



Mutual Assistance in Criminal Matters (Thailand) Regulations 2008¹

Select Legislative Instrument 2008 No. 200

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Mutual Assistance in Criminal Matters Act 1987*.

Dated 3 October 2008

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BOB DEBUS
Minister for Home Affairs

1 Name of Regulations

These Regulations are the *Mutual Assistance in Criminal Matters (Thailand) Regulations 2008*.

2 Commencement

These Regulations commence on the day on which the Treaty between the Government of Australia and the Government of Thailand on Mutual Assistance in Criminal Matters, done at Kuala Lumpur in Malaysia on 27 July 2006, enters into force.

3 Definition

In these Regulations:

Act means the *Mutual Assistance in Criminal Matters Act 1987*.

4 Application of Act

For paragraph 7 (2) (a) of the Act, the Act applies to Thailand subject to the Treaty between Australia and Thailand on Mutual Assistance in Criminal Matters done at Kuala Lumpur in Malaysia on 27 July 2006, a copy of the text of which is set out in Schedule 1.

**Schedule 1 Treaty between Australia and
Thailand on Mutual
Assistance in Criminal Matters
done at Kuala Lumpur in
Malaysia on 27 July 2006**

(regulation 4)

**TREATY BETWEEN AUSTRALIA AND THE KINGDOM OF
THAILAND ON MUTUAL ASSISTANCE IN CRIMINAL
MATTERS**

Australia and the Kingdom of Thailand, hereinafter referred to as
“the Contracting States”,

Desiring to maintain and to strengthen the longstanding bonds which
unite the two countries, and to improve the effectiveness of both
countries in the investigation, prosecution and suppression of crime
through cooperation and mutual assistance in criminal matters,

Have agreed as follows:

**Article 1
Obligation to Grant Mutual Assistance**

1. The Contracting States shall, in accordance with the provisions of this
Treaty, grant to each other the widest measure of mutual assistance in
connection with investigations, prosecutions and other proceedings
relating to criminal matters, irrespective of whether the assistance is
sought or to be provided by a court or some other authority.

2. Criminal matters shall include, but not be limited to, matters connected
with offences against a law relating to taxation, customs and excise
duties, foreign exchange control and other revenue matters.

3. Assistance shall include, but not be limited to:

- (a) taking of evidence and obtaining of statements of persons;
- (b) providing information, documents, records and evidence;
- (c) serving documents;
- (d) executing requests for searches and seizures;
- (e) seeking the consent of persons to be available to give evidence or to assist in investigations in the Requesting State, and where such persons are in custody, arranging for their temporary transfer to that State for testimonial purposes or, where permitted by the law of the Requested State, to assist in investigations;
- (f) locating and identifying persons or objects;
- (g) measures to locate, restrain and forfeit the instruments or proceeds of crime; and
- (h) other assistance consistent with the objects of this Treaty which is not inconsistent with the law of the Requested State.

4. This Treaty is intended solely for mutual assistance between the criminal law enforcement authorities of the Contracting States and is not intended or designed to provide such assistance to private parties.

5. A private party may not rely upon any provision of this Treaty to impede the execution of a request, or to exclude or suppress evidence obtained under the Treaty.

6. Assistance shall not include:

- (a) the arrest or detention of any person with a view to the extradition of that person or the extradition of any person;

(b) the execution of criminal judgments, verdicts or decisions rendered in the Requesting State except to the extent permitted by the law of the Requested State and this Treaty;

(c) the transfer of sentenced persons for serving sentences; or

(d) the transfer of criminal proceedings.

7. This Treaty shall not apply to an offence regarded by the Requested State to be an offence under the military law of the Requested State which is not also an offence under the ordinary criminal law of the Requested State.

Article 2 **Grounds for Refusal or Postponement**

1. The Requested State shall refuse to execute a request if it considers that:

(a) the request would prejudice the sovereignty, security, national interest or other essential public interest of the Requested State;

(b) the request relates to a political offence;

(c) there are substantial grounds for the Requested State to believe that the request has been made for the purpose of an investigation, prosecution, punishment or proceeding against a person on account of that person's race, sex, religion, nationality or political opinions, or that that person's position may be prejudiced for any of those reasons; or

(d) the request relates to the prosecution of a person for an offence in respect of which the offender has been finally acquitted or pardoned or has served the sentence imposed.

