

11 May 2022

English only

**Commission on Crime Prevention
and Criminal Justice****Thirty-first session**

Vienna, 16–20 May 2022

Item 5 of the provisional agenda*

**Thematic discussion on strengthening the use of
digital evidence in criminal justice and countering
cybercrime, including the abuse and exploitation of
minors in illegal activities with the use of the
Internet****Model Law on Mutual Assistance in Criminal Matters
(2007), as amended with provisions on electronic evidence
and the use of special investigative techniques (2022)****

1. At its tenth session in October 2020, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime adopted resolution 10/4, through which it “request[ed] the United Nations Office on Drugs and Crime, within its mandate, to continue to provide technical assistance and capacity-building to member States, upon request, to support their capacity to prevent and combat transnational organized crime, including through the following: (...) (d) The updating, as necessary, of model instruments and publications, such as the guide on current practices in electronic surveillance in the investigation of serious and organized crime developed by the United Nations Office on Drugs and Crime in 2009, the model law on mutual assistance in criminal matters developed by the Office in 2007, and the Manual on Extradition and Mutual Legal Assistance published by the Office in 2012, also with a view, as appropriate, to including provisions and updated material on the use of special investigative techniques and the gathering of electronic evidence” (operative paragraph 15(d) of resolution 10/4).

2. Pursuant to the aforementioned mandate, UNODC held two informal expert group meetings in March and November 2021 to update the Model Law on Mutual Assistance in Criminal Matters (2007). These informal expert group meetings were funded by the Government of Japan and the United Kingdom of Great Britain and Northern Ireland (Foreign, Commonwealth & Development Office).

3. The amendments to the 2007 Model Law were primarily based on: (a) the deliberations during the first and second informal expert group meetings mentioned above; (b) the written inputs received through national questionnaires; (c) the inputs received in the context of focused interviews with a number of national central authorities; and (d) the desk review carried out by UNODC experts in the Terrorism

* E/CN.15/2022/1.

** This document is reproduced as received by the Secretariat.



Prevention Branch (under the Global Initiative on Handling Electronic Evidence Across Borders) and the Organized Crime and Illicit Trafficking Branch of the Division for Treaty Affairs. Due consideration was also given to the 2021 edition of the UNODC *Practical Guide for Requesting Electronic Evidence Across Borders*, as well as the UNODC *Model Legislative Provisions against Organized Crime*, 2nd ed. (Vienna, 2021), as appropriate.

4. The suggested amendments, the majority of which concern Part 4 on “Assistance in relation to electronic evidence”, are wide-ranging. The previous provisions concerning expedited preservation and disclosure of stored computer data, production of stored computer data, and search and seizure of computer data have all been amended to provide further considerations for States in the granting of such orders. New provisions have been inserted concerning the production of stored computer data in an emergency situation (section 32A), and the relevant definitions (section 27) have also been updated to reflect the state of the art. New provisions concerning the treatment of electronic evidence by a State, following a foreign request, have been inserted in sections 28–30 (new Subpart 4A). Finally, provisions have been inserted with respect to the granting of mutual assistance in relation to electronic surveillance (section 34), with related amendments also required in section 27 to include necessary definitional concepts. Some incidental amendments to Chapter 1 have also been suggested.

5. It was deemed appropriate not to include additional provisions in Chapter 3 of the Model Law, entitled “Requests for assistance by (name of State)”. The existing provisions that regulate outgoing requests for mutual legal assistance were considered sufficient to also cover outgoing requests involving electronic evidence.

6. For ease of reference, additional text introduced within the revised version of the Model Law, as contained in the Annex below, is highlighted in bold and as “NEW”.

7. The revised Model Law on Mutual Assistance in Criminal Matters, as amended with provisions on electronic evidence and the use of special investigative techniques, is brought to the attention of the Commission on Crime Prevention and Criminal Justice at its 31st session for the information of Member States and also for consideration as reference material in support of the thematic discussion on “strengthening the use of digital evidence in criminal justice and countering cybercrime, including the abuse and exploitation of minors in illegal activities with the use of the Internet”. It will also be brought to the attention of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime at its eleventh session, to be held in October 2022. The revised text of the Model Law will be made available on the website of UNODC in June 2022.

