

ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

B.E.2535

BHUMIBOL ADULYADEJ, REX.

Given on the 31st Day of March B.E. 2535;

Being the 47th Year of the Present Reign

His Majesty King Bhumibol Adulyadej has the Royal Proclamation to announce that:

Whereas it is expedient to have a law governing the mutual assistance in criminal matters.

Therefore, His Majesty the King Bhumibol Adulyadej has graciously been pleased to enact this Act, with the advice and consent of the National Legislative Assembly acting as the Parliament, as follows:

Section 1 This Act shall be called the “Act on Mutual Assistance in Criminal Matters B.E. 2535”.

Section 2¹ This Act shall come into force when a period of ninety days as from the date following the date of its publication in the Government Gazette has been elapsed.

Section 3 All provisions of laws, rules, regulations and other announcements as provided in this Act or contrary to or inconsistent with this Act shall be superseded by this Act.

Section 4 In this Act:

“Assistance” means assistance in matters relating to investigation, inquiry, prosecution, forfeiture of property and other actions in connection with criminal cases.

“Requesting State” means a country seeking assistance from the Requested State.

“Requested State” means a country having been requested by the Requesting State for assistance.

¹ The Government Gazette, Volume 109 Section 40 Page 27 dated 7th April 1992.

“Central Authority” means a person who has powers and duties of coordination relating to the provision of assistance to a foreign state or seeking assistance from a foreign state under this Act.

“Competent Authority” means a government official who has powers and duties to provide assistance to a foreign state in response to a request for assistance submitted by the Central Authority under this Act.

Section 5² The Prime Minister and the Attorney General shall take charge under this Act and the Prime Minister shall be empowered to issue Ministerial Regulations and the Attorney General shall be empowered to issue regulations or announcements for compliance with this Act, thus, in connection with their respective powers and duties.

Such Ministerial Regulations, regulations or announcements shall be enforced after the publication in the Government Gazette.

SECTION 1 THE CENTRAL AUTHORITY

Section 6 The Attorney General or a person assigned by the Attorney General shall be the Central Authority.

Section 7 The Central Authority shall have powers and duties, as follows:

- (1) Receive a request for assistance from the Requesting State and submit it to the Competent Authority.
- (2) Receive a request for assistance from a Thai government agency and submit it to the Requested State.
- (3) Consider and determine whether such assistance should be provided or sought.
- (4) Follow up and accelerate the operation of the Competent Authority so that such assistance to a foreign state shall be complete promptly.
- (5) Issue regulations or announcements for compliance with this Act.
- (6) Take other actions for accomplishment of the provision of or the seeking for assistance under this Act.

Section 8 A committee shall be established consisting of a representative of the Ministry of Defence, a representative of the Ministry of Foreign Affairs, a representative of the Ministry of Interior, a representative of the Ministry of Justice, a representative of the Office of the Attorney General and no more than four other eminent persons appointed by the Prime Minister as directors and a public prosecutor appointed by the Committee as the Secretary. The Committee shall give its opinions for consideration and adjudication by the Central Authority relating to the provision of assistance to a foreign state or the seeking for assistance from a foreign state which may affect the sovereignty, national security, significant public interest or international relations or in connection with political crimes or military offences.

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

When assistance is sought under Section 10 or Section 36 and whereupon the Central Authority has taken actions under Section 11, the Central Authority shall promptly submit such matter to the Committee for its consideration and giving of opinions, unless the Committee shall have passed its resolution to determine practices otherwise.

In the event that the Committee has its different opinions on a decision made by the Central Authority, the Central Authority shall submit such opinions and decision to the Prime Minister for consideration and commands under Section 11 Paragraph 5 or Section 38 Paragraph 2, as the case may be.

