

**KINGDOM OF CAMBODIA
NATION RELIGION KING**



**LAW ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
WITH EXPLANATORY NOTES**

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[Unofficial Translation]

Chapter I

General Provisions

Article 1 - Purpose

This Law defines mutual legal assistance in the criminal matters between the Kingdom of Cambodia and a Foreign State with respect to proceedings related to criminal offenses as well as freezing, seizure and confiscation of property for the purpose of strengthening and extending international cooperation.

Note:

Article 1 makes it clear that the purpose of the law is to enhance international cooperation between Cambodia and other states to effectively combat crime in relation to criminal matters, including proceeds of crime actions. This is consistent with Cambodia's obligation under Financial Action Task Force (FATF) criterion 37.1 to have a broad legal basis for mutual legal assistance.

Article 2 - Scope

This Law shall apply for:

- Legal assistance in the criminal matters to be provided to all Requesting **States** even if they do not have any agreement with the Kingdom of Cambodia;
- Seeking for legal assistance in the criminal matters from all **Requested States** even if they do not have any agreement with the Kingdom of Cambodia.

The scope of this Law shall not be applicable to mutual legal assistance in the criminal matters carried out in accordance with a bilateral or multilateral treaty or a convention which has been ratified by the Kingdom of Cambodia.

The internal procedure for executing the requests for mutual assistance as stipulated under this Law shall cover all cases of mutual legal assistance in the criminal matters including mutual legal assistance in the criminal matters implemented in accordance with a bilateral or multilateral treaty or a convention which has been ratified by the Kingdom of Cambodia, except other provisions specified under the treaty or convention, or any other laws of the Kingdom of Cambodia.

This Law shall not prevent the making or receiving of the requests related to the mutual legal assistance in the criminal matters or the cooperation between the Kingdom of Cambodia and a Foreign State through other lawful mean.

Note:

This Article makes it clear that all requests for mutual legal assistance received and made by Cambodia fall within the scope of the law, regardless of whether or not there is a mutual legal assistance treaty between Cambodia and the other state.

This Article also makes it clear that the law does not restrict the power of Cambodian Implementing Authorities to make or receive requests for information or to cooperate with a foreign state through other channels or in another manner outside of the law (e.g. the exchange of information between law enforcement authorities or financial intelligence units).

Article 3 - Definitions

The terminologies used in this Law shall be defined as follows:

1. *Legal Assistance* refers to mutual assistance in the criminal matters which includes the followings:
 - taking evidence or statements from witness;
 - searches and seizures;
 - providing evidence before a court;
 - providing information controlled by the Kingdom of Cambodia;
 - serving court documents;
 - transferring a detained person for giving evidence;
 - identifying a location of person;
 - identifying a location of property;
 - taking measures on a request related to freezing, seizure, or confiscation of property; and
 - confiscation of evidence materials from a financial institution.
2. *Investigation* refers to a research, prosecutorial investigation, and judicial investigation in a criminal case.
3. *Proceeds of crime* refer to any property obtained or received directly or indirectly, through the commission of a crime.
4. *Property* refers to:
 - All kinds of property, including movable or immovable property, tangible or intangible property, and legal documents or instruments that serve as an evidence of ownership or an interest in such property;
 - Property, including instruments and proceeds of money laundering, terrorist financing, and other serious offenses; and

- Property, including substitute property of a natural person or legal person, which has its value equivalent to the property that is subjected to freezing, seizures, and confiscation.
5. **Internal procedure** refers to a procedure for implementing a request for mutual legal assistance in the criminal matters in the Kingdom of Cambodia.
 6. **Requested State** refers to a Foreign State that has received a request for legal assistance in the criminal matters from the Kingdom of Cambodia.
 7. **Requesting State** refers to a Foreign State that seeks legal assistance in the criminal matters from the Kingdom of Cambodia.
 8. **Criminal matters** refers to:
 - a criminal offense; or
 - determination of proceeds of a crime, or an instrument of an offense, or terrorist's property;
 - an implementable confiscation decision; or
 - freezing or seizing the proceeds of crime, or an instrument of an offense, or terrorist's property
 9. **Instrument of an offense** refers to property used in the commission of an offense or intended to be used in the commission of an offense.

Note:

This Article defines terms used in the law.

'Legal assistance' that may be provided under the law includes all the types of assistance that are available to Cambodian Implementing Authorities for domestic criminal matters. This supports Cambodia's compliance with FATF criterion 37.8.

'Criminal matter' is defined to include proceeds of crime actions (e.g. the freezing, seizure or forfeiture of property). The intended effect is that mutual legal assistance under the law may include proceeds of crime actions that may not otherwise be considered criminal matters.

'Property' is defined to include substitute property of equivalent value. The definitions of 'instrumentalities of crime' and 'proceeds of crime' therefore also capture substitute property of equivalent value. The intended effect is that proceeds of crime actions may be taken against substitute property of equivalent value.

These definitions support Cambodia's ability to execute mutual legal assistance requests for the identification, freezing, seizing and forfeiture of property, including substitute property of equivalent value, in accordance with FATF criterion 38.1.

Chapter 2

Central Authority and Implementing Authority

Article 4 - Institution in Charge as Central Authority

The Ministry of Justice of the Kingdom of Cambodia is the Central Authority. The Minister of Justice may appoint an official as the representative of the Central Authority for communicating with a Foreign State, the Implementing Authority, and the relevant competent authorities.

Note:

Article 4 designates the Ministry of Justice as Cambodia's Central Authority for mutual legal assistance.

Article 5 - Competence of Central Authority

The Central Authority shall have the following competences:

1. to receive the request from a Requesting State, and transmit the request to the relevant competent Implementing Authority of the Kingdom of Cambodia;
2. to receive the request made by the relevant competent authorities of the Kingdom of Cambodia and transmit the request to a Requested State;
3. to assess and determine the requirements of the request of the Requesting State in compliance with the law of the Kingdom of Cambodia;
4. to assess and determine the requirements for transmitting the request of the relevant competent authorities of the Kingdom of Cambodia to a Requested State in compliance with the law of the Kingdom of Cambodia;
5. to follow up and expedite the implementation of the Implementing Authority in providing Legal Assistance to a Requesting State;
6. to follow up and communicate with the Central Authority of a Requested State in order to expedite the implementation of the request of the Kingdom of Cambodia;
7. to coordinate with all the Implementing Authorities in order to ensure effective implementation of the request in compliance with this Law, and any other relevant provisions;

8. to issue, as necessary, instructions or required measures in order to ensure effective implementation of this Law.

Note:

Article 5 sets out the powers and functions of the Central Authority. The intended effect is that the Central Authority may perform the functions necessary to effectively provide and request legal assistance, and has the power to issue, as necessary, instructions or required measures in order to ensure effective implementation of this Law.

Cambodia's designation and use of a Central Authority to perform functions related to the transmission and execution of requests is consistent with Cambodia's obligations under FATF criterion 37.2.

