

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT,
B.E. 2535 (1992)¹

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 is graciously pleased to proclaim that:
Whereas it is expedient to have a law on mutual assistance in criminal matters;
Be it, therefore, enacted by the King, by and with the advice and consent of
the National Legislative Assembly acting as the National Assembly as follows:

Section 1. This Act is called the “Mutual Assistance in Criminal Matters Act, B.E. 2535(1992)”.

Section 2.² This Act shall come into force after the expiration of ninety days from the date of its publication in the Government Gazette.

¹ Translated by Ms. Mattanee Kaewpanya under contract for the Office of the Council of State of Thailand's Law for ASEAN project.- Initial version- pending review and approval.

² Published in the Government Gazette, Vol.109, Part 40, Page 27, dated 7th April B.E. 2535 (1992).

Section 3. All other laws, rules, by-laws, regulations, and notifications, in so far as they have already been provided herein or are contrary to or inconsistent with the provisions of this Act, shall be replaced by this Act.

Section 4. In this Act:

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

“Requesting State” means a State seeking assistance from the Requested State;

“Requested State” means a State receiving a request for assistance from the Requesting State;

“Central Authority” means a person having powers and duties to coordinate in providing of assistance to a foreign State, or seeking assistance from a foreign State pursuant to this Act;

“Competent Authority” means an official having powers and duties to provide assistance to a foreign State in response to a request for assistance as notified by the Central Authority pursuant to this Act.

Section 5. The Prime Minister shall have charge and control of the execution of this Act and shall have the power to issue Ministerial Regulations for the execution of this Act.

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

CHAPTER I CENTRAL AUTHORITY

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

Section 7.The Central Authority shall have the following powers and duties:

- (1) to receive a request for assistance from a Requesting State and transmit it to the Competent Authority;
- (2) to receive a request seeking assistance from a Thai government agency and deliver it to a Requested State;
- (3) to consider and determine whether to provide or seek assistance;
- (4) to monitor and accelerate the work of the Competent Authority so that the assistance to a foreign State is completed promptly;
- (5) to issue regulations or announcements for the implementation of this Act;
- (6) to carry out other acts necessary for the success of providing or seeking assistance in pursuant to this Act.

Section 8.There shall be a Committee consisting of representatives from the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Justice, the Office of the Attorney General, not more than four other qualified members appointed by the Prime Minister as members, and a public prosecutor appointed by the Committee to be secretary. The Committee shall provide opinions to assist the Central Authority in its consideration and making determination on providing assistance to, and seeking assistance from, foreign States in cases that may prejudice national sovereignty or security, essential public interests, international relations, or relate to a political or military offence.

When assistance is sought under section 10 or section 36 and whereupon the Central Authority has completed the process under section 11, the Central Authority shall promptly submit such case to the Committee for its opinions, unless the resolution of the Committee prescribed practices otherwise.

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In case the Committee has differing opinions on a decision made by the Central Authority, the latter shall submit those opinions and decision to the Prime Minister for consideration when making a ruling in accordance with section 11 paragraph five or section 38 paragraph two, as the case may be.

CHAPTER II

PROVIDING OF AND SEEKING FOR ASSISTANCE

Part 1

General Provisions

Section 9. Providing of assistance to a foreign State shall be subject to the following criteria:

(1) Thailand may provide assistance to a Requesting State, even when it has no treaty on mutual assistance in criminal matters with that State, provided that the Requesting State must demonstrate its commitment to provide assistance in similar manner if Thailand so requests;

(2) an action which constitutes grounds for a request must be an offence punishable under Thailand laws, except to the extent where Thailand and the Requesting State have a treaty on mutual assistance in criminal matters between them, and provisions in that treaty specify otherwise; in any case, the assistance must be in conformity with the provisions of this Act;

(3) Thailand may refuse to accept a request if it prejudices its national sovereignty, security, or other essential public interests, or relates to a political offence;

(4) the assistance shall not be related to military offences.

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Section 10. A State, having a treaty on mutual assistance in criminal matters with Thailand, shall submit its request for assistance directly to the Central Authority, if desired. A State, having no such treaty with Thailand, shall submit its request through the diplomatic channels.

A request for assistance shall be in conformity with the forms, rules, methods and conditions specified 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 the request falls within the criteria for assistance under this Act; is processed according to the procedure; and has sufficient accompanying documents.

If the request falls within the criteria for assistance; is processed according to the procedure; and has sufficient accompanying documents, the Central Authority shall transmit that request to the Competent Authority for further actions.

In case the request falls outside the criteria for assistance; or assistance may be given on conditions deemed to be necessary; or the request is not properly processed according to the procedure; or has insufficient accompanying documents, the Central Authority shall inform the Requesting State of the refusal to provide assistance and reasons, or indicate the conditions deemed to be necessary or causes for impossibility to execute the request.