SECTION 2 PROVISION OF AND SEEKING FOR ASSISTANCE

PART 1 GENERAL PROVISIONS

Section 9 The provision of assistance to a foreign state shall be subject to the following criteria:

(1) Thailand may provide assistance to the Requesting State despite having no treaty on mutual assistance in criminal matters with Thailand; however, the Requesting State shall express its intentions to provide similar assistance to Thailand upon request.

(2) An action which is a subject matter of such assistance must be an offence punishable under the Thai laws, except in the event that Thailand and the Requesting State have a treaty on mutual assistance in criminal matters between them and the provisions contained in the treaty have been otherwise specified; provided that such assistance shall be subject to the provisions contained in this Act.

(3) Thailand may refuse to accept a request for assistance, in case such request may affect the sovereignty, national security or other significant public interest of Thailand or in connection with political crimes.

(4) The provision of assistance must not be in connection with military offences.

Section 10 In case, a state party to a treaty on mutual assistance in criminal matters with Thailand wishes to request for assistance as provided in this Section from Thailand, it shall submit its request for assistance to the Central Authority; however, for a non-state party to such treaty with Thailand, it shall submit its request through diplomatic channels.

A request for assistance shall be made in accordance with the forms, criteria, methods and conditions prescribed by the Central Authority.

Section 11 Upon receipt of a request for assistance from a foreign state, the Central Authority shall consider and determine whether such request falls within the criteria for provision of assistance under this Act and has been submitted in accordance with the processes and provided with correct and complete documents and evidences or not.

In case, such request falls within the criteria for provision of assistance under this Act and has been submitted in accordance with the processes and provided with correct and complete documents and evidences, then, the Central Authority shall submit such request to the Competent Authority for further actions.

In case, such request falls outside the criteria for provision of assistance under this Act or assistance may be provided under certain necessary conditions or has not been submitted in accordance with the processes or has not been provided with correct and complete documents and evidences, then, the Central Authority shall notify the Requesting State of its refusal to provide assistance together with reasons thereof or of necessary conditions or extenuating circumstances.

In case, the Central Authority considered that an execution of such request may interfere with an ongoing investigation, inquiry, prosecution or other actions in connection with criminal cases in Thailand, the Central Authority may postpone the execution of such request or may execute such request under necessary conditions and shall notify the Requesting State accordingly.

The Central Authority's decision relating to the provision of assistance shall be final unless otherwise ordered by the Prime Minister.

Section 12³ The Central Authority shall submit a request for assistance from a foreign state to the following Competent Authority for further actions:

(1) A request for questioning of witnesses or providing documents or items of evidences which is an out-of-court action; a request for delivery of documents; a request for searching; a request for locating of people; and a request for freezing or seizure of documents or articles for the purpose of gathering of evidences shall be submitted to the Commissioner General of 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 oral witnesses, documentary evidences or physical evidences which is an action 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 judgments or orders of courts in a foreign state shall be submitted to the Public Prosecutor.

(3) A request for transfer or receipt of transfer of a person under custody for testimonial purposes shall be submitted to the Director General of the Department of Corrections.

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

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

In case, it is deemed expedient, the Central Authority may submit a request for assistance from a foreign state to the government official or the competent authority under other laws for actions relating to the request under Paragraph 1.

Section 13 Upon receipt of a request for assistance from the Central Authority, the Competent Authority shall provide assistance as requested and, upon completion thereof, shall submit a report as well as the related documents and articles to the Central Authority.

In the event that the Competent Authority encountered obstacles or was unable to execute such request, the Competent Authority shall notify the extenuating circumstances to the Central Authority.

Section 14 Whereupon the Competent Authority executed a request for assistance and notified the results thereof to the Central Authority, then, the Central Authority shall notify the Requesting State of the execution results and shall submit the related documents and articles to the Requesting State.

