**MUTUAL ASSISTANCE IN**

**CRIMINAL MATTERS**

**THE ACT**

**ON**

**MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

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

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**BHUMIBOL ADULYADEJ, REX.**

**Given on the 31st Day of March B.E. 2535 (1992)**

**Being the 47th Year of the Present Reign**

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

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

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

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

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\* Unofficial Translation

 **Section 2**[[1]](#footnote-1)This Act shall come into force after ninety days upon its publication in the Government Gazette.

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

 **Section 4** In this Act:

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

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

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

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

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

 **Section 5**[[2]](#footnote-2)The Prime Minister and the Attorney General shall take charge under this Act. The Prime Minister shall have the power to issue Ministerial Regulations and the Attorney General shall have the power to issue regulations or notifications for compliance with this Act, provided that such issuances are in connection with their respective powers and duties.

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

**CHAPTER 1**

**CENTRAL AUTHORITY**

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

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

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

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

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

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

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

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

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

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

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

**CHAPTER 2**

**PROVIDING OF AND SEEKING FOR ASSISTANCE**

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**PART 1**

**General Provisions**

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

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

 (2) The act on which the request is based must be an offence punishable under Thai laws unless when Thailand and the Requesting State have a mutual assistance treaty between them and the treaty otherwise specifies, providing, however, that assistance must be conformed to the provisions of this Act;

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

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

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

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

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

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

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

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

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

 **Section 12**[[3]](#footnote-3) The Central Authority shall transmit the request for assistance from a foreign state to the following Competent Authority for further execution:

 (1) A request for taking statement of persons or providing documents or items of evidence which is out-of-court execution; a request for delivery of documents; a request for the search; a request for locating a person; and a request for freezing or seizure of documents or articles for the purpose of gathering of evidence shall be transmitted to the Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation, the Secretary General of the Public Sector Anti-Corruption Commission or the Secretary General of the National Anti-Corruption Commission.

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

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

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

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

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

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

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

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

**PART 2**

**Inquiry and Producing Evidence**

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

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

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

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

 **Section 17**[[5]](#footnote-5)Upon the receipt of the request for assistance from a foreign state to take evidence in Thai Court, the Competent Authority shall notify the Public Prosecutor to execute such request.

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

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

**PART 3**

**Provision of Documents and Information**

**in the Possession of Government Agencies**

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

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

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

**PART 4**

**Serving Documents**

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

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

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

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

**PART 5**

**Search, Freezing or Seizure**[[6]](#footnote-6)

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

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

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

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

**PART 6**

**Transferring of Person in Custody to Assist Proceedings at the Stage Concerning the Authorities or at the Trial Stage**[[10]](#footnote-10)

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 **Section 26**[[11]](#footnote-11)Upon receipt of a request for assistance from a foreign state to transfer a person in custody in Thailand to testify as a witness in court or to assist the authority in the investigation and inquiry as a witness in the Requesting State or to request a transfer of a person in custody in the Requesting State to provide assistance in the same manner in Thailand, if the Central Authority considers that such transfer is necessary and the said person in custody consents thereto, the Central Authority shall notify the Competent Authority to transfer the said person to the Requesting State or to receive the said person from the Requesting State into Thailand.

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

 **Section 27**[[12]](#footnote-12)The period, during which a person is transferred to assist the proceedings at the stage concerning the authorities or at the trial stage in a foreign state and under the custody of the Requesting State, shall be deemed as the period of such person’s custody in Thailand.

 **Section 28**[[13]](#footnote-13)The Competent Authority shall have power to keep the person transferred from a foreign state in custody to assist the proceedings at the stage concerning the authorities or at the trial stage throughout the period of the said person’s presence in Thailand. When such person has completely assisted the proceedings at the stage concerning the authorities or at the trial stage, the Competent Authority shall notify the Central Authority accordingly.

