

The Union of Myanmar

The State Peace and Development Council

The Mutual Assistance in Criminal Matters Law

(The State Peace and Development Council Law N° 4/2004)

The 10th Waxing of Kason 1366 ME

(28th April, 2004)

The State Peace and Development Council hereby enacts the following Law:

Chapter I

Title, Application and Definition

1. This Law shall be called the Mutual Assistance in Criminal Matters Law.
2. This Law shall apply to providing assistance in criminal proceedings with States parties to an international convention or regional agreement to which the Union of Myanmar is a State party or with the State that has entered into bilateral agreement or with the State that will provide reciprocal assistance though not a State party to the international convention or regional agreement or bilateral agreement with respect to investigation, prosecution and judicial proceedings in criminal matters.
3. The following expressions contained in this Law shall have the meanings given hereunder:
 - (a) Offence means the offence, punishable with imprisonment for a term of one year and above under any existing law. The said expression also includes offences punishable with imprisonment for a term of one year and above under the law of any requesting foreign State;
 - (b) Assistance means providing assistance in investigation, prosecution and judicial proceedings in respect of an offence for the purpose of this Law;

- (c) Investigation includes inquiry, search and seizure of exhibits relating to the offence by a police officer or person authorized by the Central Authority or the Judge;
- (d) Performance of judicial proceedings includes all activities of the judge under any existing law, with respect to an offence;
- (e) Property means corporeal and incorporeal property of every description, whether tangible or intangible, movable or immovable. This expression also includes interests, rights and ownership in respect of the property;
- (f) Document means writing, mark, figure alphabet or symbol upon any substance including information and record or any mark or symbol that can be interpreted by any means or any object that can interpret sound, image or writing spontaneously or a map, design, picture and any similar object;
- (g) Record means any data recorded or marked upon any substance and which can be read or understood by any person personally or by a computer system or by the use of any other device;
- (h) Restraining Order means any order issued with the intention of restraining property related to offence in the possession of any person;
- (i) Central Authority means the Central Authority formed under this Law to provide mutual assistance in criminal matters among States.

Chapter II

Aims

4. The aims of this Law are as follows:
- (a) To enable rendering of assistance in criminal matters in accordance with international conventions, regional agreements and agreements among States;
- (b) To enable liaison and communication with the international organizations, regional organizations and foreign countries in carrying out criminal matters;

(c) To enable laying down and carrying out appropriate means and measures for providing assistance among States, in respect of investigation, prosecution and judicial proceedings in criminal matters;

(d) To enable effective prevention and suppression of other serious crimes including terrorism, financing of terrorism, transnational organized crimes and crimes related to money laundering.

Chapter III

Forming the Central Authority and Duties and Powers Thereof

5. The Government shall form the Central Authority for rendering assistance among States in criminal matters, comprising the following persons:

- (a) Minister, Ministry of Home Affairs Chairman
- (b) Deputy Minister, Ministry of Home Affairs Vice Chairman
- (c) Deputy Minister, Ministry of Foreign Affairs Member
- (d) Deputy Minister, Ministry of Finance and Revenue Member
- (e) Deputy Minister, Ministry of Immigration and Population Member
- (f) Deputy Chief Justice Member
- (g) Deputy Attorney General Member
- (h) A Representative from the Ministry of Defence Member
- (i) Director General, General Administration Department Member
- (j) Director General, Myanmar Police Force Secretary
- (k) Chief of Police General Staff Myanmar Police Force Joint Secretary

6. The functions and duties of the Central Authority are as follows:

- (a) granting or refusing to provide assistance after scrutiny of the request;
- (b) giving opinion to the Government with respect to entering into agreement between States on mutual assistance in criminal matters;
- (c) laying down necessary training programmes for personnel from relevant departments and organizations for enhancement of skill and technology in implementation of this law;
- (d) liaising and coordinating, as may be necessary if requested issue is also involved with another State;
- (e) coordinating with the relevant government departments, organizations and persons in respect of the requested issue;
- (f) informing the relevant government department and organization to carry out matters related to the request and handing over the performances of the relevant government department and organization to the Requesting State;
- (g) requesting and obtaining assistance from a foreign State in criminal matters.

