



# **MODEL LAW ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS (2007)<sup>1</sup>**

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<sup>1</sup> Elaborated in the Vienna based United Nations Office on Drugs and Crime, Division for Treaty Affairs, Treaty and Legal Affairs Branch (UNODC/DTA/TLAB) in accordance with General Assembly resolution 53/112 of 9 December 1998. Earlier drafts of the model law were reviewed in two Expert Group Meetings on the Elaboration of Model Legislation on Mutual Legal Assistance, organized by the United Nations Office on Drugs and Crime, in cooperation with the International Institute of Higher Studies in Criminal Sciences (ISISC), and hosted by ISISC in Siracusa, Italy, on 30 November-3 December 2004 and 28-29 November 2005 respectively. A revised draft version, based on the comments received by the experts, was distributed as a Conference Room Paper (E/CN.15/2006/CRP.4) at the fifteenth session of the Commission on Crime Prevention and Criminal Justice (Vienna, 24-28 April 2006) and Member States were invited to provide further comments by 30 July 2006. Input and remarks received upon this invitation are reflected in the final version of the model law which was made available in February 2007. Footnotes accompanying the text of the law intend to provide specific guidelines on drafting or amending national mutual legal assistance legislation, which are reflecting similar (and accordingly adapted) guidance included in the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters, available on the UNODC website through the following weblink:

[http://www.unodc.org/pdf/model\\_treaty\\_extradition\\_revised\\_manual.pdf](http://www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf).

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## **CHAPTER 1: PRELIMINARY**

### **1. Short title and commencement**<sup>2</sup>

(1) This law may be called the “Mutual Assistance in Criminal Matters Act 2005”.

(2) This Act shall come into force on.....

### **2. Definitions**<sup>3</sup>

In this Act, unless otherwise specifically provided:

(1) *Agreement* means a treaty, convention or other international agreement that is in force, to which (**name of State**) is a party and that contains a provision or provisions respecting mutual assistance in criminal matters.

(2) *Central authority* means an authority designated in section 4 of this Act.

(3) *Criminal matter* includes any investigation, prosecution or judicial proceeding relating to:

- (a) any criminal offence; or
- (b) the determination of whether property is proceeds or instrumentalities of crime or terrorist property;
- (c) a possible confiscation order, whether or not based on an underlying criminal conviction; or
- (d) the freezing or seizure of proceeds or instrumentalities of crime or terrorist property;  
[or
- (e) an investigation carried out by an administrative investigative body with a view to referral for prosecution under the criminal law]<sup>4</sup>.

[(4) *International Criminal Court* means the Court established by the Rome Statute of the International Criminal Court that was adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the “Establishment of an International Criminal Court” on 17 July 1998 and came into force on 1 July 2002.]<sup>5</sup>

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<sup>2</sup> States that wish to retain this provision, especially those of a civil law tradition, may wish to place this provision at the end of their legislation.

<sup>3</sup> States, especially those of a civil law tradition, may wish to place the definition section at the end of their legislation.

<sup>4</sup> The clause in brackets is optional, as a number of countries may not wish to include administrative proceedings in this definition.

<sup>5</sup> This definition will only be relevant for States that are either States parties to the Rome Statute of the International Criminal Court (adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the “Establishment of an International Criminal Court” on 17 July 1998 and in force since 1 July 2002), or are non States parties that wish to have the ability to provide for assistance to the ICC under general mutual legal assistance legislation. See section 7(4) below.

### **[3. Objects of the Act**<sup>6 7</sup>

(1) The object of this Act is to facilitate the widest range of assistance to be given and received by **(name of State)** in investigations, prosecutions and judicial proceedings in relation to criminal matters, including with respect to the freezing, seizing and confiscation of proceeds and instrumentalities of crime and terrorist property.

(2) Nothing in the Act precludes the granting of any other form or nature of assistance that may lawfully be afforded to foreign States, including controlled delivery, joint investigations, the use of other special investigative techniques and the transfer of criminal proceedings.]

### **4. Saving clause**<sup>8</sup>

Nothing in this Act shall limit the power of a competent authority of **(name of State)** apart from this Act to make or receive requests for information or to cooperate with a foreign State through other channels or in another manner.

