

## **Mutual Legal Assistance Act, 2070 (2014)**

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Act No. 7 of 2070 (2014)

Preamble: Whereas, it is expedient to make provision on the execution of mutual legal assistance between Nepal and foreign states in matters of judicial proceedings;

Now, therefore, the Constituent Assembly has, in capacity of the Legislature Parliament under Article 83 of the Interim Constitution of Nepal, 2063 (2007) made this Act.

Chapter –1

Preliminary

1. Short title and commencement: (1) This Act is called as the “Mutual Legal Assistance Act, 2070(2014)”.  
(2) This Act shall come into force immediately.
2. Definitions: Unless the subject or the context otherwise requires, in this Act, -
  - (a) “Court” means the Supreme Court, High Court and District Court, and this term includes any other authority or body carrying out judicial proceedings.
  - (b) “order” means an order issued by a court and includes a decision or judgment of a court.
  - (c) “offence” means an offence that is punishable by law with imprisonment for at least one year or with a fine of at least fifty thousand rupees, and this term includes an offence punishable by the law of a foreign state with imprisonment

for at least one year or with a fine of at least fifty thousand rupees.

- (d) “Central Authority” means the body or authority referred to in Section 6.
- (e) “judicial proceedings” means the proceedings from the filing of a case to the enforcement of a judgment, and this term includes investigation or inquiry in relation to any offence.
- (f) “judicial document” means a plaint, petition of claim, petition or appeal filed in a court, and this term includes an order made by a court.
- (g) “mutual legal assistance” means proceedings related to the matters set forth in Section 5.
- (h) “process” means a notice, summons or subpoena issued to any person.
- (i) “foreign state” means a foreign state which makes a request to Nepal for mutual legal assistance.

## Chapter – 2

### Conditions for Provision and Matters of Mutual Legal Assistance

3. Conditions for exchange of mutual legal assistance: (1) Where there exists a bilateral treaty between Nepal and a foreign state on the exchange of mutual legal assistance, mutual legal assistance may be exchanged between Nepal and such a foreign state.

(2) Notwithstanding anything contained in sub-section (1), if a foreign state makes a request, through the diplomatic channel, to the Government of Nepal for mutual legal assistance in respect of any particular legal proceedings and the request is accompanied by the assurance of affording mutual legal assistance in similar type of judicial proceedings in the future, nothing shall bar the extension of legal assistance on a basis of reciprocity.

Provided that a judgment made by a foreign court in any matter not covered by a treaty may not be enforced.

4. Conditions of not exchanging mutual legal assistance: Notwithstanding anything contained in Section 3, mutual legal assistance shall not be extended if-
  - (a) in relation to a matter of civil nature, the judicial proceedings involve the amount in controversy of less than one hundred thousand rupees,
  - (b) in relation to a matter of criminal matter, the offence is punishable by imprisonment for less than one year or a fine of less than fifty thousand rupees,
  - (c) the extension of mutual legal assistance as requested by a foreign state undermines or results in the undermining of the public order (*ordre public*) or sovereignty of Nepal.
5. Matters of mutual legal assistance: Mutual legal assistance may be provided between Nepal and a foreign state in the following matters related with judicial proceedings:
  - (a) taking, collecting or receiving document or evidence,
  - (b) providing information and evidence by inspecting any relevant thing or place,
  - (c) providing originals or certified copies of relevant documents including banking, financial or business records,
  - (d) executing searches and seizures of objects, locating or identifying persons,
  - (e) facilitating the appearance of persons who can assist in a matter of criminal nature,
  - (f) serving summons,
  - (g) freezing or confiscating movable or immovable property,
  - (h) enforcing judgments.

6. Designation of Central Authority: (1) The Government of Nepal shall, by notification in the Nepal Gazette, designate anybody or authority as the Central Authority of the Government of Nepal for carrying out acts of mutual legal assistance between Nepal and a foreign state.<sup>o</sup>

(2) The authority in accordance with sub-section (1) shall execute functions in accordance with the provisions of this Act.