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

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

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

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

**PART 7**

**Locating Persons**

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

**PART 8**

**Initiating Proceedings upon Request**

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

**PART 9**

**Freezing, Seizure or Forfeiture of Property and**

**Compulsory Payment in Lieu of Forfeiture of Property**[[15]](#footnote-15)

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

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

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

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

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

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

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

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

 **Section 33**[[17]](#footnote-17) Upon the receipt of the request for assistance from a foreign state to freeze or seize any property as per an order prior to an issuance of a judgment of the foreign court, or to forfeit the property or to compel any person to make payment in lieu of forfeiture of property as per the foreign judgment or order which is not yet final, the Competent Authority shall file an application to the Court that such property is located in its jurisdiction, or to the court that the person who has the ownership or possession of such property has domicile in its jurisdiction, or to the court that such person who has to make payment in lieu of forfeiture of property has domiciled in its jurisdiction, or to the court that such person was found within its jurisdiction, as the case may be, to issue its order to freeze or seize such property or the property of such person. In such case, if the Competent Authority is entitled to file an application to at least two courts, the Competent Authority may file an application to one of any of those courts.

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

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

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

 (3) There is reasonable grounds to believe that such property may be disposed of, distributed, transferred, concealed or hidden thus preventing the enforcement of a judgment or an order of the foreign court or that such property may be rendered useless or devalued, thus possibly causing the enforcement of a judgment or an order of a court in the foreign state to be invalid.

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

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

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

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

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

 Upon the receipt of an application, the Court shall issue a summons to the Competent Authority and all related parties to appear before the Court. Once such persons are heard, if it is satisfied as follows, the Court shall render a judgment to forfeit the property or to compel such person to make payment in lieu of forfeiture of the property as provided in the final judgment or order of such foreign court, as deemed appropriate.

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

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

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

 **Section 35**[[19]](#footnote-19)Regarding the freezing, seizure or forfeiture of property and compel for payment in lieu of forfeiture of the property in accordance with the provisions contained in this Part, the Court may render its judgment or order even though the commission of an offence causing the freezing, seizure or forfeiture of the property or the demand of payment in lieu of forfeiture of such property has not occurred in the Kingdom. The Court shall render a judgment to forfeit the property or compel to make payment in lieu of forfeiture of the property even though the offender is deceased, in case where it appears to the Court that the judgment or order of a court of the foreign state has been final before such person is dead.

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

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

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

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

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

**PART 10**

**Seeking Assistance**

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

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

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

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

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

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

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

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

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

 **Section 41**[[23]](#footnote-23)Regarding the admissibility of evidence obtained from a foreign state, the provisions of the Criminal Procedure Code shall be applied *mutatis mutandis*.

**CHAPTER 3**

**COSTS**

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

Counter-signature

Anand Panyarachun

Prime Minister

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

THE ACT ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS (NO.2) B.E. 2559 (2016)[[24]](#footnote-24)

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

1. Published in the Government Gazette, Vol. 109, Part 40, Page 27, dated 7th April B.E. 2535 (1992). [↑](#footnote-ref-1)
2. Section 5 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-2)
3. Section 12 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-3)
4. Section 14/1 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-4)
5. Section 17 Paragraph 3 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-5)
6. Part 5 Search, Freezing or Seizure, Section 23 through Section 25 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-6)
7. Section 23 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-7)
8. Section 24 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-8)
9. Section 25 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-9)
10. Part 6 Transferring of Person in Custody to Assist Proceedings at the Stage Concerning the Authorities or at the Trial Stage as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-10)
11. Section 26 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-11)
12. Section 27 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-12)
13. Section 28 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-13)
14. Section 29/1 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-14)
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 (2016). [↑](#footnote-ref-15)
16. Section 32 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-16)
17. Section 33 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-17)
18. Section 34 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-18)
19. Section 35 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-19)
20. Section 35/1 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-20)
21. Section 35/2 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-21)
22. Section 36/1 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-22)
23. Section 41 as amended by the Act on Mutual Assistance in Criminal Matters (No.2) B.E. 2559 (2016). [↑](#footnote-ref-23)
24. Published in the Government Gazette, Vol. 133, Part 33 A, Page 1, dated 21st April B.E. 2559 (2016) [↑](#footnote-ref-24)