### **5. Central authority: making and reception of requests**

(1) For the purposes of this Act a central authority is established with the tasks:

(a) to make and receive requests for assistance and to execute and/or arrange for the execution of such requests;

(b) where necessary, to certify or authenticate, or arrange for the certification and authentication of, any documents or other material supplied in response to a request for assistance;

(c) to take practical measures to facilitate the orderly and rapid disposition of requests for assistance;

(d) to negotiate and agree on conditions related to requests for assistance, as well as to ensure compliance with those conditions;

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<sup>6</sup> This section is optional as not all countries have an objects clause in their legislation. However, States are exhorted to include some expression of the sentiment of the widest range of assistance within the usual format of their legislation.

<sup>7</sup> States may wish to include in their mutual legal assistance legislation a section listing the types of assistance to be afforded to a foreign State. Such a provision was not included in the model law on the understanding that it may be considered by other countries as a limitation to cooperation even if a “catch all” reference (“any other type of assistance that is not contrary to the domestic law”) is inserted. For countries wishing to provide for a list of types of assistance, the following could be used as reference material: article 1, paragraph 2 of the Model Treaty on Mutual Assistance in Criminal Matters; article 18, paragraph 3 of the United Nations Convention against Transnational Organized Crime; and article 46, paragraph 3 of the United Nations Convention against Corruption.

<sup>8</sup> For the application of Section 4: Saving Clause, paragraphs 63-66 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters ([http://www.unodc.org/pdf/model\\_treaty\\_extradition\\_revised\\_manual.pdf](http://www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf)) may also be considered *mutatis mutandis* as references.

(e) to make any arrangements deemed necessary in order to transmit the evidentiary material gathered in response to a request for assistance to the competent authority of the requesting State or to authorize any other authority to do so; and

(f) to carry out such other tasks as provided for by this Act or which may be necessary for effective assistance to be provided or received.

(2) The central authority referred to in this section shall be the [designate appropriate authority/office, e.g. Minister of Justice/Ministry of Justice/Attorney-General/Procurator General] of **(name of State)**.

(3) Requests transmitted to other agencies or authorities of **(name of State)** shall be referred as soon as possible to the central authority. The fact that the central authority of **(name of State)** did not receive the request directly from the foreign State shall not affect the validity of the request or action taken on it. The judicial authority of **(name of State)** may not reject the request on the grounds that the central authority did not receive it directly from the foreign State.

## **6. Spontaneous transmission of information**

Nothing in this Act shall prevent the central authority of **(name of State)**, or any other competent authority of **(name of State)**, from spontaneously transmitting information relating to criminal matters to a competent authority in a foreign State without prior request.

# **CHAPTER 2: INCOMING REQUESTS FOR ASSISTANCE**

## **Part 1: General provisions**

### **7. Scope of assistance**<sup>9</sup>

(1) Assistance under this Act may be provided to any foreign State whether on the basis of an agreement or not.

(2) This Act regulates the rendering of assistance by **(name of State)** to any foreign State, unless otherwise regulated by agreement.

(3) Notwithstanding subsection (2), nothing precludes **(name of State)** from rendering of a broader range of assistance to another State under this Act than may be provided for in an agreement.

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<sup>9</sup> See also paragraphs 10-62 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

(4) The provisions of this Act shall also apply to a request for assistance from the International Criminal Court or an international tribunal [listed in the schedule to this Act]<sup>10</sup>.

## **8. Form of request**

(1) The central authority of **(name of State)** may accept a request for assistance from a foreign State by any means of communication that affords a record in writing including, but not limited to, by facsimile or e-mail.

(2) In urgent cases, the central authority of **(name of State)** may accept an oral request provided it is confirmed by a means that affords a record within [x] days/hours.

## **9. Content of request for assistance**<sup>11</sup>

(1) A request for assistance shall include:

- (a) the name of the authority conducting the investigation, prosecution or judicial proceeding to which the request relates, including contact details of the person capable of responding to enquiries concerning the request;
- (b) a description of the criminal matter, including a summary of the facts and, if applicable, offences and penalties concerned;
- (c) a description of the purposes of the request for assistance, as well as the nature of the assistance sought.

(2) If the information set forth in subsection (1) is not sufficient, **(name of State)** may request the foreign state to provide additional information.

(3) Notwithstanding subsection (1), the fact that a request for assistance does not contain the information set out therein shall not affect the validity of the request or preclude its execution.