### Chapter – 3

#### Procedures for Obtaining Mutual Legal Assistance

7. Request for provision of evidence:(1) If the authority competent to make investigation or prosecution in accordance with the prevailing law has adequate grounds to believe that any document, evidence, information or object, including any banking, financial or business records, which may be of assistance in the investigation or prosecution of any offence, is in a foreign state, the authority may request the Central Authority for the provision of such document, evidence, information or object.

(2) If there are adequate grounds to believe that any document, evidence, information or object, including any banking, financial or business records, which may be of assistance in the judicial proceedings, is in a foreign state, the Court may make an order for that purpose.

(3) If an order is made under sub-section (1), the Court shall request the Central Authority for the provision of such document, evidence, information or object.

(4) If, in making a request for the provision of any document, evidence, information or object under sub-section (1) or (3), it appears necessary to search any place or object or freeze any object, the concerned authority or Court may make a request also for executing the search of such place or object or freezing any object.

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<sup>o</sup> Ministry of Law, Justice and Parliamentary Affairs designated as the central authority as per notice published in the Nepal Gazette dated 2069/11/20 (3 March 2013)

8. Request for appearance of and locating persons: (1) If there are adequate grounds to believe that any person, who may be of assistance in the judicial proceedings, resides in a foreign state, the Court may make an order for that purpose.
- (2) If it is necessary to locate or identify any person, who is related to any judicial proceedings and is in the territory of a foreign state, the Court may make an order for that purpose.
- (3) If an order is made under sub-section (1) or (2), the Court may make a request to the Central Authority for the availability of such person or for locating the place in the foreign state where such person is staying or for identifying such person.
9. Request for service of process or judicial document: (1) If, in any case filed in the Court, it is necessary to serve any process or judicial document on any person who is residing or staying in a foreign state, the Court may make an order for that purpose.
- (2) If an order is made under sub-section (1), the Court shall request the Central Authority for the service of such process or judicial document on the person residing or staying in the foreign country.
10. Request for taking evidence: (1) If, in respect of any case *sub judice* in the Court, it is necessary to take any evidence in a foreign country, the Court may make an order for that purpose.
- (2) If an order is made under sub-section (1), the Court shall write to the Central Authority to that end.
11. Request for examination of witness and service of written interrogations: (1) If, in the course of any judicial proceedings, it is necessary to examine any person, who is residing or staying in a foreign country as a witness, and that person does not want or is not able to travel to Nepal, the Court may order that such person be examined by the court of the foreign country as a witness.

(2) If an order is made for the examination of a witness under sub-section (1) and such witness is not able to appear before the court of foreign country, the Court may make an order for the examination of witness by way of written interrogatories.

(3) Notwithstanding anything contained in sub-section (2), the Court may, at the request of the concerned party, may make orders for the examination of witness and for deposition by way of written interrogatories at the same time.

(4) If a witness is unable to appear in the court of a foreign country because of old age or physical illness or to appear in the Court of Nepal because of residing or staying abroad and the Court considers it reasonable to examine such witness through video conferencing, it may make an order for the examination of such witness through video conferencing.

(5) If an order is made under this Section, the Court shall communicate it to the Central Authority.

12. Request for freezing or confiscating property: (1) If there are adequate grounds to believe that the whole or any part of property related with the judicial proceedings is located in a foreign state, the Court may make an order for the freezing or confiscation of such property.

(2) If an order is made under sub-section (1), the Court shall communicate it to the central authority for the freezing or confiscation of such property.

13. Request for enforcement of judgment : (1) If it appears that any judgment made by a Court of Nepal is to be enforced by a foreign court, the Court may make an order for that purpose.

(2) If an order is made under sub-section (1), the Court shall communicate it to the Central Authority.

