

No. S 77

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

MUTUAL ASSISTANCE IN CRIMINAL MATTERS REGULATIONS, 2005

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MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

MUTUAL ASSISTANCE IN CRIMINAL MATTERS REGULATIONS, 2005

In exercise of the power conferred by section 56 of the Mutual Assistance in Criminal Matters Order, 2005, the Minister of Home Affairs with the approval of His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Regulations —

PART I

PRELIMINARY

Citation.

1. These regulations may be cited as the Mutual Assistance in Criminal Matters Regulations, 2005.

Interpretation.

2. In these regulations, unless the context otherwise requires —

"Order" means the Mutual Assistance in Criminal Matters Order, 2005.

Forms.

3. The forms in the Schedule, with such variation as the circumstances of each case require, may be used for the purposes of the Order.

Applicable procedure.

4. (1) The Criminal Procedure Code, Chapter 7 shall, unless expressly provided otherwise in these Regulations, apply for the purposes of the Order.

(2) Where a request by a foreign country to Brunei Darussalam for assistance in a criminal matter contains details of the procedure which that foreign country wishes Brunei Darussalam to follow in giving effect to the request, such procedure shall be applied to the extent that it is not contrary to any written law for the time being in force, and in such case, the relevant provisions of the Criminal Procedure Code shall apply with the necessary modifications.

Secretariat and Register.

5. (1) There is hereby established a Mutual Legal Assistance Secretariat consisting of such public officers as the Attorney General may appoint to assist the Attorney General in discharging his responsibilities under the Order.

(2) The Attorney General may keep and maintain a Register in such form as he considers appropriate.

(3) The Register may contain information pertaining to requests for assistance under the Order including on the following matters —

(a) requests made by Brunei Darussalam to a foreign country under the Order;

(b) the results of requests made by Brunei Darussalam to a foreign country under the Order;

(c) details of the things seized pursuant to a request made by Brunei Darussalam to a foreign country under the Order and the return of such things to the appropriate authority of the foreign country, where applicable;

(d) details of the prisoners transported to Brunei Darussalam pursuant to a request made by Brunei Darussalam to a foreign country under the Order;

(e) details of the assets traced, restrained and recovered pursuant to a request made by Brunei Darussalam to a foreign country to enforce a forfeiture order under the Order;

(f) details of the persons located pursuant to a request made by Brunei Darussalam to a foreign country under the Order;

(g) details of the processes served in a foreign country pursuant to a request made by Brunei Darussalam to a foreign country under the Order;

(h) requests received by Brunei Darussalam from a foreign country under the Order;

(i) the results of requests received by Brunei Darussalam from a foreign country under the Order;

(j) details of the things seized pursuant to a request received by Brunei Darussalam from a foreign country, the return of such things to the appropriate authority of Brunei Darussalam, where applicable, and the return of such things to the rightful owner, where applicable;

(k) details of the persons who have travelled to and the prisoners who have been transported to a foreign country pursuant to a request received by Brunei Darussalam from a foreign country under the Order;

(l) details of the persons located pursuant to a request received by Brunei Darussalam from a foreign country under the Order;

(m) details of the processes served in Brunei Darussalam pursuant to a request received by Brunei Darussalam from a foreign country under the Order; and

(n) such other information as the Attorney General considers appropriate.

Witness fees.

6. A person who attends as a witness before any Court in accordance with a summons under the Order may be entitled to be paid witness fees as specified in the Criminal Procedure Code.

FORM 1
(Section 12(1))

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

DIRECTION FOR CUSTODY OF FOREIGN PRISONER

To: The Director of Prisons

WHEREAS —

- (a) a criminal matter involving the offence of
(description of offence) has commenced in Brunei Darussalam;
- (b) there are reasonable grounds to believe that
(name of person), a prisoner at (place of imprisonment) in
(name of foreign country), is capable of giving evidence or assistance
relevant to that criminal matter;
- (c) pursuant to a request for assistance under section 10 of the Mutual
Assistance in Criminal Matters Order, 2005,
(name of foreign country) has agreed to arrange for the transfer of
..... (name of person) to Brunei Darussalam for the purpose of
giving such evidence or assistance in that criminal matter; and
- (d)(name of person) has freely consented to travel
to Brunei Darussalam and attend as requested for the purpose of giving
such evidence or assistance in that criminal matter;

Now THEREFORE, in exercise of the powers conferred on me by section 12(1) of
the Mutual Assistance in Criminal Matters Order, 2005 I,,
the Minister of Home Affairs, direct you, to receive
(name of person) into your custody in
(name of foreign country) and to convey him in custody to Brunei Darussalam and
there to keep him safely in custody of to be
further dealt with in accordance with the provisions of the Mutual Assistance in
Criminal Matters Order, 2005.

