

TREATY BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the Kingdom of Thailand and the Government of the United States of America,

Desiring to maintain and to strengthen the longstanding bonds which unite the two countries, and to undertake effective mutual assistance in criminal matters,

Have agreed as follows:

ARTICLE 1

Obligation to Assist

1. The Contracting States agree, in accordance with the provisions of this Treaty, to provide mutual assistance in connection with investigations, prosecutions, and other proceedings relating to criminal matters.

2. Assistance shall include but not be limited to:

(a) taking the testimony and statement of persons; (b) providing documents, records, and evidence;

(c) serving documents;

(d) executing requests for searches and seizures;

(e) transferring persons in custody for testimonial purposes;

(f) locating persons;

(g) initiating proceedings upon request; [12] and

(h) assisting in forfeiture proceedings.

3. Assistance shall be provided without regard to whether the acts which are the subject of the investigation, prosecution, or proceeding in the Requesting State are prohibited under the law in the Requested State, or whether the Requested State would have jurisdiction with respect to such acts in corresponding circumstances.

4. This Treaty is intended solely for mutual assistance between the criminal law enforcement authorities of the Contracting States and is not intended or designed to provide such assistance to private parties.

5. A private party may not rely upon any provision of this Treaty to impede the execution of a request, or to exclude or suppress evidence obtained under the Treaty.

6. This Treaty shall not apply to the execution of arrest warrants or to military offenses. For the purposes of this Treaty, military offenses are violations of military laws and regulations which do not constitute offenses under ordinary criminal law.

ARTICLE 2

Limitations on Compliance

1. The Requested State may refuse to execute a request to the extent that:

(a) the request would prejudice the sovereignty, security, or other essential [13] public interests of the Requested State; or

(b) the request relates to a political offense.

2. Before refusing the execution of any request pursuant to this Article, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts the assistance subject to these conditions, it shall comply with the conditions.

3. If the execution of a request would interfere with an ongoing criminal investigation, prosecution or proceeding in the Requested State, execution may be postponed by that State, or made subject to conditions determined to be necessary by the State after consultations with the Requesting State.

4. The Requested State shall promptly inform the Requesting State of the reason for refusing or postponing the execution of a request.

ARTICLE 3

Central Authorities

1. A Central Authority shall be established by each Contracting State.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by him.

3. For the Kingdom of Thailand, the Central Authority shall be the Minister of Interior or a person designated by him.

4. Requests under this Treaty [14] shall be made by the Central Authority of the Requesting State to the Central Authority of the Requested State.

ARTICLE 4

Contents of Requests for Mutual Assistance

1. A request for assistance shall be submitted in writing in the language of the requested State. All accompanying documents shall be translated into the language of the Requested State. Such translations shall be certified by a sworn or approved translator in accordance with the laws or practices of the Requesting State.

2. The request shall include the following:

(a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

(b) the subject matter and nature of the investigation, prosecution, or proceeding;

(c) a description

of the evidence or information sought or the acts of assistance to be performed; and (d) the purpose for which the evidence, information, or other assistance is sought.

3. When appropriate, a request shall also include:

- (a) available information on the identity and whereabouts of a person to be located;
- (b) the identity and location of a person to be served, that person's relationship to the investigation, prosecution, or proceeding, [15] and the manner in which service is to be effected;
- (c) the identity and location of persons from whom evidence is sought;
- (d) a precise description of the place or person to be searched and of the articles to be seized;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be answered;
- (g) a description of any particular procedure to be followed in executing the request;
- (h) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled; and
- (i) any other information which may be brought to the attention of the requested State to facilitate its execution of the request.

ARTICLE 5

Execution of the Request

1. The Central Authority of the Requested State shall promptly comply with the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request, and shall issue subpoenas, search warrants, or other process necessary in the execution of the request.
2. When execution of the request requires judicial or administrative action, [16] the request shall be presented to the appropriate authority by officials of the Requested State at no cost to the Requesting State.
3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it would be incompatible with the laws of the Requested State.

ARTICLE 6

Costs

The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses and the allowances and expenses related to travel of persons pursuant to Articles 12 and 16, which fees, allowances, and expenses shall be borne by the Requesting State.

