

Electronic Evidence Fiche: CAMBODIA

1) DEFINITIONS

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| Cambodia |
| What are the definitions in your laws/regulations, if any, of: |
| Electronic evidence |
| According to the Annex to the Law on Electronic Commerce, Definition No. 17, “electronic evidence” means “any information, data or documents which are created, stored, sent or received in electronic format or electronic communication for being used to prove facts in legal proceedings, and such information, data or documents shall be authentic in accordance with the e-Commerce Law.” |
| Computer system |
| There is a definition of “electronic system” in the Annex to the Law on Electronic Commerce (Definition No. 23): “Electronic system refers to an electronic device or a group of devices interconnected or inter-related via an electronic program, which may perform automatic processing of data, information or documents, including electronic devices for the storage of such data, information or documents”. |
| Computer data |
| According to the Annex to the Law on Electronic Commerce, Definition No. 9, “data” refers to “a group of numbers, characters, symbols, message, images, sound, video, information or electronic program which are prepared in a form suitable for use in database or an electronic system.” |
| Categories of computer data (e.g. basic subscriber information, traffic data and content data) |
| There is no specific definition. |
| Electronic surveillance or real-time collection of computer/communication data |
| There is no specific definition. |
| Service provider (e.g. ISP, hosting) |
| According to the Annex to the Law on Electronic Commerce, Definition No. 32, “service provider” refers to: (a) A person who provides an information and communication services including sending, receiving, storing or processing the electronic communication or providing of services through other electronic systems; |

- (b) A person who owns, possess, operates, manages or controls a public switched network or a person who provides telecommunication services; or
- (c) Any other person who processes or store data for the use of electronic telecommunication service-oriented or users of such service.

2) DATA RETENTION REGIME

Cambodia

Do you have any domestic laws that stipulate a mandatory retention period of electronic data? If so, for what types of data and for how long?

There is no specific legal provision.

3) ADMISSIBILITY OF ELECTRONIC EVIDENCE IN THE CRIMINAL TRIAL

Cambodia

What is the requirement under your domestic law for electronic evidence to be admissible in a criminal trial?

According to Article 321 of the Criminal Procedure Code, unless it is provided otherwise by law, in criminal cases all types of evidence are admissible. The court has to consider the value of the evidence submitted for its examination, following the judge's intimate conviction. The judgment of the court may be based only on the evidence included in the case file or that has been presented at the hearing. A confession shall be considered by the court in the same manner as other evidence. Declaration given under physical or mental duress shall have no evidentiary value. Evidence emanating from communications between the accused and their lawyer is inadmissible.

Article 28 of the Law on Mutual Legal Assistance in Criminal Matters also provides that 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.

4) RECEIVING REQUESTS FOR ELECTRONIC EVIDENCE FROM OTHER STATES

4.1. Direct requests from foreign authorities to service providers

4.1.1. Requests for preservation

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| Cambodia |
| What legal framework(s) is/are applicable, if any? |
| Such direct requests are not allowed under Cambodian law. The only way to obtain electronic evidence is to address a formal request to the Central Authority directly or through diplomatic channels. |
| Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities? |
| No information provided |
| If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)? |
| No information provided |
| Is a judicial order required from the requesting state? |
| No information provided |
| Are there any time limits for data preservation? Any possibility of extension? |
| No information provided |
| Would service providers in your country notify the data subjects of the request? |
| No information provided |

4.1.2. Requests for voluntary disclosure

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| Cambodia |
| What legal framework(s) is/are applicable, if any? |

Such direct requests are not allowed under Cambodian law. The only way to obtain electronic evidence is to address a formal request to the Central Authority directly or through diplomatic channels.

Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?

No information provided

If they are prohibited or if there are limitations, are there any alternative options to obtain the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?

No information provided

Is a judicial order required from the requesting state? Are there any time limits?

No information provided

Would service providers in your country notify the data subjects of the request?

No information provided

How can the process be simplified or quickened in emergency situations?

No information provided

4.2. Requests received by your central authority for **Mutual Legal Assistance (MLA)**

Cambodia

How do you execute MLA requests for electronic evidence stored by domestic service providers (e.g. through a domestic court order or a search warrant)?

According to Article 11 of the Law on Mutual Legal Assistance in Criminal Matters, "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.”

Can you provide assistance in real-time collection of non-content and/or content data (e.g. through electronic surveillance) upon the receipt of a MLA request? If yes, are there any limitations or conditions (e.g. limited to certain crime types or penalties thresholds)?