.....
Minister of Home Affairs
Brunei Darussalam

.....
Date

FORM 2
(Section 13)

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

DIRECTION OF MINISTER FOR RELEASE OF FOREIGN PRISONER

To: The Director of Prisons.

In exercise of the powers conferred on me by section 13 of the Mutual Assistance in Criminal Matters Order, 2005, I, the Minister of Home Affairs of Brunei Darussalam hereby direct that *(name of person)* be released from your custody.

.....
Minister of Home Affairs
Brunei Darussalam

.....
Date

FORM 3
(Section 14(2))

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

DECLARATION OF ATTORNEY GENERAL

In exercise of the powers conferred on me by section 14(2)(b) of the Mutual Assistance in Criminal Matters Order, 2005, I,, the Attorney General of Brunei Darussalam declare as follows –

- (a) that a criminal matter involving the offence of
(description of offence) has commenced in Brunei Darussalam;
- (b) that it is desirable that (name of person and residential address), a person (name of in foreign country) to attend Brunei Darussalam for the purpose of giving *evidence / *assistance relevant to that criminal matter;
- (c) that pursuant to a request for assistance under section 10 of the Mutual Assistance in Criminal Matters Order, 2005, (name of the person) has consented to attend in Brunei Darussalam for the purpose of giving such *evidence / *assistance in the criminal matter.

.....
Attorney General
Brunei Darussalam

.....
Date

*Delete if not applicable.

FORM 4
(Section 27(1))

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

**AUTHORISATION OF THE ATTORNEY GENERAL
FOR THE TAKING OF EVIDENCE**

To the Magistrate at

WHEREAS —

- (a)* a request has been made by *(name of foreign country)*
that evidence be taken in Brunei Darussalam for the purpose of a
criminal matter; and
- (b)* there are reasonable grounds for believing that the evidence can be
taken in Brunei Darussalam;

Now THEREFORE, in exercise of the powers conferred on me by subsection 27(1)
of the Mutual Assistance in Criminal Matters Order, 2005, I,
the Attorney General of Brunei Darussalam, authorise you to take the evidence
requested in accordance with section 27 of the Mutual Assistance in Criminal
Matters Order, 2005 for transmission to
(name of foreign country).

.....
Attorney General
Brunei Darussalam

.....
Date

FORM 5
(Section 27(2))

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

CERTIFICATE OF MAGISTRATE UNDER SECTION 27(2)
OF THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

[Note This Certificate is to be attached at the end of the record of evidence taken under section 27(2) of the Mutual Assistance in Criminal Matters Order, 2005]

I, (*name*), a Magistrate at certify as follows –

- (a) the evidence recorded above was taken by me and is a true and accurate record of the Evidence on *oath /*affirmation of (*name of witness*) appearing before me;
- (b) *the person to whom the criminal matter in the foreign country relates / *his legal representative *was /*was not present at the proceedings;
- (c) the following persons were present at the proceedings –
.....
(*name and description of persons*);
- (d) * (*name of witness*), being the person summoned to give the material evidence requested, objected to evidence being taken under (*specify relevant law of foreign country*);
- (e) * (*other relevant matters*).

.....
Date

.....
Signature

.....
(*Description*)

* Delete if not applicable.

FORM 6
(Section 29)

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

APPLICATION FOR PRODUCTION ORDER

To:

WHEREAS —

- (a) a request has been made by *(name of foreign country)*, under section 26 of the Mutual Assistance in Criminal Matters Order, 2005 that *(brief description of document, article or other thing to which request of foreign country relates)* be produced for the purpose of a criminal matter in *(name of foreign country)*; and
- (b) there are reasonable grounds to believe that the documents, articles or other things are located in Brunei Darussalam *in the possession of *(name or description of person or authority)* /* at *(name or description of premises)*;

Now THEREFORE, in exercise of the powers conferred on me by subsection 29(1) of the Mutual Assistance in Criminal Matters Order, 2005, I, , the Attorney General of Brunei Darussalam, hereby apply /* authorise *(name of officer)* to apply for the production of the evidence requested by *(name of foreign country)*.

.....
Attorney General
Brunei Darussalam

.....
Date

*Delete if not applicable.

FORM 7
(Section 29)

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

PRODUCTION ORDER

To: *(name and address of person)*.