Annex

Model Law on Mutual Assistance in Criminal Matters (2007), as amended with provisions on electronic evidence and the use of special investigative techniques (2022)

CONTENTS

CHAPTER 1: PRELIMINARY

- Section 1:** Short title and commencement
- Section 2:** Definitions
- Section 3:** Objects of the Act
- Section 4:** Saving clause
- Section 5:** Central authority: making and reception of requests
- Section 6:** Spontaneous transmission of information

CHAPTER 2: INCOMING REQUESTS FOR ASSISTANCE

Part 1: General provisions

- Section 7:** Scope of assistance
- Section 8:** Form of request
- Section 9:** Content of request for assistance
- Section 10:** Application of specific procedures sought by the requesting State
- Section 11:** General provision
- Section 12:** Refusal of request for assistance
- Section 13:** Non-disclosure of confidential requests for assistance

Part 2: Rules regarding specific forms of assistance

- Section 14:** Statements, testimony, production of evidence and identification of a person or thing
- Section 15:** Special provisions relating to the taking of testimony or statements
- Section 16:** Use of videoconferencing technology
- Section 17:** Search and seizure
- Section 18:** Transfer of a person detained in **(name of State)**
- Section 19:** Safe conduct
- Section 20:** Effect of transfer on sentence of person in custody
- Section 21:** Custody of persons in transit

Part 3: Requests for freezing or seizure and confiscation

- Section 22:** Definitions
- Section 23:** Request for obtaining an order for freezing or seizure
- Section 24:** Request for enforcement of foreign orders
- Section 25:** Rights of bona fide third parties
- Section 26:** Disposition of confiscated proceeds of crime or property

NEW! Part 4: Assistance in relation to electronic evidence

- Section 27:** Definitions
- Section 28:** Transmission of electronic evidence to requesting State
- Section 29:** Conditions for electronic transmission of electronic evidence
- Section 30:** Treatment of electronic evidence by the requesting State
- Section 31:** Expedited preservation and disclosure of stored computer data
- Section 32:** Production of stored computer data
- Section 32A:** Production of stored computer data in an emergency situation

Section 33: Search and seizure
Section 34: Electronic surveillance

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

Section 35: Special provisions relating to transferred persons in custody
Section 36: Safe conduct for person in **(name of State)** pursuant to a request for assistance
Section 37: Limitation on use of evidence obtained pursuant to a request for assistance
Section 38: Suspension of time limits pending execution of a request for assistance

CHAPTER 4: MISCELLANEOUS

Section 39: Costs

CHAPTER 1: PRELIMINARY

Section 1: Short title and commencement¹

(1) This law may be called the “Mutual Assistance in Criminal Matters Act **(insert year of adoption/enactment at the national level)**”.

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

Section 2: Definitions

In this Act, unless otherwise specifically provided:²

(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; or

(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].³

NEW! (4) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least [two/three/four] years or a more serious penalty.⁴

[(5) **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.]⁵

¹ 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.

² States, especially those of a civil law tradition, may wish to place the definition section at the end of their legislation.

³ The clause in brackets is optional, as a number of countries may not wish to include administrative proceedings in this definition.

⁴ According to article 2 (b) of the United Nations Convention against Transnational Organized Crime, the term “serious crime”, for the purposes of that Convention, shall mean “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.”

⁵ This definition will only be relevant for States that are either States parties to the Rome Statute

[Section 3: Objects of the Act^{6,7}

(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.]

Section 4: Saving clause⁸

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.

Section 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;
- (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)**.

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.

⁶ 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.

⁷ 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.

⁸ 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 (Microsoft Word – FINALmanuals.doc (unodc.org)) may also be considered mutatis mutandis as references.

(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.

Section 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

Section 7: Scope of assistance⁹

- (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.
- (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].¹⁰

Section 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 email.
- (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.

Section 9: Content of request for assistance¹¹

- (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.

⁹ See also paragraphs 10–62 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

¹⁰ 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.

¹¹ See also paragraphs 105–115 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters. 12 See also paragraph

Section 10: Application of specific procedures sought by the requesting State¹²

(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)**.

(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.

Section 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.

Section 12: Refusal of request for assistance

Option 1

No reference to grounds for refusal of a mutual legal assistance request.¹³

Option 2

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

(1) or (2)¹⁵ 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.¹⁶

(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.

(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.

¹² See also paragraphs 116–125 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

¹³ 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.

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

¹⁵ Numbering will depend on the option chosen.

¹⁶ For countries choosing option 2.

Section 13: Non-disclosure of confidential requests for assistance¹⁷

(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).]¹⁸

(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)]¹⁹

Part 2: Rules regarding specific forms of assistance

Section 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,

the [court/prosecutor/other authority] may issue an order for gathering evidence if satisfied that [there are reasonable grounds to (believe/suspect) that]²⁰ 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.²¹

NEW! (3) Where the foreign request relates to the production of electronic evidence, the provisions contained in sections 32-32A will apply.

(4) 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)**.

¹⁷ See also paragraphs 134–140 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

¹⁸ Subsection (2) is optional, as related issues may be covered by general provisions on contempt of court.

¹⁹ See footnote 19.

²⁰ The phrase in brackets is intended to cover the practice followed in common law jurisdictions.

²¹ This clause should cover the issue of ordering private persons not to disclose information.

(5) 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.

Section 15: Special provisions relating to the taking of testimony or statement

(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)**.

(3)²² 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.

Section 16: Use of videoconferencing technology^{23,24}

(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;

(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

²² See also paragraph 151 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

²³ 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).