ARTICLE 7

Limitations on Use

1. Information and evidence obtained under this Treaty, as well as information derived therefrom, shall not be used for purposes other than those stated in the request without the prior consent of the Requested State.
2. The Requesting State may require that the application for assistance, its contents and related documents, and the granting of assistance be kept confidential. If the request cannot be executed without breaching [17] the required confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.
3. The Requested State may require that information or evidence furnished, and information derived therefrom, be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting State shall comply with the conditions, except to the extent that the information or evidence is needed in a public trial resulting from the investigation, prosecution, or proceeding described in the request.

ARTICLE 8

Taking Testimony and Statements and Producing Evidence in the Requested State

1. Upon a request that a person be summoned to give testimony, make a statement, or produce documents, records, or articles in the Requested State, that person shall be compelled to do so in the same manner and to the same extent as in criminal investigations, prosecutions, or proceedings in the Requested State.
2. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the evidence shall nonetheless be taken and the claim made known [18] to the Requesting State for resolution by the authorities of the Requesting State.
3. The Requested State shall furnish information in advance as to the date and place of the taking of the evidence.
4. The Requested State shall authorize the presence of such persons as specified in the request for the taking of testimony or a statement during the execution of the request and allow such persons to question the person whose testimony or statement is sought, insofar as it would not be prohibited by the laws of the Requested State.
5. Business records produced under this Article shall be authenticated by the person in charge of maintaining them through the use of Form A appended to this Treaty. No further certification shall be required. Documents authenticated under this paragraph shall be admitted in evidence as proof of the truth of the matters set forth therein.

ARTICLE 9

Providing Records of Government Offices or Agencies

1. The Requested State shall provide copies of publicly available records of a government office or agency.
2. The Requested State may provide any record or information in the possession of a government office or agency, but not publicly available, to the same [19] extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may

deny the request entirely or in part.

3. Documents provided under this Article shall be attested by the official in charge of maintaining them through the use of Form B appended to this Treaty. No further certification shall be required. Documents attested under this paragraph shall be admitted in evidence as proof of the truth of the matters set forth therein.

ARTICLE 10

Serving Documents

1. The Requested State shall effect service of any legal document transmitted for this purpose by the Requesting State.

2. Any request for the service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.

3. The Requested State shall return as proof of service a dated receipt signed by the person served or a declaration signed by the officer effecting service, specifying the form and date of service.

4. A person, other than a national of the Requesting State, who has been served pursuant to this Article with a legal document calling [20] for his appearance in the Requesting State, shall not be subjected to any civil or criminal forfeiture, or other legal sanction or measure of restraint, because of his failure to comply therewith, even if the document contains a notice of penalty.

ARTICLE 11

Search and Seizure

1. A request for search, seizure, and delivery of any article to the Requesting State shall be executed if it includes the information justifying that action under the laws of the Requested States.

2. Every official of the Requested State who has custody of a seized article shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity of the article, and the integrity of its condition. No further certification shall be required. Such certificate shall be admitted in evidence as proof of the truth of the matters set forth therein.

ARTICLE 12

Transferring Persons in Custody for Testimonial Purposes

1. A person in custody in the Requested State who is needed as a witness in the Requesting State shall be transported to that State if the person and the Requested State consent.

2. A person in custody in the Requesting State whose presence in the Requested State is [21] required for the purpose of confrontation may be transported to the Requested State if the person and the Requested State consent.

3. For the purposes of this Article:

(a) the receiving State shall have the authority and obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

(b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed;

(c) the receiving State shall not require the sending State to initiate extradition proceedings in order to obtain the return of the person transferred; and

(d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

ARTICLE 13

Locating Persons

1. The Requested State shall take all necessary measures to locate persons who are believed to be in that State and who are needed in connection with a criminal investigation, prosecution, or proceeding in the Requesting State.

2. The requested State shall communicate as soon as possible the results of its inquiries to the Requesting State.

ARTICLE 14

Initiating Proceedings [22] Upon Request

1. When one State is competent to initiate proceedings but wishes the proceedings to be carried out by the other State, the Central Authority of the former shall officially notify the Central Authority of the latter of the facts of the case. If the Requested State has jurisdiction in this regard, it shall submit the case to its competent authorities with a view to initiating criminal proceedings. Those authorities shall issue their decision in accordance with the laws of their country.

2. The Requested State shall report on the action taken regarding the notification and transmit, as appropriate, a copy of the decision issued.