Article 6 - Implementing Authority

The Implementing Authority for request for assistance as specified under this Law is a municipal /provincial court of first instance and the office of prosecutor attached to the municipal /provincial court of first instance based on the case(s) of each request for assistance and based on the determination of the Central Authority. If a municipal/provincial court of first instance receives a request from the Central Authority, the President of the court of first instance shall be authorized, under this Law, to implement the request, by applying all the authority and entitlement vested to a judge in accordance with the Code of Criminal Procedure and other laws of the Kingdom of Cambodia. If the office of prosecutor attached to the municipal/provincial court of first instance receives a request from the Central Authority, the prosecutor of the office of the prosecutor attached to the court of first instance shall be authorized, under this Law, to implement the request, by applying all the authority and entitlement vested to a prosecutor in accordance with the Code of Criminal Procedure and other laws of the Kingdom of Cambodia in order to implement the request. However, the Implementing Authority for a request for assistance related to provision of documents and information that are under the control of State institutions as stated under Sub-Section 3 (Assistance Related to Provision of Documents and Information Under Control of State Institutions), Section 2 (Particular Rules Related to Specific Formality of Assistance), Chapter 3 (Request for Assistance by Requesting State) of this Law is the relevant competent State institution.

Note:

This Article makes it clear that the Implementing Authorities is a municipal /provincial court of first instance and the office of prosecutor attached to the municipal /provincial court of first instance based on the case(s) of each request for assistance and based on the determination of the Central Authority. However, the Implementing Authority for a request for assistance related to provision of documents and information that are under the control of State institutions as stated under Sub-Section 3 (Assistance Related to Provision of Documents and Information Under Control of State Institutions), Section 2 (Particular Rules Related to Specific Formality of Assistance), Chapter 3 (Request for Assistance by Requesting State) of this Law is the relevant competent State institution.

Chapter 3
Request for Assistance by Requesting State

Section 1
General Rules

Article 7 - Transmission of Request to the Kingdom of Cambodia

A Requesting State shall transmit a request to the Central Authority directly or through a diplomatic channel.

Note:

Article 7 sets out the accepted transmission methods for mutual legal assistance requests to Cambodia. The accepted transmission methods for requests are: directly to the Central Authority; or by diplomatic channels via the Ministry of Foreign Affairs and International Cooperation.

Article 8 - Contents and Forms of Request to the Kingdom of Cambodia

A request shall include the following information:

1. name(s) of the authority/ies conducting a prosecutorial investigation, accusation, judicial investigation, trial, or implementation of the criminal proceeding related to the request, such as detailed information of individual(s) capable of responding to enquiries related to the request;
2. a description of characteristics of the criminal case, including a summary of facts, name(s) of the offense, and penalties to be applied, accompanied by relevant legal texts; and
3. a description of the purpose of the request for assistance and types of the assistance sought. The Central Authority may request the Requesting State to give additional and relevant information and documents if it deems the information and documents included in the request is insufficient.

A request which contains insufficient information shall not affect the validity-requirements of the request, or obstructs the automatic implementation of the request.

A request and documents related to the request shall be made in writing in Khmer and in English.

Note:

Article 8 sets out the type of information that a Requesting State should provide in a mutual legal assistance request to Cambodia and also makes it clear that the Central

Authority may seek additional information from the Requesting State if the information initially provided is insufficient. The intended effect of this Article is to ensure that Cambodia receives sufficient information to effectively assess and execute requests.

This Article also provides that failure to fully comply with sufficient information does not invalidate a request. This provision has been included because it is not intended that any purely technical deficiency should automatically invalidate a request.

This Article also provides that the accepted form for requests is in writing.

Article 9 - Conditions for Provision of Assistance Based on Principle of Reciprocity

The Legal Assistance could be granted under the conditions that the Requesting State is committed to giving the Legal Assistance to the Kingdom of Cambodia in a similar manner when there is a request from the Kingdom of Cambodia.

Note:

Article 9 makes it clear that Cambodia may provide mutual legal assistance in the absence of a mutual legal assistance treaty on the basis of reciprocity. The intended effect is that Cambodia is able to cooperate with other states to the widest extent possible for the purpose of combating crime, consistent with the purpose of the law.

Article 10 - Conditions for Refusal of Request

The Central Authority shall refuse the request of a Requesting State under any of the following conditions:

1. the implementation of the request affects the sovereignty, national security, public order, or other important public interests of the Kingdom of Cambodia;
2. the request involving prosecutorial investigation, accusation, judicial investigation, or trial of a person for a political offense;
3. the request involving prosecutorial investigation, accusation, judicial investigation, or trial for a military offense;
4. there is a sufficient, reliable ground to believe that the request has been made for the purpose of prosecutorial investigation, accusation, judicial investigation, or trial a person on the ground of race, religion, sex, ethnicity, nationality, or political views of the person;
5. there is a sufficient, reliable ground to believe that if the request is implemented, the person will encounter the torture.

The Central Authority may refuse a request under any of the following conditions:

1. the request involving prosecutorial investigation, accusation, judicial investigation, or trial of a person for an act which is not considered an offense under the law of the

Kingdom of Cambodia, if that act occurs in the Kingdom of Cambodia. This provision shall not be implemented if the fact(s) presented by the Requesting State is/are considered an offense under a provision of the law of the Kingdom of Cambodia even if:

- the types of the offense may be defined differently;
 - the name of the offense, use of terminology, definition, or determination of the characteristics of the offense are not the same;
 - the elements that determine the offense as stipulated under the law of the Requesting State differ from those are defined under the law of the Kingdom of Cambodia.
2. The provision of the assistance shall exert an excessive burden on the resources of the Kingdom of Cambodia;
 3. The provision of the assistance may affect the prosecutorial investigation or proceedings related to a criminal case in the Kingdom of Cambodia;
 4. there is an appropriate ground in all circumstances that the request should not be granted;
 5. there is a sufficient, reliable ground to believe that if the request is implemented, the person will be subjected to Municipal punishment, and the Requesting State has not given a commitment that it will not apply a Municipal punishment, or if the punishment was decided, it would not be carried out;
 6. the request involving prosecutorial investigation, accusation, judicial investigation, or trial of a person for an offense, but the person has been acquitted, or pardoned, or has fully served the sentence in the Kingdom of Cambodia or in a Foreign State;
 7. the request involving prosecutorial investigation, accusation, judicial investigation, or trial of a person for an offense that has exceeded the statute of limitations under the law of the Kingdom of Cambodia.

A request shall not be refused based only on reasons of:

1. the confidentiality of a bank, a financial institution, or an informant as stipulated under the Law on Anti-Money Laundering and Combating the Financing of Terrorism; or
2. the offense is considered to be related to fiscal matters.

Note:

Article 10, paragraph (1) sets out the circumstances in which the Central Authority is obliged to refuse a mutual legal assistance request. Article 10, paragraph (2) sets out the circumstances in which the Central Authority has discretion to refuse a mutual legal

assistance request. These grounds for refusal are for the purpose of ensuring that Cambodian interests are safeguarded and that no injustice or oppression is caused to individuals. Consistent with FATF criterion 37.3, these conditions are not unreasonable or unduly restrictive.