²⁴ See also paragraph 148 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

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.

Section 17: Search and seizure²⁵

(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)**.

NEW! (2) Where the foreign request relates to the search and seizure of computer systems or computer data, the provisions contained in section 33 will apply.

(3) 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.

(4) 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.

Section 18: Transfer of a person detained in (name of State)²⁶

(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.

(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.

Section 19: Safe conduct²⁷

(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:

²⁵ See also paragraphs 168–170 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

²⁶ See also paragraphs 152–154 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

²⁷ See also paragraphs 160–164 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

- (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.

Section 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 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.

Section 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 1²⁸

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 2²⁹

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. (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 confiscation³⁰

Section 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 penalty or other order imposing a penalty determined by reference to the benefit to a person from an offence or unlawful activity³¹, 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

²⁸ For national laws requiring judicial approval for granting transit permission.

²⁹ For national laws that regulate the granting of transit permission as an administrative practice.

³⁰ See also paragraphs 171–207 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

³¹ 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.

(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.

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

Section 24: Request for enforcement of foreign orders

Option 1³²

(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 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)**.

³² For national laws requiring judicial approval for the enforcement of foreign orders.

Option 2³³

(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;

(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)**.

Section 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).

Section 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.

NEW!³⁴ **Part 4: Assistance in relation to electronic evidence****NEW! Section 27: Definitions**

(1) Affected person means any person, service provider or other entity who has been, or is likely to be, affected by the grant of any order in this Part.

³³ For national laws that regulate the enforcement of foreign orders via the mechanism of the registration of such orders

³⁴ Replacing former Part 4 of the Model Law entitled “Assistance in relation to computers, computer systems and computer data.

(2) Computer data

Option 1

Computer data means any representation of data or information that has been stored, transmitted or otherwise processed in a computer system. It includes subscriber, traffic and content data.

Option 2

Computer data means 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.³⁵

(3) Computer system means any device or group of interconnected or related devices, one or more of which, pursuant to a program or other software, stores, transmits or otherwise processes computer data.

(4) Content data

Option 1

No definition of the term.

Option 2

Content data means any computer data relating to a communication by means of a computer system concerning the substance or purport of that communication, such as text, voice, images and sound.

(5) Electronic communications network means transmission systems, whether or not based on a permanent infrastructure or centralized administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements that are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, and electricity cable systems, to the extent that they are used for the purpose of transmitting signals, irrespective of the type of information conveyed.

(6) Electronic evidence means any data or information generated, stored, transmitted or otherwise processed in electronic form that may be used to prove or disprove a fact in legal proceedings.

(7) Electronic surveillance means:

(a) the monitoring, interception, copying or manipulation of messages, data or signals that have been stored or transmitted, or are in the process of being transmitted, by electronic means; and

(b) the monitoring or recording of activities by electronic means, and any covert engagement in electronic communications with suspects involving undercover measures.

(8) Emergency situation means a situation in which there is a significant and imminent risk to the life or physical safety of any person, or a significant and imminent threat to national security, or the security of critical infrastructure of any country, dependency or other territories.

(9) Service provider means:

(a) any person, or public or private entity, that provides to users of its service the ability to communicate by means of a computer system, or otherwise facilitates communication over an electronic communications network; and

³⁵ This is the definition of “computer data” in Article 1(b) of the Council of Europe’s Cybercrime Convention.

(b) any other person, or public or private entity, that stores or otherwise processes computer data on behalf of such service or users of such service.

(10) Subscriber data means any computer data, collected in the normal course of business by a service provider, pertaining to the name, date of birth, postal or geographic address, billing and payment data, device identifiers, telephone number or email address, which can serve to identify the subscriber or customer, as well as the type of service provided and the duration of the contract with the service provider.

(11) Traffic data means any computer data collected in the normal course of business by a service provider, related to:

(a) the type of service provided and its duration where it concerns technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of the service, excluding passwords or other authentication means used instead of a password, that are provided by a user, or created at the request of a user;

(b) the commencement and termination of a user access session to a service, such as the date and time of use, or the log on to, and log out from the service; and

(c) communications metadata as processed in an electronic communications network for the purposes of transmitting, distributing or exchanging content data, including data used to trace and identify the source and destination of a communication, data on the location of the terminal equipment used in the context of providing communications services, and the date, time, duration and the type of communication.

NEW! Section 28: Transmission to requesting State

Unless international treaties to which (name of State) is a party or its laws establish otherwise, electronic evidence obtained pursuant to any of the procedural powers in this Part may be:

(a) disclosed to the central authority of (name of State) for transmission to the requesting State, or

(b) [with the approval of the central authority of (name of State)] transmitted directly [in cases of [emergency/urgency]] to any competent authority in the requesting State that is identified as the appropriate recipient in the request [, provided the material is subsequently disclosed to the central authority of (name of State)].

