradition is completed when the competent authority of the Requesting State undertakes to remove such person.

Upon the completion of the surrender of the person sought for extradition, the Royal Thai Police shall notify the Central Authority as to the result.

**CHAPTER 3**  
**EXPENSES OF EXTRADITION PROCEEDINGS**

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**Article 10** All expenses related to the extradition granted to the Requesting State or the request for extradition to Thailand shall be managed as follows:

(1) In case where there is an extradition treaty between Thailand and the Requesting State, or between Thailand and the Requested State, and the treaty stipulates a provision on costs, such provision shall prevail as stipulated in the treaty.

(2) In cases where there is no agreement on costs, the budget shall be disbursed from the government agencies concerning the extradition.

Issued on the 11<sup>th</sup> day of June, B.E. 2553 (2010)

- signature -

(Mr. Kasit Piromya)  
Minister of Foreign Affairs

- signature -

(Mr. Peerapan Saleerattawipak)  
Minister of Justice

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**Remarks:** The reason for enforcing this Ministerial Regulation is due to Section 8 paragraph 3, Section 22, and Section 32 of Extradition Act B.E. 2551 (2008) provide that requirements of the requests, surrendering process, and expenses of extradition proceedings shall be in accordance with the rules, means, and conditions as stipulated in the Ministerial Regulation. It is thus essential to enact this Ministerial Regulation.



**ASEAN TREATY  
ON  
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**





**ASEAN TREATY**  
**ON**  
**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

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The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Socialist Republic of Vietnam (hereinafter referred to singularly as "the Party" and collectively as "the Parties"):

DESIRING to improve the effectiveness of the law enforcement authorities of the Parties in the prevention, investigation and prosecution of offences through cooperation and mutual legal assistance in criminal matters,

HAVE AGREED as follows:

**ARTICLE 1**  
**SCOPE OF ASSISTANCE**

1. The Parties shall, in accordance with this Treaty and subject to their respective domestic laws, render to one another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and resulting proceedings.

2. Mutual assistance to be rendered in accordance with this Treaty may include:

(a) taking of evidence or obtaining voluntary statements from persons;

(b) making arrangements for persons to give evidence or to assist in criminal matters;

(c) effecting service of judicial documents;

(d) executing searches and seizures;

(e) examining objects and sites;

(f) providing original or certified copies of relevant documents, records and items of evidence;

(g) identifying or tracing property derived from the commission of an offence and instrumentalities of crime;

(h) the restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;

(i) the recovery, forfeiture or confiscation of property derived from the commission of an offence;

(j) locating and identifying witnesses and suspects; and

(k) the provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party.

3. This Treaty applies solely to the provision of mutual assistance among the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

4. For the purposes of this Treaty, the expression "instrumentalities of crime" means property used in connection with the commission of an offence or the equivalent value of such property.

## **ARTICLE 2 NON-APPLICATION**

1. This Treaty does not apply to -

(a) the arrest or detention of any person with a view to the extradition of that person;

(b) the enforcement in the Requested Party of criminal judgements imposed in the Requesting Party except to the extent permitted by the law of the Requested Party;

(c) the transfer of persons in custody to serve sentences; and

(d) the transfer of proceedings in criminal matters.

2. Nothing in this Treaty entitles a Party to undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic laws.

## **ARTICLES 3 LIMITATIONS ON ASSISTANCE**

1. The Requested Party shall refuse assistance if, in its opinion -

(a) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;

(b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would have constituted a military offence under the laws of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party;

(c) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;

(d) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person -

(i) has been convicted, acquitted or pardoned by a competent court or other authority in the Requesting or Requested Party; or

(ii) has undergone the punishment provided by the law of that Requesting or Requested Party, in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;

(e) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would not have constituted an offence against the laws of the Requested Party except that the Requested Party may provide assistance in the absence of dual criminality if permitted by its domestic laws;

(f) the provision of the assistance would affect the sovereignty, security, public order, public interest or essential interests of the Requested Party;

(g) the Requesting Party fails to undertake that it will be able to comply with a future request of a similar nature by the Requested Party for assistance in a criminal matter;

(h) the Requesting Party fails to undertake that the item requested for will not be used for a matter other than the criminal matter in respect of which the request was made and the Requested Party has not consented to waive such undertaking;

(i) the Requesting Party fails to undertake to return to the Requested Party, upon its request, any item obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;

(j) the provision of the assistance could prejudice a criminal matter in the Requested Party; or

(k) the provision of the assistance would require steps to be taken that would be contrary to the laws of the Requested Party.