7. In implementing its duties and powers under Section 6, the Central Authority may, if necessary, assign duty to any member of the Central Authority or a body headed by any member and comprising other suitable persons.

8. The Chairman of the Central Authority or the Secretary assigned by the Chairman has the right to perform the matters to be carried out immediately out of the duties and powers of the said Authority, and such performance shall be submitted to the Central Authority and approval obtained therefrom.

9. The Government may, if necessary amend, alter, suspend or cancel any performance made by the Central Authority in respect of the assistance requested.

Chapter IV

Requesting Assistance and Refusal

10. Any foreign State requesting assistance of Myanmar in criminal matters shall:

(a) if it is the State Party to the international convention or regional agreement to which the Union of Myanmar is a State Party or the State which has bilateral agreement with the Union of Myanmar request assistance directly to the Central Authority;

(b) if it is the State Party to the international convention or regional agreement to which the Union of Myanmar is not a State Party or the State that has not entered into bilateral agreement with the Union of Myanmar, request to the Central Authority through diplomatic channel.

11. Any foreign State may, in making a request under section 10, with respect to investigation, prosecution and judicial proceedings in criminal matters include and request the following matters

(a) taking evidence or statement from any person;

(b) rendering service so that judicial documents shall have effect;

(c) examining objects and sites;

(d) identifying or tracing money or property to be used for evidentiary purpose to be relevant to the offence;

(e) executing searches, seizures, control, issuing restraining order and confiscation of exhibit;

(f) obtaining information, documents to be used for evidentiary purpose, records and expert opinion;

(g) providing originals or certified copies of relevant documents and records to be used for evidentiary purpose;

(h) exposing the residential address of offender, location of the exhibit and other necessary information;

(i) other matters in respect of which the Central Authority has agreed to give assistance.

12. The requesting State shall, in making a request mention the following facts in Myanmar language or English language

- (a) name and designation of the authority making the request;
- (b) statement setting out a summary and nature of the case relevant to the request;
- (c) necessary identity, address and nationality of the person concerned;
- (d) procedures for rendering assistance in matters for obtaining evidence;
- (e) period and limitation during which the request is to be complied with;
- (f) information to be exposed and evidence to be obtained;
- (g) statement to perform confidentially if the matter is required to be performed confidentially;
- (h) extract of relevant laws, rules and procedures exercised in one's own State in respect of the assistance of requested and reasons thereof;
- (i) name, function and responsibility of the person conducting investigation, prosecution and judicial proceedings in one's own State;
- (j) other necessary information.

13. The requesting State may, in urgent circumstance make request orally by telephone facsimile, electronic mail or other electronic means including computer network. In making such request the original letter of request shall be sent to the Central Authority without delay.

14. The Central Authority may:

(a) on receiving the request of any foreign State, request after scrutiny, necessary additional information and supporting evidence for the execution in conformity with the existing laws.

(b) meet with the person or body of persons assigned by the authority of the requesting State and make inquiry and request supporting evidences.

15. If the Central Authority, on receiving the request and on finding that the request is in conformity with the following facts may grant the request:

(a) the offence relating to the request being an offence covered by sub-section (a) of section 3;

(b) having no infringement with any fact that is ground for refusal contained in section 18;

(c) the request being in conformity with the forms terms and means and ways prescribed by the Central Authority;

(d) upon the expenses incurred by the Union of Myanmar for rendering assistance having been coordinated and agreed between the two countries.

16. In respect of mutual assistance in criminal matters, if the Central Authority is desirous of granting the request to the State which is neither the State Party to the Convention or regional agreement nor has bilateral agreement, it may do so on condition that such requesting State has already agreed to grant the request of the Union of Myanmar on reciprocal basis.

17. In respect of a request of any foreign State, if the Central Authority is of the opinion that, it interferes with an ongoing investigation, prosecution or proceeding in the Union of Myanmar it may postpone the request in whole or in part in consultation with the requesting State.