NEW! Section 29: Conditions for electronic transmission of electronic evidence³⁶

Where a foreign request is received requesting the transfer of electronic evidence through electronic means, such evidence will only be transferred in the format requested where the (competent authority) in (name of State) is satisfied that the process:

(a) ensures the security and integrity of the evidence, and the identification, authentication and verification of the sender and recipient, and

(b) is in compliance with (any applicable domestic data protection/data privacy laws).

NEW! Section 30: Treatment of electronic evidence by the requesting State

Any electronic evidence provided by (name of State), as a result of a foreign request for assistance under this Act, may not be used for any purpose other than with respect to the criminal matter for which the request for assistance was made, or otherwise authorized by the relevant legal instrument in effect between the requesting State and (name of State), unless the (competent authority) of (name of State) has explicitly approved its use for other purposes.

³⁶ See UNODC, *Practical Guide for Requesting Electronic Evidence Across Borders* (Vienna, United Nations, 2021), section 3.9 “Transmission of the Requested Evidence”.

NEW! Section 31: Expedited preservation and disclosure of stored computer data

(1) **Upon request by a foreign State setting forth—**

(a) **the need for specified computer data to be preserved,**

(b) **the urgency of preserving it, and grounds to demonstrate that this would be a relevant and [proportionate/non-excessive] measure for the investigation,**

(c) **sufficient information to locate the data, and**

(d) **a statement that a request for production of the data will follow,**

the central authority of (name of State) [or (other competent authorities)] may issue an order compelling any person, service provider or other entity located or established in, or [through data processing activities] otherwise operating from (name of State), to preserve and safeguard such data. The order shall lapse if the request for production is not received within [90/180] 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) The central authority [or (competent authority)] should endeavour to review any expedited preservation request as soon as reasonably practicable, but no later than [12/24/48] hours after receipt of the request from the foreign State, and may order that any associated preservation order be implemented within [12/24/48] hours of receipt of service of the order if deemed necessary.

(3) Where in the course of execution of a request under subsection 1 to preserve traffic data concerning a specific communication, authorities in (name of State) discover that a person, service provider or other entity 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 person, service provider or other entity, and the path through which the communication was transmitted[, provided such disclosure is in compliance with (applicable domestic data protection/data privacy laws)].

[(4) The central authority [or (other competent authority)] will not exercise the power conferred under subsection 3 unless it is satisfied, on the basis of the information provided by the foreign State, that a criminal offence has been, is being, or is likely to be committed, and that the disclosure of traffic data is needed for the investigation or prosecution of the offence.]

(5)

Option 1 Appeals

The appeal procedure in (relevant law) shall not apply to the granting of an order under this section.

Option 2 Appeals

Appeals against a decision of the Central Authority [or (other competent authorities)] may be made by any affected person, according to the following procedures:

(a) **the grounds for appeal shall be the same as apply in (relevant domestic law);**

(b) **notice in writing of any intention to appeal must be served on the Central Authority [or (other competent authorities)] at least (appropriate number of hours/days) before any appeal is made;**

(c) **where an appeal is successful in relation to only part of a preservation order, the remainder of the order remains in force; and**

(d) **the provisions in (domestic law) in relation to the payment of costs of any appeal shall apply[;**

(e) **(further as required)].**

(6) This section is without prejudice to the ability of a foreign State to secure the preservation of any particular categories of computer data in (name of State) either through law enforcement cooperation, or directly from any person, service provider or other entity located or established in, or [through data processing activities] otherwise operating from (name of State), where that process is permitted by national law [or subject to any international agreement(s)].

NEW! Section 32: Production of stored computer data

(1) Where a request is made by a foreign State for the production of:

(a) specified computer data in the possession or control of a person or entity located in (name of State), or

(b) any specified computer data in the possession or control of a service provider located or established in, or [through data processing activities] otherwise operating from (name of State), the [court/competent authority] may issue an order requiring the production of the requested data, provided the conditions in subsection 2 are satisfied. [It will be for the (competent authority, or a person nominated on its behalf, as the applicant) to apply for the order on behalf of the foreign State.]

(2)

Option 1 Conditions for the granting of a production order

The [court/competent authority] may only issue a production order under subsection 1 where the conditions applicable to the granting of such an order in similar domestic criminal proceedings are met], and the [court/competent authority] is satisfied that its implementation will not prejudice the sovereignty, security, *ordre public* or other essential public interest in (State).

Option 2 Conditions for the granting of a production order

The process for the granting of a production order in (applicable domestic laws) shall apply and references to (terminology³⁷) shall have effect notwithstanding the foreign nature of the criminal matter and the origin of the request.