2. The Requested Party may refuse assistance if, in its opinion -

(a) the Requesting Party has, in respect of that request, failed to comply with any material terms of this Treaty or other relevant arrangements;

(b) the provision of the assistance would, or would be likely to prejudice the safety of any person, whether that person is within or outside the territory of the Requested Party; or

(c) the provision of the assistance would impose an excessive burden on the resources of the Requested Party.

3. For the purposes of subparagraph 1 (a), the following offences shall not be held to be offences of a political nature:

(a) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State;

(b) an offence against the life or person of a Head of a central Government, or of a Minister of a central Government;

(c) an offence within the scope of any international convention to which both the Requesting and Requested Parties are parties to and which imposes on the Parties thereto an obligation either to extradite or prosecute a person accused of the commission of that offence; and

(d) any attempt, abetment or conspiracy to commit any of the offences referred to in subparagraphs (a) to (c).

4. The Requested Party may restrict the application of any of the provisions made under paragraph 3 according to whether the Requesting Party has made similar provision in its laws.

5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

6. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing criminal matters in the Requested Party.

7. Before refusing a request or postponing its execution pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions.

8. If the Requesting Party accepts assistance subject to the terms and conditions imposed under paragraph 7, it shall comply with such terms and conditions.

9. If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.

10. The Parties shall, subject to their respective domestic laws, reciprocate any assistance granted in respect of an equivalent offence irrespective of the applicable penalty.

#### **ARTICLE 4**

##### **DESIGNATION OF CENTRAL AUTHORITIES**

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. The designation of the Central Authority shall be made at the time of the deposit of the instrument of ratification, acceptance, approval or accession to this Treaty.

3. Each Party shall expeditiously notify the others of any change in the designation of its Central Authority.

4. The Central Authorities shall communicate directly with one another but may, if they choose, communicate through the diplomatic channel.

#### **ARTICLE 5**

##### **FORM OF REQUESTS**

1. Requests for assistance shall be made in writing or, where possible, by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity. In urgent situations and where permitted by the law of the Requested Party, requests may be made orally, but in such cases the requests shall be confirmed in writing within five days.



2. Central Authorities shall deal with the transmission of all requests and any communication related thereto. In urgent situations and where permitted by the law of the Requested Party, requests and any communication related thereto may be transmitted through the International Criminal Police Organization (INTERPOL) or the Southeast Asian Police Organization (ASEANAPOL).

## **ARTICLE 6**

### **CONTENTS OF REQUESTS**

1. A request for assistance in criminal matters shall contain such information as the Requested Party requires to execute the request, including -

(a) the name of the requesting office and the competent authority conducting the investigation or criminal proceedings to which the request relates;

(b) the purpose of the request and the nature of the assistance sought;

(c) a description of the nature of the criminal matter and its current status, and a statement setting out a summary of the relevant facts and laws;

(d) a description of the offence to which the request relates, including its maximum penalty;

(e) a description of the facts alleged to constitute the offence and a statement or text of the relevant laws;

(f) a description of the essential acts or omissions or matters alleged or sought to be ascertained;

(g) a description of the evidence, information or other assistance sought;

(h) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed;

(i) specification of any time limit within which compliance with the request is desired;

(j) any special requirements for confidentiality and the reasons for it; and

(k) such other information or undertakings as may be required under the domestic laws of the Requested Party or which is otherwise necessary for the proper execution of the request.

2. Requests for assistance may also, to the extent necessary, contain the following information:

(a) the identity, nationality and location of the person or persons who are the subject of the investigation or criminal proceedings;

(b) the identity and location of any person from whom evidence is sought;

(c) the identity and location of a person to be served, that person's relationship to the criminal proceedings, and the manner in which service is to be made;

(d) information on the identity and whereabouts of a person to be located;

(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;

(g) a description of the documents, records or items of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;

(h) a statement as to whether sworn or affirmed evidence or statements are required;

(i) a description of the property, asset or article to which the request relates, including its identity and location; and

(j) any court order relating to the assistance requested and a statement relating to the finality of that order.

3. Requests, supporting documents and other communications made pursuant to this Treaty shall be in the English language and, if necessary, accompanied by a translation into the language of the Requested Party or another language acceptable to the Requested Party.

4. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, the Requested Party may request additional information. The Requesting Party shall supply such additional information as the Requested Party considers necessary to enable the request to be fulfilled.

**ARTICLE 7**  
**EXECUTION OF REQUESTS**

1. Requests for assistance shall be carried out promptly, in the manner provided for by the laws and practices of the Requested Party. Subject to its domestic laws and practices, the Requested Party shall carry out the request in the manner specified by the Requesting Party.

2. The Requested Party shall, if requested to do so and subject to its domestic laws and practices, make all necessary arrangements for the representation of the Requesting Party in the Requested Party in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

3. The Requested Party shall respond as soon as possible to reasonable inquiries by the Requesting Party concerning progress toward execution of the request.

4. The Requested Party may ask the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

## **ARTICLE 8**

### **LIMITATIONS ON USE OF EVIDENCE OBTAINED**

1. The Requesting Party shall not, without the consent of the Requested Party and subject to such terms and conditions as the Requested Party considers necessary, use or disclose or transfer information or evidence provided by the Requested Party for purposes other than those stated in the request.

2. Notwithstanding paragraph 1, in cases where the charge is amended, the information or evidence provided may be used, with the prior consent of the Requested Party, in so far as the offence, as charged, is an offence in respect of which mutual legal assistance could be provided under this Treaty, and which is made out by the facts on which the request was made.

## **ARTICLE 9**

### **PROTECTION OF CONFIDENTIALITY**

1. The Requested Party shall, subject to its domestic laws, take all appropriate measures to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting of such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality requirements, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requesting Party shall, subject to its domestic laws, take all appropriate measures to -

(a) keep confidential information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the purposes described in the request; and

(b) ensure that the information and evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.

#### **ARTICLE 10**

#### **OBTAINING VOLUNTARY STATEMENTS**

Where a request is made to obtain a statement from a person for the purpose of a criminal matter in the Requesting Party, the Requested Party shall endeavor, with the consent of that person, to obtain that statement.

#### **ARTICLE 11**

#### **OBTAINING OF EVIDENCE**

1. The Requested Party shall, subject to its domestic laws, arrange to have evidence, including sworn or affirmed testimony, documents or records taken or obtained from witnesses for the purpose of a criminal matter for transmission to the Requesting Party.

2. Where sworn or affirmed testimony is to be taken under this Article, the parties to the relevant criminal proceedings in the Requesting Party or their legal representatives may, subject to the domestic laws of the Requested Party, appear and question the person giving that evidence.

3. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party for the purpose of executing this Article if it is expedient in the interests of justice to do so.

## **ARTICLE 12**

### **RIGHT TO DECLINE TO GIVE EVIDENCE**

1. A person who is required to give sworn or affirmed testimony or produce documents, records or other evidence under Article 11 of this Treaty in the Requested Party pursuant to a request for assistance may decline to do so where -

(a) the law of the Requested Party permits or requires that person to decline to do so in similar circumstances in proceedings originating in the Requested Party; or

(b) the law of the Requesting Party permits or requires that person to decline to do so in similar circumstances in proceedings originating in the Requesting Party.

2. If the person claims that there is a right to decline to give sworn or affirmed testimony or produce documents, records or other evidence under Article 11 of this Treaty under the law of the Requesting Party, the Requesting Party shall, if so requested, provide a certificate to the Requested Party as to the existence or otherwise of that right.

**ARTICLE 13**  
**PROVISION OF PUBLICLY AVAILABLE DOCUMENTS AND**  
**OTHER RECORDS**

1. The Requested Party shall provide to the Requesting Party copies of publicly available documents or records in the possession of government departments and agencies.

2. The Requested Party may, subject to its domestic laws and practices, provide the Requesting Party with copies of any documents or records in the possession of government departments and agencies that are not publicly available. The Requested Party may in its discretion deny, entirely or in part, a request pursuant to this paragraph.

**ARTICLE 14**  
**ATTENDANCE OF PERSON IN THE REQUESTING PARTY**

1. The Requested Party may, subject to its domestic laws and practices, assist in arranging the attendance of a person in the Requested Party, subject to his consent, in the Requesting Party -



(a) to assist in the investigations in relation to a criminal matter in the Requesting Party; or

(b) to appear in proceedings in relation to a criminal matter in the Requesting Party unless that person is the person charged.

2. The Requested Party shall, if satisfied that satisfactory arrangements for that person's safety will be made by the Requesting Party, invite the person to give or provide evidence or assistance in relation to a criminal matter in the Requesting Party. The person shall be informed of any expenses or allowances payable.

