

GUIDE TO EXTRADITION FROM EAST ASIA AND THE PACIFIC REGION

BRUNEI DARUSSALAM

I. INTRODUCTION

The extradition process in Brunei Darussalam is generally governed by three pieces of legislation, Extradition Order 2006, Extradition (Malaysia and Singapore) Act, Chapter 154 and Summonses and Warrants (Special Provisions) Act, Chapter 155.

Generally request for extradition from Brunei Darussalam will have to be made to the Attorney General by diplomatic officer, consular officer or a Minister of the requesting state. Where a requesting country or entity, either directly or through ICPO-Interpol, has made an application to a Magistrate of Brunei Darussalam that a person to be sought is believed to be in or on his way to Brunei Darussalam and the requesting country or entity intends to make a formal request to Brunei Darussalam for his extradition, the Magistrate of Brunei Darussalam will issue a provisional warrant of arrest for the said person. The supporting documents such as the copy of the warrant for the arrest issued in the requesting country; a description of the person sought; statements of the acts that constitute the offence, the text of the law creating the offence and text of the law that prescribed the penalty are required for the application of a provisional warrant of arrest.

Once such request has been received, the Attorney General will issue an authority to proceed after satisfying certain conditions as listed in section 9(1)(a) of the Order. If the Attorney General has issued an authority to proceed for an extradition offence in relation to any person, taking into account the conditions in section 12, the magistrate will conduct extradition proceedings as soon as practicable to determine whether he should be surrendered for the extradition offence. The supporting documents in relation to an extradition offence can be found under section 15. The definition of an extradition offence can be found in Section 3 of the Order.

The Extradition Order 2006 stipulates different requirements and procedures for different countries. For instances, Extradition from Brunei Darussalam to Commonwealth Countries, Extradition from Brunei Darussalam to Designated Countries, Extradition from Brunei Darussalam to Treaty Countries and Extradition from Brunei Darussalam to Other Countries.

- I. Extradition from Brunei Darussalam to Commonwealth countries can be found under section 21 of the Order. Before extradition is made under this section there is a requirement to show “prima facie evidence” as stated in section 23 and the record of the case scheme as stated in section 24 of the Order.

- II. Section 25 of the said order provides for Extradition from Brunei Darussalam to designated countries. This section applies to the extradition of a person accused or convicted of extradition offences in other countries to a country which the Attorney General may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, published in the Gazette specify as a designated country. To apply this provision, the magistrate will also have to conduct extradition proceedings to determine whether that person should be surrendered to the designated country.
- III. Extradition from Brunei Darussalam to Treaty Countries are subjected to the limitations, conditions, exceptions or qualifications that are contained in the extradition treaty between Brunei and the treaty country and any modifications to this order made by regulations.
- IV. Lastly section 40 applies to Extradition of a person from Brunei to an entity or any country other than a Commonwealth country, treaty country or a designated Country. The Attorney General may, with the approval of His Majesty the Sultan and Yang Di-Pertuan certify that a country is an extradition country for the purpose of a particular extradition request. When the Attorney General certifies that a country is an extradition country, he may also specify the provisions of this order that are apply to the extradition request. (Section 41)

Therefore Brunei Darussalam has a flexible way to deal with the requests made by different countries even if the country is not considered as an extradition country.

Section 4 of the Order specified the mandatory grounds for the refusal of extradition of a person. The Attorney General of Brunei shall refuse extradition of a person if:-

- The extradition offence is regarded as a political offence;
- The person is sought because of his race, religion, nationality, political opinions, sex or status, or for political offence in the requesting country;
- Final judgment has been given against him for the offence in Brunei Darussalam or in a third country.

As provided in Section 17(2) of the Order, the Attorney General of Brunei may also refuse for the extradition of a person if:-

- The requesting country has not given a specialty undertaking;
- He is a citizen of Brunei Darussalam;
- Prosecution for the offence for which surrender has been ordered is pending against him in Brunei Darussalam;
- He has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment.

The Extradition Order 2006 also states that a person can be prosecution in Brunei Darussalam, in situation where the Attorney General refuses for the person to be extradited, for an offence if he is a citizen of Brunei Darussalam; or the extradition offence is one in respect of which the courts in Brunei Darussalam have jurisdiction. (Section 55)

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Central Authority for receiving and making extradition requests is the Attorney General of Brunei Darussalam.