14. Details to be set out in or documents to be attached with communication to Central Authority: (1) The concerned authority or Court shall set out the following information in a communication to be sent under Section 7, 8, 9, 10, 11, 12 or 13 for mutual legal assistance:
- (a) the court requesting judicial proceedings, summary of judicial proceedings, and relevant laws,
  - (b) matter of mutual legal assistance being sought,
  - (c) in the case of judicial proceedings being of criminal nature, the maximum punishment that can be imposed in that proceedings, and in the case of such proceeding being of civil nature, the maximum amount in controversy as claimed,
  - (d) the location and nature of the document, evidence, information, object or property related with judicial proceedings,
  - (e) if search has to be made, description of the object and full address of such place,
  - (f) in relation to a person capable of making assistance in the judicial proceedings, name, description and nationality of that person, passport number or national identity number, if any, of that person, including other necessary details indicating that person's identity, and information, to the extent possible, about the place where that person is currently residing,
  - (g) statement substantiating that the requested document, evidence, information, object or person has material relation with judicial proceedings,
  - (h) where the originals of the concerned evidence, document are necessary, justifications for the same,

and if they are to be returned, assurance to return them,

- (i) concerned authority of the foreign country to whom request for mutual legal assistance is addressed,
- (j) period within which mutual legal assistance should be provided,
- (k) if the request is for the search or seizure of any object, grounds showing the commission of offence in Nepal by the person who has ownership in such object or increment of property from such offence,
- (l) if the request is for the service of a process or judicial document,
  - (1) full name of the person whom such process or judicial document has to be served on,
  - (2) country where the person mentioned in clause (1) is residing or staying, passport or national identity card number, if any, of that person, other necessary details indicating that person's identity including description and nationality, and information, to the extent possible, about the place where that person is currently residing,
  - (3) if the process or judicial document cannot be served at the address of the person mentioned in clause (2), country and address of the enterprise where he or she is working or running business.
- (m) if the request is for the taking of evidence,-
  - (1) if the court or body that is requested to take evidence is identified, details of that court or body,



- (2) details of the taking of evidence or other judicial act to be done,
  - (3) if any witness has to be examined, name, surname and address of such witness, and details of passport or national identity card indicating his or her identity,
  - (4) if a witness has to be examined by a letter interrogatory, description of the questions to be asked to the witness,
  - (5) indication as to whether a witness should be examined under oath or not,
  - (6) if inspection, measurement, survey or examination of any document, movable or immovable property should be made, description thereof.
- (n) if the request is for the freezing or confiscation of a property,
- (1) description as to whether judicial proceedings in the matter related with the property is at the stage of being filed or has been filed or decision has not been made,
  - (2) description showing that the confiscation of the property has a material relation with judicial proceedings,
  - (3) description that an order of confiscation has been made and such order has become unappealable,
  - (4) description that the amount payable under the order of confiscation remains due,

(5) if the person affected by the order of confiscation has not appeared in the court, description that such person has been served with a notice with adequate time for his or her defence,

(o) other necessary description.

(2) A request for seeking description under sub-section (1) must be accompanied by the following documents:

(a) if the request is for facilitating the attendance of a person, identifying the location of a person or for indentifying the person, his or her photograph to the extent possible,

(b) evidence that the person whose attendance is sought has freely expressed willingness to so attend,

(c) order made by the Court in that respect,

(d) if a process or judicial document is to be served, two attested copies of the process or judicial document,

(e) if a request is for the enforcement of a judgment-

(1) a certified original copy of the judgment of the Court,

(2) evidence showing that the judgment has become incapable of being appealed.

15. Request to be made to foreign state for obtaining mutual legal assistance:

(1) If the Central Authority receives a request for mutual legal assistance under Sections 7, 8, 9, 10, 11, 12 or 13, it must request, through the diplomatic channel, the foreign state for the provision of such mutual legal assistance.