Article 10, subparagraph (2)(1) makes it clear that dual criminality is not a condition for assistance (the absence of dual criminality is a discretionary ground for refusal only). This is consistent with FATF criterion 37.6.

Article 10, subparagraph (2)(1) also makes it clear that Cambodia assesses dual criminality on the basis of the underlying conduct of the offence. This is consistent with FATF criterion 37.7.

Article 10, paragraph (3) makes it clear that requests shall not be refused solely on the grounds specified in subparagraphs (1) and (2). This makes it clear that Cambodia is compliant with FATF criterion 37.4.

Article 11 - Review and Determination of Request

Upon receiving a request from a Requesting State, the Central Authority shall review and consider the request as well as requirements for implementing of the request.

If a request has satisfied the requirements for appropriate implementation under this Law, the Central Authority shall apply the subsequent procedure by transmitting the request to the Implementing Authority for implementation.

If a request does not satisfy the requirements as stipulated under this Law, which makes the request unimplementable, the Central Authority shall notify the Requesting State.

If a request cannot be implemented because of lack of the information, the Central Authority shall request additional information from the Requesting State. Even if additional information has been received from the Requesting State, but the request remains unimplementable under this Law, the Central Authority shall notify the Requesting State of the refusal of the request.

Note:

Article 11 provides the procedure for the Central Authority to review and determine requests made to Cambodia. The Central Authority will receive requests made to Cambodia and assess whether or not a request is eligible for legal assistance from Cambodia. If the Central Authority accepts a request, it will transmit the request to the Implementing Authorities for execution. If the Central Authority refuses a request, it will inform the Requesting State.

Article 12 - Suspension of Implementation of Request

If it is deemed that the implementation of a request may affect the process of prosecutorial investigation, accusation, judicial investigation, trial, or court proceedings in the Kingdom of

Cambodia, the Central Authority may suspend the implementation of the request, or may implement the request under specific conditions, and shall notify the Requesting State.

Note:

Article 12 makes it clear that the Central Authority may provide assistance subject to conditions (including postponement) if the provision of assistance as specified in the request would interfere with a criminal matter in Cambodia. The intended effect is to protect the integrity of criminal processes in Cambodia.

Article 12 also makes it clear that the Central Authority will advise a Requesting State if Cambodia intends to execute a request subject to conditions in accordance with this Article.

Article 13 - Implementation of Request by Relevant Competent Implementing Authority

Upon receiving a request from the Central Authority, the relevant competent Implementing Authorities shall implement the request. After completion of the implementation of a request, the relevant competent Implementing Authorities shall transmit the results accompanied by documents and relevant items to the Central Authority.

In case of obstacle or inability to implement a request, the relevant competent Implementing Authorities shall report to the Central Authority the reasons for failure to implement the request. In case that a request cannot be implemented, the Central Authority shall notify the Requesting State.

Note:

Article 13 provides the procedure for Relevant Competent Implementing Authorities to execute requests made to Cambodia. The Relevant Competent Implementing Authorities will receive requests made to Cambodia via the Central Authority, and execute requests by providing the assistance sought by the Requesting Country (e.g. by locating a person or property). Once the Relevant Competent Implementing Authorities have executed a request, they will provide a report, supported by the material sought, to the Central Authority.

If the Relevant Competent Implementing Authorities are unable to provide the assistance sought (e.g. if a person cannot be located), they will inform the Central Authority (with reasons). The Central Authority will then inform the Requesting State of their decision in writing however they are not obligated to provide reasons for their decision to the Requesting State.

Article 14 - Authentication of Documents

If the treaty or the convention on mutual Legal Assistance between the Kingdom of Cambodia and a Requesting State requires that documents be authenticated, the Central Authority shall request the relevant competent Implementing Authorities to authenticate the documents in

compliance with the forms and formalities as stated under the treaty or the convention, or according to the requirements by the Central Authority.

Note:

Article 14 provides the procedure for the authentication of documents to be transmitted by Cambodia. Cambodia will authenticate documents if required by a mutual legal assistance treaty under which it is providing assistance, or if requested by the Requesting State. Documents are to be authenticated by Relevant Competent Implementing Authorities upon the request of the Central Authority. Documents are to be authenticated in accordance with the forms and means specified by the relevant mutual legal assistance treaty, or as otherwise defined by the Central Authority. The intention of this article is to facilitate the Relevant Competent Implementing Authorities to take the necessary steps to fulfil the foreign state's evidentiary requirements so that the material sought can be relied upon in a foreign proceeding.

Article 15 - Transmission of Results of Implementation of Request to Requesting State

Upon receiving the results of the implementation of a request from the relevant competent Implementing Authority, the Central Authority shall transmit the results accompanied by relevant documents and items if any to the Requesting State under conditions of the agreement between the Kingdom of Cambodia and the Requesting State.

Note:

Article 15 provides the procedure for the transmission of assistance sought from Cambodia to a Requesting State. Relevant Competent Implementing Authorities will provide a report on their execution of a request to the Central Authority, in accordance with Article 13. The Central Authority will then transmit the material sought to the Requesting State.

Article 16 - Confidentiality

The Central Authority shall take all appropriate measures to maintain confidentiality of a request for assistance, the contents and references of a request, the decision to provide assistance, and any arrangements for implementation of a request if there is such a request from the Requesting State. If a request cannot be implemented without breaching the confidentiality requirement, the Central Authority shall notify the Requesting State of this matter in order to determine whether the request will be implemented or not.

The Central Authority may request the Requesting State to maintain confidentiality of information or evidence provided, or the source(s) of the information or evidence. The Central Authority shall attach the requirements related to the use or the disclosure of the information or evidence when transmitting the results of implementation of a request to the Requesting State.

Note:

Article 16 imposes a general obligation not to disclose information about or contained in a request made to Cambodia. The purpose of this confidentiality requirement is to protect the integrity of any investigations or other actions related to request. For example, it may be of operational importance that a suspect has no knowledge of the investigation related to the request. This confidentiality requirement is consistent with Cambodia's obligations under FATF criterion 37.5.

Article 16 also provides that if Cambodia is unable to comply with the obligation of confidentiality, it will inform the Requesting State before proceeding to execute the request. The purpose of this is to provide the Requesting State an opportunity to withdraw or limit the request.

Section 2

Particular Rules Related to Specific Formality of Assistance

Sub-Section 1

Assistance Related to Taking Statements and Evidence

Article 17 - Principles related to Taking Statements

Upon receiving a request to take statements of a person from the Central Authority, the relevant competent Implementing Authorities shall identify the person's location, and request the person to provide statements in accordance with the request of the Requesting State.

If the person refuses to provide the statement, the Implementing Authority shall report to the Central Authority and then the Central Authority shall provide this information to the Requesting State.

Note:

Article 17 provides the procedure for Cambodia to take statements in response to a mutual legal assistance request. The Central Authority will transmit the request to the Relevant Competent Implementing Authorities. The Relevant Competent Implementing Authorities will locate the person and request that the person makes the requested statement.

If the person refuses to make a statement, the Relevant Competent Implementing Authorities will notify the Central Authority, and the Central Authority will inform the Requesting State.