Option 3 Conditions for the granting of a production order

The [court/competent authority] may only issue a production order pursuant to subsection 1 where the following conditions are satisfied:

(a) the foreign State has provided sufficient information to demonstrate that there are [reasonable] grounds to suspect that a criminal offence, contrary to the laws of the foreign State, has been committed, or is in the process of being committed,

(b) there are reasonable grounds to suspect that the data sought will be [material/of substantial value] to the criminal matter in the foreign State,

(c) the granting of the order is a [necessary/relevant] and [proportionate/non-excessive] measure for the investigation and prosecution of the criminal matter in the foreign State,

(d) satisfactory arrangements are in place for the transmission of any requested computer data to the foreign State, and for its destruction or return, if either may be requested by any affected person, where it is no longer required for the criminal matter in the foreign State,

[(e) the information sought is not subject to any legal privilege,³⁸ or immunity under domestic or international law] [and]

[(f) (any further conditions as necessary)].

³⁷ Some language in relevant domestic law for production orders will be specific to domestic process and procedure, and without specification here, could lead to uncertainty or inconsistency in interpretation where it is to apply to a foreign request.

³⁸ This may be a relevant and necessary consideration in certain common law jurisdictions, in particular.

[(2A) The conditions in subsection 2 do not apply where the material sought by the foreign State relates to subscriber data only. This data can be provided where a [prosecutor/other competent authority] is satisfied that the data is [necessary and] relevant to the criminal matter in the foreign State, and the disclosure is otherwise in compliance with (applicable domestic laws).]³⁹

(3) [To the extent that the order does not prescribe otherwise, the requested data will be produced in accordance with (applicable domestic laws).] A person, entity or service provider served with an order pursuant to subsection 1 will be required to provide the requested data, in the form determined by the [court/prosecutor/competent authority], within (appropriate number) days of receipt of service of the order, or such other period as the [court/prosecutor/competent authority] considers appropriate.

(4)

Option 1 Notice

An order requiring a service provider to produce specified data pursuant to subsection 1 will be without notice to any subscriber or customer to whom the request relates.

Option 2 Notice

An order requiring a service provider to produce specified data pursuant to subsection 1 will ordinarily be with notice to any subscriber or customer to whom the request relates, unless the foreign State, or any domestic authority acting on its behalf in the proceedings, request in the application for the order that notification should be delayed for a period no longer than [90/180/365] days, or such other justified period that is necessary for the resolution of the criminal matter in the foreign State. The [court/prosecutor/competent authority] will grant the request for delayed notification if it determines that there is reason to believe that notification of the existence of the order may have any of the following adverse results: _____

- (a) **Endangering the life or physical safety of victims and witnesses or of any other person;**
- (b) **Flight from prosecution;**
- (c) **Destruction of, or tampering with, evidence;**
- (d) **Intimidation of potential witnesses; or**
- (e) **Otherwise seriously jeopardising an investigation or unduly delaying a trial.**

(5)

Option 1 Appeals

The appeal procedure in (relevant law) shall not apply to the grant of an order under this section.

Option 2 Appeals

An appeal against a decision of the [court/competent authority] may be made to (name of court) by: (i) the applicant authority, acting on behalf of the foreign State; or (ii) an affected person, according to the following procedures:

- (a) the grounds for appeal shall be the same as apply in (domestic laws); _____
- (b) where an appeal is to be made by an affected person who is a service provider, notice in writing of the intention to appeal must be served on the applicant at least (appropriate timeframe in hours/days) before any appeal is made;
- (c) where an appeal is made by an affected person who is not a service provider—

³⁹ Some countries may regard subscriber data as less sensitive than other types of computer data and may determine that it is not necessary to e.g. require the same evidentiary thresholds or judicial oversight of decisions on whether to provide subscriber data to a foreign State.

(i) notice in writing of the intention to appeal must be served on the applicant authority and any service provider or other entity required to comply with the order, at least (appropriate timeframe in hours/days) before any appeal is made; and

(ii) both the applicant authority and any service provider or other entity required to comply with the order must be named as parties to the appeal;

(d) where an appeal is successful in relation to only part of a production order, the remainder of the order remains in force; [and]

(e) the provisions in (domestic law) in relation to the payment of costs of any appeal shall apply; and

(f) (further as required)].

(6) This section is without prejudice to the ability of a foreign State to obtain any particular categories of computer data in (name of State) either through law enforcement cooperation, or directly from any person authorized to give consent, or service provider or other entity located or established in, or [through data processing activities] otherwise operating from (name of State), where that process is permitted by national law [or subject to any international agreement(s)].

NEW! Section 32A: Production of stored computer data in an emergency situation

(1) Where a request is made by a foreign State for the production of computer data covered by section 32(1)(b) in an emergency situation, the [court/competent authority] may order the service provider to produce the requested data on an expedited basis.

(2) The [court/prosecutor/competent authority] may only grant a production order pursuant to this section if

(a) the conditions for the grant of an order in section 32(2) are satisfied, and

(b) the requesting State has provided sufficient information to satisfy the [court/prosecutor/competent authority] that an emergency situation exists.