Article 172 of the Criminal Procedure Code contains provisions for “listening to telephone conversations”. For the purpose of ascertaining the truth, the investigating judge may issue an order authorizing the listening to and recording of telephone conversations. The investigating judge may also order the recording of other telecommunications, such as by facsimile or emails. The investigating judge may order any public institutions or civil servants to install the necessary technical instruments and make the recording. The investigating judge shall identify the type of communications that are authorized to be intercepted and the duration of the order. The authorized public institutions or civil servants shall accomplish the order of the investigating judge. During the course of performance of the assignment, authorized public institutions or civil servants shall report to the investigating judge on the progress of the performance, particularly of possible difficulties. When the assignment has been completed, the public institution or civil servants shall transcribe all recorded communications. The recordings shall be given to the investigating judge who shall seal them. The investigating judge can inspect the location where the recording is being done at any time. The investigating judge may not be prohibited from visiting that location for any reason, even if the place is a military location. An investigating judge may proceed as well by way of a rogatory letter.

What are the central and competent authorities in your country to:

- a) Receive a request for MLA in criminal matters?**
- b) Execute/recognize the measure (if other than the receiving authority)?**

a) 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. (Article 4, Law on Mutual Legal Assistance in Criminal Matters)

b) The Implementing Authority for a request for assistance is a municipal/provincial court of first instance and the office of the 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 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 the 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 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 the provision of documents and information that are under the control of State institutions is the relevant competent State institution. (Article 6, Law on Mutual Legal Assistance in Criminal Matters)

What are the accepted languages for MLA requests?

A request and documents related to the request shall be written in Khmer and in English. (Paragraph 3 of Article 8, Law on Mutual Legal Assistance in Criminal Matters). However, some bilateral treaties may require Khmer and/or English.

Can the request be submitted electronically to the central authority?

A request shall be made in writing. (Paragraph 3 of Article 8, Law on Mutual Legal Assistance in Criminal Matters). However, some bilateral treaties may accept other forms in urgent circumstances, such as electronic mail, but with prompt confirmation in writing.

Can the request be submitted directly to the central authority?

Yes. According to Article 7 of the Law on Mutual Legal Assistance in Criminal Matters, “a Requesting State shall transmit a request to the Central Authority directly or through a diplomatic channel”.

What are the specific requirements (e.g. dual criminality, minimum penalty thresholds, etc.) that the requesting states have to meet under your domestic laws for MLA requests seeking for the provision of electronic evidence?

According to Article 9 of the Law on Mutual Legal Assistance in Criminal Matters, the legal assistance could be granted under the condition that the Requesting State is committed to giving legal assistance to the Kingdom of Cambodia in a similar manner when there is a request from the Kingdom of Cambodia.

5) REQUESTING ELECTRONIC EVIDENCE ACROSS BORDERS

5.1. Direct requests to foreign service providers

5.1.1. Requests for preservation

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| Cambodia |
| What legal framework(s) is/are applicable, if any? |
| According to Article 35 of the Law on Mutual Legal Assistance in Criminal Matters, the relevant competent authority shall request legal assistance from a foreign state through the Central Authority. The Central Authority shall consider the relevance of the request by taking into account the 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. |
| Which authority(ies) in your country is/are allowed to request data preservation to foreign service providers? |
| No information provided |
| If the requested foreign service providers are prohibited or limited to preserve the data, are there any alternative options to preserve the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA? |
| No information provided |
| Can a court order or a search warrant be issued for data preservation by foreign service providers? If not, what are the reasons? |
| No information provided |

5.1.2. Requests for voluntary disclosure

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| Cambodia |
| What legal framework(s) is/are applicable, if any? |
| No information provided |

Which authority(ies) in your country is/are allowed to request data disclosure to foreign service providers?

No information provided

If the requested foreign service providers are prohibited or limited to voluntarily disclose the data, are there any alternative options to obtain the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?

No information provided

Can a court order or a search warrant be issued for data disclosure by foreign service providers? If not, what are the reasons?

No information provided

5.2. Requests sent by your central authority for Mutual Legal Assistance (MLA)

Cambodia

What is your central authority to send requests for MLA in criminal matters?

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. (Article 4, Law on Mutual Legal Assistance in Criminal Matters)

Are informal contacts with the central authority of the requested states allowed and used?

Yes, for example through the South East Asia Justice Network (SEAJust).