(2) In making a request in accordance with sub-section (1), the Central Authority must set out the following description, in addition to the documents mentioned in Section 14:

- (a) the name of requesting authority or Court,
- (b) if a certain process has to be adopted in executing the request in the foreign state and in providing information or object as per the request, description of that process,
- (c) if confidentiality of request is intended, the reasons and grounds for that,
- (d) if the request is for facilitating the attendance of a person, arrangement for security of that person and other facilities including accommodations of that person,
- (e) if the request is made under any treaty and a separate process is to be adopted in making such request under the treaty, description of that process,
- (f) such other description as specified by the Government of Nepal by notification in the Nepal Gazette.

(3) In making a request pursuant to sub-section (2), the following documents must be attached:

- (a) if a request is for arranging the attendance of a person, undertaking that the person shall not be detained, prosecuted or punished for any offence against law that was committed prior to the request for the attendance of that person, and that such person shall be returned to the concerned country,

- (b) undertaking that the person shall not be compelled to give evidence or assistance in relation to any matter other than the matter to which the request relates,
- (c) undertaking that the person shall not be subjected to any legal act or punishment in relation to the judicial proceedings except for making false statement or contempt of court,
- (d) if a request is made for search, undertaking that the objects searched and seized shall be retained safely and be returned after such purpose is served,
- (e) if a request is made for any document, object or information, undertaking that it shall not be published without consent of the concerned country,
- (f) such other documents as specified by the Government of Nepal by notification in the Nepal Gazette.

(4) If, in making a request for mutual legal assistance under this Section, any treaty has not been concluded with a country for that purpose and any undertaking has to be made that if such country makes a request for mutual legal assistance of similar nature in the future, the mutual legal assistance as requested shall be provided on the basis of reciprocity, the Central Authority may make such undertaking through the diplomatic channel.

16. To be admissible in evidence: (1) An evidence taken by a foreign country in accordance with the law of that country pursuant to a request made under Section 15 and made available to the Court through the Central Authority may be taken in evidence as if it were taken in accordance with law.

(2) Notwithstanding anything contained elsewhere in this Act, nothing shall bar the settlement of a case by examining the other available

evidence for the sole reason that a foreign state has refused to take evidence or evidence has not been taken by the competent authority of such state.

(3) A certificate issued on behalf of the competent authority of a foreign state indicating the value of the property confiscated in the foreign state, and the date of confiscation, pursuant to a request for mutual legal assistance under Section 15 may be taken in evidence for any judicial proceedings.

(4) Notwithstanding anything contained in the laws in force, examination of witness or interrogatories executed in a foreign country pursuant to this Act may be taken in evidence as if such examination of witness or written interrogatories were executed in the Court of Nepal.

17. Special arrangement to be made for attendance of person: (1) If any person is to travel to Nepal in the course of mutual legal assistance pursuant to a request made under Section 15, the Central Authority must, in coordination with the competent body of the foreign state, make appropriate arrangements for the arrival and departure of such person to and from Nepal.

(2) If a person who is in attendance in the course of mutual legal assistance is in detention in accordance with the law of the concerned foreign country, judicial assistance must be obtained by holding that person in detention also in Nepal.

18. Process or judicial document deemed to have been duly served: (1) If a foreign state gives information that a process or judicial document has been served on the concerned person on the basis of a request made for mutual legal assistance pursuant to Section 15, the process or judicial document is deemed to have been duly served on that person.

(2) If a foreign state refuses to serve a process or judicial document on the basis of a request made for mutual legal assistance pursuant to

Section 15 or such country gives information through the diplomatic channel to the Court through the Central Authority that the process or judicial document could not be served since such person was not found or identified, the contents of such process or judicial document shall be published in any national daily newspaper of the country where such person is residing or staying or of Nepal.

(3) Where a process or judicial document is served under sub-section (2), the process or judicial document is deemed to have been duly served.