The contact information for the Central Authority of Brunei Darussalam is-

The Attorney General of Brunei Darussalam,
Jalan Raja Isteri Pengiran Anak Hajah Saleha,
BSB, BA1910
Negara Brunei Darussalam

Tel : +673 2231200

Fax : +673 2231221

Website : <http://www.agc.gov.bn>

E-mail: mla@agc.gov.bn

III. PROCEDURES OF EXTRADITION

General provisions on Extradition from Brunei Darussalam to Requesting Countries

i. Formal Request

A formal extradition request shall be made to the Attorney General of Brunei Darussalam by a diplomatic officer, consular officer or a Minister of the requesting state.

ii. Arrest in relation to extradition offences- Section 6

In circumstance where the requesting country has made an application to the Magistrate of Brunei Darussalam, either directly or through, ICPO-Interpol, that a person to be sought is believed to be in or on his way to Brunei Darussalam and the requesting country or entity intends to make a formal request to Brunei Darussalam for his extradition, the Magistrate of Brunei Darussalam will issue a provisional warrant of arrest for the said person.

The supporting documents (Section 6(2)) required for the application of a provisional warrant of arrest include

- A copy of the warrant for the arrest issued in the requesting country;
- A description of the person sought;
- statements of the acts that constitute the offence;
- The text of the law creating the offence and
- Text of the law that prescribed the penalty is required for the application of a provisional warrant of arrest.

Once a person is arrested, he shall be brought before a Magistrate of Brunei. The Magistrate shall either remand the person in custody or release him on bail for not exceeding 60 days. (Section 7(4))

iii. Authority to Proceed- Section 9

Once the extradition request has been received, the Attorney General would issue an authority to proceed after taking into consideration the following factors:-

- The offence is an extradition offence
- Requesting country is an extradition country
- Nothing in section 17 (surrender determination by the Attorney General) or any other written law that would preclude the surrender of that person
- No other reason why the authority to proceed should not be issued.

iv. If Authority of Proceed not issued by the Attorney General.

If the Attorney General does not issue authority to proceed, the Magistrate must be informed and the person has to be released or discharge of the sureties for the bail.

v. Extradition Proceedings-Section 12 and 13

If a person has not consented to surrender and the Attorney General has issued authority to proceed, the Magistrate shall conduct extradition proceedings only when an application is made to a Magistrate by the person or by the requesting country for extradition proceedings to be conducted and both parties have had reasonable time to prepare for the conduct of the proceedings.

- Extradition proceedings- Magistrate shall hear the case in the same manner and have the same jurisdiction and powers as if the person was accused of an offence committed within his jurisdiction.
- During proceedings, a person is not entitled to adduce evidence, and Magistrate is not entitled to receive evidence.

vi. Surrender Determination by Attorney General-Section 17

If a Magistrate has reported to the Attorney General that a person should be held for surrender and the period for review has ended (within 15 days) and no application for review has been made or on review the High Court has ordered that he be held for surrender the Attorney General shall make a final decision whether he should be surrendered.

vii. Mandatory Grounds for Refusal-Section 4

The mandatory grounds for refusal of extradition of a person are as follows:-

- The extradition offence is regarded as a political offence;
- The person is sought because of his race, religion, nationality, political opinions, sex or status, or for political offence in the requesting country;
- Offence under military law, but not under the ordinary criminal law of Brunei Darussalam;
- Final judgment has been given against him for the offence in Brunei Darussalam or in a third country;
- Under the law of the requesting country or of Brunei Darussalam, he has become immune from prosecution or punishment because of lapse of time, amnesty or any other reason;
- He has already been acquitted or pardoned in the requesting country or in Brunei Darussalam, or punished under the law of the country or Brunei Darussalam, for the offence or another offence constituted by the same conduct as the extradition offence; or
- Judgment has been given in his absence and there is no provision in the law of the requesting country entitling him to appear before a court and raise any defence that he may have.

viii. Discretionary Grounds for Refusal-Section 17(2)