If the Central Authority is of the view that an execution of a request may interfere with an ongoing investigation, inquiry, prosecution, or other criminal proceedings in Thailand, he or she may postpone the execution of the said request, or may execute it subject to conditions deemed to be necessary, and inform the Requesting State accordingly.

A decision of the Central Authority with regard to assistance shall be final, unless ordered otherwise by the Prime Minister.

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Section 12.The Central Authority shall transmit a request for assistance from a foreign State to the Competent Authority as follows:

(1) a request for taking statement of witnesses, providing of documents or items that are evidence, which is an out-of-court procedure; serving documents; searching; seizing documents or items; and locating persons, shall be transmitted to the Director-General of the Police Department to proceed;

(2) a request for taking testimony of witnesses, documentary or physical evidence, which is the court proceedings; and forfeiture or seizure of properties, shall be transmitted to the Executive Director for Litigation to proceed;

(3) a request for transferring person or receiving transferred person in custody for testimonial purposes shall be transmitted to the Director-General of the Department of Corrections to proceed;

(4) a request for initiating criminal proceedings shall be transmitted to the Director-General of the Police Department and the Executive Director for Litigation to proceed.

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

In case the Competent Authority encounters impediments or is unable to execute the request, he or she shall report the causes of impediments to the Central Authority.

Section 14. Whereupon the Competent Authority executes a request and reports the results to the Central Authority, the latter shall notify the Requesting State of the execution results, together with relevant documents and items.

Part 2

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Inquiry and Producing Evidence

Section 15. Upon receipt of a request for assistance from a foreign State to take statement of witnesses or gather evidence located in Thailand at an inquiry stage, the Competent Authority shall notify an inquiry official to execute such request.

The inquiry official shall have the power to take statement of witnesses or gathering evidence as requested under paragraph one and, if necessary, to search and seize any document or item in accordance with the rules, methods, and conditions set forth in the Criminal Procedure Code.

When the inquiry officer has finished taking statement of witnesses or gathering evidence, he or she shall report and deliver all gathered evidence to the Competent Authority for further actions.

Section 16. If the treaty on mutual assistance in criminal matters between Thailand and the Requesting State requires documents to be authenticated, the Competent Authority shall have the authority to instruct an authorized person in charge of maintaining documents to authenticate those documents in accordance with the forms and methods specified in the treaty or as prescribed by the Central Authority.

Section 17. Upon receipt of a request for assistance from a foreign State to take testimony of witnesses in a Thai Court, the Central Authority shall notify a public prosecutor to execute such request.

The public prosecutor shall have the power to file a request to the Court that has jurisdiction over the location where a person, who will be a witness or takes possession of or keeps those documentary or physical evidence, has domicile or an address, to produce such evidence. The Court shall have the power to conduct witness testimonial proceedings in accordance with the provisions in the Criminal Procedure Code.

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When the Court completes the testimonial proceedings, the Public Prosecutor shall submit to the Court a request for the testimonial records, including other evidence therein, to be sent to the Competent Authority for further actions.

Part3

Providing of Documents or Information in the Possession of State 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 request to the agency having possession over those documents or information. The said agency shall deliver such documents or information to the Central Authority.

Section 19. In case the documents or information sought by the foreign State under section 18 are confidential and the agency maintaining them considers that they cannot or should not be disclosed as requested or may be disclosed subject to conditions, that agency shall inform the Central Authority the causes of impediment or conditions required for disclosure of those documents or information.

Section 20. In providing of documents according to the request for assistance from a foreign State under this Part, an authorized official in charge of maintaining those documents shall authenticate them, in accordance with the forms and methods specified by the Central Authority, unless prescribed otherwise in the treaty, in which case the provision of the treaty shall prevail.

Part4

Service of Documents

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

If the requested legal document to be served is a document requiring an appearance of a person before an authority or the Court in the Requesting State, the Competent Authority shall transmit the said document to the latter within a reasonable time prior to the scheduled appearance.

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

Section 22. The provisions regarding penalties in case of non-compliance with the orders of the authorized officials or the Court shall not apply to a person, who is not a national of the Requesting State, being served with a legal document requesting his or her appearance before an authority or the Court in the Requesting State.

Part 5

Search and Seizure

Section 23. Upon receipt of a request for assistance from a foreign State to search, seize and deliver items, if there are grounds to issue a search warrant or conduct a search or seize the items in accordance with law, the Competent Authority shall have the power to do so.

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Section 24.The relevant provisions of the Criminal Procedure Code relating to Search shall be applied, *mutatis mutandis*, to the search and seizure under section 23.

Section 25.The Competent Authority conducting search or seizure of an item in response to the request for assistance shall certify in writing of its continuity of custody, identity, and integrity of its condition, and shall deliver the said item together with the certification thereof to the Central Authority.

The certification shall be in accordance with the forms and methods specified by the Central Authority.