2. Assistance may be refused if:

(a) the request relates to the prosecution or punishment of a person for an offence where the acts or omissions alleged to constitute that offence would not, if they had taken place within the jurisdiction of the Requested State, have constituted an offence;

(b) the request relates to the prosecution or punishment of a person in respect of conduct committed outside the territory of the Requesting State and the conduct does not constitute an offence under the law of the Requested State where it occurs outside its territory. However, the Requested State shall endeavour, on the basis of reciprocity, to grant assistance in response to such a request;

(c) the request relates to the prosecution or punishment of a person for an offence which, if it had been committed in the Requested State, could no longer be prosecuted by reason of lapse of time;

(d) provision of the assistance sought could prejudice an investigation or proceeding in the Requested State, prejudice the safety of any person or impose an excessive burden on the resources of that State; or

(e) the request is made with regard to an offence punishable by the death penalty under the law of the Requesting State but not under the law of the Requested State. Notwithstanding the foregoing, the request may not be refused if the Requesting State gives such assurances as the Requested State considers sufficient that the death penalty will not be pronounced or, if it is pronounced, will not be executed. Refusal by the Requested State to execute a request on this ground shall entitle the Requesting State to have discretion to refuse, on the basis of reciprocity, to execute a request from the other state relating to an offence of similar nature and gravity.

3. Assistance may be postponed by the Requested State if the execution of the request would interfere with an ongoing investigation, prosecution or proceeding in the Requested State. The Requested State may also postpone the delivery of an article requested if such an article is required for proceedings in respect of criminal or civil matters in that State.

4. Before refusing or postponing the execution of any request pursuant to this article, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts the assistance subject to these conditions, it shall comply with the conditions.

5. The Requested State shall promptly inform the Requesting State of the reasons for refusing or postponing the execution of a request.

Article 3

Central Authorities

1. The Contracting States shall each appoint a Central Authority to transmit and receive requests for the purpose of this Treaty. Either State shall notify the other of any change of its Central Authority.

2. For the Kingdom of Thailand, the Central Authority shall be the Attorney General or an official designated by the Attorney General.

3. For Australia, the Central Authority shall be the Attorney-General's Department, Canberra.

4. Requests under this Treaty shall be made through the Central Authorities which shall arrange for the prompt carrying out of such requests.

Article 4

Language

Requests and supporting documents and other communications made by the Requesting State pursuant to this Treaty shall be in the language of the Requesting State and accompanied by a translation into the language of the Requested State.

Article 5
Contents of Requests for Mutual Assistance

1. A request for assistance shall be submitted in writing. In urgent circumstances or where otherwise permitted by the Requested State, a request may be made by facsimile or any other modern means of communication but shall be confirmed in writing promptly thereafter.

2. All requests shall include the following:

(a) the name of the competent authority conducting the investigation, prosecution or proceeding to which the request relates;

(b) a description of the nature of the investigation, prosecution or proceeding, including a summary of the relevant facts and laws;

(c) a description of the statement, evidence or information sought or the acts of assistance to be performed; and

(d) the purpose for which the evidence, information, or other assistance is sought.

3. When appropriate, a request shall also include:

(a) where possible, the identity, nationality and location of the person or persons who are the subject of or who may have information relevant to or who are related to the investigation, prosecution or proceeding in the Requesting State;

(b) the need, if any, for confidentiality and the reasons therefore;

(c) a description of the subject matter of the evidence or statement sought including a list of questions to be answered;

(d) details of any particular procedure or requirement that the Requesting State wishes to be followed in executing the request, including a statement as to whether sworn or affirmed evidence or statements are required;

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- (e) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled;
- (f) specification of any time limit within which compliance with the request is desired; and
- (g) any other information which may be brought to the attention of the Requested State by the Requesting State to facilitate its execution of the request.
4. If the Requested State considers that the information contained in the request is not sufficient in accordance with this Treaty to enable the request to be dealt with, it may request additional information.

Article 6

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as it is not inconsistent with that law, in the manner requested by the Requesting State.
2. The Requested State shall not decline execution of a request on the ground of bank secrecy.
3. The Requested State shall promptly inform the Requesting State of circumstances, when they become known to the Requested State, which are likely to cause a significant delay in responding to the request.

Article 7

Costs and Representation

1. The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses and the allowances and expenses related to the travel of persons pursuant to Articles 14 and 17, which fees, allowances and expenses shall be borne by the Requesting State. The Requesting State shall also bear the expenses associated with conveying custodial or escorting officers required by the Requested State in fulfilling the request.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting States shall consult to determine the terms and conditions under which the requested assistance can be provided.

3. Upon request, the Requested State, subject to its domestic law, shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting State.