The Attorney General may refuse to order a person to be surrendered if:-

- The requesting country has not given a specialty undertaking;
- The requesting country is not a country with which Brunei Darussalam has a bilateral treaty containing specialty undertaking;
- The law of the requesting country does not contain a provision prohibiting prosecution of an offence other than the one for which he is surrendered;
- He is a citizen of Brunei Darussalam
- A prosecution for the offence for which surrender has been ordered is pending against him in Brunei Darussalam;
- The offence for which surrender has been ordered was committed outside the territory of the requesting country;
- The offence have been committed wholly or partly within Brunei Darussalam;
- He has been sentenced or would be liable to be tried or sentenced in the requesting country by an extraordinary or ad hoc court or tribunal;
- He has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or
- Having regard to the national interest of Brunei Darusslam and the severity of the offence the Attorney General considers that he should not be surrendered.

ix. Surrender Warrant or Temporary Warrant- Section 18 and 19

Once the Attorney General has decided that the person is to be surrendered to the requesting country, the Attorney General shall issue a surrender warrant or a temporary surrender warrant for him.

Surrender warrant shall:-

- Be in writing;
- State the offences for which the person is to be surrendered and require any person who has custody of that person to hand over to a police officer.

The warrant also authorise police officer to transport the person to another place within Brunei for the purpose of handing him over to the escort officer, or hold that person in custody for as long as necessary to enable him to be handed over to the foreign escort officer and authorise the foreign escort officer to transport that person out of Brunei Darussalam.

x. Additional Information

PART III- Extradition from Brunei Darussalam to Commonwealth Countries.

In addition to the general provision for the extradition of persons from Brunei Darussalam, the Attorney General may direct the Magistrate to apply in the case of a Commonwealth Country certain evidentiary requirements: the Prima Facie Evidence Scheme or the Record of the Case Scheme.

Prima Facie Evidence Scheme

The Magistrate must be able to establish a prima facie case sufficient from evidence that is produced before him that the person to be surrendered has committed the offence.

Record of Case Scheme

There is a requirement that a record of the case is produce for the offence for which the surrender is sought. Section 24(3) of the Order defines the record of case as a document containing the recital of the evidence to support the request and authenticated copy, reproduction or photographs of all exhibits and documentary evidence.

The case record shall also be accompanied by:-

- Affidavit of an officer of the authority that investigated the manner, stating that the record of the case was prepared by him and under his direction and the evidence in the record of the case has been preserved for use in that person's trial; and

- Certificate of the Attorney General or any other person justifies the surrender of such person based on the evidence provided.

PART IV- Extradition from Brunei Darussalam to Designated Countries

Backing of warrants procedure- Section 26

The Attorney General of Brunei Darussalam may, with the approval of His Majesty the Sultan and yang Di-Pertuan, by order published in the Gazette, specify a country as a designated country.

A provisional warrant of arrest is issued by the Magistrate if an application is made to the Magistrate on behalf of the designated country. The application is made by affidavit stating that an original warrant for the arrest of that person has been issued in the designated country but is not yet available in Brunei Darussalam and the person named in the original warrant maybe in or on his way to Brunei Darussalam.

A person arrested based on the provisional warrant of arrest can be remanded or release on bail for not exceeding 28 days.

Endorsement of warrant- Section 28

The Magistrate shall endorse the original warrant to authorise the arrest of that person under the warrant in Brunei Darussalam if an application is made to the Magistrate on behalf of the designated country for the endorsement of a warrant. The application is made by affidavit stating that the person named in the original warrant maybe in or on his way to Brunei Darussalam.

IV. REQUIREMENTS OF EXTRADITION

(i) Dual Criminality

Section 3 of the Extradition Order 2006 states that an offence is an extradition offence if-

- a) It is an offence deemed by any written law or any treaty to which Brunei Darussalam is a party to be an extradition offence; or
- b) It is an offence against a law of the requesting country for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than one year, and

The conduct that constitutes the offence, if committed in Brunei Darussalam would constitute an offence in Brunei Darussalam for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than one year.

Therefore dual criminality is one of the requirements for a person to be extradited from Brunei

Darussalam.

(ii) Rule of Specialty

The Attorney General may refuse to order a person to be surrendered if the requesting country has not given a specialty undertaking.

