

Mutual Assistance in Criminal Matters Act, B.E. 2535 (1992)

Translation

Section 1

This Act shall be called the "Mutual Assistance in Criminal Matters Act, B.E. 2535 (1992)"

Section 2

This Act shall come into force after ninety days upon its publication in the Government Gazette.

Section 3

All other laws, regulations, rules, decrees, and announcement already provided in or inconsistent to this Act shall be replaced by 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 from whom assistance for the Requesting State is sought;

"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 Authorities" means the official having authority and function to execute the request for assistance from a foreign state as notified by the Central Authority under this Act.

Section 5

The Prime Minister shall be the guardian of this Act and shall have the authority to issue Ministerial Regulations necessary for the implementation of this Act.

Ministerial Regulations shall become effective upon publication in the Government Gazette.

CHAPTER 1

Central Authority

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 for assistance from the Requesting State and transmit it to the Competent Authorities;
- (2) To receive the request seeking assistance presented by the agency of the Royal Thai Government and deliver 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 Authorities in providing assistance to a foreign state for the purpose of expeditious conclusion;

- (5) To issue regulations or announcement for the implementation of this Act:
- (6) To carry out other acts necessary for the success of providing or seeking assistance under this Act.

Section 8

There shall exist a board comprising representatives from the Ministry of Defense, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Justice, the Office of the Attorney General, as well as other distinguished people not more than four persons as its members 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 the providing for 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 otherwise established the process.

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

CHAPTER 2

Providing of and Seeking for Assistance

PART 1

General Provisions

Section 9

The providing of assistance to a foreign state shall be subject to the following conditions:

- (1) Assistance may be provided even there exists no mutual assistance treaty between Thailand and the Requesting State provides that such state commits to assist Thailand under the similar manner when requested;
- (2) The act which is the cause of a request 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 provides, however, that the assistance must be conformed to the provisions of this Act;
- (3) A request may be refused if it shall affect national sovereignty or security, or other crucial public interests of Thailand, or relate to a political offence;
- (4) The providing of 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 that has no such treaty shall submit its request through diplomatic channel.

A request for assistance shall conform to the forms, regulations, means and conditions defined by the Central Authority.

Section 11

Upon receipt a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request is eligible for the providing of assistance

under this Act and has followed the process correctly as well as accompanied by all appropriate supporting documents.

If such request eligible for the providing of assistance, and in line with the process, as well as accompanied by all appropriate supporting documents, the Central Authority shall transmit the said request to the Competent Authorities for further execution.

If such request if not eligible for the providing of assistance, or must be subject to some essential conditions before the assistance is provided, or if it is not in line with the process or has not been accompanied by all appropriate supporting documents required, the Central Authority shall refuse to provide assistance and notify the Requesting State the reasons thereof, or indicate the required conditions, or the causes of impossibility 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 proceeding pending its handling in Thailand, he may postpone the execution of the said request or may execute it under certain conditions set by him and notify the Requesting State about that.

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

Section 12

The Central Authority shall transmit the request for assistance from a foreign state to the following Competent Authorities for execution:

- (1) The request for taking statement of persons, or providing documents, articles, and evidence out of Court, the request for serving documents, the request for searches, the request for seizures documents or articles, and the request for locating persons shall be transmitted to the Director General of the Police Department;
- (2) The request for taking the testimony of persons and witnesses or adducing document and evidence in the Court, as well as the request for forfeiture or seizure of properties shall be transmitted to the Chief Public Prosecutor for Litigation;
- (3) The request for transferring persons in custody for testimonial purposes shall be transmitted to the Director General of the Correctional Department.
- (4) The request for initiating criminal proceedings shall be transmitted to the Director General of the Police Department and the Chief Public Prosecutor for Litigation.

Section 13

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

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

Section 14

When the Competent Authorities finished the execution of a request and have already reported to the Central Authority, the Central Authority shall notify the result thereof as well as deliver all documents and articles concerned to the Requesting State.

PART 2

Inquiry and Producing Evidence

Section 15

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

The Inquiry Official shall have authority to take statement of persons or gathering evidence as requested under paragraph one and, if necessary, to search and seize any document or article in accordance with rules, means, and conditions set forth in the Criminal Procedure Code

When the taking statement of persons or gathering evidence has been finished, the Inquiry Official shall report and deliver all evidence derived there from to the Competent Authorities.