## **10. Application of specific procedures sought by the requesting State**<sup>12</sup>

(1) A request for assistance shall be executed in accordance with any procedures specified in the request, unless such execution would be contrary to the fundamental principles of the law of **(name of state)**.

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<sup>10</sup> The bracketed phrase in this subsection can be deleted where States may wish to include requests for assistance from all international tribunals in the scope of application of their legislation.

<sup>11</sup> See also paragraphs 105-115 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

<sup>12</sup> See also paragraphs 116-125 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

(2) For greater certainty, subsection (1) shall apply even if the requested procedures are not used in **(name of State)** or are not available in relation to the type of assistance sought domestically.

## **11. General provision**

If a foreign State requests a form of assistance not specifically mentioned in this Chapter but available under the law of **(name of State)** for domestic criminal matters, the assistance sought may be provided to the same extent and under the same conditions as would be available to law enforcement authorities of **(name of State)** in a domestic criminal matter.

## **12. Refusal of request for assistance**

### *Option 1*

*No reference to grounds for refusal of a mutual legal assistance request.<sup>13</sup>*

### *Option 2*

(1) A request for assistance under this Act may be refused if, in the opinion of [the central authority of]<sup>14</sup> **(name of State)**, granting of the request would prejudice the sovereignty, security, *ordre public* or other essential public interests of **(name of State)**.

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(1) or (2)<sup>15</sup> Notwithstanding subsection (1) or the provisions of any other law of **(name of State)**, assistance under this Act shall not be refused:

(a) on the ground of bank secrecy; or

(b) on the sole ground that the offence for which such assistance is sought is also considered to involve fiscal matters.

(2) or (3) Reasons shall be provided for any refusal of a request for assistance.

(3) or (4) Where possible, the central authority of **(name of State)** may, instead of refusing a request, grant assistance subject to such conditions, including but not limited to use limitations, as may be appropriate in a particular case.

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<sup>13</sup> As the rendering of assistance is a discretionary matter, there is no need to list specific grounds on which a request might be refused. This approach also gives a State great flexibility in negotiating the provisions of a treaty without conflict with domestic law. Discretion to refuse assistance should be exercised with restraint in order to facilitate greater reciprocal cooperation by other States. If the volume of incoming requests begins to impose extraordinary burdens on the requested State, that State should consult with requesting States to identify measures that can reduce pending and future burdens.

<sup>14</sup> States may vest the authority to make these decisions in the central authority or in some other office, person or body.

<sup>15</sup> Numbering will depend on the option chosen.



(4) or (5) Once the conditions have been accepted to the satisfaction of the central authority of **(name of State)**, it may transmit the results of the execution of the request.

### **13. Non-disclosure of confidential requests for assistance**<sup>16</sup>

(1) Unless otherwise authorized by law, a person who, because of his or her official capacity or office, and being aware of the confidential nature of the request, has knowledge of:

- (a) the contents of such request made under this Act; or
- (b) the fact that such request has been, or is about to be, made; or
- (c) the fact that such request has been granted or refused;

shall not disclose those contents or these facts except to the extent that the disclosure is necessary to execute the foreign request.

[(2) Any person who contravenes subsection (1) commits an offence and is liable to (sentence).]<sup>17</sup>

(3) The [court/prosecutor/other authority] issuing an order under sections (14), (17)-(18), (23)-(24) and (29)-(30) may order the person providing a statement or testimony, or the custodian of evidence or information being provided under this Act, to keep confidential the fact of having given such statement or testimony, or having produced such evidence or information. [The failure to respect such order is liable to (sentence)]<sup>18</sup>.

## **Part 2: Rules regarding specific forms of assistance**

### **14. Statements, testimony, production of evidence and identification of a person or thing**

- (1) Where a request is made by a foreign State for
- (a) the taking of a statement or testimony from a person; or
  - (b) the production of documentary or other evidence in **(name of State)**; or
  - (c) the identification of a person or thing,

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<sup>16</sup> See also paragraphs 134-140 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

<sup>17</sup> Subsection (2) is optional, as related issues may be covered by general provisions on contempt of court.

<sup>18</sup> See footnote 17 above.

the [court/prosecutor/other authority] may issue an order for gathering evidence if satisfied that [there are reasonable grounds to (believe/suspect) that]<sup>19</sup> the relevant evidence may be found in **(name of State)**.