#### Chapter-4

#### Process for Making Request by Foreign State for Mutual Legal Assistance

19. Request for provision of document, evidence, information or object: (1) If there are adequate grounds to believe that any document, evidence, information or object, which may be of assistance in the investigation of any offence or in the judicial proceedings or enforcement of judgment in a foreign country, is in Nepal, the concerned foreign state may make a request, through the diplomatic channel, to the Government of Nepal for mutual assistance.
- (2) If, in making a request under sub-section (1), it appears necessary to search any place or object or seize any object, the foreign state may make a request also for executing search of such place or object or seizure of any object.
20. Request for assisting in attendance of and locating persons: (1) A foreign state may make a request through the diplomatic channel to the Government of Nepal for assisting in the attendance of a person in Nepal showing the reason that such person may assist in any judicial proceedings *sub judice* in that foreign state.

(2) If it is necessary to locate or identify any person who is related to any judicial proceedings, a foreign state may make a request through the diplomatic channel to the Government of Nepal for that purpose.

21. Request for service of process or judicial document: If it is necessary to serve any process or judicial document on any person or body who is related with judicial proceeding *sub judice* in a foreign court and is staying in Nepal, the foreign state may, pursuant to the order of the court of the foreign state, make a request through the diplomatic channel to the Government of Nepal for the service of such process or judicial document issued by the foreign court.
22. Request for examining witness or taking evidence: (1) If, in the course of any judicial proceedings *sub judice* in any foreign court or body, it is necessary to examine any witness residing or staying in Nepal, the foreign state may, pursuant to the order of the court or body of such foreign state, make a request through the diplomatic channel to the Government of Nepal.  

(2) If, in relation to any case *sub judice* in a court or body under sub-section (1), it is necessary to examine any evidence in Nepal, the foreign state may, pursuant to the order of the court or body of the foreign state, make a request through the diplomatic channel to the Government of Nepal.
23. Request for enforcement of order of freeze or confiscation of property: If it is necessary to enforce an order made by a court of a foreign state to freeze or confiscate a property that is related to the judicial proceedings *sub judice* in the foreign court because the property in whole or in part is situated in Nepal, the foreign state may make a request through the diplomatic channel to the Government of Nepal.
24. Request for recognition or enforcement of judgments: If it is necessary to recognize or enforce a judgment of any foreign court related to the

judicial proceedings, the foreign state may make a request through the diplomatic channel to the Government of Nepal.

25. Details to be set out or documents to be attached: The provisions set forth in Sections 14 and 15 shall apply, *mutatis mutandis*, to a request by a foreign state to the Government of Nepal for mutual legal assistance under this Chapter, and the concerned foreign state must accordingly set out the necessary details in, or attach the concerned documents, with the request.
26. To forward request for mutual legal assistance to Central Authority: Upon receipt of a request from a foreign state for mutual legal assistance under Sections 19, 20, 21, 22, 23 and 24, the Government of Nepal, Ministry of Foreign Affairs must forward such request and description, document and evidence attached with the request to the Central Authority for mutual legal assistance.
27. Central Authority to carry out necessary study and examination: (1) If a request as well as description, document and evidence is received for mutual legal assistance under Section 26, the Central Authority must carry out necessary study and examination of the request and make decision whether or not to initiate action for the provision of mutual legal assistance.  
(2) If, on study and examination carried out under sub-section (1), the description, document and evidence received along with the request are not sufficient to initiate action relating to mutual legal assistance, the Central Authority may write to the foreign state through the diplomatic channel to submit additional description, document and evidence.  
(3) If decision is made to initiate action relating to mutual legal assistance under sub-section (1), the Central Authority may, for the purpose of providing mutual legal assistance, order the investigating authority if the request is for mutual legal assistance related to



investigation, and the concerned District Government Attorney to make application to the concerned District Court if the request is for other mutual legal assistance.