Article 18 - Procedures for Implementation of Request to Take Statements and Evidences

Upon receiving a request from the Requesting State to take statements or evidences based on the proceeding of the Cambodian court, the Central Authority shall transmit the request to the competent Implementing Authority.

The procedure specified by a Requesting State shall be applied except for the fact that the procedures are contrary to the law of the Kingdom of Cambodia. If the procedures are contrary to the law of the Kingdom of Cambodia or if the procedures are not specified in the request, the procedures of the law of the Kingdom of Cambodia shall apply except for the fact that there is a different agreement between the Kingdom of Cambodia and the Requesting State.

Upon completion of the implementation of a request, the Implementing Authority shall transmit the written records of taking the statements or evidences to the Central Authority for further proceeding.

Note:

Article 18 provides the procedure for Cambodia to take statements in court in response to a mutual legal assistance request. The Central Authority will transmit the request to take a statement in court to the Relevant Competent Implementing Authorities.

The Requesting State's procedures for the taking of statements will be followed except where the Requesting State's procedures are incompatible with Cambodian law or unknown. In these circumstances, Cambodia's procedures will apply.

Upon completion of the implementation of a request, the Relevant Competent Implementing Authorities will transmit the written records of taking the statements or evidences obtained to the Central Authority for further proceeding.

Sub-Section 2

Assistance Related to Searches and Seizures

Article 19 - Principles Related to Searches and Seizures

Upon receiving a request from a Requesting State for search or seizure of items in the interest of taking the evidences, the Central Authority shall transmit the request to a competent Implementing Authority for implementation in accordance with the law of the Kingdom of Cambodia.

The Implementing Authority may search and seize properties or items, which are instrument of an offense, are used for commission of an offense, or are the proceeds of crime. The Implementing Authority may also search and seize the documents or information that indicates that the property or items are instruments of an offense, or the proceeds of crime.

In case that the request is related to information possessed by a banking institution, or a financial institution, or a unit, or any other person, the Implementing Authority is authorized under

this Law to require the banking institution or the financial institution or the unit or the person, to provide the information in accordance with the law of the Kingdom of Cambodia.

Note:

Article 19 provides the procedure for the execution of search and seizure, for the purpose of collecting evidence, in response to a mutual legal assistance request. The Central Authority has the power to request that the Relevant Competent Implementing Authorities execute such a request in accordance with Cambodia's Criminal Procedure Code. Paragraph (2) makes it clear that the Relevant Competent Implementing Authorities may search and seize any property, document or information to identify property that is instrumentalities of crime or proceeds of crime. Paragraph (3) makes it clear that the Relevant Competent Implementing Authorities have the power to compel a person, entity or financial institution to produce information in accordance with the Criminal Procedure Code and other relevant Cambodian laws.

Cambodia's authority to take action to identify property in response to a request supports its compliance with FATF criterion 38.1.

Article 20 - Implementation Procedures related to Searches and Seizures

The Implementing Authority who is entitled to search and seize items according to a request, shall prepare the written records of searches and seizures of items in accordance with the law of the Kingdom of Cambodia, and transmit the written records and seized items to the Central Authority for further proceedings. Those records shall comply with the forms and formalities in accordance with the law of the Kingdom of Cambodia.

Other regulations related to searches and seizures as stipulated under the Code of Criminal Procedure of the Kingdom of Cambodia shall also apply even if the offense resulting in the searches or seizures does not occur in the Kingdom of Cambodia.

Note:

Article 20 provides the procedure for the making of a record of search and seizure carried out in response to a mutual legal assistance request. The Relevant Competent Implementing Authorities that conduct search and seizure must make a record of the search and seizure in accordance with Cambodia's Code of Criminal Procedure and any other laws or regulations set by the Central Authority. The Relevant Competent Implementing Authorities will then transmit the record, and any item(s) seized, to the Central Authority for further proceeding.

The article also makes it clear that Cambodia's Code of Criminal Procedure will apply irrespective of whether the alleged offence occurred in Cambodia (which would normally be the case where a mutual assistance request is received from a foreign country).

Sub-Section 3
Assistance Related to Provision of Documents
and Information Under Control of State Institution

Article 21 - Implementation Procedures Related to Request for Documents or Information Under Control of a State Institution

Upon receiving a request from a Requesting State requesting for documents or information which are under the control of a State Institution of the Kingdom of Cambodia, the Central Authority shall transmit the request to the relevant State Institution to implement the request of the Requesting State. The State Institution shall provide the results of the implementation of the request to the Central Authority.

Note:

Article 21 provides the procedure for Cambodia to provide information or documents held by Cambodian government institutions in response to a mutual legal assistance request. The Central Authority will transmit the request to the government institution that holds the information or documents. The government institution will submit the requested information or documents to the Central Authority.

Article 22 - Conditions for Providing Documents or Information Under Control of State Institution

If the documents or information which are the subject matter of the request of a Requesting State as stipulated under Article 21 (Implementation Procedures Related to Request for Documents or Information Under Control of State Institution) above are documents or information that cannot be disclosed to the public, and the competent institution in control of the documents or information considers that the documents or information cannot be provided due to the confidentiality of the documents or information, or may be provided under specific requirements, the institution shall notify the Central Authority of the reasons or the requirements for provision of documents or information requested.

Note:

Article 22 provides that if a Cambodian government institution determines that information or documents requested under Article 21 should not be disclosed, or should only be disclosed subject to conditions, the government institution will inform the Central Authority. The government institution's advice to the Central Authority should include the reasons why the information or documents should not be disclosed or should only be disclosed subject to conditions, and what conditions for disclosure should be applied.

Article 23 - Authentication of Documents Under Control of State Institution

For providing documents upon the request of a Requesting State as stipulated under this Sub-Section, the Central Authority shall request the relevant competent authority to authenticate the

documents in compliance with the forms, formalities, and requirements that have been requested by the Requesting State as stipulated under the treaty or the convention on mutual legal assistance in the criminal matters between the Kingdom of Cambodia and the Requesting State, or as determined by the Central Authority.

Note:

Article 23 provides the procedure for Cambodia to authenticate documents held by Cambodian government institutions that are to be provided to a Requesting State. Documents are to be authenticated by Relevant Competent Authorities upon the request of the Central Authority. Documents are to be authenticated in accordance with the forms, means and conditions requested by the Requesting State, specified in the relevant mutual legal assistance treaty, or as defined by the Central Authority.

Sub-Section 4

Assistance Related to Service of Court Documents

Article 24 - Implementation of Request related to Service of Court Document

Upon receiving a request from the Requesting State to serving the court documents, the Central Authority shall transmit the request to the competent Implementing Authority, and this Authority shall implement the request and provide the results of the implementation to the Central Authority. The competent Implementing Authority may use all appropriate means in accordance with provisions of the laws in order to implement the request in a prompt manner.

If the court documents to be served orders any person to appear before an official or a court in the Requesting State, the competent Implementing Authority shall transmit the document to the person within an appropriate duration before the due date to be present in the Requesting State.