3. The Requested Party shall promptly inform the Requesting Party of the person's response and, if the person consents, take any steps necessary to facilitate the person's attendance in the Requesting Party.

4. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party if it is expedient in the interests of justice to do so.

## **ARTICLE 15**

### **ATTENDANCE OF PERSON IN CUSTODY IN THE REQUESTING PARTY**

1. The Requested Party may, subject to its domestic laws and practices, agree to allow a person in custody in the Requested Party, subject to his consent, to be temporarily transferred to the Requesting Party to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the Requested Party, the Requesting Party shall hold the person in custody and shall return that person in custody to the Requested Party at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released from custody and be treated as a person referred to in Article 14 of this Treaty.

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

5. The period during which such person was under the custody of the Requesting Party shall count towards the period of his imprisonment or detention in the Requested Party.

6. No transfer under this Article shall be effected unless the Requesting Party gives an undertaking -

(a) to bear and be responsible for all the expenses of the transfer of custody;

(b) to keep the person under lawful custody throughout the transfer of his custody; and

(c) to return him into the custody of the Requested Party immediately upon his attendance before the competent authority or court in the Requesting Party is dispensed with.

7. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party if it is expedient in the interests of justice to do so.

**ARTICLE 16**  
**SAFE CONDUCT**

1. Subject to paragraph 2, where a person is present in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty -

(a) that person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party in respect of any acts or omissions or convictions for any offence against the law of the Requesting Party that is alleged to have been committed, or that was committed, before the person's departure from the Requested Party;

(b) that person shall not, without that person's consent, be required to give evidence in any criminal matter in the Requesting Party other than the criminal matter to which the request relates; or

(c) that person shall not be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from the Requested Party.

2. Paragraph 1 shall cease to apply if that person, being free and able to leave, has not left the Requesting Party within a period of 15 consecutive days after that person has been officially told or notified that his presence is no longer required or, having left, has voluntarily returned.

3. A person who attends before a competent authority or court in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not be subject to prosecution based on such testimony except that that person shall be subject to the laws of the Requesting Party in relation to contempt of court and perjury.

4. A person who does not consent to attend in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not by reason only of such refusal or failure to consent be subjected to any penalty or liability or otherwise prejudiced in law notwithstanding anything to the contrary in the request.

## **ARTICLE 17**

### **TRANSIT OF PERSONS IN CUSTODY**

1. The Requested Party may, subject to its domestic laws and practices, authorize the transit through its territory of a person held in custody, by the Requesting Party or a third State, whose personal appearance has been requested by the Requesting Party in a criminal matter.

2. Where the aircraft, vessel or train by which the person is being transported lands or calls or stops in the Requested Party, the custodial or escorting officers of the Requesting Party or, if applicable, the third State that is assisting the Requesting Party to facilitate the transfer shall continue to be responsible for the custody of the person being transported while he is on transit in the Requested Party, unless otherwise agreed by the Requested Party.

3. Without prejudice to paragraph 2 and where the Requested Party agrees, the person being transported may be kept temporarily in the custody of a competent authority of the Requested Party until his transportation is continued.

4. Where a person is being held in custody in the Requested Party on transit and the person's transportation is not continued within a reasonable time, the Requested Party may direct that the person be transported in custody to the State from which the person was first transported.

5. All costs and expenses incurred by the Requested Party in respect of paragraphs 3 and 4 shall be reimbursed by the Requesting Party.

## **ARTICLE 18**

### **SEARCH AND SEIZURE**

1. The Requested Party shall, subject to its domestic laws, execute a request for the search, seizure and delivery of any

documents, records or items to the Requesting Party if there are reasonable grounds for believing that the documents, records or items are relevant to a criminal matter in the Requesting Party.

2. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized documents, records or items which may be delivered to the Requesting Party that are considered necessary by the Requested Party to protect the documents, records or items to be transferred.

3. The Requested Party shall as soon as practicable inform the Requesting Party of the result of any search, the place and circumstances of seizure, and the subsequent custody of the documents, records or items seized.

## **ARTICLE 19**

### **RETURN OF EVIDENCE**

1. The Requesting Party shall at the conclusion of the criminal matter in respect of which the request for assistance was made return to the Requested Party any documents, records or items provided to the Requesting Party pursuant to a request under this Treaty.