28. Refusal to provide mutual legal assistance: Notwithstanding anything contained in Section 27, the Central Authority may refuse to provide mutual legal assistance if:

- (a) there exists a ground provided for in Section 4,
- (b) the request is not made in accordance with a bilateral treaty,
- (c) the request is for mutual legal assistance in matter of any offence and the offence is of a political nature,
- (d) the description, document or evidence required pursuant to sub-section (2) of Section 27 is not received from the concerned foreign country,
- (e) the request is related to an offence under the Military Act,
- (f) there are grounds for believing that the request was made for the purpose of investigating, prosecuting or punishing a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinion,
- (g) the matter requested for is of insufficient importance to the investigation or information in relation to that matter can be obtained by other means,
- (h) there is no undertaking that the matter requested for mutual legal assistance shall not be used for any action other than that in respect of which the request was made,
- (i) the provision of the mutual legal assistance would impair public order (*ordre public*).

29. Application to be made to Court: (1) If an order is received from the Central Authority for the provision of mutual legal assistance pursuant to sub-section (3) of Section 27, the concerned District Government

Attorney must make an application, accompanied by the description, document and evidence received from the foreign state, to the concerned District Court.

(2) The Court may refuse to provide mutual legal assistance if, on examination of the application received under sub-section (1) and the description, document and evidence attached therewith,-

- (a) it appears *prima facie* that the offence in relation to which application is made for mutual legal assistance cannot be established,
- (b) the mutual legal assistance is contrary to a general principle of justice.

(3) Notwithstanding anything contained in sub-section (2), the Court may refuse to provide such mutual legal assistance at any time when the ground provided for in that sub-section appears.

30. Information on refusal of mutual legal assistance to be given: If it is refused to provide mutual legal assistance under Section 28 or 29, the Central Authority must give information thereof to the foreign state through the diplomatic channel not later than seven days.

## Chapter-5

### Provision of Mutual Legal Assistance

31. To make order for provision of mutual legal assistance: If the Central Authority makes order to the concerned investigating authority for the provision of mutual legal assistance pursuant to sub-section (3) of Section 27 or if the Court does not refuse to provide such mutual legal assistance pursuant to Section 29, the investigating authority or the Court must make order to initiate necessary action in that respect for the purpose of providing the mutual legal assistance pursuant to the request by the foreign state.

32. Provision of evidence: (1) If a foreign state makes a request for the provision of any document, evidence, information or object pursuant to Section 19 and such document, evidence, information or object can be provided in accordance with law, the concerned authority or Court shall make order for sending certified copies of such document, evidence, information or object.

(2) If a foreign state makes a request for the provision of originals of the document, evidence, information or of the object itself as provided for in sub-section (1), the concerned authority or Court may order for sending the originals of such document, evidence, information or object upon retaining certified copies thereof and, in the case of the object, shall provide such object upon maintaining records of description thereof.

(3) If a foreign state makes a request for search or seizure of any object, the concerned body must make search or seizure of the object in accordance with law.

(4) Notwithstanding anything contained in sub-section (3), if a request is made for the search or seizure of any object in relation to any offence, the request for the search or seizure of such object may be refused if that act is not an offence under the laws of both Nepal and the requesting foreign state.

33. Request for assistance in making attendance of, locating, or identifying persons: (1) If a foreign state has made a request for assistance in making attendance of a person pursuant to Section 20, the Central Authority must make arrangements, in coordination with the foreign state, for sending and taking back such person from and to Nepal.

(2) If a person who is requested for making attendance pursuant to sub-section (1) is held in detention in Nepal, that person must, with the leave of the concerned Court, be handed over to the competent body of the foreign state from the entry point of Nepal.

(3) After the conclusion of the matter in relation to which the attendance of the person handed over pursuant to sub-section (2) was sought in the foreign state, the custody of that person must be taken from the competent body of the foreign state at the entry point of Nepal.

(4) If a foreign state has made a request for locating the place of any person related to any judicial proceedings or for identifying a person, the concerned body must locate the place where such person is staying or identify the person.