Section 14/1⁴ In case of receiving a request from a foreign state for submission of data relating to the commission of offences or data relating to any property for the purposes of investigation, inquiry, prosecution or judicial proceedings, if the Central Authority considered that such data may be provided under this Act, including cases of necessity, urgency and having reasonable causes, the Central Authority may submit such data in accordance with the criteria, methods and conditions as prescribed by the Central Authority when such foreign state has expressed its intentions to provide similar assistance; provided that the provisions relating to the provision of assistance upon request shall apply mutatis mutandis to the data submitted under this Section.

PART 2

INQUIRY AND THE TAKING OF EVIDENCE

Section 15 Upon receipt of a request for assistance from a foreign state to question witnesses or gathering of evidences in Thailand at the police interrogation stage, the Competent Authority shall notify the inquiry official to execute such request.

The inquiry official shall be empowered to question witnesses or gather evidences as requested under Paragraph 1 and, if necessary, to search and seize any documents or objects, thus, in accordance with the criteria, methods and conditions as provided in the Criminal Procedure Code.

When the inquiry official has finished the questioning of witnesses or gathering of evidences, the inquiry official shall report the results of action or submit the gathered evidences to the Competent Authority for further actions.

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

Section 16 In case, a treaty on mutual assistance in criminal matters between Thailand and the Requesting State requires the authentication of any documents, the Competent Authority shall be empowered to order a person in charge of maintaining documents to authenticate such documents in accordance with the forms and methods prescribed in such treaty or as prescribed by the Central Authority.

Section 17 Upon receipt of a request for assistance from a foreign state to take evidences in a Thai court, the Competent Authority shall notify the Public Prosecutor to execute such request.

The Public Prosecutor shall be empowered 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 those documentary or physical evidence has domicile or address within the jurisdiction of the Court to take such evidences; and the Court shall be empowered to conduct witness testimonial proceedings in accordance with the provisions contained in the Criminal Procedure Code.

Upon the completion of the taking of evidences, the Court shall submit witness statements, including other evidences in the case files to the Public Prosecutor, the petitioner, to be sent to the Competent Authority for further actions.⁵

PART 3

PROVISION OF DOCUMENTS OR INFORMATION IN THE POSSESSION OF GOVERNMENT AGENCIES

Section 18 Upon receipt of a request for assistance from a foreign state to provide documents or information in the possession of the Thai government agencies, the Central Authority shall notify the same to the agency that has possessed such documents or information; and such agency shall submit such documents or notify the information to the Central Authority.

Section 19 In the event that documents or information requested by a foreign state under Section 18 should not be disclosed to the general public and the agency that has possessed such documents or information considered that such documents or information may not be disclosed or should not be disclosed as requested or may be disclosed subject to conditions, such agency shall notify the extenuating circumstances or conditions of disclosure of documents or information to the Central Authority.

Section 20 Regarding the provision of documents as per a request for assistance from a foreign state under the provisions contained in this Part, the official in charge of maintaining those documents shall authenticate such documents in accordance with the forms and methods prescribed by the Central Authority, unless otherwise prescribed in the treaty, in which case the provisions of the treaty shall prevail.

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

PART 4

DELIVERY OF DOCUMENTS

Section 21 Upon receipt of a request for assistance from a foreign state to deliver legal documents, the Competent Authority shall execute such request and notify the result thereof to the Central Authority.

In case, the legal documents requested for delivery are documents requiring an appearance of a person before the official or the Court in the Requesting State, the Competent Authority shall deliver them to the recipient within a reasonable time prior to the scheduled appearance.

The notification of result of delivery of documents shall be in accordance with the forms and methods prescribed by the Central Authority, unless otherwise prescribed in the treaty, in which case the provisions of the treaty shall prevail.

Section 22 The provisions governing statutory punishment in case of non-compliance with statutory orders of the authority or of the Court shall not apply to a person not being a national of the Requesting State who has received the legal documents to appear before the official or the Court in the Requesting State.