(3) The [court/prosecutor/other authority] may seek supplemental information in order to evaluate an emergency request. Requests sent pursuant to this subsection will be processed on an expedited basis through the Central Authority of (State) or through any other channel that the [court/prosecutor/competent authority] deems appropriate.

(4) Where a [court/prosecutor/competent authority] finds that the conditions in subsection 2 are satisfied, it will order that the service provider produce the requested data within (appropriate timeframe in hours/days) of receipt of service of the order.

(5)

Option 1 Notice

An order requiring a service provider to produce specified data pursuant to subsection 1 will be without notice to any subscriber or customer to whom the request relates.

Option 2 Notice

An order requiring a service provider to produce specified data pursuant to subsection 1 will ordinarily be with notice to any subscriber or customer to whom the request relates, unless the foreign State, or any domestic authority acting on its behalf in the proceedings, request in the application for the order that notification should be delayed for a period no longer than [90/180/365] days, or such other justified period that is necessary for the resolution of the criminal matter in the foreign State. The [court/prosecutor/competent authority] will grant the request for delayed notification if it determines that there is reason to believe that notification of the existence of the order may have any of the following adverse results:

(a) Endangering the life or physical safety of any person;

(b) Flight from prosecution;

- (c) Destruction of, or tampering with, evidence;
- (d) Intimidation of potential witnesses; or
- (e) Otherwise seriously jeopardising an investigation or unduly delaying a trial.

(6)

Option 1 Appeals

The appeal procedures in (relevant law) shall not apply to the grant of an order under this section.

Option 2 Appeals

The appeal procedures in section 32(5) shall also apply to the grant of any production order under this section (adjust time limits for notices to appeal accordingly).

(7) This section is without prejudice to the ability of a foreign State to obtain stored computer data in an emergency situation through other forms of judicial or law enforcement cooperation or directly from service providers located or established in, or [through data processing activities] otherwise operating from (name of State), where that process is permitted by domestic law [or subject to any international agreement(s)].

NEW! Section 33: Search and seizure

(1) Where a request is made by a foreign State for the search or seizure of any computer system or computer data located in (name of State), the (name of court) may issue a [search warrant/other search order] authorizing a person designated by it to perform the search or seizure provided the conditions in subsection 2 are satisfied. [It will be for the (competent authority, or a person nominated on their behalf, as applicant authority) to apply for the [search warrant/other search order] on behalf of the foreign State.]

(2)

Option 1 Conditions

The (name of court) may only issue a [search warrant/other search order] under subsection 1 where the conditions applicable to the granting of such a [search warrant/other search order] in similar domestic criminal proceedings would be met[, and the (name of court) is satisfied that its implementation will not prejudice the sovereignty, security, *ordre public* or other essential public interest in (State).

Option 2 Conditions

The requirements for the granting of a [search warrant/other search order] in (applicable domestic laws) shall apply and references to (terminology⁴⁰) shall have effect notwithstanding the foreign nature of the criminal matter and the origin of the request.

Option 3 Conditions

The (name of court) may only issue a [search warrant/other search order] pursuant to subsection 1 where the following conditions are satisfied:

(a) the foreign State has provided sufficient information to demonstrate that there are [reasonable] grounds to suspect that a [serious] crime, contrary to the laws of the foreign State, has been committed, or is in the process of being committed;

(b) there are reasonable grounds to suspect that the material sought will be [relevant and material/of substantial value] to the criminal matter in the foreign State;

⁴⁰ Some language in relevant domestic law for search warrants or orders will be specific to domestic process and procedure, and without specification here, could lead to uncertainty or inconsistency in interpretation where it is to apply to a foreign request.

(c) the granting of the order is a [necessary/relevant] and [proportionate/non-excessive] measure for the investigation and prosecution of the criminal matter in the foreign State;

(d) satisfactory arrangements are in place for the transmission of any requested computer data or computer system(s) to the foreign State, and for their destruction or return, if either may be requested by any affected person, where they are no longer required for the criminal matter in the foreign State;

[(e) the information sought is not subject to any legal privilege⁴¹ or immunity under domestic or international law]; [and]

[(f) (any further conditions as necessary)].

(3) A [search warrant/other search order] under this section shall:

(a) specify (i) any computer system(s) to be searched or seized and (ii) any computer data to be searched or seized, in as much detail as is reasonably practicable in the circumstances;

(b) require any person who is served with the [search warrant/other search order], and is in possession of the computer system(s), to give the designated person access to it, either immediately or within a period specified in the [search warrant/other search order];

(c) require any person who is served with the [search warrant/other search order] and is entitled to grant entry to any place where the computer system is located, to grant such entry in order to allow the designated person to execute the search or seizure;

(d) authorize the designated person to enter the place where the computer system(s) is located, accompanied by such other person[s] as the designated person thinks necessary, on production, if so requested, of the [search warrant/other search order] and, if necessary, by the use of reasonable force;

(e) authorize the designated person to search the place and any persons present therein, and to perform any or all of the acts of search and seizure referred to in subsection 6;

(f) authorize the disclosure of any material obtained pursuant to the [search warrant/other search order or power] to the requesting State and, where necessary, attaching conditions to be fulfilled before such disclosure may take place; [and]

[(g) (further as necessary)].