(2) Such order shall specify the procedure by which the evidentiary material is to be gathered to give effect to the foreign request and may include such conditions as are considered appropriate, including conditions:

- (a) relating to the interests of the person named therein or of third parties; or
- (b) requiring a person to appear at a specified time and place for an examination or to produce documents or things; or
- (c) designating a person before whom an examination will take place; or
- (d) requiring a person to appear at a facility where technology for video or satellite link is available; or
- (e) providing for the non disclosure of information regarding the request and its execution.<sup>20</sup>

(3) A person who, without reasonable excuse, refuses to comply with an order issued by a [court/prosecutor/other authority] in accordance with subsection (1) shall be liable to sanction available under the laws of **(name of State)**.

(4) This Section is without prejudice to the ability of **(name of State)** to obtain the evidence sought through voluntary production of the documentary or other evidence or provision of a voluntary statement or testimony.

## **15. Special provisions relating to the taking of testimony or statements**

(1) Where the evidence sought under section (14) is a statement or testimony from a witness, including an expert or defendant where applicable, the [court/prosecutor/other authority] of **(name of State)** may permit:

- (a) any person to whom the foreign investigation, prosecution or proceeding relates or that person's legal representative; or
- (b) the legal representative of the foreign State

to participate in the proceedings and question the witness.

(2) A person named in an order issued under section (14) is entitled to be paid the expenses he or she would be entitled to if required to attend as a witness in proceedings in **(name of State)**.

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<sup>19</sup> The phrase in brackets is intended to cover the practice followed in common law jurisdictions.

<sup>20</sup> This clause should cover the issue of ordering private persons not to disclose information.

(3)<sup>21</sup> A person named in the order may refuse to answer a question or to produce any other evidentiary material where the refusal is based on:

- (a) a law currently in force in **(name of State)**, except where this law provides otherwise;
- (b) a privilege recognized by a law in force in the requesting State;
- (c) a law currently in force in the requesting State that would render the answering of that question or the production of the evidentiary material by that person in its own jurisdiction an offence.

(4) If requiring the person to answer the question might result in a breach of law of the requesting State in accordance with subsection 3(c) or be contrary to the fundamental purpose of a privilege recognized in the requesting State in accordance with subsection 3(b), the [court/prosecutor/other authority] may permit the refusal on a temporary basis, make a note of it and continue with the examination. At the end of the examination, the record of it with any such noted objection(s) shall be submitted to the requesting state. If the authorities of the requesting State determine any such noted objection(s) to be unfounded, they shall advise the central authority [or other competent authority] of **(name of State)**, the proceedings shall be resumed and the witness shall be required to answer the question.

## **16. Use of videoconferencing technology**<sup>22 23</sup>

(1) The [court/prosecutor/other authority] of **(name of State)** may issue an order that the testimony or statement, the identification of a person or thing or any other form of assistance be provided by use of video or audio transmission technology.

(2) An order issued under subsection (1) shall order the person:

(a) to attend at a time and place fixed by the [court/prosecutor/other authority] to give a statement, testify or otherwise provide assistance by videoconference, and to remain in attendance until excused by the authorities of the foreign State;

(b) to answer any questions raised by the authorities of the foreign State, or persons authorized by those authorities, in accordance with the law that applies to that foreign State;

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<sup>21</sup> See also paragraph 151 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

<sup>22</sup> Countries wishing to include in their legislation more detailed provisions on this issue may take into consideration the relevant articles of the European Union Convention on Mutual Assistance in Criminal Matters (2000) and the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters (2001).

<sup>23</sup> See also paragraph 148 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

(c) to produce or show to those authorities at the time and place fixed by the [court/prosecutor/other authority] any item, including any document, or copy thereof

and may include any other appropriate conditions.

(3) Notwithstanding the provisions of section (35), the costs of establishing a video or telephone link, costs related to the servicing of a video or telephone link in **(name of State)**, shall be borne by the requesting State, unless otherwise agreed.

## **17. Search and seizure**<sup>24</sup>

(1) Where a request is made by a foreign State for search and seizure to be carried out in **(name of State)**, the [court/prosecutor/other authority] of **(name of State)** may issue an [order to search/search warrant/other order] if satisfied that [there are reasonable grounds to (believe/suspect) that] evidence relevant [and proportionate] to the investigation, prosecution or proceeding may be found in **(name of State)**.