WHEREAS the *(name of foreign country)* has requested the Attorney General of Brunei Darussalam to arrange for the production of *(brief description of document, article or other thing to which request of foreign country relates)* under section 26 of the Mutual Assistance in Criminal Matters Order, 2005;

AND WHEREAS I am satisfied that the production of such document, article or other thing is necessary or desirable for the purposes of the criminal matter to which the application relates;

Now THEREFORE in exercise of the powers conferred on me by section 29 of the Mutual Assistance in Criminal Matters Order, 2005, I, a *Magistrate /*Judge at, by this Order require you, *(name and address of person)*;

within *7 days / * *(such other period determined by the court)* of this Order at *(place)* produce that *(brief description of document, article or other thing to which request of foreign country relates)* and where it consists of information contained in or accessible by means of any data equipment *(as defined in section 31(8) of the Mutual Assistance in Criminal Matters Order, 2005)*, to produce the material in a form which can be taken away and which is visible, legible and comprehensible;

within *7 days / * *(such other period determined by the court)* of this Order give *(name and address of authorised officer)* access to that, *(brief description of document, article or other thing to which request of foreign country relates)* and where it consists of information contained in or accessible by means of any data equipment *(as defined in section 31(8) of the Mutual Assistance in Criminal Matters Order, 2005)*, to give access to the material in a form which is visible, legible and comprehensible;

grant entry to the premises at *(name, description and address of premises)* to allow *(name and address of authorised officer)* to enter the premises to obtain access to that *(brief description of document, article or other thing to which request of foreign country relates)* at *(date and time)*;

allow *(name and address of authorised officer)* to photograph or to make copies of or both to photograph and make copies of any thing produced or to which access is granted pursuant to this Order;

such *(brief description of material evidence to which request of foreign country relates)* to be transmitted to *(name of foreign country)* for use in the criminal matter to which the application relates.

Note

This Order —

- (a)* shall not confer any right to the production of, or of access to, items subject to legal privilege; and
- (b)* shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by law, contract or rules of professional conduct.

.....
Date

.....
(Signature of Magistrate/Judge)

.....
(Description)

(Seal)

*Delete if not applicable.

Note

A person who has been served with a production order under section 29 of the Mutual Assistance in Criminal Matters Order, 2005 who —

- (a)* without reasonable excuse contravenes or fails to comply with the production order; or
- (b)* in purported compliance with such an order, produces or makes available to an authorised officer any material known to the person to be false or misleading in a material particular without —

- (i) indicating to the authorised officer that the material is false or misleading and the part of the material that is false or misleading;
or
- (ii) providing correct information to the authorised officer if the person is in possession of, or can reasonably acquire, the correct information,

is guilty of an offence under section 33 of the Order and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

FORM 8
(Section 30)

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

PRODUCTION ORDER TO FINANCIAL INSTITUTION

To: *(name and address of Financial Institution)*.

WHEREAS the*(name of foreign country)* has requested the Attorney General of Brunei Darussalam to arrange for the production of *(brief description of document, article or other thing to which request of foreign country relates)* under section 26 of the Mutual Assistance in Criminal Matters Order, 2005;

AND WHEREAS I am satisfied that the production of such document, article or other thing is necessary or desirable for the purposes of the criminal matter to which the application relates;

Now THEREFORE in exercise of the powers conferred on me by section 30 of the Mutual Assistance in Criminal Matters Order, 2005, I,, the Attorney General of Brunei Darussalam, by this Order require you, *(name of Financial Institution)* within *(specify period)* from the date of this Order to provide *(name of authorised officer)* such *(brief description of material evidence to which request of foreign country relates)* to be transmitted to *(name of foreign country)* for use in the criminal matter to which the application relates.

Note

This Order —

- (a)* shall not confer any right to the production of, or of access to, items subject to legal privilege; and
- (b)* shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by law, contract or rules of professional conduct.

.....
Date

.....
Attorney General
Brunei Darussalam

(Seal)

*Delete if not applicable.

Note

A person who has been served with a production order under section 30 of the Mutual Assistance in Criminal Matters Order, 2005 who —

- (a) without reasonable excuse contravenes or fails to comply with the production order; or
- (b) in purported compliance with such an order, produces or makes available to an authorised officer any material known to the person to be false or misleading in a material particular without —
 - (i) indicating to the authorised officer that the material is false or misleading and the part of the material that is false or misleading; or
 - (ii) providing correct information to the authorised officer if the person is in possession of, or can reasonably acquire, the correct information,

is guilty of an offence under section 33 of the Order and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

FORM 9
(Section 34(1))

MUTUAL ASSISTANCE IN CRIMINAL MATTERS, 2005

AUTHORISATION TO TAKE WRITTEN STATEMENT

To:

WHEREAS —

- (a) a request has been made by *(name of foreign country)* for a written statement of *(name of person)*, who is in Brunei Darussalam, to be taken for the purpose of a criminal matter; and
- (b) that, *(name of person)* consents to a written statement being taken from him;

Now THEREFORE, in exercise of the powers conferred on me by subsection 34(1) of the Mutual Assistance in Criminal Matters Order, 2005, I,, the Attorney General of Brunei Darussalam, authorise you to take the written statement as requested in accordance with section 34 of the Mutual Assistance in Criminal Matters Order, 2005 for transmission to *(name of foreign country)*.