The results of the transmission of a court document shall be reported in a form and formality determined by the Central Authority except when there is the treaty on mutual legal assistance in the criminal matters between the Kingdom of Cambodia and the Requesting State, which stipulates otherwise.

The Central Authority shall forward to the Requesting State the evidence of transmission of the court document. If the transmission of the document cannot be attained, the Central Authority shall notify the Requesting State, by providing the reasons for the non-attainment of the transmission of the document.

Note:

Article 24 provides the procedure for Cambodia to serve court documents on a person in Cambodia in response to a mutual legal assistance request. The Central Authority will transmit a request for service of court documents to the Relevant Competent Implementing Authorities. The Relevant Competent Implementing Authorities will attempt

to serve the court documents and report the result (whether or not service was effected) to the Central Authority. The result of an attempt to serve court documents will be reported in accordance with the forms and means defined by the Central Authority, unless an applicable mutual legal assistance treaty specifies otherwise.

This Article also makes it clear that where the court documents to be served call for the appearance of the person before an official or court in the Requesting State, the Relevant Competent Authorities will seek to serve the documents within a reasonable timeframe. The purpose of this is to allow the person sufficient time to make arrangements for their appearance in the Requesting State.

Article 25 - Irreproachability for Non-Compliance with a Subpoena of Requesting State

If any person in the Kingdom of Cambodia is subpoenaed as a witness in the Requesting State, the person shall not be subjected to both criminal and civil liabilities in the Kingdom of Cambodia due to the refusal or failure to comply with the subpoena although the refusal or failure is contrary to the requirements under the subpoena.

Note:

The purpose of Article 25 is to provide that a person in Cambodia who is served with a summons to appear as a witness in the Requesting State will not be subject to any penalty or liability in Cambodia for non-compliance with the summons, even if the summons states that a penalty may be imposed.

This recognises that it would not be appropriate for Cambodia to penalise a person for refusing to comply with a summons served on them while they are outside the jurisdiction of the state that issued the summons.

Sub-Section 5

Assistance Related to Transfer of a Detained Person to Give Testimony or to Assist with Prosecutorial Investigation in Requesting State

Article 26 - Conditions for Transfer of a Detained Person to Give Testimony or to Assist with Prosecutorial Investigation in Requesting State

Upon receiving a request for a provisional transfer of any person who is in detention in the Kingdom of Cambodia to give testimony or to assist with prosecutorial investigation in court proceedings as a witness in the Requesting State, the Central Authority shall transmit the request to a competent Implementing Authority to take action in accordance with a law of the Kingdom of Cambodia if the Central Authority considers that the transfer is necessary.

The transfer of the detained person can be carried out in compliance with the following conditions:

- the detained person voluntarily consents for the transfer to give testimony or to assist with prosecutorial investigation requested, and
- the Requesting State agrees to respect the specific conditions required by the Central Authority, including expenses related to the implementation of the assistance as well as safety measures, such as detention and assurance of the safety of the detained person to be transferred, not being subjected to prosecution of the detained person for a crime in the Requesting State, and the return of the detained person.

Note:

Article 26 provides the procedure for Cambodia to arrange for a person in custody in Cambodia to travel to a Requesting State to provide assistance.

The Central Authority may transmit such a request to the Relevant Implementing Competent Authorities if the Central Authority is satisfied that:

- the transfer of the person is necessary; and
- the person consents to being transferred to the Requesting State for the purpose of providing assistance.

Article 27 - Duration of Detention of a Detained Person

The duration of the transfer of a detained person to the Requesting State, and the duration of detention of a detained person in the Requesting State to give testimony or to assist with prosecutorial investigation shall be included as the duration of the detention of the detained person in the Kingdom of Cambodia.

Note:

Article 27 makes it clear that when a person in custody in Cambodia travels to a Requesting State in accordance with Article 26, the period in which the person spends in the Requesting State (and in transit) will count towards their time served in custody under their sentence.

The intended effect of this provision is to encourage persons in custody in Cambodia to consent to testify in Requesting State by ensuring that they are not disadvantaged by doing so.

Article 28 - Transit of Detained Person

Upon receiving a request from the Requesting State to allow any person who is in detention in a Foreign State to traverse the territory of the Kingdom of Cambodia to give testimony or to assist with prosecutorial investigation in the territory of the Requesting State, the Central Authority shall notify a competent prosecutor in order to facilitate the transit of the person if the Central Authority considers that the Requesting State has satisfied the conditions to receive such assistance.

The person as stipulated under Paragraph 1 above, shall traverse the Kingdom of Cambodia within the period authorized by the Central Authority and in compliance with the requirements of an agreement with the Requesting State. If the authorized period expires or the requirements are not satisfied, the person will be freed or is expelled in compliance with the law of the Kingdom of Cambodia, except where there is a different agreement between the Requesting State and the Central Authority of the Kingdom of Cambodia.

Note:

Article 38 provides the procedure that will apply where a prisoner is being transported through Cambodia from one foreign state to another foreign state for the purpose of giving evidence or assisting in an investigation in a foreign state. If the Central Authority determines that such a request is eligible for assistance, the Central Authority will direct the Relevant Competent Implementing Authorities to facilitate the transit of the person. If the person is not transferred from Cambodia to the Requesting State within the agreed timeframe, the Central Authority has the power to direct that the person be transported in custody to the foreign state from which they departed. The Requesting State will be responsible for the detention of the person during their transit in Cambodia, unless otherwise agreed.

Sub-Section 6

Assistance Related to Identifying Location of Person

Article 29 - Identifying Location of Person

Upon receiving a request for assistance to locate a person believed to be residing in the Kingdom of Cambodia, and the Requesting State needs the person for the purpose of the court proceedings in its territory, the Central Authority shall transmit the request to a competent Implementing Authority in order to find the location of the person. The Implementing Authority shall report the results of the finding of the person to the Central Authority for further actions.

Note:

Article 29 provides the procedure for Cambodia to locate a person believed to be in Cambodia, and required in relation to a judicial proceeding, in response to a mutual legal assistance request. The reference to judicial proceeding includes an investigation. The Central Authority will transmit the request to the Relevant Competent Implementing Authorities. The Relevant Competent Implementing Authorities will attempt to locate the person and inform the Central Authority of the outcome.

Sub-Section 7

Assistance Related to Freezing, Seizures, and Confiscation of Property

Article 30 - Freezing or Seizures of Property According to a Non-Final Ruling of a Court of Requesting State

Upon receiving a request to freeze or seize property according to a non-final ruling of a court of a Requesting State, the Central Authority shall transmit this request to a competent Municipal /provincial court of first instance in order to freeze or seize the property. If multiple courts of first instance have jurisdiction on this case, the Central Authority may transmit this request to any of the courts of first instance. The ruling to freeze or seize property shall be made in the form of a ruling by the president of the court of first instance with appropriate and explicit reasons.

The court of first instance shall consider the request in Paragraph 1 above as an urgent matter. The court of first instance shall issue a ruling to freeze or to seize the property if:

1. the property shall be frozen or seized under the law of the Kingdom of Cambodia; and
2. there is a reasonable ground to believe that the property may be sold, transferred, or concealed; or there is a measure on the property in order to make it free from confiscation, or to make it useless.