2. Notwithstanding paragraph 1, the Requesting Party shall at any time, upon request, temporarily return to the Requested Party any documents, records or items provided to the Requesting Party pursuant to a request under this Treaty if these are needed for a criminal matter in the Requested Party.

## **ARTICLE 20**

### **LOCATION OR IDENTIFICATION OF PERSONS**

The Requested Party shall, subject to its domestic laws, use its best endeavors to ascertain the location or identity of a person specified in the request and who is reasonably believed to be within its territory.

## **ARTICLE 21**

### **SERVICE OF DOCUMENTS**

1. The Requested Party shall, subject to its domestic laws, use its best endeavors to effect service of any document in respect of a criminal matter issued by any court in the Requesting Party.

2. The Requesting Party shall transmit any request for the service of a document which requires a response or appearance in the Requesting Party not later than thirty days before the scheduled response or appearance.

3. The Requested Party shall return a proof of service in the manner mutually agreed by the Parties concerned.

4. For the purposes of paragraph 3, the expression "proof of service" includes information in the form of an affidavit on when and how the document was served and, where possible, a receipt signed by the person on whom it was served and if the serving officer has not been able to cause the document to be served, that fact and the reason for the failure.

**ARTICLE 22**  
**ASSISTANCE IN FORFEITURE PROCEEDINGS**

1. The Requested Party shall, subject to its domestic laws, endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime for which such assistance can be given provided that the Requesting Party provides all information which the Requested Party considers necessary.

2. Where a request is made under paragraph 1, the request shall be accompanied by the original signed order, or a duly authenticated copy of it.

3. A request for assistance under this Article shall be made only in respect of orders and judgements that are made after the coming into force of this Treaty.

4. Subject to the domestic laws of the Requested Party, property forfeited or confiscated pursuant to this Article may accrue to the Requesting Party unless otherwise agreed in each particular case.

5. The Requested Party shall, subject to its domestic laws, pursuant to any agreement with the Requesting Party transfer to the Requesting Party the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the Requested Party in enforcing the forfeiture order.



### **ARTICLE 23**

#### **COMPATIBILITY WITH OTHER ARRANGEMENTS**

Nothing in this Treaty shall prevent the Parties from providing assistance to each other pursuant to other treaties, arrangements or the provisions of their national laws.

### **ARTICLE 24**

#### **CERTIFICATION AND AUTHENTICATION**

1. Each Party shall, upon request, authenticate any documents or other material to be transmitted to the other Party under this Treaty.

2. A document is duly authenticated for the purposes of this Treaty if -

(a) it purports to be signed or certified by a judge, magistrate, or officer in or of the Party transmitting the document duly authorized by the law of that Party; and

(b) either -

(i) it is verified by the oath or affirmation of a witness, or of an officer of the government of that Party; or

(ii) it purports to be sealed with an official or public seal of that Party or of a Minister of State, or of a department or officer of the government, of that Party.

3. Nothing in this Article shall prevent the proof of any matter or the admission in evidence of any document in accordance with the law of the Requesting Party.

4. Subject to the domestic laws of each Party -

(a) a document signed with a digital or electronic signature in accordance with the laws of the Party concerned shall be as legally binding as a document signed with a handwritten signature, an affixed thumb-print or any other mark; and

(b) a digital or electronic signature created in accordance with the laws of the Party concerned shall be deemed to be a legally binding signature.

## **ARTICLE 25**

### **COSTS**

1. The Requested Party shall assume all ordinary expenses of fulfilling the request for assistance except that the Requesting Party shall bear -

(a) the fees of counsel retained at the request of the Requesting Party;

(b) the fees and expenses of expert witnesses;

(c) the costs of translation, interpretation and transcription;

(d) the expenses associated with conveying any person to or from the territory of the Requested Party and the fees, allowances and expenses payable to the person concerned while that

person is in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty; and

(e) the expenses associated with conveying custodial or escorting officers.

2. The cost of establishing live video or television links or other appropriate communications facilities, the costs related to the servicing of live video or television links or other appropriate communications facilities, the remuneration of interpreters provided by the Requested Party and allowances to witnesses and their traveling expenses in the Requested Party shall be refunded by the Requesting Party to the Requested Party, unless the Parties mutually agree otherwise.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the execution of the request is to be effected or continued.

## **ARTICLE 26**

### **CONSULTATION**

1. The Central Authorities of the Parties shall consult, at times mutually agreed upon by them, to promote the most effective use of this Treaty.