Part 6

Transferring of Person in Custody for Testimony

Section 26.Upon receipt of a request for assistance from a foreign State to transfer a person in custody in Thailand to testify as a witness in the Requesting State; or to transfer a person in custody in the Requesting state to testify as a witness in Thailand, if the Central Authority considers that such transfer is necessary and the said person consents thereto, the Central Authority shall notify the Competent Authority to transfer that person to the Requesting State or to admit that person from the Requesting State into Thailand.

The transportation and admission of the person under paragraph one shall be according to the rules, methods and conditions set forth by Ministerial Regulation.

Section 27.The period, during which a person is transferred to testify as a witness in a foreign State under the custody of the Requesting State, shall be deemed as the period of his custody in Thailand.

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Section 28.The Competent Authority shall have the power to keep the person in custody transferred from a foreign State for testimony throughout the period of his or her presence in Thailand. When the person completes the witness testimony, the Competent Authority shall notify the Central Authority accordingly.

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.

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 proceedings, on reasonable grounds to believe that the person is in Thailand, the Competent Authority shall proceed to locate that person and 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, having the competence to initiate any criminal proceedings but desiring to initiate that criminal proceedings in Thailand, and if that 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. If so, he or she shall notify the Competent Authority to proceed in

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accordance with the provisions of the Criminal Procedure Code. The Competent Authority shall report the result to the Central Authority.

Part 9

Forfeiture or Seizure of Properties

Section 32. Upon receipt of a request for assistance from a foreign State to forfeit or seize properties located in Thailand, the Competent Authority shall file a motion to the competent Court that has jurisdiction over the location of those properties to adjudicate the forfeiture or issue an order to seize those properties.

In the case of paragraph one, the Competent Authority may, if necessary, conduct an inquiry or authorize an inquiry official to conduct an inquiry on his or her behalf.

Section 33. The Court may adjudicate to forfeit properties in response to a request for assistance from a foreign State if there is a final forfeiture adjudication by the foreign Court and if the properties are forfeitable under Thai laws.

In case where a foreign Court has ordered prior to a judgment; or passed a judgment, which is not yet final, to seize the properties and those properties are seizable under Thai laws, the Court may, if deemed fit, issue an order to seize those properties.

The Court shall have the power to adjudicate the forfeiture or issue an order to seize properties under this section, even if the offence which is the ground for the forfeiture or seizure does not take place in the Kingdom.

Section 34. For the inquiry, filing of motion, trial, adjudication, and issuance of an order to forfeit or seize properties, the provisions in the Criminal Procedure Code and the Penal Code on forfeiture of properties shall apply, *mutatis mutandis*.

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Section 35.The properties forfeited by the judgment of the Court under this Part shall become the State properties, but the Court may give a judgment to render those properties useless or to be destroyed.

Part 10
Methods for Seeking Assistance

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

Section 37.A request to seek assistance from a foreign State and all documents to be sent shall be made in accordance with the forms, rules, methods, and conditions specified by the Central Authority.

Section 38.The Central Authority shall determine whether it is appropriate to request assistance from a foreign State, taking into account the rules, details, facts and accompanying documents, and shall then notify the requesting agency of his or her decision.

A decision of the Central Authority with regard to the request for assistance shall be final, unless ordered otherwise by the Prime Minister.

Section 39.The requesting agency shall comply with obligations that Thailand has with the Requested State on the use of information or evidence for the purposes specified in the request.

The requesting agency shall also comply with obligations that Thailand has with the Requested State on confidentiality of the requested information or evidence, unless such information or evidence is necessary for an open trial as a result of its investigation,

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inquiry, prosecution or other criminal proceedings in connection with the criminal case specified in the request.

Section 40. A person entering into Thailand to give statement or testimony in accordance with this Act shall not be served with summons for any proceeding against him or her, or detained, or restricted of personal liberty by reasons of any acts that occur prior to his or her departure from the Requested State.

The right in paragraph one shall cease when the person, being given an opportunity to depart from Thailand within fifteen days after being notified by the requesting agency that he or she is no longer required to be in Thailand, continues to stay in the Kingdom, or voluntarily returns after departing the Kingdom.

Section 41. (cannot be enforced)³

(Constitutional Court Judgment No. 4/2556 dated 13 March B.E. 2556 (2013) rules that the Act on Mutual Assistance in Criminal Matters, B.E. 2535 (1992) section 41 is contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), section 3 paragraph two, section 29, and section 40 (2) (3) (4) (7), therefore it cannot be enforced in accordance with section 6 of the Constitution.)

CHAPTER III

COSTS

³All evidence and documents obtained under this Act are deemed to be admissible according to the laws.

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Section 42.All costs related to the providing of assistance to a foreign State and the request for assistance from a foreign State shall be in accordance with the rules, methods, and conditions set forth in Ministerial Regulation.

Countersigned by
AnandPanyarachun
Prime Minister

Office of the Council of State

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