Section 16

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

Section 17

Upon receipt the request for assistance from a foreign state to take the testimony of witness in Thai Court, the Central Authority shall direct the public prosecutor to execute such request.

The Public Prosecutor shall have the power to apply to the Court having jurisdiction over the domicile or residence of the person who will be the witness or who has in possession or keep the documents or other evidence, and request for the testimony or adducing of the evidence, and the Court shall have the power to try the case conforming to the provisions enshrined in the Criminal Procedure Code.

After the completion of testimony, the Public Prosecutor shall apply to the court requesting for the record of testimony as well as other evidence and deliver all to the Central Authority for further operation.

PART 3

Providing of Documents and Information in the Possession of Government Agencies

Section 18

Upon receipt 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 are those should not be published and the agency maintaining such documents or information considers it impossible to disclose or should not disclose the said documents or information, or possible to disclose them under certain conditions, the said agency shall acknowledge the Central Authority the causes of impossibility or the conditions required for the disclosure of such documents or information.

Section 20

In providing of 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 defined by the Central Authority unless otherwise specified by the treaty, and then the provision of the treaty shall prevail.

PART 4
Serving Documents

Section 21

Upon receipt the request for assistance from a foreign state to serve legal documents, the Competent Authorities shall execute such request and report to the Central Authority.

If the legal document to be served under the request is such that requiring the appearance of a person before an authority or the court in the Requesting State, the Competent Authorities shall serve the said document for a reasonable time prior to the scheduled appearance.

The result of service of documents shall be reported in accordance with the forms and means defined by the Central Authority unless otherwise specified in the treaty, then the provision of the treaty shall prevail.

Section 22

The provisions regarding penalty in case of non-compliance with the lawful instruction of the authority or of the Court shall not be applied to the person served with a document calling for his appearance before an authority or the court in the Requesting State, if he is not a national of such state.

PART 5
Search and Seizure

Section 23

Upon receipt the request for assistance from a foreign state to search or seize and deliver any article, the Competent Authorities shall have the power to search or issue a warrant of search and seize in accordance with the law, if there shall be a reasonable ground to do so.

Section 24

As regards the search and seizure under Section 23, the provisions relating to search under the Criminal Procedure Code shall be applied, *mutatis mutandis*.

Section 25

The Competent Authorities conducting search or seizure of article in compliance with the request for assistance shall certify the continuity of custody, identity of the article, as well as integrity of its condition, and shall deliver the said article together with the certificate thereof to the Central Authority.

The certificate thereof shall be in the form and in line with the means defined by the Central Authority.

PART 6
Transferring Persons in Custody for Testimonial Purposes

Section 26

Upon receipt the request for assistance from a foreign state to transfer a person in custody in Thailand to testify in the Requesting State or to transfer a person in custody in the Requesting State to testify in Thailand, the Central Authority, upon determining it

necessary and the person to be transferred consents thereto, shall notify the Competent Authorities to transport or admit the said person.

The transportation and admission of the person under paragraph one shall be in line with the rules, means and conditions set forth in the Ministerial Regulations.

Section 27

The period during which a person is transferred to testify in a foreign state under the custody of the Requesting State shall be deemed as the period he is in custody in Thailand.

Section 28

The Competent Authorities shall have the power to keep the person transported from a foreign state in custody for the purpose of testimony during his presence in Thailand, and shall report to the Central Authority when such testimony has been finished.

Section 29

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

PART 7

Locating Persons

Section 30

Upon receipt the request for assistance from a foreign state to locate the person, required by the Requesting State for the purpose of investigation, inquiry, prosecution or other criminal proceedings, who is believed to be in Thailand, the Competent Authorities shall detect his location and report to the Central Authority.

PART 8

Initiating Proceedings upon Request

Section 31

Upon receipt the request for assistance from a foreign state which is competent to initiate criminal proceeding but wishes the proceeding which is subject to the jurisdiction of Thai Court to be initiated in Thailand, the Central Authority shall consider whether it is appropriate to initiate the proceeding requested, if so shall notify the Competent Authorities under the Criminal Procedure Code to carry out the said proceeding and shall have such Competent Authorities to report the result thereof.