The requesting country is deemed to have given a specialty undertaking if it undertakes that he will not, without having the opportunity of leaving the requesting country-

- a) be detained or tried for an offence committed before surrender, other than-
 - the offence for which surrender is granted; or
 - an offence of which he could be convicted on proof of the acts constituting the offence for which surrender is sought, for which the penalty is no greater than the penalty for the offence for which surrender is sought, or
- b) be detained in the requesting country for surrender to a third country for an offence committed before surrender to the requesting country, unless the Attorney General consents to the trial or to the surrender to a third country.

(iii) Surrender of Nationals

The extradition of a Bruneian National is a discretionary ground for refusal under Section 17(3)(d) of the Order.

(iv) Statute of Limitation

Brunei Darussalam does not impose any specific period of limitation. However Section 4(f) of the Order states that under the law of the requesting country or of Brunei Darussalam, he has become immune from prosecution or punishment because of lapse of time, amnesty or any other reason.

V. STEPS TO FOLLOW WHEN SEEKING EXTRADITION FROM Brunei Darussalam

In general, the steps outlined below should be followed for extradition from Brunei Darussalam:

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contact the Central Authority of Brunei Darussalam, the Attorney General in advance of making a request for extradition, particularly in the most serious cases, to ensure the extradition which you seek is available under the laws of Brunei Darussalam and the request will meet the legal requirements of Brunei Darussalam. In addition, the following steps should be followed in every case. The requesting countries are also recommended to look at the Brunei Darussalam's Extradition Order 2006

available at the Attorney General Chamber's website.

Step 2: INDICATE THE MECHANISM USED TO SEEK EXTRADITION

In drafting your request, begin by clearly identifying the bilateral treaty or international convention (UNCAC, UNTOC) or other avenue of cooperation being referred to in seeking the extradition from Brunei Darussalam.

Step 3: SUMMARIZE THE CASE

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution.

Step 4: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties. Requesting Countries are encouraged to attach text of the law and the penalty prescribed

Step 5: PROVIDE AMPLE EXHIBITS

Enclose diverse and sufficient evidence as the court demands that the allegations be substantiated thoroughly during extradition hearings.

Step 6: PROVIDE A LIST OF RELEVANT CONTACT POINTS IN YOUR COUNTRY

Include a list of names and contact numbers for key law enforcement/prosecution authorities dealing with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign state wishes to contact you for the purpose of clarification or obtaining additional information. It should also be made clear which authority is requesting for the extradition.

Step 7: TRANSLATE THE REQUEST

Brunei Darussalam requires incoming requests for extradition to be provided, in writing, in English.

VI. OTHER RELATED ISSUES

(i) Deportation

Under the Immigration Act, Chapter 17, a person can only be deported from Brunei Darussalam if the person has committed an offence in Brunei Darussalam. However if a person is not a citizen of Brunei Darussalam and is a member of any of the prohibited classes can be refused entry into Brunei Darussalam.

Members of the prohibited classes, amongst others, include any person who has been convicted in any country or state of an offence for which a sentence of imprisonment has been passed for any term; has not received a free pardon and by reason of the circumstances connected with such conviction is deemed by the Controller to be an undesirable immigrant.

(ii) Effect of Interpol Red-Notice

Once Interpol red notice is issued, the Royal Brunei Police Force, as Interpol Brunei, will then disseminate the information to all law enforcement agencies to alert them to arrest such persons if detected. If the arrest is executed, then the extradition proceedings will be triggered. For countries like Singapore and Malaysia, the Extradition (Malaysia and Singapore) Act, Chapter 154 will be referred to.

VII. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON EXTRADITION

Brunei Darussalam has extradition arrangements with both Malaysia and Singapore. The provisions are contained in the Extradition (Malaysia and Singapore) Act, Chapter 154.

Brunei Darussalam is also a party to the UNCAC, UNTOC and the 1988 Convention on Illicit Trafficking and Psychotropic Substances.

VIII. EXTRADITION TO AND FROM MALAYSIA AND SINGAPORE

If the Malaysia or Singapore Judicial Authorities have issued a warrant or summons authorizing the arrest of an accused or convicted of an offence, a Magistrate in Brunei Darussalam may endorse the warrant to be executed in Brunei Darussalam as if it were a warrant lawfully issued in Brunei Darussalam.

Once a warrant or summons has been executed, the person arrested shall be produced before a Magistrate in Brunei Darussalam who shall direct that the arrested person be transferred forthwith in custody to the appropriate court in Malaysia or Singapore.