The ruling to freeze or to seize property by the court of first instance shall be notified by posting on the court of first instance's information board, and shall be notified to relevant persons, or if necessary, shall be made public via media or via means of audio-visual communication.

A third party or an interested person related to the ruling to freeze or to seize property under Paragraph 2 above, may file an opposition to the court of first instance to repeal the ruling within 15 (fifteen) days starting from the date of the notification of the ruling. If there is evidence confirming that the property is not involved with what the Requesting State has requested as stipulated under Paragraph 1 above, or the relevant person(s) did not commit any acts as alleged under Paragraph 2 above, the court of first instance shall repeal the ruling. This ruling shall be final. Formalities and procedure for opposition stipulated under the Code of Criminal Procedure shall apply for the opposition in this Paragraph.

A third party or an interested person related to the ruling to freeze or to seize property under Paragraph 2 above may file an appeal to the Court of Appeal for the ruling to freeze or to seize property by the court of first instance within 1 (one) month starting from the expiry of the opposition period. The ruling of the Court of Appeal shall be final. An appeal can also be filed for a ruling denying opposition application by a relevant person within 1 (one) month starting from the date of the notification of the denial ruling. The ruling of the Court of Appeal shall be final. The formalities and procedure for an appeal stipulated under the Code of Criminal Procedure shall apply for this case.

The ruling to deny a request to freeze or to seize property by the court of first instance, or the ruling to repeal the ruling to freeze or to seize property by the court of first instance at the request of the Requesting State shall not prevent the Central Authority to submit a new request to the court of first instance to issue a ruling to freeze or seize property once again if there is new evidence that enables the court of first instance to issue a ruling to freeze or to seize the property.

In case that the court of first instance rules to refuse the request of the Requesting State, this ruling shall be final, and shall be reported immediately to the Central Authority.

Note:

Article 30 provides the procedure for Cambodia to freeze or seize property in accordance with a pre-final judgment order of a court of a Requesting State, in response to a mutual legal assistance request. The intended effect is that Cambodia can carry out provisional measures to prevent any dealing, transfer or disposal of property that may be eligible for forfeiture where there is a risk of the dissipation of property. Cambodia's authority to take action to freeze or seize property in response to a request supports its compliance with FATF criterion 38.1.

The Central Authority will transmit the request to the Cambodian court that has jurisdiction in accordance with the considerations in paragraph (1).

Paragraph (2) provides the process for a Cambodian court to consider a request under this Article. This paragraph makes it clear that the court will consider applications under this Article quickly and efficiently. This paragraph also makes it clear that a Cambodian court may make a decision to freeze and seize property in the following circumstances:

- the property can be frozen or seized under Cambodian law; and
- there exists a reasonable ground to believe that the property may be sold, transferred, or hidden so as to prevent the property from being forfeited or there may be an act of rendering the property useless.

Paragraph (3) makes it clear that the court's decision to dismiss a request under this Article will be final.

Paragraph (4) makes it clear that the court's decision to freeze or seize property under this Article can be appealed.

Paragraph (5) provides the procedure for a third party who is the real owner of property that a court has ordered to be frozen or seized under this Article to make an application for the court to set aside the order. The purpose of this provision is to protect the rights of genuine third parties.

Paragraph (6) makes it clear that the Central Authority may resubmit an application to the court under this Article if new or substantial evidence arises that supports the application to freeze or seize the property

Article 31 - Confiscation of Property in Compliance with Final Ruling of Court of the Requesting State

Upon receiving a request to confiscate property in compliance with the final ruling of a court of the Requesting State, the Central Authority shall transmit this request to a competent court of first instance to rule to confiscate property. If multiple courts of first instance have jurisdiction on this case, the Central Authority may transmit this request to any of the courts of first instance. The ruling to confiscate a property shall be made in the form of a court's judgment based on explicit grounds and provisions of the law. The court of first instance makes judgment by a single judge who is the president of the court of first instance or by a panel of judges chaired by the president of the court of first instance and two other judges as assigned by the president of the court of first instance when the case is complicated.

Upon receiving a request, the court of first instance shall conduct hearings to examine and scrutinize evidence, and to listen to testimonies of all parties concerned. Regulation related to compositions and proceedings of the hearing as defined under the Code of Criminal Procedure and other relevant laws shall apply in this case.

In case of sufficient grounds, the court of first instance shall decide to confiscate the property in accordance with the final ruling of the court of the Requesting State if:

1. the property shall be confiscated in compliance with the law of the Kingdom of Cambodia; and
2. the court of the Requesting State has jurisdiction to make a ruling on this case.

In case that the judgment of the court of the Requesting State was not in line with the basic principle of the judicial criminal proceeding, such as the right for self-defense of the accused, or the execution of the judgment of the Requesting State seriously affects the public order of the Kingdom of Cambodia, the court shall dismiss the request.

Note:

Article 31 provides the process for Cambodia to forfeit property in accordance with a final judgment order of a court of a Requesting State, in response to a mutual legal assistance request. Cambodia's authority to take action to forfeit property in response to a request supports its compliance with FATF criterion 38.1.

The Central Authority will transmit the request to the Cambodian court that has jurisdiction in accordance with the considerations in paragraph (1).

Paragraph (2) provides that upon receiving an application under this Article, the court shall summon the relevant parties to testify in court. This paragraph also makes it clear that a Cambodian court may make a decision to forfeit property if:

1. the property can be forfeited in accordance with Cambodian laws; and
2. the court of the Requesting State has jurisdiction to render judgment of forfeiture.

Paragraph (3) makes it clear that the Cambodian court may dismiss an application under this Article if the procedure followed by the court of the Requesting State did not provide the protections outlined in this paragraph.

Article 32 - Ruling on Freezing, Seizures or Confiscation of Property

The court of first instance shall be legally entitled to decide freeze, to seize, or to confiscate the property as stipulated under this Sub-Section even if the offense leading to freeze seize or confiscate the property would not be committed in the Kingdom of Cambodia. The court of first instance shall also decide to freeze, seize, or confiscate the property even if the offender or the accused died, or has not been identified, or has escaped when the court of the Requesting State has issued a judgment stating that the property was the proceeds of a crime, or instruments of an offense, which shall be confiscated. When there is a request for assistance to freeze, seize, or confiscate the property of the offender or the accused person who has died, or has not been identified, or has escaped, the requirements related to the right for self-defense as stipulated under Article 31 (Confiscation of Property in Compliance with Final Ruling of a Court of Requesting State) shall not apply.

Note:

Article 32 makes it clear that a Cambodian court has the power to make a decision in relation to the freezing, seizure or forfeiture of property even if the relevant offence did not occur in Cambodia. The intended effect is to ensure that Cambodia can take proceeds of crime action against property located in Cambodia in response to a mutual legal assistance request, regardless of where the relevant offence was committed.