(2) The procedures for the execution of the [order to search/search warrant/other order] shall be the same as those for the execution of an [order to search/search warrant/other order] in **(name of State)**, varied to the extent necessary to respond to the request.

(3) In issuing the [order to search/search warrant/other order] in accordance with subsection (1), the [court/prosecutor/other authority] of **(name of State)** may subject its execution to conditions and may authorize the presence and participation of officers of the foreign State in the search.

## **18. Transfer of a person detained in (name of State)**<sup>25</sup>

(1) Where a foreign State requests the attendance of a person in custody in its territory for purposes of identification, giving evidence or otherwise providing assistance, the [court/prosecutor/other authority] may issue an [order/warrant] and direct that the person in custody be placed in the custody of an authorized officer for the purpose of giving the assistance requested, if satisfied that:

(a) the person in custody has consented to attending; and

(b) the foreign State has given assurances satisfying the requirements set out in section 19.

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<sup>24</sup> See also paragraphs 168-170 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

<sup>25</sup> See also paragraphs 152-154 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

(2) Where an [order/warrant] is issued in accordance with subsection (1), the central authority of **(name of State)** may make the necessary arrangements for the travel of the person in custody to the foreign State.

### **19. Safe conduct**<sup>26</sup>

(1) The matters in relation to which assurances are to be given for the purposes of section 18 are:

(a) In all cases:

- (i) That the person shall not be detained, prosecuted or punished or subjected to any other restriction of personal liberty or subjected to any civil proceedings, in respect of any act or omission that occurred before the person's departure from **(name of State)**;
- (ii) That the person shall not be required, without his/her consent and the consent of **(name of State)**, to assist in any investigation or proceeding other than that to which the request relates;
- (iii) That the person shall be returned to **(name of State)** in accordance with the arrangements made or varied with the central authority of **(name of State)**.

(b) Where **(name of State)** requires the foreign State to keep the person in custody while that person is in the territory of the State:

- (i) That adequate arrangements are made for that purpose;
- (ii) That the person shall not be released from custody by the foreign State, unless **(name of State)** notifies that the person is entitled to be released from custody under the law of **(name of State)**.

(2) The **(name of State)** may also require the requesting State to give the assurances set forth in subsection (1)(a) in case of a person not in custody.

### **20. Effect of transfer on sentence of person in custody**

Where a person in custody who is serving a term of imprisonment [or is detained pending trial] in **(name of State)** is transferred to a foreign State pursuant to a request

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<sup>26</sup> See also paragraphs 160-164 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

made under section 18, the time spent in custody in the foreign State shall count as part of any sentence required to be served by that person in custody.

## **21. Custody of persons in transit**

(1) Where a person is to be transferred in custody from a foreign State (transferring State) to another foreign State (receiving State) through **(name of State)** for purposes of identification, giving evidence or otherwise providing assistance,

### ***Option 1***<sup>27</sup>

the central authority of **(name of State)** may authorize the transit and apply to a [court/prosecutor/other authority] for the issuance of an [order/warrant] to that effect. The [court/prosecutor/other authority] shall issue an [order/warrant] to enable the transportation of the person through **(name of State)** and the holding of that person in custody by authorities of the transferring State.

### ***Option 2***<sup>28</sup>

the central authority of **(name of State)** may approve the transportation of the person through **(name of State)** and the holding of that person in custody by authorities of the transferring State.

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(2) Where an unscheduled transit in **(name of State)** occurs, a competent authority of **(name of State)** may, at the request of the escorting officer, hold the person in custody for [24/48 hours] pending an authorization under subsection (1).

## **Part 3: Requests for freezing or seizure and confiscation**<sup>29</sup>

### **22. Definitions**

For the purposes of this Act:

(1) ***Assets*** include items.

(2) ***Confiscation***, which includes ***forfeiture*** where applicable, means the permanent deprivation of property by order of a court or other competent authority.

(3) ***Confiscation order*** means an order made by a court or other competent authority in **(name of State)** or a foreign State for the confiscation of proceeds or instrumentalities of crime or terrorist property. Such an order includes a pecuniary

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<sup>27</sup> For national laws requiring judicial approval for granting transit permission.

<sup>28</sup> For national laws that regulate the granting of transit permission as an administrative practice.

<sup>29</sup> See also paragraphs 171-207 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

penalty or other order imposing a penalty determined by reference to the benefit to a person from an offence or unlawful activity<sup>30</sup>, whether or not the order is based on an underlying criminal conviction.