PART 5

SEARCHING, FREEZING OR SEIZURE⁶

Section 23⁷ Upon receipt of a request for assistance from a foreign state to search, freeze, seize and deliver articles for the purpose of gathering of evidences, in case, there are grounds to issue a search warrant or an order for freezing or seizure of articles according to the laws, the Competent Authority shall request the Court to issue a search warrant or an order for freezing or seizure of such articles.

Section 24⁸ The provisions contained 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 searching, freezing or seizure under this Part; and such actions may be taken even though the commission of offences causing the searching, freezing or seizure has not occurred in the Kingdom of Thailand.

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

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

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

Section 25⁹ The Competent Authority who has conducted the searching, freezing or seizure of articles in response to the request for assistance shall certify, in writing, of the maintenance of appearance, nature and completeness of such articles and shall deliver the said articles together with such certificates thereof to the Central Authority for further actions.

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

PART 6

TRANSFERRING OF PERSON IN CUSTODY FOR TESTIMONY¹⁰

Section 26¹¹ Upon receipt of a request for assistance from a foreign state to transfer a person in custody in Thailand to testify as witness in court or to assist the authority in the investigation and inquiry in the capacity of witness in the Requesting State or to request for transfer of a person in custody in the Requesting State to provide similar assistance in Thailand, in case, the Central Authority considers and agrees 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 take the said person from the Requesting State into Thailand.

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

Section 27¹² The period, during which a person is transferred to testify as witness in a foreign state and under the custody of the Requesting State, shall be deemed as the period of his/her custody in Thailand.

Section 28¹³ The Competent Authority shall be empowered to keep the person transferred from a foreign state in custody for testimony throughout the period of his/her presence in Thailand. When the person has finished the witness testimony, the Competent Authority shall notify the Central Authority accordingly.

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

¹⁰ Part 6 Transferring of Person in Custody for Testimony as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559.

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

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

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

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

Section 29/1¹⁴ 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 for testimony in the Requesting State, in case, the Central Authority considers that an assistance may be provided, then, the Central Authority shall notify the Competent Authority to facilitate the travelling of such person through Thailand.

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

The Requesting State shall be responsible for custody of the person under Paragraph 1 during his/her travelling through Thailand, unless otherwise agreed by the Requesting State and the Central Authority.

PART 7

LOCATING OF PERSON

Section 30 Upon receipt of a request for assistance from a foreign state to locate a person required by the Requesting State for investigation, inquiry, prosecution or other criminal actions on reasonable grounds to believe that the person is in Thailand, the Competent Authority shall locate that person and shall notify the result thereof to the Central Authority.

PART 8

INITIATING CRIMINAL PROCEEDINGS

Section 31 Upon receipt of a request for assistance from a foreign state which is empowered to initiate any criminal proceedings but desiring to initiate such criminal proceedings in Thailand, and if such case is under the jurisdiction of a Thai court, the Central Authority shall determine whether it is appropriate to initiate the criminal proceedings as requested or not. If so, the Central Authority shall notify the Competent Authority to take actions in accordance with the provisions of the Criminal Procedure Code; and the Competent Authority shall report the result thereof to the Central Authority.

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

PART 9
FREEZING, SEIZURE OR FORFEITURE OF PROPERTY AND
COMPULSORY PAYMENT IN LIEU OF FORFEITURE OF PROPERTY¹⁵

Section 32¹⁶ Upon receipt of a request for assistance from a foreign state to freeze or seize any property as per the order of freezing or seizure of property issued by the Competent Authority of the Requesting State for the purpose of forfeiture of property or demanding any person to make payments in lieu of forfeiture of property; and in case, the court in a 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 was located in its jurisdiction or to the court that the owner of such property has domiciled in its jurisdiction or to the court that such person who may have to make payments 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. In such case, if the Competent Authority may file an application to at least two courts, the Competent Authority may file an application to any of those courts.

The Court shall urgently consider the application under Paragraph 1. In case, the declaration of the Competent Authority or evidence adduced by the Competent Authority or evidence taken by the Court hereunder is satisfactory, 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 demanded to make payments in lieu of forfeiture of property under the Thai laws.