Article 8 **Limitations on Use and Confidentiality**

1. Information and evidence obtained under this Treaty or anything derived from such information and evidence shall not be disclosed or used for purposes other than those stated in the request without the prior consent of the Requested State.

2. The Requesting State may require that the application for assistance, its contents and related documents, and the granting of assistance be kept confidential. If the request cannot be executed without breaching the required confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.

3. The Requested State may require that information or evidence furnished and the source of such information or evidence be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting State shall comply with the conditions except to the extent that the information or evidence is needed for the investigation, prosecution, or proceeding described in the request.

Article 9
**Taking Testimony and Statements and Producing Evidence
in the Requested State**

1. Upon a request that a person be summoned to give testimony, make a statement, or produce documents, records or articles in the Requested State, that person may be compelled to do so in accordance with the law of the Requested State.
2. A request under this Article shall include, when appropriate, a description of the documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked to produce them.
3. The Requested State shall, upon request, furnish information to the Requesting State in advance as to the date and place of the taking of the evidence.
4. The Requested State may, subject to its law, authorise the presence of such persons as specified in the request for the taking of testimony or a statement during the execution of the request and allow such persons to question the person whose testimony or statement is sought.
5. A person from whom evidence is to be taken in the Requested State pursuant to a request under this Article may decline to give evidence where the law of the Requested State or that of the Requesting State so provides.
6. If any person in the Requested State claims that there is a right or obligation to decline to give evidence under the law of the Requesting State, the Requesting State shall, upon request, provide a certificate to the Requested State as to the existence or non-existence of that right. In the absence of evidence to the contrary, the certificate shall be sufficient evidence of the matters stated in it.

Article 10
Providing Records of Government Offices or Agencies

1. The Requested State shall provide copies of publicly available records of a government office or agency.
2. The Requested State may provide any record or information in the possession of a government office or agency which is not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part, in which case it shall promptly inform the Requesting State of the reasons for such denial.

Article 11
Transmission of Documents and Objects and Authentication

1. When the request concerns the transmission of records and documents, the Requesting State may request the originals. The Requested State may transmit the originals or certified true copies thereof.
2. The Requesting State shall return any original documents or records or articles furnished in execution of requests when no longer needed for the relevant investigation, prosecution or proceeding.
3. Where not inconsistent with the law of the Requested State, documents, articles and records shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State.
4. Evidence or documents transmitted pursuant to this Treaty shall not require any form of authentication, save as specified in paragraph 3 of this Article.

Article 12
Service of Documents

1. The Requested State shall effect service of any document related to an investigation, prosecution or proceeding transmitted to it for this purpose by the Requesting State.
2. Any request for the service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted not later than 45 days before the date on which the appearance is required. In urgent cases, the Requested State shall use its best endeavours to waive this requirement.
3. The Requested State shall return proof of service of the documents, specifying the person served, the form and date of service. If service cannot be effected, the Requesting State shall be so informed and advised of the reasons.
4. A person who has been served pursuant to this Article with a legal document calling for an appearance in the Requesting State shall not be liable to any penalty or be subjected to any coercive measure in the Requested State because of failure to comply therewith, notwithstanding any contrary statement in the request or in any document accompanying the request.
5. The Requested State may effect service of any document by mail or, if the Requesting State so requests, in any other manner required by the law of the Requesting State which is not inconsistent with the law of the Requested State.

Article 13
Search and Seizure

1. A request for search, seizure and delivery of any article shall be executed by the Requested State insofar as its law permits if it includes the information justifying that action under the law of the Requested State.

2. A request under this Article shall include a statement indicating the basis for the belief that evidence may be found in the jurisdiction of the Requested State and a precise description of the place to be searched and of the evidence to be searched for.

3. The Requested State shall provide, in accordance with its law, such information as may be required by the Requesting State concerning the result of any search, the place of seizure, the circumstances of seizure and the subsequent custody of the article seized.

4. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized article which is delivered to the Requesting State.

Article 14

Temporary Transfer of Persons in Custody

1. A person in custody in the Requested State shall, at the request of the Requesting State, be temporarily transferred to the Requesting State for testimonial purposes if the person and the Requested State consent.

2. Where permitted by the law of the Requested State, a person in custody in the Requested State shall, at the request of the Requesting State, be temporarily transferred to the Requesting State to assist in investigations if the person and the Requested State consent.

3. A request under this Article shall include the name of the person or the authority who will have custody during the transfer and the place to which the detained person is to be transferred.

4. Where the person transferred is required to be held in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return the person in custody to the Requested State at the conclusion of the matter in relation to which the transfer was sought or at such earlier time as the person's presence is no longer required.