18. The Central Authority shall not refuse the request of any foreign State on the ground of it being a bank and financial institutions secrecy. Provided that if it is found on scrutiny that it infringes one of the following facts the request may be refused in whole or in part:

- (a) not being in conformity with the stipulations of this Law;
- (b) encroaching on the sovereignty of the State, its security prevalence of law and order or public interests;
- (c) there being cause to believe that the race, sex, religion, nationality, ethnic origin, political opinion or personal stand of any individual is encroached;
- (d) there being a prohibition of conducting investigation, prosecution and judicial proceedings of an offence similar to the offence requested, under the existing law of the Union of Myanmar;
- (e) being an offence of military nature actionable under the Defense Services Act, 1959;
- (f) the subject matter relating to the request being contrary to the laws of Myanmar;
- (g) being a request incidental to matters reserved in the international convention to which Union of Myanmar is a State Party.

19. The Central Authority shall, on refusing the request of any foreign State reply to the requesting State giving reasons for so refusing.

20. (a) The Central Authority shall, on deciding to grant the request of any foreign State assign duty to the relevant government department and organization to execute in conformity with the stipulations.

(b) The government department or organization assigned duty under sub-section (a) shall, for enabling the reply to the Requesting State, submit to the Central Authority urgently the condition of completion or the condition of being unable to perform, giving complete reasons.

21. The Central Authority, on receiving the submission made by the relevant government department and organization under sub-section (b) of section 20 shall:

(a) if no performance can be made with respect to the request, inform the Requesting State giving reasons therefore;

(b) if performance can be made with respect to the request, carry out for enabling the handing over of the relevant information, testimony, documents, records and supporting evidences to the Requesting State within the stipulated time.

22. The Central Authority shall

(a) if there are matters that are to be kept confidential among the information and evidences to be sent by one's own State with respect to matters that are given assistance or matters that are sought assistance by the Union of Myanmar, inform the Requesting State to keep the same confidential;

(b) if there is no intention of handing over document, record and properties in their entirety to the Requesting State, mention to return the same without delay to the Union of Myanmar after completing performance of request.

23. The Central Authority shall, if it is required to conduct joint investigation between two or more States with respect to request or giving assistance, obtain prior agreement of the competent authority of the relevant foreign State on each issue of the matter through coordination.

24. The Central Authority and the relevant Government departments and organizations shall not, with respect to information, testimony, document, records and supporting evidences handed over by the requested State to the Union of Myanmar use, handover or expose without agreement between the two states in relation to matters not mentioned in the request.

Chapter V

Search, Seizure, Control, Issuing Restraining Order and Confiscation of Exhibits

25. With respect to request of any foreign State the Central Authority shall, if granted after scrutiny the request of a foreign State to search, seize, control, issue restraining order or confiscate the exhibit is granted instruct the relevant government department and organization to search, seize, control, issue restraining order and confiscate in conformity with the existing laws.

26. (a) The Central Authority shall administer the property seized as exhibits, property controlled and property confiscated under the request of a foreign State in conformity with the bilateral agreement.

(b) If there exists no bilateral agreement between the two States, the confiscated property shall vest in the State.

27. If a person who is not involved in the offence can prove that he has in good faith and after giving consideration taken over and has in possession the property that has been seized as exhibit or has been confiscated, the right of such person shall not be affected.

Chapter VI

Sending a Person who is in Myanmar to Give Testimony and Statement

28. The Central Authority shall:

(a) with respect to a request made to send a person who is in Myanmar to give testimony, statement or expert opinion in a foreign State, if the said person has agreed to testify, and the Central Authority has also decided to grant permission, inform the relevant government department and organization to make arrangements for travel and right to go abroad of the said person permitted to be sent;

(b) if the person permitted to be sent is a person in custody inform the relevant government department and organization to make arrangements to transfer and transport him safely in custody and to transport him back under the bilateral agreement.

29. (a) The Central Authority shall, in sending the person in custody, if Union of Myanmar has not sent a letter informing that the said person is to be released from custody, mention to keep him in custody till the time of transporting him back to Union of Myanmar after completion of requested matter.

(b) The duration of time in which the person sent in custody is in the Requested State including the duration of time of transporting him in custody shall be deemed as if it were the duration of time in custody in the Union of Myanmar.

30. If the person who is to give testimony, statement or expert opinion is prohibited from giving testimony, statement or expert opinion under the existing Law of Myanmar, he may refuse for the said matter.