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

(3) There are reasonable causes to believe that such property may be disposed of, concealed or prevented from the forfeiture of property or demand for payments in lieu of forfeiture of property or may cause such property so useless or devalued that such forfeiture of property or demand for payments in lieu of forfeiture of property might be invalid.

In case, the Court has issued its order to dismiss the application, such order shall be final; however, in case, the Court has issued its order to freeze or seize the property, it may be appealed to the court at the appellate stage; and the judgment or order of the Appeal Court shall be final.

¹⁵ 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.

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

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

The fact that the Court has issued its order to cancel the application or has cancelled the order of freezing or seizure issued in accordance with the application shall not deprive the rights of the Competent Authority to submit an application to the Court to issue its order of freezing or seizure of such property, in case, there is new significant evidence which might cause the Court to issue its order of freezing or seizure of such property.

Section 33¹⁷ Upon receipt of a request for assistance from a foreign state to freeze or seize any property as per the order prior to the issuance of the judgment of a court in a foreign state or to forfeit property or to demand any person to make payments in lieu of forfeiture of property as per the judgment or order which has not been final of a court in a foreign state, 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 domiciled in its jurisdiction or to the court that such person who shall be obliged to make payments 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 may file an application to at least two courts, the Competent Authority may file an application to any of those courts.

The Court shall urgently consider the application under Paragraph 1. In case, the declaration of the Competent Authority or evidence adduced by the Competent Authority or evidence taken by the Court hereunder is satisfactory, 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 demanded to make payments in lieu of forfeiture of property under the Thai laws.

(2) A court in a foreign state which has its jurisdiction may consider and adjudge the case and may issue such judgement or order and

(3) There are reasonable causes to believe that such property may be disposed of, concealed or prevented from the enforcement of judgment or orders of a court in a foreign state or may cause such property so useless or devalued that the enforcement of judgment or orders of a court in a foreign state might be invalid.

In case, the Court has issued its order to dismiss the application, such order shall be final; however, in case, the Court has issued its order to freeze or seize the property, it may be appealed to the court at the appellate stage; and the judgment or order of the Appeal Court shall be final.

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

The real owner of property who is subject to the Court's order of freezing or seizure or the person whose property is frozen or seized under Paragraph 2 may promptly file an application so that the Court shall cancel such order. In case, it appears to the Court that such person has not connived at the action which caused the foreign state file the request under Paragraph 1 or has not taken action which is considered as a cause under Paragraph 2, the Court shall cancel such order; and orders of such court shall be final; however, the Court's order to cancel the application of the real owner or the person whose property is frozen or seized shall be appealed to the Appeal Court; and the judgment or order of the Appeal Court shall be final.

The fact that the Court has issued its order to cancel the application or has cancelled the order of freezing or seizure issued in accordance with the application shall not deprive the rights of the Competent Authority to submit an application to the Court to issue its order of freezing or seizure of such property or the property of such person, in case, there is new significant evidence which might cause the Court to issue its order of freezing or seizure of such property or the property of such person.

Section 34¹⁸ Upon receipt of a request for assistance from a foreign state to forfeit the property or to demand any person to make payments in lieu of forfeiture of property as per the final judgment or order of a court in a foreign state, 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 domiciled in its jurisdiction or to the court that such person who shall be obliged to make payments 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 judgment to forfeit such property or to demand such person to make payments in lieu of forfeiture of the property as per the final judgment or order of a court in a foreign state. In such case, if the Competent Authority may file an application to at least two courts, the Competent Authority may file an application to any of those courts.

Regarding the actions 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 receipt of an application, the Court shall issue a summons to the Competent Authority and all related parties to appear in the Court; and when the Court has listened to answers of those people to its satisfaction, the Court shall adjudge to forfeit the property or to demand such person to make payments in lieu of forfeiture of the property as provided in the final judgment or order of such court in a foreign state, as it may think fit.