.....
Attorney General
Brunei Darussalam

.....
Date

FORM 10
(Section 35(2))

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

AUTHORISATION TO OBTAIN ATTENDANCE
OF PERSON IN FOREIGN COUNTRY

To:

WHEREAS —

- (a) (*name of foreign country*) has requested me to assist in arranging the attendance of (*name of person*) to (*name of foreign country*) for the purpose of giving or providing evidence or assistance relevant to a criminal matter in (*name of foreign country*) under section 35(1) of the Mutual Assistance in Criminal Matters Order, 2005;
- (b) there are reasonable grounds for believing that (*name of person*) could give or provide evidence relevant to that criminal matter;
- (c) (*name of person*) consents to attend as requested; and
- (d) (*name of foreign country*) has given adequate undertakings in respect of matters specified under paragraphs (a), (b), (c); and (e) of section 37 of the Mutual Assistance in Criminal Matters Order, 2005;

Now THEREFORE, in exercise of the powers conferred on me by section 35(2) of the Mutual Assistance in Criminal Matters Order, 2005, I,, the Attorney General of Brunei Darussalam, authorise you to assist in arranging the attendance of (*name of person*) in (*name of foreign country*) as requested.

.....
Attorney General
Brunei Darussalam

.....
Date

FORM 11
(Section 36)

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

**AUTHORISATION TO ARRANGE ATTENDANCE
OF PRISONER IN FOREIGN COUNTRY**

To: Director of Prisons

WHEREAS (*name of foreign country*) has requested me to assist in arranging for the temporary transfer of (*name of person*) to (*name of foreign country*) for the purpose of giving or providing evidence or assistance relevant to a criminal matter in (*name of foreign country*) under section 36 of the Mutual Assistance in Criminal Matters Order, 2005;

Now THEREFORE, in exercise of the powers conferred on me by section 36(3) of the Mutual Assistance in Criminal Matters Order, 2005, I,, the Attorney General of Brunei Darussalam, authorise you to assist in the temporary transfer of (*name of person*), a prisoner under detention at and further direct that you produce the same at (*date, time and place*) to ascertain whether he freely consents to travel to and attend in (*name of foreign country*) as requested. If so, I direct that you to release (*name of person*) from prison and arrange for him to travel to (*name of foreign country*) in the custody of a police officer or a prison officer.

.....
Attorney General
Brunei Darussalam

.....
Date

FORM 12
(Section 40 (2))

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

DIRECTION FOR CUSTODY OF PERSON IN TRANSIT

To: (*name of authorised officer*)

WHEREAS —

- (a) (*name of person*), a person in custody in (*name of foreign country*), was being transported to (*name of foreign country*) to give evidence or provide assistance in relation to a criminal matter in (*name of foreign country*);
- (b) the *aircraft /*vessel (*Flight/Vessel No.*) in which the said person was being transported will *land /*call /* in Brunei Darussalam on (*date*); and
- (c) he is to be kept in custody in Brunei Darussalam from (*relevant date*) to (*relevant date*) until his transportation is continued;

Now THEREFORE, in exercise of the powers conferred on me by section 40(2) of the Mutual Assistance in Criminal Matters Order, 2005, I,, the Attorney General of Brunei Darussalam, request you to keep (*name of person*) in custody from (*relevant date*) to (*relevant date*) until his transportation is continued.

.....
Attorney General
Brunei Darussalam

.....
Date

*Delete if not applicable.

FORM 13
(Section 40(3))

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

DIRECTION FOR REMOVAL OF PERSON IN TRANSIT THROUGH BRUNEI

To: (name of authorised officer).