ARTICLE 15

Assisting in Forfeiture Proceedings

1. If the Central Authority of one State becomes aware of fruits or instrumentalities of crime located in the other State which may be forfeitable or otherwise subject to seizure under the laws of the other State, it may so inform the Central Authority of that other State. If that other State has jurisdiction in this regard it shall present this information to its competent authorities for a determination whether any action is appropriate. Those authorities shall issue their decision in accordance [23] with the laws of their country, and shall, through their Central Authority, report to the other State on the action taken.

2. The Contracting States may assist each other to the extent permitted by their respective laws and this Treaty, in proceedings relating to the forfeiture of the fruits or instrumentalities of crime.

ARTICLE 16

Appearance in the Requesting State

When the appearance of a person who is in the Requested State is needed in the Requesting State, the Central Authority of the Requested State shall invite the person to appear before the appropriate

authority in the Requesting State, and shall indicate the extent to which the expenses will be paid. The response of the person shall be communicated promptly to the Requesting State.

ARTICLE 17

Safe Conduct

1. No person in the territory of the Requesting State to testify or provide a statement in accordance with the provisions of this Treaty shall be subject to service of process or be detained or subject to any other restriction of personal liberty by reason of any acts which preceded his departure from the Requested State.

2. The safe conduct provided for by this Article shall cease when the person, having had the [24] opportunity to leave the Requesting State within 15 consecutive days after notification that his presence was no longer required by the appropriate authorities, shall have nonetheless stayed in that State or shall have voluntarily returned after having left it.

ARTICLE 18

Returning Documents, Records for Articles

The Requesting State shall return any documents, records, or articles furnished in execution of requests as soon as possible unless the Requested State waives their return.

ARTICLE 19

Compatibility With Other Treaties and National Laws

Assistance and procedures provided for by this Treaty shall not prevent either of the Contracting States from granting assistance through the provisions of other international agreements to which it may be a party or through the provisions of its national laws.

ARTICLE 20

Ratification and Entry Into Force

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force upon the exchange of the instruments of ratification.

ARTICLE 21

Termination

Either Contracting State may terminate this Treaty by means of written notice [25] to the other Contracting State at any time. Termination shall take effect six months following the date of notification.

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

Done at Bangkok, in duplicate, in the Thai and English languages, each text being equally authentic, this

nineteenth day of March in the two thousand five hundred and twenty-ninth year of the Buddhist Era, corresponding to the one thousand nine hundred and eighty-sixth year of the Christian Era.

For the Government of the United States of America:

EDWIN MEESE III,

Attorney General of the United States of America.

For the Government of the Kingdom of Thailand:

SIDDHI SAVETSILA,

Air Chief Marshal, Deputy Prime Minister, and Minister of Foreign Affairs of Thailand.

FORM A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, ___ (Name), attest on penalty of criminal punishment for false statement or attestation that I am employed by ___ (Name of Business from which documents are sought) and that my official title is ___ (Official Title), I further state that each of the records attached hereto is the original or a duplicate of [26] the original of records in the custody of ___ (Name of Business from which Documents are sought)

(A) such records were made at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) such records were kept in the course of a regularly conducted business activity;

(C) the business activity made such records as a regular practice; and

(D) if such record is not the original, such record is a duplicate of the original.

___ (Signature)

___ (Date)

FORM B

ATTESTATION OF AUTHENTICITY OF DOCUMENTS

I, ___ (Name), attest on penalty of criminal punishment for false statement or attestation that my position with the Government of ___ (Country) is ___ (Official Title) and that in that position I am authorized by the law of ___ (Country) to attest that the documents attached and described below are true copies of original official records which are recorded or filed in ___ (Name of Government Office or Agency) which is an office or agency of the Government of ___ (Country)

Description of documents:

___ (Signature)

___ (Title)

___ (Date)

FORM C

I, ___ (Name) certify that I am ___ (Title) employed in [27] the ___ (Name of Government Office or Agency). I received custody of the articles listed below from ___ (Name of Person) on ___ (Date), at ___ (Place).

I relinquished custody of those articles to ___ (Name) on ___ (Date), at ___ (Place) in the same condition as when I received them (or if different as noted below).

Description of articles:

Changes in condition while in my custody:

___ (Signature)

___ (Title)

OFFICIAL SEAL ___ (Place)

___ (Date)