(4) Where execution of the [search warrant/other search order] will involve entry into any place, or the search of a person, the procedures in (applicable domestic laws) for the conduct of such a search shall apply, varied to the extent necessary to respond to the foreign request.

(5) In issuing the [search warrant/other search order] in accordance with subsection 1, the (name of court) may subject its execution to conditions and may authorize the presence or participation of representatives of the requesting State in the search.

(6) References to search and seizure in subsection 1 shall include authorizing the designated person, where necessary, to:

(a) access and examine a specified computer system, or part thereof;

(b) seize or otherwise secure any specified computer system(s) or computer data;

(c) require the production of any computer data specified in the [search warrant/other search order], or the giving of access to it, in a form that is legible and comprehensible or can be made so, in order for it to be taken away;

(d) make and retain a copy of any specified computer data;

(e) maintain the integrity of all relevant computer data;

⁴¹ This may be a relevant and necessary consideration in certain common law jurisdictions, in particular.

(f) take such other steps as appear to the designated person to be necessary for preserving any relevant material that is the subject of the [search warrant/other search order] and preventing any interference with it [; and

(g) (further as necessary)].

(7) Where a designated person seizes a computer system or computer data pursuant to a [search warrant/other search order], they shall [after consultation with the foreign State, if necessary]:

(a) provide a description of any computer system(s) and computer data seized to the person(s) with an interest in the material, as soon as reasonably practicable;

(b) provide a description of how any seized material will be examined and used, to the person(s) with a possessory interest in the material, as soon as reasonably practicable;

(c) ensure the return of any seized computer system(s), to the person(s) with an interest in the material, as soon as reasonably practicable, where the computer system(s) is no longer required for the criminal matter in the foreign State;

(d) ensure the return or deletion of any seized computer data, as soon as is reasonably practicable, where the data is no longer required for the criminal matter in the requesting State, taking account of any requests made by the person(s) with an interest in the material;

(e) provide a description, to the person with a possessory interest in the material, of the mechanisms for submitting requests [and/or appeal rights] in relation to the treatment of the material [and

(f) (further as necessary)].

(8) If any seized computer system or computer data has not been returned to the person with an interest in the material after the expiry of a period of (appropriate number) month(s) from the date of seizure, that person may apply to (name of court) for the return or deletion of the computer data, or the return of the computer system(s), on the grounds that:

(a) the computer system(s) or data is reasonably required for legitimate purposes; and

(b) the continued retention of the seized material is no longer required for the criminal matter in the requesting State.

(9)

Option 1 Appeals

The appeal procedure in (relevant domestic law) shall not apply to the grant of an order under this section.

Option 2 Appeals

An appeal against a decision of the (name of court) under this section may be made by: (i) the applicant authority, on behalf of the foreign State; or (ii) an affected person, according to the following procedures:

(a) the grounds for appeal shall be the same as apply in (domestic laws);

(b) the notice of appeal provisions in (domestic laws) shall apply to any appeal brought pursuant to this section;

(c) where an appeal is successful in relation to only part of a [search warrant/other search order], the remainder of the [search warrant/other search order] remains in force;

(d) the provisions in (domestic law) in relation to the payment of costs of any appeal shall apply. [; and

(e) (further as required)].

NEW! Section 34: Electronic surveillance

(1) Where a request is made by a foreign State for assistance involving electronic surveillance the (name of appropriate court or other competent authority) may grant an order authorizing the requested conduct provided the conditions in this section are satisfied.

(2) Upon receipt of a request for an electronic surveillance order under subsection 1, the Central Authority of (State) may consult with (appropriate minister/competent authority, or person nominated on their behalf) to determine if the request should be accepted and forwarded for the purposes of preparing an order under this section.

(3) An application for an electronic surveillance order under this section will be made by (competent authority as applicant authority) on behalf of the requesting State.

(4) An electronic surveillance order under this section may relate to:

(a) a particular person or entity;

(b) a group of persons who share a common purpose or who carry on, or may carry on, a particular activity;

(c) more than one person or entity, where the conduct authorized or required by the order is for the purposes of a single investigation;

(d) particular network access, equipment or service level identifiers,

where that person(s), entity, or equipment is, or is suspected to be, located in (name of State) or any relevant service provider is located or established in, or [through data processing activities] otherwise operating from (name of State).