Article 32 also makes it clear that a Cambodian court has the power to make a decision in relation to the freezing, seizure or forfeiture of property even if the offender or alleged offender was deceased, is unknown or absconded, if the Court of the Requesting State has issued an order or judgment that the property constitutes proceeds of crime or instrumentalities of crime. In these circumstances, the protections outlined in Article 34, paragraph (3) do not apply. The intended effect is to ensure that Cambodia can take action against property that is proceeds or instrumentalities of crime in circumstances where it would not be practicable to follow the processes contained in Articles 33 and 34. This provision is consistent with FATF criterion 38.2.

Article 33 - Coordination of Seizures and Confiscation

The Central Authority shall sign an agreement with a Requesting State for the purpose of coordinating of seizures and confiscation at the request of a Requesting State in accordance with this Law.

Note:

Article 33 makes it clear that the Central Authority has the power to enter into an arrangement with a Requesting State for the purpose of coordinating seizure and forfeiture actions in accordance with a mutual legal assistance request.

Cambodia's ability to enter into arrangements with other states to coordinate seizure and forfeiture actions supports its compliance with FATF criterion 38.3(a).

Article 34 - Management, Handling, and Allocation of Confiscated Property

The Property frozen, seized, or confiscated pursuant to this Law shall be managed in accordance with a law-of the Kingdom of Cambodia.

The property confiscated by the final ruling of the Cambodian court in accordance with provisions of this Sub-Section shall be put under the management and handling of the Central Authority.

Based on the agreement between the Central Authority and the Requesting State, and legal permission by the country's law, the Central Authority shall transfer to the Requesting State all or a portion of the confiscated property, except when the transfer of the property would affect the public order or social morality of the Kingdom of Cambodia. The Central Authority, in all cases, shall deduct from the confiscated property, all the expenses related to the operation from freezing, seizures, and confiscating of property until the property transferred to the Requesting State. In case of necessity, the Central Authority shall manage and sell the confiscated non-cash property in compliance with the existing procedures.

The confiscated property that has not been transferred to the Requesting State shall be put into a foundation for the Central Authority's use for fulfillment of duty of the mutual legal assistance in the criminal matters with a Foreign State, or for work relating to other cooperation in the criminal matters.

The confiscated property that is hazardous to humans, or to the property, or to the environment, including the property that is not legally owned, the Central Authority shall file a lawsuit to the respective court that is entitled to issue the confiscation ruling for its destruction.

Note:

Article 34 provides the procedure for the management of forfeited property, including the sharing of forfeited property with other states.

Paragraph (1) makes it clear that property that is frozen, seized or forfeited under the law will be managed in accordance with Cambodian law. Cambodia's ability to manage

property frozen, seized or forfeited in accordance with established mechanisms supports its compliance with FATF criterion 38.3(b).

Paragraph (2) makes it clear that:

- forfeited property shall belong to Cambodia;
- the Cambodian court may decide that property is useless or destroyed; and
- Cambodia may agree to share forfeited property with a Requesting or Requested State (unless contrary to public order or social morals).

An example of when Cambodia may agree to share forfeited property with a Requesting State would be if the Requesting State had made a significant contribution to the recovery of the property or to the investigation or prosecution of the unlawful activity through coordinated law enforcement actions.

Cambodia's ability to share forfeited property with other states is consistent with FATF criterion 38.4.

Paragraph (3) makes it clear that in order to return a share of forfeited property to the Requesting State, the Central Authority must send a motion to the Court to issue an order (unless otherwise as provided by agreement).

Paragraph (4) makes it clear than any expenses incurred by Cambodia during the process of forfeiting the property or returning property to the Requesting State will be deducted from the value of the forfeited property. The Central Authority will then return the remaining value to the Requesting State.

Paragraph (5) makes it clear than any interest accrued between the forfeiture of property, and the returning of an agreed share of that property to the Requesting State, will belong to Cambodia unless otherwise agreed between Cambodia and the Requesting State.

Chapter 4

Request for Assistance by the Kingdom of Cambodia

Section 1

General Rules

Article 35 - Request Made by Relevant Competent Authority

The relevant competent authority shall request a Legal Assistance from a Foreign State through the Central Authority. The Central Authority shall consider the relevance of the request by taking into account regulations, detailed information, facts and relevant documents, and notify the

competent authority who has submitted the request of its decision. In case of necessity, the Central Authority shall request a decision of the Royal Government prior to the implementing subsequent procedures.

Note:

Article 35 makes it clear that any Cambodian Competent Authority that wishes to seek legal assistance from a foreign state must send a request to Cambodia's Central Authority.

This Article also makes it clear that upon receipt of a request from a Cambodian Competent Authority, the Central Authority will determine whether or not it is appropriate for Cambodia to make the proposed request to the foreign state. When making this decision, the Central Authority is to take into account all the factors. The Central Authority will then inform the Competent Authority of its decision. The Central Authority's decision is final, unless otherwise directed by the government of Cambodia. The reference to government is a reference to the Prime Minister of Cambodia.

Article 36 - Formalities of Request for Assistance

The relevant competent authority shall complete formalities of a request for assistance, which shall be determined by the Central Authority. In case of necessity, the Central Authority shall request additional information to ensure that the request for assistance shall be accepted by the Requested State.

Note:

Article 36 makes it clear that all requests for mutual legal assistance made by Cambodia to foreign states will be made in accordance with the forms, means and conditions set by the Central Authority. This provision ensures that requests to foreign states are made in a consistent form and manner.

Article 37 - Conditions for Use of Information and Evidence

The relevant competent authority who makes a request shall not use or disclose information or evidence provided by the Requested State for any purpose beside the point defined in the request without prior consent of the Requested State.

The relevant competent authority who makes a request shall take appropriate measures to safeguard the confidentiality of information and evidence provided by the Requested State except for the evidence and information needed for the purposes defined in the request.

Note:

Article 37, paragraph (1) provides that information or evidence obtained by Cambodian Competent Authorities through a mutual legal assistance request may only be used or disclosed for the specific purpose(s) stated in the request. If Cambodia wishes to

use the information or evidence for any other purpose(s), consent must be sought from the Requested State. This ensures that Requested States have the opportunity to consider the purpose of each proposed use of the information or evidence (including against the conditions for assistance contained in their legislation) and determine whether or not they consent. For example, a Requested State may refuse consent for information to be used for another purpose if that purpose would cause prejudice to a person on the basis of their political opinions.

Article 37, paragraph (2) imposes a general obligation on Cambodian Competent Authorities to maintain the confidentiality of information and evidence provided by Requesting States, except to the extent necessary to execute the request. The purpose of this confidentiality requirement is to protect the integrity of any investigations or other actions related to the request.

Article 38 - Admissibility of Evidence

The court shall admit all evidences obtained from the Legal Assistance that the Kingdom of Cambodia has received from a Requested State for consideration in accordance with the law of the Kingdom of Cambodia.

Note:

Article 38 makes it clear that all legal assistance provided to Cambodia by foreign states under the law will be admissible in Cambodian courts, subject to Cambodian laws. The intended effect is for legal assistance obtained by Cambodia to be used as evidence in the relevant legal proceedings in Cambodia without further authentication by the foreign state.