**(4) Instrumentalities of crime** mean any property:

- (a) used in, or in connection with, the commission of an offence or unlawful activity; or
- (b) intended to be used in, or in connection with, the commission of an offence or unlawful activity;

whether the property is located, or the offence or unlawful activity is committed, within or outside (**name of State**).

**(5) Proceeds of crime** mean any property derived from or obtained, directly or indirectly, through the commission of an offence or unlawful activity, whether such property is located, or the offence is committed, within or outside (**name of State**).

**(6) Property** means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.

**(7) Freezing or seizure** means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority and includes a restraining order.

**(8) Terrorist property** means:

- (a) any property used in, to be used, in full or in part, in or derived from:
  - i) an act which constitutes an offence as defined in the 13 international counter-terrorism instruments listed in the schedule to this Act; or
  - ii) any act proscribed as a terrorist act under the law of (**name of State**) or of a foreign State.
- (b) any property required to be frozen by resolutions of the Security Council exercising its powers under Chapter VII of the Charter of the United Nations;
- (c) property of any individual or organization proscribed as terrorist by the (**name of State**) or a foreign State.

### **23. Request for obtaining an order for freezing or seizure**

Where a request is made by a foreign State for the freezing or seizure of property as proceeds or instrumentalities or terrorist property, the [court/prosecutor/other authority] of (**name of State**) may issue a freezing or seizure order if satisfied that there is a sufficient basis to obtain such an order under the law(s) of (**name of State**),

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<sup>30</sup> Reference in the definitions to offence or unlawful activity takes account of the fact that in some States' legislation, especially non-conviction-based confiscation regimes, proceeds of crime are premised on unlawful activity.

which shall apply as if the offence or unlawful activity that is the subject of the order had been committed in **(name of State)**.

#### **24. Request for enforcement of foreign orders**

##### *Option 1<sup>31</sup>*

(1) Where a request is made by a foreign State for the enforcement of a freezing/seizure or confiscation order and there are reasonable grounds for believing that all or some of that property is located in the territory of **(name of State)**, the [court/prosecutor/other authority] of **(name of State)** may issue an order for the:

- (a) registration of the foreign freezing or seizure order if satisfied that the order is in force in the foreign State at the time of the application;
- (b) registration of the foreign confiscation order if satisfied that the order is in force in the foreign State at the time of the application and is not subject to appeal.

(2) A copy of any amendments to the order may be registered in the same manner as the order and shall take effect upon registration.

(3) The [court/prosecutor/other authority] of **(name of State)** shall cancel the registration of:

- (a) a foreign freezing or seizure order, if satisfied that the order has ceased to have effect; or
- (b) a foreign confiscation order if satisfied that the order has been satisfied or has ceased to have effect.

(4) An order and any amendments thereto registered under this section may be enforced as if they were issued under the law of **(name of State)**.

##### *Option 2<sup>32</sup>*

(1) Where a request is made by a foreign State for the enforcement of a freezing/seizure or confiscation order and there are reasonable grounds for believing that all or some of that property is located in the territory of **(name of State)**, the [competent authority] may file a copy of the order with [relevant court] if satisfied that:

- (a) In the case of an order for freezing/seizure, the order is in force in the requesting state at the time of filing;

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<sup>31</sup> For national laws requiring judicial approval for the enforcement of foreign orders.

<sup>32</sup> For national laws that regulate the enforcement of foreign orders via the mechanism of the registration of such orders.



(b) In the case of an order for confiscation, the order is in force and not subject to further appeal at the time of filing.

(2) A copy of any amendments to the order may be filed in the same manner as the order and shall take effect upon registration.

(3) The [competent authority] of **(name of State)** may cancel the registration of an order by filing a notice to that effect if satisfied that the order has ceased to have effect in the foreign State or, if applicable, has been satisfied.

(4) An order and any amendments filed with the court in accordance with this section may be enforced as if they were issued under the law of **(name of State)**.

## **25. Rights of bona fide third parties**

(1) Notice of the [registration/filing] of an order under section 24 shall be given to all persons appearing to have an interest in property against which the order may be executed, prior to any execution action.

(2) Subject to subsection (4), any person with an interest in the property against which an order [registered/filed] under section 24 may be executed, may, within 30 days of receiving notice of the [registration/filing], make an application for an order excluding his or her interest in the property from execution of the order. The time for bringing the application may be extended by order of the [court/prosecutor/other authority].