PART 9

Forfeiture or Seizure of Properties

Section 32

Upon receipt the request for assistance from a foreign state to forfeit or seize properties located in Thailand, the Competent Authorities shall apply to the Court having jurisdiction over the location of the properties for passing the judgment forfeiting such properties or for the issuance of an order seizing them.

Under paragraph one, the Competent authorities shall, if it is necessary, conduct an inquiry himself or authorizes any inquiry official to conduct an inquiry on his behalf.

Section 33

The properties specified in the request for assistance from a foreign state may be forfeited by the final judgment of the Court if such properties have been prior adjudicated to be forfeited by the final judgment of a foreign court and they are forfeitable under Thai laws.

If the properties were adjudged to be seized by a foreign court before the Court passed its judgment or after the passing of the judgment to forfeit such properties but the judgment has not become final yet, the Court may deem it appropriate to order the properties to be seized provides that they are sizeable under Thai laws.

The forfeiture or seizure of properties by the judgment or order of the Court under this Section shall be effective even the offence, which is the cause of such forfeiture or seizure, may not have taken place in the territory of Thailand.

Section 34

The provision related to forfeiture of properties set forth in the Criminal Procedure Code and the Penal Code shall be applied to the inquiry, the application of motion, the trial, the adjudication, and the issuance of an order to forfeit or seize of properties in this regard, mutatis mutandis.

Section 35

The properties forfeited by the judgment of the Court under this part shall become the properties of the State, but the Court may pass judgment for such properties to be rendered useless, or to be destroyed.

PART 10

Seeking Assistance

Section 36

The agency seeking assistance from a foreign state shall present its request to the Central Authority.

Section 37

The request to seek assistance from a foreign state including all documents to be sent thereto shall be in line with the forms, rules, means, and conditions defined by the Central Authority.

Section 38

The Central Authority shall consider whether it is appropriate according to regulations, details, facts and supporting documents, to request assistance from a foreign state, and then notify the requesting agency his determination thereof.

A determination of the Central Authority in regard to the request seeking for assistance shall be final unless otherwise instructed by the Prime Minister.

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 the public trial, which is the consequence of the investigation, inquiry, prosecution or other criminal proceeding referred to in the request.

Section 40

No person entering to testify or give statement in Thailand in accordance with this Act 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.

The safeguard in paragraph one shall cease when the person, having had the opportunity to leave Thailand within fifteen consecutive days after notification that his presence was no longer required by the appropriate authorities, shall have nonetheless stayed in or voluntarily returned after having left Thailand.

Section 41

All evidence and documents derived under this Act shall be deemed as admissible for hearing.

CHAPTER 3

Costs

Section 42

All costs related to the providing of assistance to a foreign state and in requesting assistance from a foreign state shall be in line with rules, means and conditions set forth in the Ministerial Regulations.

Ministerial Regulation B.E. 2537 (1994)

Issued under the Mutual Assistance in Criminal Matters Act, B.E. 2535 (1992)

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

CHAPTER 1

Transferring of Persons in Custody in Thailand to Testify in the Requesting State

Article 1

When the Central Authority receives the request from a foreign state to transfer a person in custody in Thailand to testify in the Requesting State:

- (1) If the Central Authority or the Prime Minister has a final determination that the execution of the request is necessary and such request is eligible for the providing of assistance, and in line with the process as well as accompanied by all appropriate and accurate supporting documents required, including that there is no ground to postpone or impede such execution, the Central Authority shall notify such determination and transmit the request and all accompanied documents to the following authorities to inquire for consent of the person in custody,
 - (a) If the person is 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 the person is in custody under supervision of other authorities, the request shall be transmitted to the Director - General of the Department of Corrections for notifying the Heads of those authorities who shall execute the request and after completion, report the consequence thereof to the Director-General of the Department of Corrections.

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

When transmitting the request and related documents according to Article (1), the Central Authority shall clarify all accurate and relevant facts, as well as the rights and duties of the person in custody according to the law, treaty, or commitments made towards Thailand by the Requesting State.