Offence means a seizable offence or an offence punishable, on conviction, with imprisonment for a term exceeding six months under the laws of Brunei Darussalam or Malaysia.

Magistrate in relation to Singapore includes a District Judge.

IX. SUMMONSES AND WARRANTS (SPECIAL PROVISIONS) ACT, CHAPTER 155

Summonses and Warrants (Special Provisions) Act, Chapter 155 provides for the guideline for the service of summons to an accused person between Brunei Darussalam, Malaysia and Singapore. It also covers the procedures for the service of summons to a witness between Brunei Darussalam, Malaysia and Singapore. The Act also allows the Magistrate to endorse the warrant and execute the warrant as if it was issued in Brunei Darussalam.

GUIDE TO EXTRADITION FROM EAST ASIA AND THE PACIFIC REGION

[The purpose of this template is to ensure your country's contribution to the Extradition Guide for East Asia and the Pacific region meets the purpose of the guide, especially by providing brief and user-friendly advice on key extradition steps. Please make efforts to use the following headings and instructions. An example of a completed template of the Republic of Korea has been provided to assist you. We have made this template based on the G20 template as a reference.]

Please note that the submission of the guide is not mandatory, but recommended.

We will compile and distribute the guides submitted by each country to all of you.

KINGDOM OF CAMBODIA

I. INTRODUCTION [Maximum 1 Page]

Since Cambodia was signed the Law entitled Code of Criminal Procedure on 10 August 2007. The Royal Government of Cambodia expresses its continued support and cooperation to the undertakings of the Law on International Criminal, especially important mechanism to suppress transnational crimes effectively. This Code has ratified by National Assembly on 07 July 2007, Senate on 24 July 2007 and promulgated by King on 10 August 2007. In that Law has stipulated two Charters that mentions about Extradition with 29 Article, from Article 566 to 595, including the special laws as Law on Counter Terrorism on 20 July 2007 (Art. 94 – Art. 102) and Law on the Control of Drugs on 24 January 1997, this Law was amended on 02 January 2012 (Art.111 – Art.113).

Base on this Law, the Kingdom of Cambodia may executed of the Extradition Requested by foreign state. Therefore the Cambodia Government may extradite to a foreign State a foreign citizen who is currently present in the kingdom of Cambodia and who is:

- *subject to criminal proceedings in that state, or*
- *has been convicted to imprisonment by a court of that State.*

(i) Requests Made Under a Treaty/Convention

The extradition of a foreign resident who has been arrested in the territory of the Kingdom of Cambodia shall be governed by the provision of international conventions and treaties ratified

by the Kingdom of Cambodia.

(ii) Non-Treaty Letters of Request

If there is no such treaty or convention with Kingdom of Cambodia, it's can be make a request by use the provisions of Code of Criminal Procedure of the Kingdom of Cambodia (Chapter 2: Extradition)

II. CENTRAL AUTHORITY – CONTACT INFORMATION

Kingdom of Cambodia has designate the Central authority in the Ministry of Justice, where is the Contact Information for facilitating the request of the requesting state.

The Contact points for states seeking Mutual Legal Assistance:

- 1. MR. CHAN SATHA,** *Director of International Relation Department and Permanent Member of Cambodia Central Authority;*
- 2. MR. NGETH DAVUTH,** *Deputy Director of International Relation Department and Permanent Member of Cambodia Central Authority;*
- 3. MR. POV VIBOL,** *Bureau Chief of Foreign Affairs and Member of Cambodia Central Authority.*

Telephone: **+855 23 219 570**

E-mail: **ird.moj@hotmail.com**

III. PROCEDURES OF EXTRADITION

All extradition requests shall be submitted to the Royal government of Cambodia through diplomatic channel. Each request shall contain the supporting documents.

The supporting documents shall include:

- *Documents adequate for identifying the wanted person;*
- *Report of the acts for which the wanted person is prosecuted;*
- *The legal provisions applicable to such offense and possible sentence; and*
- *A copy of the sentence decision; if any.*

All documents shall be signed, officially sealed and enveloped. If they are not in Khmer, French or English language, the request shall be accompanied by a certified translation of the documents into one of the three languages. It is call Validation of Extradition Request.