(3) The provisions of the [proceeds of crime/anti-money laundering/terrorist financing laws of **(name of state)**] relating to the rights of bona fide third parties shall apply, mutatis mutandis, to any application brought under subsection (2).

(4) Unless a [court/prosecutor/other authority] in the interest of justice orders otherwise, any person who received notice in advance of the confiscation proceedings in the foreign State, whether participated in those proceedings or not, is precluded from bringing an application under subsection (2).

## **26. Disposition of confiscated proceeds of crime or property**

Upon request of a foreign State, the central authority of **(name of State)** may transfer to it the whole or part of any proceeds or instrumentalities confiscated in **(name of State)** in response to a request for the enforcement of a confiscation order pursuant to section 24 of this Act.

## **Part 4: Assistance in relation to computers, computer systems and computer data**<sup>33</sup>

### **27. Definitions**

For the purposes of this Part:

(1) **Traffic data** means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration or type of underlying service.

(2) **Service provider** means:

- (a) any public or private person that provides to users of its service the ability to communicate by means of a computer system; and
- (b) any other person or entity that processes or stores computer data on behalf of such service or users of such service.

(3) **Computer data** includes any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;

(4) **Computer system** means any device or a group of interconnected or related devices one or more of which, pursuant to a program, performs automatic processing or recording of data.

(5) **Subscriber information** means any information contained in the form of computer data or any other form that is held by a service provider relating to subscribers of its services, other than traffic or content data, by which can be established:

- (a) the type of communication service used, the technical provisions relating thereto and the period of service;
- (b) the subscriber's identity, postal or other address, telephone and other access number, billing and payment information as well as any other information on the site of the installation of communication equipment disclosed by or from the service agreement or arrangement.

### **28. Expedited preservation and disclosure of stored computer data**

(1) Upon request by a foreign State setting forth the need for specified computer data (including traffic data) to be preserved, the urgency of preserving it, sufficient information to locate the data, and a statement that a request for production of the data will follow, the central authority of **(name of State)** [or other competent authority that can issue an expedited order] may issue an order compelling a [legal or natural]<sup>34</sup> person located in **(name of State)** to preserve and safeguard such data. The order

<sup>33</sup> See also the provisions of the Council of Europe Convention on Cybercrime (2001).

<sup>34</sup> This qualification of legal or natural will be unnecessary in most common law jurisdictions.

shall lapse if the request for production is not received within [45/60] days of the request for preservation. Once the request for production has been received, the data shall continue to be preserved pending resolution of the request.

(2) Where in the course of execution of a request under subsection (1) to preserve traffic data concerning a specific communication, **(name of State)** discovers that a service provider in another country was involved in the transmission of the communication, the central authority [or other competent authority] shall have the power to disclose to the requesting State, prior to receipt of the request for production, a sufficient amount of the traffic data to identify that service provider and the path through which the communication was transmitted.<sup>35</sup>

## **29. Production of stored computer data**

(1) Upon request of a foreign State, the [court/prosecutor/other authority] of **(name of State)** may issue an order to enable the production of:

- (a) specified computer data in the possession or control of a person which is stored in a computer system or a computer data storage medium; and
- (b) subscriber information in the possession or control of a service provider.

where such data or information is relevant to the criminal matter in the requesting State.

## **30. Search and seizure of computer data**

(1) Upon request of a foreign State, the [court/prosecutor/other authority] of **(name of State)** may issue a [search warrant/order to search/other order] authorizing a person designated by it to search or otherwise access any computer system or part thereof as well as any computer storage medium in which computer data may be stored.

(2) The [search warrant/warrant/other order] issued pursuant to subsection (1) may authorize the designated person, where necessary, to:

- (a) seize or otherwise secure a computer system or part thereof, or a computer data storage medium;
- (b) make and retain a copy of those computer data;
- (c) maintain the integrity of the relevant stored computer data; and
- (d) render inaccessible or remove those computer data in the accessed computer system.

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<sup>35</sup> This power is intended to facilitate the ability of the requesting State to make a preservation request to the other country through which the communication travelled, before the traffic data is automatically destroyed by the service provider pursuant to normal business practice and there is no longer the ability to trace a communication to its source.