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

(2) A court in a foreign state which has its jurisdiction may consider and adjudge the case and may issue such judgement or order.

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

In case, it appears that regarding the case proceedings, the court in a foreign state has not given an opportunity to the accused or the alleged offenders or the real owner of property to put up a defence or to verify his/her rights or such case proceedings are contrary to the general principle of the procedure laws, the Court shall revoke the application.

Section 35¹⁹ Regarding the freezing, seizure or forfeiture of property and demand for payments in lieu of forfeiture of the property as per the provisions contained in this Part, the Court may issue its judgment or order even though the commission of offences causing the freezing, seizure or forfeiture of the property or the demand of payments in lieu of forfeiture of such property has not occurred in the Kingdom of Thailand; and the Court shall adjudge to forfeit the property or shall demand payments in lieu of forfeiture of the property though the offender is dead, in case, it appears to the Court that the judgment or order of a court of a foreign state has been final before such person is dead.

Section 35/1²⁰ Regarding the inquiry, filing of application, consideration, judgment, appeal and issuance of orders relating to the freezing, seizure or forfeiture of the property and demand for payments 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 apply *mutatis mutandis*.

Section 35/2²¹ The ownership of property which is subject to the Court's judgment of forfeiture and any money adjudged to be paid in lieu of forfeiture of the property under this Part shall be vested in the State; but the Court shall adjudge that such property shall not be used or such property may be destroyed, unless otherwise prescribed by the bilateral treaty between Thailand and the Requesting State, it shall be in accordance with the provisions of such treaty but the management of the property or such money may be prohibited, in case, it is against public order or good morals.

In case, the forfeited property or money adjudged to be paid in lieu of forfeiture of the property shall be returned to the Requesting State as prescribed in the treaty, Paragraph 1, the Central Authority shall file a petition to the Court to issue its order to submit such property or money to the Central Authority to be returned to the Requesting State.

The forfeited property or the balance of money adjudged to be paid in lieu of forfeiture of the property which shall be returned to the Requesting State, after deduction of expenses spent by Thailand on operations relating to the forfeiture or demand of payments in lieu of forfeiture of the property and necessary expenses for return of such property or money to the Requesting State, shall be returned by the Central Authority to the Requesting State, unless otherwise prescribed by the treaty under Paragraph 1, it shall be in accordance with the provisions prescribed in the treaty.

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

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

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

Ownership of 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 be vested in the State.

PART 10 METHODS OF SEEKING ASSISTANCE

Section 36 A government agency wishing to seek assistance from a foreign state shall submit the matter to the Central Authority.

Section 36/1²² In the event that Thailand requested for assistance in the offence causing the request thereof, it shall be subject to the capital punishment under the Thai laws but shall not be subject to the capital punishment under the laws of the Requesting State; and the Government needs to declare that there will be no capital punishment and it shall be negotiated and agreed to provide such warranty. In this case, if the Court has issued a capital punishment, the Government shall take actions in accordance with the provisions of laws for execution in accordance with the judgment by life imprisonment in lieu of capital punishment; provided that such person shall be prohibited to receive reduction of punishment by any reason whatsoever, except for royal pardon.

Section 37 A request for assistance from a foreign state and all documents to be sent shall be in accordance with the forms, criteria, methods and conditions as prescribed by the Central Authority.

Section 38 The Central Authority shall consider whether it is expedient to request for assistance from a foreign state by taking account of the criteria, details, facts and the supporting documents and shall notify the result thereof to the Requesting Agency.

The Central Authority's decision relating to the request for assistance shall be final, unless otherwise ordered by the Prime Minister.

Section 39 The Requesting Agency shall comply with the Thailand's obligations to the Requesting State on the use of information or evidences as per the objectives specified in the application.