WHEREAS —

- (a) (name of person), a person in custody in (name of foreign country), was being transported to (name of foreign country) to give evidence or provide assistance in relation to a criminal matter in (name of foreign country);
- (b) the *aircraft / *vessel (Flight/Vessel No.) in which the said person was being transported landed / *called / * in Brunei Darussalam on (date); and
- (c) the transportation of the said person was not continued within a reasonable time and he has been kept in custody in Brunei Darussalam from (relevant date) to (relevant date);

Now THEREFORE, in exercise of the powers conferred on me by section 40(3) of the Mutual Assistance in Criminal Matters Order, 2005, I,, the Attorney General of Brunei Darussalam, direct you to transport (name of person) in custody to (name of foreign country) by the first available *aircraft / *vessel (Flight/Vessel No.), for which this shall be your authority.

.....
Attorney General
Brunei Darussalam

.....
Date

*Delete if not applicable.

FORM 14
(Section 42)

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

APPLICATION FOR SEARCH WARRANT

To:

WHEREAS —

- (a) a request has been made by (*name of foreign country*), under section 42 of the Mutual Assistance in Criminal Matters Order, 2005 that (*brief description of the article or thing to which request of foreign country relates*) which is reasonably believed to be located in Brunei Darussalam be searched for and seized for the purpose of a criminal matter; and
- (b) there are reasonable grounds to believe that the article or thing to which the request of foreign country relates is located in Brunei Darussalam *in the possession of (*name or description of person or authority*) /*at (*name or description of premises*);

Now THEREFORE, in exercise of the powers conferred on me by section 42 of the Mutual Assistance in Criminal Matter Order 2005, I, , the Attorney General of Brunei Darussalam, hereby apply /* authorise (*name of officer*) to apply to for a warrant under section 43 of the Mutual Assistance in Criminal Matter Order, 2005.

.....
Attorney General
Brunei Darussalam

.....
Date

*Delete if not applicable.

FORM 15
(Section 48)

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

AUTHORISATION TO *LOCATE /*IDENTIFY AND LOCATE PERSON

To: *(appropriate agency in Brunei Darussalam).*

WHEREAS —

- (a) a request has been made by *(name of foreign country)*, under section 48 of the Mutual Assistance in Criminal Matters Order, 2005 that *(name or description of person)* be * located / * identified and located for the purpose of a criminal matter in *(name of foreign country)*; and
- (b) there are reasonable grounds to believe that.....
(name or description of person) —
 - (i) is or might be concerned in, or could give or provide evidence or assistance relevant to the criminal matter; and
 - (ii) is in Brunei Darussalam;

Now THEREFORE, in exercise of the powers conferred on me by section 48(2) of the Mutual Assistance in Criminal Matters Order, 2005, I,....., the Attorney General of Brunei Darussalam, authorise *(appropriate authority in Brunei Darussalam)* to *locate /*identify and locate *(name or description of person)*, the person to whom the request relates.

.....
Attorney General
Brunei Darussalam

.....
Date

*Delete if not applicable.

FORM 16
(Section 49)

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

AUTHORISATION OF SERVICE OF PROCESS

To: (*appropriate authority in Brunei Darussalam*).

WHEREAS —

(a) a request has been made by (*name of foreign country*), under section 49 of the Mutual Assistance in Criminal Matters Order, 2005 that (*description of process*) be served in Brunei Darussalam for the purpose a criminal matter in (*name of foreign country*);

(b) there are reasonable grounds to believe that (*name or description of person*) is in Brunei Darussalam;

(c) (*name of foreign country*) has furnished sufficient details of the consequences of a failure to comply with such process as follows —

.....
(*Details of consequences of a failure to comply with the process*);

** (d) (*name of foreign country*) has given an undertaking that (*name or description of person*) will not be subjected to any penalty or liability or otherwise prejudiced in law by reason only of his refusal or failure to accept or comply with the summons, notwithstanding anything to the contrary statement in the summons;

Now THEREFORE, in exercise of the powers conferred on me by subsection 49(2) of the Mutual Assistance in Criminal Matters Order, 2005, I,, the Attorney General of Brunei Darussalam, by this authorisation do direct (*appropriate authority in Brunei Darussalam*) to effect service of the following process relating to the criminal matter in (*name of foreign country*) —

.....
(*Details of process to be served in Brunei Darussalam*)

27th. DECEMBER, 2005

.....
Attorney General
Brunei Darussalam

.....
Date

*Delete if not applicable.

**Applicable only if the process to be served is a summons to appear as a witness in the foreign country.

Dated this 25th. day of Zulkaedah, 1426 Hijriah corresponding to the 27th. day of December, 2005.

PEHIN ORANG KAYA DEWA PAHLAWAN
DATO PADUKA HAJI AWANG DANI BIN HAJI IBRAHIM
Acting Minister of Home Affairs,
Brunei Darussalam.