## **CHAPTER 3: REQUESTS FOR ASSISTANCE BY (NAME OF STATE)**

### **31. Special provisions relating to transferred persons in custody**<sup>36</sup>

(1) Where a person in custody in a foreign State is brought to **(name of State)** pursuant to a request for assistance under this Act, that person shall:

- (a) be permitted to enter and remain in **(name of State)** for the purposes of the request;
- (b) be required to leave **(name of State)** when no longer required for those purposes; and
- (c) be deemed to be in lawful custody in **(name of State)** for the purposes of the request.

(2) The central authority of **(name of State)** shall be responsible for making any necessary arrangements for the transfer of a person in custody in the foreign State to **(name of State)**, including arrangements to keep the person in custody and to return the person to the requested State when that person's presence is no longer required pursuant to the request;

(3) The law(s) of **(name of State)** with respect to the conditions of imprisonment of prisoners in that State, the treatment of such persons during imprisonment and the transfer of any such prisoner from prison to prison shall apply, insofar as they are capable of application, in relation to a person who is in **(name of State)** pursuant to a request made under this section.

(4) Any person who escapes from custody while in **(name of State)** pursuant to a request made under this section may be arrested without warrant and returned to the custody authorized by this section.

### **32. Safe conduct for person in (name of State) pursuant to a request for assistance**<sup>37</sup>

#### *Option 1*

(1) A person who is in **(name of State)** pursuant to a request for assistance under this Act, shall not:

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<sup>36</sup> See footnote 26 above.

<sup>37</sup> See footnote 27 above.

### *Option 2*

(1) A person whose presence in **(name of State)** has been sought pursuant to a request for assistance under this Act, and to whom the central authority of **(name of State)** has granted safe conduct under this section, shall not:

(a) be detained, prosecuted or punished or subjected to any other restriction of personal liberty or subjected to any civil proceedings, in respect of any act or omission that occurred prior to that person's departure from the foreign State pursuant to the request;

(b) be required, without his/her consent and the consent of the foreign State, to assist in an investigation or proceeding other than the investigation or proceeding to which the request relates.

(2) Any safe conduct provided in accordance with subsection (1) shall cease to apply when the person has had the opportunity to leave **(name of State)** and has not done so within a period of [10/15/x] days from the date on which he/she has been informed that his/her presence is no longer required for the purposes of the request, or when the person has returned to **(name of State)**.

### **33. Limitation on use of evidence obtained pursuant to a request for assistance**<sup>38</sup>

(1)

#### *Option 1*

Upon request of the foreign State, any evidentiary material provided to **(name of State)** as a result of a request for assistance under this Act:

(a) may not be used for any purpose other than the investigation, prosecution or judicial proceeding in respect of which the request for assistance was made; and

(b) is inadmissible as evidence in any proceedings other than the proceedings in respect of which it was obtained,

unless the central authority of **(name of State)** has approved its use for those other purposes [or the material has been made public in the normal course of the proceedings for which it was provided].

#### *Option 2*

The central authority of **(name of State)** shall have the power to enforce conditions or limitations on use of evidence obtained pursuant to a request for assistance imposed

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<sup>38</sup> See also paragraphs 129-133 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

by the foreign State and accepted by **(name of State)**. The courts of **(name of State)** shall have the power to issue an order accordingly.

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(2) The central authority of **(name of State)** shall not approve such other use without consulting the foreign State which provided the evidentiary material.

#### **[34. Suspension of time limits pending execution of a request for assistance**

The statute of limitations or other time limit on bringing prosecution or enforcing a sentence shall be suspended pending execution of a mutual assistance request made by **(name of State)**<sup>39</sup>.

### **CHAPTER 4: MISCELLANEOUS**

#### **35. Costs**<sup>40</sup>

(1) Subject to subsection (2), or unless otherwise agreed, the execution of a request for assistance in **(name of State)** shall be conducted without charge to the foreign State, except for:

- (a) costs incurred by the attendance of experts in the territory of **(name of State)**; or
- (b) costs incurred by the transfer of a person in custody; or
- (c) any costs of a substantial or extraordinary nature.

(2) The costs of establishing a video or telephone link, costs related to the servicing of a video or telephone link in **(name of State)**, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses shall be refunded by the foreign State, unless otherwise agreed.

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<sup>39</sup> Only applicable for States whose legislation provides for statutes of limitation.

<sup>40</sup> See also paragraphs 211-213 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.