2. The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

**ARTICLE 27**  
**AMENDMENT**

1. This Treaty may be modified or amended at any time by mutual written consent of the Parties. Such modification or amendment will enter into force on such date as may be mutually agreed upon by the Parties and will form part of this Treaty.

2. Any modification or amendment will be without prejudice to the rights and obligations arising from or based on this Treaty before or up to the date such modification or amendment enters into force.

**ARTICLE 28**  
**SETTLEMENT OF DISPUTES**

Any difference or dispute between the Parties arising from the interpretation or implementation of the provisions of this Treaty shall be settled amicably through consultation or negotiation between the Parties through diplomatic channels or any other peaceful means for the settlement of disputes as agreed between the Parties.

**ARTICLE 29**  
**RESERVATIONS**

This Treaty shall not be subject to reservations.

**ARTICLE 30**  
**SIGNATURE, RATIFICATION, ACCESSION,**  
**DEPOSIT AND REGISTRATION**

1. This Treaty shall be subject to ratification, acceptance, approval or accession in accordance with the constitutional procedure of the signatory States.

2. Any State may accede to this Treaty upon consensus by the original Parties.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Government of Malaysia which is designated as the Depositary State.

4. The Depositary State shall inform the other States that are Parties to this Treaty on the deposit of instruments of ratification, acceptance, approval or accession.

5. The Depositary State shall register this Treaty pursuant to Article 102 of the Charter of the United Nations.

### **ARTICLE 31**

#### **ENTRY INTO FORCE, APPLICATION AND TERMINATION**

1. This Treaty shall enter into force for each Party ratifying, accepting, approving or acceding to it on the date of the deposit of its instrument of ratification, acceptance, approval or accession.

2. This Treaty shall apply to requests presented after the date of its entry into force for both the Parties concerned whether the relevant acts or omissions constituting the offence occurred before or after that date.

3. Any Party may denounce this Treaty by written notification to the Depositary State. Denunciation shall take effect six months following the date on which notification is received by the Depositary State.

4. Denunciation of this Treaty shall be without prejudice to the rights and obligations arising from or based on this Treaty and to the completion of any requests made pursuant to this Treaty before or up to the date of denunciation.

5. The denunciation of this Treaty shall have effect only as regards the Party that has notified it. The Treaty shall remain in force for the other Parties.

**ARTICLE 32**  
**DEPOSITARY OF TREATY**

The original of this Treaty shall be deposited with the Depository State which shall send certified copies of it to all the Parties.

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

Done at Kuala Lumpur on this 29th day of November 2004 in one original copy in the English language.

FOR THE GOVERNMENT OF  
BRUNEI DARUSSALAM



Dato' Seri Paduka Haji Kifrawi  
Dato' Paduka Haji Kifli  
*Attorney General*

FOR THE GOVERNMENT OF THE  
KINGDOM OF CAMBODIA



Ang Vong Vathana  
*Minister of Justice*

FOR THE GOVERNMENT OF THE  
REPUBLIC OF INDONESIA



Dr. Hamid Awaludin  
*Minister of Law and Human Rights*

FOR THE GOVERNMENT OF THE  
LAO PEOPLE'S DEMOCRATIC  
REPUBLIC



Kham Ouane Boupha  
*Minister of Justice*

FOR THE GOVERNMENT OF  
MALAYSIA



Tan Sri Abdul Gani Patail  
*Attorney General*

FOR THE GOVERNMENT OF THE  
REPUBLIC OF THE PHILIPPINES



Macabangkit Lanto  
*Undersecretary, Department of Justice*

FOR THE GOVERNMENT OF THE  
REPUBLIC OF SINGAPORE



Chan Sek Keong  
*Attorney General*

FOR THE GOVERNMENT OF THE  
SOCIALIST REPUBLIC OF VIETNAM



Le The Tiem  
*Vice Minister of Public Security*

AND FURTHER TO the consensus of the existing signatory States that the Union of Myanmar and the Kingdom of Thailand Should also sign and ratify the Treaty as original Parties, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Signed at Kuala Lumpur on this 17th day of January 2006

FOR THE GOVERNMENT OF THE  
UNION OF MYANMAR



U Myint Aung  
Ambassador of the Union of  
Myanmar to Malaysia

FOR THE GOVERNMENT OF THE  
KINGDOM OF THAILAND



Pachara Yutidhammadamrong  
Attorney General