(5) The application of the requesting State for an order under this section must state:

(a) the type of electronic surveillance for which the authorization is sought, and the persons, service providers or entities that may be required to assist in its implementation;

(b) the duration for which the authorization is sought;

(c) the nature of the data or information that is expected to be collected, and specifically the links to serious crime in the requesting State;

(d) the individuals, entities, locations or devices targeted by the surveillance;

(e) the measures that are in place to ensure that the privacy and other human rights of individuals are protected and, in particular, the arrangements that are in place for the secure storage of the product of any electronic surveillance, the process for its disclosure to the requesting country and whether this can be done contemporaneously with the electronic surveillance, and the procedures that are in place for its destruction when it is no longer required for the criminal matter in the foreign State;

(f) whether the matter has been the subject of a previous application; [and]

(g) (additional requirements as appropriate/required);

(6) The (name of appropriate court or other competent authority) may only issue an order under this section if it determines that:

(a) the order is needed for the purpose of giving effect to the provisions of a mutual assistance treaty, other agreements or arrangements, as appropriate, or on the basis of reciprocity;

(b) there are reasonable grounds to believe that a serious offence has been, is being or is likely to be committed;

(c) there are reasonable grounds to suspect that the conduct for which the authorization is sought will be [material/of substantial value] to the criminal matter in the requesting State;

(d) the nature and extent of the suspected criminal activity are such as to justify the type of electronic surveillance for which the authorization is sought;

(e) the electronic surveillance is a [necessary/relevant] and [proportionate/non-excessive] measure for the investigation and prosecution of the criminal matter in the foreign State;

(f) satisfactory arrangements are in place for the secure storage and disclosure of the product of any electronic surveillance, and for its destruction where it is no longer required for the criminal matter in the foreign State; [and]

[(g) the information or data sought by the electronic surveillance is not subject to any legal privilege,⁴² or immunity under domestic or international law]; [and]

[(h) (additional conditions as required)].

(7) After considering the application of the requesting State, the (name of appropriate court or other competent authority) may:

(a) authorize the electronic surveillance unconditionally;

(b) authorize the electronic surveillance subject to conditions;

(c) refuse the application for electronic surveillance.

(8) The order must specify the time period for which the electronic surveillance is authorized, which shall in any case be no longer than (appropriate time period). The order may be renewed on application.

(9) The (name of appropriate court or other competent authority) shall revoke an order granted under subsection 1 if it is no longer satisfied, on reasonable grounds, of the matters referred to in subsection 6.

(10) The (name of appropriate court or other competent authority) shall cancel an order granted under this section upon receipt of a request for cancellation from (applicant or other authority).

(11)

Option 1 Appeals

The appeal procedure in (relevant domestic law) shall not apply to the grant of an order under this section.

Option 2 Appeals

An appeal against a decision of the (name of court or other competent authority) under this section may be made to (appropriate court) by (i) the applicant authority, on behalf of the foreign State, or (ii) an affected person, according to the following procedures:

(a) the grounds for appeal shall be the same as apply in (domestic laws);

(b) where an appeal is to be made by an affected person who is a service provider, or other entity, notice in writing of the intention to appeal must be served on the applicant authority at least (appropriate timeframe in hours/days) before any appeal is made;

(c) where an appeal is successful in relation to only part of an electronic surveillance order, the remainder of the order remains in force; [and]

(d) the provisions in (domestic law) in relation to the payment of costs of any appeal shall apply; [and]

(e) (further as required)].

(12) The (competent authority) must ensure that information and data which has been collected through electronic surveillance authorized under this section, but which is not relevant to the criminal matter in the requesting State, is destroyed as soon as practicable, and no later than (appropriate time frame) after the expiry of the authorization.

(13) A law enforcement official or other authorized person who engages in conduct authorized in accordance with this section shall not be subject to criminal or civil liability for that conduct.

(14) The (competent authority) shall report annually to [Parliament/a parliamentary committee/the public] on the number of applications received under this section, and the respective numbers of authorizations that were approved, refused, revoked and cancelled.

(15) This section is without prejudice to the ability of a foreign State to obtain assistance in the conduct of any electronic surveillance in (name of State) either through law enforcement or

⁴² This may be a relevant and necessary consideration in certain common law jurisdictions, in particular.

other forms of cooperation, where that process is permitted by national law [or subject to any international agreement(s)].

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

Section 35: Special provisions relating to transferred persons in custody⁴³

(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.

Section 36: Safe conduct for person in (name of State) pursuant to a request for assistance⁴⁴

(1) *Option 1:* A person who is in **(name of State)** pursuant to a request for assistance under this Act, shall not; or *Option 2:* 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)**.

Section 37: Limitation on use of evidence obtained pursuant to a request for assistance⁴⁵

(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

⁴³ See footnote 27 above.

⁴⁴ See footnote 28 above.

⁴⁵ See also paragraphs 129–133 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.

(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 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.

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

Section 38: 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)**⁴⁶

CHAPTER 4: MISCELLANEOUS

Section 39: Costs⁴⁷

(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.

⁴⁶ Only applicable for States whose legislation provides for statutes of limitation.

⁴⁷ See also paragraphs 211–213 of the Revised Manual on the Model Treaty on Mutual Assistance in Criminal Matters.