34. Service of process or judicial document: (1) If a foreign state has made a request for the service of any process or judicial document pursuant to Section 21, the concerned Court must serve such process or judicial document in accordance with law as if the judicial proceedings were *sub judice* in that Court itself.

(2) If, in serving a process or judicial document pursuant to sub-section (1), any specific procedure or method is required to be followed in the service of such process or document pursuant to a treaty concluded with the foreign state or pursuant to the request by the foreign state and request has been made by the Central Authority accordingly, the concerned Court must serve such process or judicial document by following such procedure or method.

(3) After the service of any process or judicial document pursuant to this Section, the concerned Court must prepare the description of service of such document.

(4) If the description of service provided for in sub-section (3) has to be translated into the English language pursuant to a request by the court of the foreign state, the Central Authority must translate that description, and certify the originals received from the concerned Court and the translated copy.

35. To examine witness or take evidence: (1) If the court of a foreign state has made a request for examining any witness or taking evidence pursuant to Section 22, the concerned Court must take evidence as if evidence were taken in the proceedings of a case *sub judice* in such Court.

(2) If, in taking evidence pursuant to sub-section (1), the Court is required to give a time-limit for any witness or person to appear before the Court, it must serve the process in accordance with law, giving a time limit of up to seven days excluding the time required for journey.

(3) In taking evidence pursuant to sub-section (1), the concerned Court must take evidence being limited to the matter of examination of witness, preparation of answers to the written interrogatories or provision of evidence, document or description of a movable or immovable property pursuant to the request by the court of the foreign state.

(4) If, in making examination of witness, preparing answers to the written interrogatories or examining document or taking evidence pursuant to sub-section (3), the parties to the case in the matter of which evidence is taken pursuant to this Section, their attorneys or law practitioners wish to appear in the Court, the concerned Court may give permission to such parties, attorneys or law practitioners to appear in the Court at the time of taking evidence.

(5) The concerned Court shall apply the laws of Nepal in taking evidence pursuant to this Section.

(6) Notwithstanding anything contained in sub-section (5), if a treaty has been concluded with a foreign state for taking evidence by adopting any specific procedure or method or the foreign state has requested for the adoption of such procedure or method and the Central Authority has requested for the taking of evidence accordingly, the concerned Court shall take evidence accordingly.

36. To freeze or confiscate property: (1) If a foreign state has made a request to freeze or confiscate any property situated in Nepal pursuant to Section 23, the Court must order the concerned body to freeze or confiscate the property in accordance with the laws of Nepal in force.

(2) Notwithstanding anything contained in sub-section (1), if the Court is satisfied that the concerned person whose property is subject to the order of confiscation in relation to the offence has already paid the amount payable by him or her or that in the event of inability to pay such amount, that person has already served the sentence of imprisonment equal to that amount, the Court shall not make order to confiscate the property.

Provided that if the property involves the proceeds of crime or instruments of crime, such property must be confiscated.

(3) If the value of the property liable to confiscation is indicated in a currency other than the Nepalese currency, that value shall be converted into the Nepalese currency on the basis of the foreign exchange rate as determined by the Nepal Rastra Bank on the day of filing of application in the Court pursuant to Section 29, for the purpose of determining the amount in controversy pursuant to this Act.

37. Special provisions relating to enforcement of judgments made by foreign courts: (1) Notwithstanding anything contained elsewhere in this Act, a foreign state or foreign party wishing to have a judgment of a civil nature made by a foreign court recognized or enforced in Nepal must make an application, accompanied by the following documents, to the concerned High Court:

- (a) full text of the certified judgment,
- (b) if the judgment was made in absentia, originals or certified copies of the document establishing that the process was duly served on the party who was absent,

- (c) all documents establishing that the judgment satisfies the requirements set forth in clauses (b) and (c) of sub-section (2),
- (d) a copy with full text of the judgment translated into the Nepalese language, as certified by the concerned diplomatic or consular representative or by a person authorized to make formal translation.