- (2) If the Central Authority or the Prime Minister has the final determination that the execution of the request is unnecessary or the request is not eligible for providing of assistance, or the assistance may be granted subject to some required conditions, or the request does not comply with the regulated process or has not been accompanied by accurate and appropriate supporting documents, or the execution of the request must be postponed or impeded by some causes, the Central authority shall inform the Requesting State of the refusal of assistance with the reason thereof, or the necessary conditions for granting the assistance, or the impediments.

Article 2

In case where the person in custody who voluntarily agreed to be transferred to testify in the Requesting State desires to revoke his 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 Heads of other authorities in charge of his custody, as the case may be, and if such revocation is made towards the Heads of other authorities then such particular Heads shall promptly inform the matters to the Director-General of the Department of Corrections.

If there shall be any cost arising from the process of transferring prior to the revocation of Consent under paragraph one which shall be borne by Thailand or the Competent Authorities, then the person who revokes his consent shall be responsible for that.

Article 3

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

In case where the person in custody consented to be transferred for testimonial purposes but revoked 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 receipt the notification pursuant to Article 3, the Central Authority shall proceed as follows:

- (1) If the person in custody gave no consent or revoked the consent to be transferred, the Central Authority shall notify the Requesting State of the refusal of assistance together with the reasons thereof;
- (2) If the person in custody gave 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 receipt the notification from the Central Authority to transfer a person 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 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 in custody under supervision of other authorities, the Director-General of the Department of Corrections shall notify the Heads of those authorities to transfer such person to the Department of Corrections for further proceeding.

Article 6

During the proceeding under Article 5 conducted by the Director-General of the Department of Corrections or the Heads of other authorities under which the person in custody is supervised, if the 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 receipt the notification from the Requesting State to return the person who was 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 transferred person is in custody under supervision of the other authorities according to Article 5 (2), the Director-General of the Department of Corrections shall transfer that person to those authorities after admitting him from the Requesting State.

Article 8

The Central Authority shall coordinate with the Requesting State, the Director-General of the Department of Corrections, or the Heads of other competent authorities in the arrangement of the transfer, places, travel documents, period of time, officers in charge or any necessary facts for the purpose of transfer or return the transferred person pursuant to Article 5 or Article 7.

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

CHAPTER 2

Admission of Persons in Custody in the Requesting State to Testify in Thailand

Article 9

Upon receipt the request from a foreign state to transfer the person in custody in the Requesting State to testify in Thailand.

- (1) If the Central Authority or the Prime Minister has a final determination that the request is necessary, eligible for the providing of assistance, and in line with the process as well as accompanied by all accurate and appropriate 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 state attorneys to conduct the testimony,
- (2) If the Central Authority or the Prime Minister has the final determination that the request is unnecessary, or not eligible for the providing of assistance, or assistance may be granted subject to some required conditions, or the request does not comply with the regulated procedure, or lack of accurate and appropriate supporting documents, the Central Authority shall inform the Requesting State of the refusal of assistance together with reasons thereof, or necessary conditions for granting the assistance or the impediments.

Article 10

When admitting the transferred 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 the prison or detention center of the Department, however, if the said person is a juvenile, he shall be forwarded to the Juvenile Observation Center pursuant to the Act on Setting up of the Juvenile and Family Court and the Procedure.

In case where there exists special circumstances that the detention under paragraph one is inappropriate, or specifically provided otherwise in the treaty, or the Requesting State requests to agree otherwise, the Central Authority shall notify the Director-General of the Department of Corrections of the matters to detain such person in a more appropriate place.

Article 11

When the transferred person completed his testimony, the state attorney 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 transferred 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 persons in custody in the Requesting State to testify in Thailand and the return of such persons shall be governed by Article 8, *mutatis mutandis*.

CHAPTER 3 Miscellaneous

Article 13

For the purpose to implement this ministerial Regulation, the Director-General of the Department of Corrections or the Heads of other competent authorities shall have authority to regulate the procedure related to the transfer or admission of the persons in custody and all other matters concerning thereto.

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

Article 14

For the purpose of expedition and effectiveness of the transfer or admission of persons 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 the 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.

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 persons in custody testify in a foreign state or Thailand.

Issued on the 8th day of February, B.E. 2537 (1994) by Mr. Chaun Leekpai as Prime Minister

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