31. The Central Authority shall, if the person who is to give testimony, statement or expert opinion in any foreign State has committed any offence previously in the Requested State, within 15 days or if it exceeds 15 days from the date of arrival at the said State and making report thereof, raise the issue to get prior agreement with the said State so as not to prosecute, detain, punish or restrict personal liberty in the said State with respect to the previous offence, during the period agreed upon by the two States.

32. The Central Authority shall, if the request of a foreign State to transfer a person in custody in transit from the Union of Myanmar or passing through the Union of Myanmar to provide assistance is granted, inform the relevant government department and organization to give assistance for the security of such person in custody, within the territory of Myanmar.

Chapter VII

Request by the Union of Myanmar

33. The government department and organization desirous of requesting assistance from any foreign State with respect to matters contained in section 11 shall, to obtain permission for the assistance desired, submit to the Central Authority mentioning completely the points contained in section 12.

34. If the Central Authority, grants permission under Section 33 on the submission of the relevant government department and organization to request assistance from any foreign State shall:

(a) if it is the State Party to the international convention or regional agreement to which the Union of Myanmar is a State Party or the State which has bilateral

agreement with the Union of Myanmar, request assistance directly from the Central Authority of the said State;

(b) if it is the State Party to the international convention or regional agreement to which the Union of Myanmar is not a State Party or the State that has not entered into bilateral agreement with the Union of Myanmar, request the Central Authority of the said State through diplomatic channel.

35. The relevant government department and organization shall not prosecute, detain, punish or restrict personal liberty of a person sent by a foreign State with respect to any offence committed by him previously in the Union of Myanmar within 15 days or if it exceeds 15 days from the date of arrival and making report thereof, during the period agreed upon between the two States while he is in the Union of Myanmar to give testimony, statement, expert opinion or in person, in accordance with this Law.

36. The government department and organization that performs under the direction of the Central Authority shall, if the relevant foreign State does not send a letter informing to release the person in custody who has been transferred to give testimony or statement in Myanmar, have the authority to put him in custody during the time agreed upon between the two States and, after submitting to the Central Authority, carry out in accordance with the direction of the Central Authority, for enabling to transport him back to the Requesting State without delay, in conformity with the stipulations after completion of the said matter.

Chapter VIII

Bearing of Costs

37. In carrying out the tasks on requested matters, if there exists no specific agreement between the two States, the ordinary costs shall be borne by the requested State. The costs exceeding the ordinary costs or costs of extraordinary nature shall be borne by the relevant State in accordance with the terms and conditions agreed upon in advance.

38. If the cost of requesting assistance or providing assistance by the Union of Myanmar is to be borne by the Union of Myanmar, it shall be borne by the relevant government department or organization with the approval of the Government.

Chapter IX

Miscellaneous

39. (a) The Central Authority shall, if the requested matter of the foreign State is for judicial proceedings, inform to the Supreme Court.

(b) The Supreme Court may carry out the matter informed under subsection (a) by itself or delegate to the relevant competent Court.

40. The Central Authority, with respect to testimony, documents, records and supporting evidences which are performed under the request of any foreign State:

(a) may determine and assign duty to any relevant government department and organization or any expert or a body of experts to submit the same after translation;

(b) shall, after authenticating on the translation, hand it over to the relevant foreign State.

41. With respect to mutual assistance in criminal matters, the communications made by telephone, fax or e-mail, or any other electronic means including communications made through computer network shall be entitled to be submitted as evidence.

42. With respect to any offence for which assistance is requested by any foreign State, if there is no explicit provision in this Law, regarding investigation, prosecution and judicial proceedings, the Central Authority and the government department and organization assigned duty by such body shall, comply with the provisions of the existing Law.

43. In implementing the provisions of this Law:

(a) The Ministry of Home Affairs may, with the approval of the Government, issue such rules and procedures as may be necessary;

(b) The Central Authority, relevant Ministry, the Supreme Court and the Office of the Attorney General may with the approval of the government; issue such notifications, orders and directives as may be necessary.

(Sd.)

Than Shwe

Senior General

Chairman

The State Peace and Development Council