An example of when legal assistance obtained by Cambodia would be not be admissible under Cambodian law would be if the Requested State had obtained a confession through mental pressure, as such confessions are inadmissible as evidence of guilt under Article 38 of Cambodia's Constitution.

Section 2

Particular Rules Related to Requesting a Detained Person or Any Other Persons to Testify or to Assist with Investigation in the Kingdom of Cambodian

Article 39 - Conditions for Requesting Person to Testify or to Assist with Investigation

The relevant competent authority shall make a request to a Requested State through the Central Authority to temporarily transfer a detained person or to send other persons who are in the

Requested State to give testimony or to assist with judicial investigation in court proceedings of the Kingdom of Cambodia under conditions that:

1. a criminal case has already commenced in the Kingdom of Cambodia; and
2. the detained person or the other persons can give evidence that is useful for the court proceedings, and a consent to give testimony or to assist judicial investigation in the Cambodian court proceedings.

Upon receiving a detained person from a Requested State to give testimony in Cambodian court proceedings or to give assistance related to judicial investigation, the detention of the person in the Kingdom of Cambodia shall be made in accordance with the requirements of the agreement with the Requested State, or as determined by the Central Authority.

The acceptance and detention of a detained person shall be made in accordance with the law of the Kingdom of Cambodia.

Note:

Article 39 provides the procedure for Cambodia to request that a person held in custody in a foreign state to be transferred to Cambodia for the purpose of providing assistance.

Paragraph (1) provides that Cambodia may make a request for this type of assistance if:

- 1- a proceeding or investigation relating to a criminal matter has commenced in Cambodia; and
- 2- a prisoner in the Requested State is capable of giving evidence relevant to the proceeding, and has consented to being transferred to Cambodia for the purpose of testifying in the proceeding.

Paragraph (2) makes it clear that the Central Authority may request the Requested State to authorise the attendance of the person at a hearing in connection with the proceeding or for the purpose of giving assistance in relation to the investigation.

Paragraph (3) makes it clear that the Central Authority has the power to request that the Relevant Competent Authorities transport and detain a person transferred to Cambodia in accordance with this Article.

Article 40 - Rights of a Person Giving Testimony or Assists with Judicial Investigation

In addition to the conditions agreed upon with the Requested State, any person(s) – either a detained person or other persons – who come(s) to the Kingdom of Cambodia for the purpose of giving testimony or assisting with judicial investigation under this Law:

1. shall not be prosecuted, detained, punished, or subjected to other restriction of personal liberty in the Kingdom of Cambodia for any offense against the law of the Kingdom of

Cambodia, which had been alleged or had been committed before the person's departure from the Requested State;

2. shall not be required to give evidence related to any other crimes in the Kingdom of Cambodia other than the crimes defined in the request except when there is consent from the person;
3. shall not be subjected to any civil suit, or any other suits related to a deed or an act for which the person(s) is/are alleged to have committed before the person(s) depart/s from the Requested State.

The rights as stipulated under Paragraph 1 above shall cease when the person(s) has/have opportunities to leave the Kingdom of Cambodia within 15 days after a notification from a relevant competent authority that the presence of the person(s) is no longer needed, but the person(s) continue(s) to stay in the Kingdom of Cambodia, or return(s) by himself/herself/ themselves after leaving the Kingdom of Cambodia.

Note:

Paragraph (1) provides certain protections to a person coming to Cambodia for the purpose of providing assistance (whether the person is in custody or not):

- 1- Subparagraph (1)(a) grants certain immunities in relation to any offences against Cambodian law that the person committed prior to their departure from the Requested State.
- 2- Subparagraph (1)(b) provides that the person shall not be compelled to give evidence in any criminal matter other than the matter to which they are providing assistance pursuant to the mutual legal assistance request.
- 3- Subparagraph (1)(c) grants immunity from any civil suit in relation to conduct that occurred prior to their departure from the Requested State.

The intended effect of these protections is to safeguard the rights of foreign witnesses, and encourage witnesses to consent to come to Cambodia to give evidence or assist an investigation by ensuring that they are not disadvantaged by doing so.

Paragraph (2) sets out the time when the protections in paragraph (1) cease to apply. The protections cease to apply if the person remains in Cambodia for more than 15 days after being notified that their presence is no longer required, or if the person returns to Cambodia after having departed.

Article 41 - Report on Completion of Giving Testimony or Assistance with Investigation

A relevant competent authority shall report to the Central Authority when a detained person or any other person(s) has/have completed giving testimony or assistance with judicial investigation.

Note:

Article 41 makes it clear that the Relevant Competent Authorities have the power to keep in custody a person transferred to Cambodia in accordance with Article 39. This Article requires that the Relevant Competent Authorities must make a report to the Central Authorities when the transferred person has finished giving their testimony.

Article 42 - Return of Detained Person

Upon receipt of a report from a relevant competent authority as stipulated under Article 41 (Report on Completion of Giving testimony or Assistance with Judicial Investigation) of this Law, the Central Authority shall coordinate with the relevant competent authority to send the detained person to the Requested State immediately.

Note:

Article 42 makes it clear that once the report referred to in Article 41 has been made, the Relevant Competent Authority shall promptly return the transferred person to the Requested State.

Chapter 5

Expenses

Article 43 - Expenses

All expenses of the Central Authority related to coordination on the Legal Assistance for a Requesting State, and a request for Legal Assistance from a Requested State shall be borne by the Ministry of Justice. Expenses for the implementation of a request shall be borne by the Implementing Authority, and expenses related to a request for assistance shall be borne by a relevant competent authority. In case those expenses for provision of the Legal Assistance constitute a serious burden for the Kingdom of Cambodia, the Kingdom of Cambodia shall request the Requesting State to make contribution to the expenses.

Note:

The purpose of Article 43 is to set out how costs associated with the implementation of the law will be paid:

- The Ministry of Justice will be responsible for costs related to the coordination of incoming and outgoing mutual legal assistance requests, such as resourcing for the Central Authority.
- Relevant Competent Implementing Authorities will be responsible for all other costs related to mutual legal assistance, such as costs associated with executing requests for assistance.
- Expenses related to a request for assistance shall be borne by a relevant competent authority.

The intended effect is that Cambodia will bear the cost of executing requests in most cases, which is a general principle in mutual legal assistance.

Article 43 also provides that where expenses of a substantial or extraordinary nature are or will be required for Cambodia to execute a request, Cambodia may ask the Requesting State to make a contribution to costs. It is open to Cambodia to determine whether or not a cost is of a substantial or extraordinary nature on a case-by-case basis. An example of a type of expense that many states consider to be of a substantial or extraordinary nature is the fees and reasonable expenses of expert witnesses. The intended effect of this provision is to protect Cambodia from an obligation to incur substantial or extraordinary costs.

Chapter 6 Final Provision

Article 44 - Promulgation

This law shall be promulgated as an urgent matter.

Note:

Article 44 provides that the law shall come into force immediately.

This Law was adopted by the National Assembly of the
Kingdom of Cambodia

On Saturday, 7 Koeut, Month of Asad Year of Rat Tosak Buddhist Era 2564

Royal Palace, 27th of June 2020

Signature

NORODOM SIHAMONI

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