5. Where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in Article 17.

Article 15
Locating and Identifying Persons or Articles

1. The Requested State shall, upon request, take all reasonable measures to locate and identify persons or articles believed to be in that State and needed in connection with a criminal investigation, prosecution or proceeding in the Requesting State.
2. The Requested State shall communicate to the Requesting State as soon as possible the results of the measures taken pursuant to this Article.

Article 16
Instruments and Proceeds of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any instruments or proceeds of crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of its belief that such instruments or proceeds may be located in the latter's jurisdiction.
2. A request under this Article shall include, when appropriate, the court order, if any, sought to be enforced and, if it is a final order, a statement to the effect that it is a final order.
3. Where, pursuant to paragraph 1 of this Article, suspected instruments or proceeds of crime are found, the Requested State shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of such instruments or proceeds of crime, pending a final determination in respect of those instruments or proceeds by a court of the Requesting State.
4. The Requested State shall, to the extent permitted by its law, give effect to a final order forfeiting or confiscating the instruments or proceeds of crime made by a court of the Requesting State.

5. In the application of this Article, the rights of *bona fide* third parties shall be respected under the law of the Requested State.

6. The Requested State in control of confiscated instruments or proceeds of crime shall deal with those instruments or proceeds in accordance with its law. To the extent permitted by its law and upon such terms as it deems appropriate, the Requested State may transfer confiscated proceeds or instruments of crime or the value of instruments of crime to the Requesting State.

7. In this Article “proceeds of crime” means any property suspected, or found by a court, to be property derived or realised, directly or indirectly, as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

8. In this Article “instruments of crime” means any property used in or intended to be used in, or in connection with, the commission of an offence.

Article 17
Availability of Persons to Give Evidence
or Assist in Investigations

1. When a person in the Requested State is needed to appear as a witness or expert in proceedings or to assist in investigations in the Requesting State, the Central Authority of the Requested State shall, upon request, invite the person to appear or assist in investigations in the Requesting State unless that person is the person charged.

2. The Requested State shall indicate to the person the extent to which expenses will be paid. The response of the person shall be communicated promptly by the Requested State to the Requesting State.

3. Where appropriate, the Requested State shall satisfy itself that satisfactory arrangements have been made for the person’s safety.

Article 18

Safe Conduct

1. No person in the territory of the Requesting State to testify or provide a statement in accordance with the provisions of this Treaty shall be prosecuted or punished in the Requesting State for any offence, nor be subject to any civil suit, being a civil suit to which the person could not be subjected if the person were not in the Requesting State or subjected to any other restriction of personal liberty by reason of any acts or omissions which preceded that person's departure from the Requested State, nor shall that person, without that person's consent, be obliged to give evidence in any proceeding other than the proceeding to which the request relates.
2. The safe conduct provided for by this Article shall cease when the person, having had the opportunity to leave the Requesting State within 15 consecutive days after official notification that that person's presence is no longer required by the appropriate authorities, shall have nonetheless stayed in that State or shall have voluntarily returned after having left it.
3. A person appearing in the Requesting State pursuant to a request made under Article 14 or 17 shall be subject to the law of that State relating to contempt, perjury and the making of false declarations.
4. A person who does not consent to a request pursuant to Article 14 or 17 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure notwithstanding any contrary statement in the request or in any document accompanying the request.

Article 19

Compatibility with Other Treaties

This Treaty shall not alter the rights and obligations of the Contracting States which arise from other international agreements, nor shall this Treaty prevent the Contracting States from providing assistance to each other pursuant to other international agreements binding upon them, or otherwise.

Article 20
Consultation

The Contracting States shall consult promptly, at the request of either Contracting State, concerning the interpretation and the implementation of this Treaty.

Article 21
Scope of Application

This Treaty shall apply to any request presented after its entry into force even if the relevant acts or omissions occurred before that date.

Article 22
Entry into force

This Treaty shall enter into force 30 days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

Article 23
Termination

Either Contracting State may terminate this Treaty by means of written notice to the other Contracting State at any time. Termination shall take effect six months following the date of notification.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed the present Treaty.

DONE at Kuala Lumpur, in duplicate, in the English and Thai languages, each text being equally authentic, this twenty-seventh day of July in the year two thousand and six.

FOR AUSTRALIA:

**FOR THE KINGDOM OF
THAILAND:**

.....
Alexander Downer
Minister for Foreign Affairs

.....
Dr Kantathi Suphamongkhon
Minister of Foreign Affairs

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.