The Requesting Agency shall comply with the Thailand's obligations to the Requesting State on the confidentiality of information or evidences requested for assistance, except such information or evidences are necessary for trial in an open court, resulting from investigation, inquiry, prosecution or other actions in connection with criminal cases specified in the application.

Section 40 A person who has testified as witness or has given verbal testimonies in Thailand under this Act shall not be served with warrants for any actions, custody or limitation of rights and liberties caused by actions prior to such person's departure from the Requesting State.

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

Rights under Paragraph 1 shall be terminated when such person has an opportunity to depart Thailand within a period of fifteen days after receiving a notice from the Requesting Agency, such person no longer needs to stay in Thailand but continues staying in Thailand or such person has voluntarily returned after departing Thailand.

Section 41²³ Regarding the admissibility of evidences obtained from a foreign state, the provisions of the Criminal Procedure Code shall apply mutatis mutandis.

SECTION 3

COSTS

Section 42 All costs relating to the provision of assistance to a foreign state and the request for assistance from a foreign state shall be in accordance with the criteria, methods and conditions prescribed in the Ministerial Regulations.

Counter-Signature:

Mr. Anand Panyarachun

Prime Minister

²³ Section 41 as amended by the Act on Mutual Assistance in Criminal Matters (No.2)

Note:- Reason for promulgation of this Act: Whereas, at present, there are transnational organized crimes which may not be absolutely controlled by the administration of criminal justice of each country alone; therefore, the control of such crimes shall depend on mutual assistance and it is expedient to determine measures for provision of assistance and receipt of mutual assistance in criminal matters. For the purpose of control of such crimes, therefore, it is necessary to enact this Act.

Announcement of the Office of the Constitutional Court on the Constitutional Court has adjudicated that the provisions of laws are contrary to or inconsistent with the Constitution of the Kingdom of Thailand.²⁴

The Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559.²⁵

Section 2 This Act shall come into force as from the date following the date of its publication in the Government Gazette.

Note:- Reason for promulgation of this Act: Whereas, the Attorney General in the capacity of the Central Authority under the law governing mutual assistance in criminal matters shall have significant roles, powers and duties under the said law; therefore, it is expedient to provide additionally that the Attorney General shall take charge under this Act in connection with his/her powers and duties; and certain provisions in the law governing mutual assistance in criminal matters are still not in conformity with the current mutual assistance in criminal matters; that is to say, the Central Authority is unable to submit a request for assistance from a foreign state to the officials or the competent authorities under other laws for actions in connection with the requests; and the Central Authority is not empowered to send data relating to the commission of offences or any property to a foreign state for the purposes of investigation, inquiry, prosecution or judicial proceedings, in case, such country has not requested so; as a result, mutual assistance is limited; and the processes of searching or seizure of property for the purposes of gathering of evidences and for the ultimate purpose of forfeiture of existing property. At present, the transfer of property acquired from commission of offences may not be prevented. Moreover, it was negotiated and agreed to guarantee that no capital punishment shall be enforced; and it is considered as mechanism in the request for assistance in offences which are causes of such request for assistance which shall be subject to the capital punishment under the Thai laws but shall not be subject to the capital punishment under the laws of the Requesting State; moreover, the transfer of persons in custody shall not cover the transfer of persons in custody for assistance in case proceedings at the stage of the authorities; meanwhile, the forfeiture or seizure of property shall not cover the demand for payments in lieu of forfeiture of property as per judgments or orders of a court of a foreign state; therefore, it is expedient to amend such provisions for more effective provision of mutual assistance in criminal matters; and therefore, it is necessary to enact this Act.

²⁴ Government Gazette, Volume 130, Section 28 A, Page 20 dated 22nd March 2013

²⁵ Government Gazette, Volume 133, Section 33 A, Page 1 dated 21st April 2016

Prepared by: Pattama

Checked by: Wasin

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Added by: Panotporn

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Added by: Wissanee

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Checked by: Panya

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