(2) If, upon studying the application, along with the documents, received pursuant to sub-section (1), the judgment made by a foreign court appears to satisfy the following requirements, the concerned High Court must recognize the judgment made by the foreign court and send it to the concerned District Court for enforcement:

- (a) such judgment has been made by the competent court with appropriate jurisdiction,
- (b) such judgment is capable of being enforced in the concerned country,
- (c) such judgment has become final and is not capable of being reviewed pursuant to the law of the concerned country.

Explanation: For the purposes of this Section, "concerned District Court" means the District Court of the territory where the property from which the amount in controversy has to be recovered, partition shares to be set aside and right to property to be executed pursuant to the judgment is situated.

(3) Notwithstanding anything contained in sub-section (2), a judgment made by the court of a foreign country shall not be recognized and enforced in Nepal if:

- (a) such judgment has been obtained by deception or fraud from the procedural perspective,

- (b) a case was filed in a court of Nepal prior to its being filed in a foreign court between the same parties, over the same fact, and for the same purpose as the parties, fact and purpose being involved in such judgment and is *sub judice* in the court of Nepal,
- (c) judgment has already been made by the court of Nepal in the case mentioned in clause (b),
- (d) in the case mentioned in clause (b), judgment has been made by a court of another country and such judgment has already been recognized and enforced in or is in the process of being enforced in Nepal,
- (e) adequate opportunity has not been given to any party to fairly represent himself or herself in such judgment,
- (f) such judgment has been made in defiance of the regular procedures required for the trial of a case,
- (g) enforcement of such judgment would be contrary to public order.

(4) If it is so written by the High Court for the enforcement of a judgment pursuant to sub-section (2), the concerned District Court shall implement the judgment as if it were made by that Court itself.

38. Provision of mutual legal assistance: (1) Upon the completion of acts including the collection of evidence, document and taking of evidence relating to mutual legal assistance pursuant to this Chapter, the investigating authority, Court or concerned District Government Attorney Office must send the description thereof to the Central Authority.

(2) The Central Authority must provide the description relating to mutual legal assistance received pursuant to sub-section (1) to the foreign state through the diplomatic channel.



## Chapter-6

### Miscellaneous

39. Documents, evidence to be certified: (1) The documents, evidence attached with a request made for mutual legal assistance pursuant to this Act must be certified by the judge or competent government officer and bear the seal of office.
- (2) The documents, evidence not certified in fulfillment of the procedures as provided in sub-section (1) shall not be recognized.
40. Request sent for mutual legal assistance to be in Nepali language: (1) A request made by a foreign state to the Government of Nepal for mutual legal assistance pursuant to this Act must be written in the Nepali language.
- (2) If a request provided for in sub-section (1) is written in any foreign language and the original of the English text or formal translation of the text from another language to the English language is attached with the request, showing the reason that it is not practicable to translate such request into the Nepali language, such request shall be acceptable to the Central Authority or the concerned Court.
41. To bear expenses: If any fee or charge is leviable in the provision of mutual legal assistance under the prevailing laws of Nepal, the foreign state must bear the amount of such fee or charge.
42. This Act to prevail: The matters set forth herein shall be governed by this Act and the other matters by the prevailing laws of Nepal.
43. To render assistance: The concerned bodies of the Government of Nepal must render necessary assistance in the performance of business required to be performed under this Act.
44. Report to be made: The Central Authority must make a yearly report containing the following matters to the Government of Nepal:

- (a) requests of mutual legal assistance to and mutual legal assistance obtained from the foreign states,
- (b) mutual legal assistance provided by Nepal to the foreign states at the latter's request,
- (c) reforms to be made in the future in relation to mutual legal assistance.

45. Power to frame rules: The Government of Nepal may frame necessary rules for the implementation of this Act.

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**Note:**

Words as altered by Judicial Administration Act, 2016, "Appellate Court "replaced by "High Court".