Minister of Foreign Affairs of Kingdom of Cambodia shall forward the request together with the supporting documents to the Minister of justice. The Minister of justice examines the regularity of the request [Central Authority] and then forward it to the General Prosecutor attached to the Appeal Court of Phnom Penh.

The state requesting extradition may request the provisional arrest of the wanted person.

In case of urgency, the request for provisional arrest may be made prior to the extradition request (Validation of Extradition Request).

The request for provisional arrest, which is aimed at preventing the wanted person from escaping, does not need to follow a special format.

The person detained under provisional arrest procedures shall be automatically released if the Royal Government of Cambodia does not receive all the documents (Validation of Extradition Request) within two months from the date of the arrest.

In case of arrest, the wanted person shall be brought without delay before the Prosecutor who has territorial competence and who shall notify such person of the special detention order and take that person's statement.

The wanted person shall be transferred to a Phnom Penh prison for detention. He may request the General Prosecutor attached to the Phnom Penh Court of Appeal to take his statement.

The General Prosecutor shall bring the case file up to date and seize the Investigation Chamber of the Phnom Penh Court of Appeal.

The Investigation Chamber may issue an order rejecting the extradition request if it finds that the legal requirements for extradition are not met.

The wanted person may request to be released from detention.

The motion shall be made in writing.

The motion shall be submitted to the Investigation Chamber which will make its decision after hearing the wanted person's statement, the submissions of the General Prosecutor and the defense lawyer.

If the wanted person agrees to be extradited pursuant to the request of the requesting State after having been fully informed of the consequences of that agreement, the Investigation Chamber shall mention such agreement in its order.

When the order of the Investigation Chamber becomes final, the Minister of Justice shall be

immediately informed.

If the Investigation Chamber makes a rejection order, the extradition cannot be made by the Cambodian government. The wanted person shall be released immediately unless such person is subject to detention for another case.

If the Investigation Chamber grants the extradition request, the Minister of Justice shall propose that the Royal Government issues a sub-decree ordering the extradition of the wanted person.

After the extradition has been ordered, the wanted person shall be handed over to the requesting State. The expenses of extradition shall be borne by the requesting State. The security and protection of the wanted person while he is outside the Kingdom of Cambodia shall be the responsibility of the requesting State.

If the requesting State fails to initiate measures for repatriation within 30 days after the notification of the sub-decree ordering the extradition, the wanted person shall be released.

IV. REQUIREMENTS OF EXTRADITION

(i) Dual Criminality

An extradition may be made only if the prosecuted facts against the wanted person constitute an offense under the laws of both the requesting State and the Kingdom of Cambodia, even though:

- *The type of offense might be defined differently; or*
- *The legal qualification of the offense, the use of terminology, the definition or the determination of characteristics of the offense is different; or*
- *Elements characterizing the offense under the laws of the requesting State are different from those under the laws of the Kingdom of Cambodia, provided that the whole set of elements of the facts presented by the requesting State constitute an offense under the provisions of the laws in force in Cambodia.*

(ii) Rule of Specialty

A person extradited shall not be detained, proceeded against or subject to the enforcement of a sentence in the territory of the Requesting Party for any offence committed before her or his extradition other than:

- *an offence for which extradition was granted;*
- *any other extraditable offence provable on the same facts and punishable by the same or lesser penalty as the offence for which extradition was granted; or*

- *any other extraditable offence in respect of which the Requested Party consents. A request for consent shall be accompanied by such of the documents as are sought by the Requested Party, as well as a record of any statement made by the extradited person in relation to the offence.*

(iii) Surrender of Nationals

The kingdom of Cambodia shall have right to refuse extradition or arrested to be extradited the own national to a foreign state, but the Cambodia request the requesting state the submitted the case and forward it to the competence authority for the prosecution. For this propose, the requesting state shall submit documents and evidence to the case to the competence authority of Cambodia.

(iv) Statute of Limitation

An extradition shall not be granted with the reasons as follow:

The extinction of criminal action, the reasons for extinguishing a charge in a criminal action are as follows:

1. *The death of the offender;*
2. *The expiration of the statute of limitations;*
3. *A grant of general amnesty;*
4. *Abrogation of the criminal law;*
5. *The res judicata.*

When a criminal action is extinguished a criminal charge can no longer be pursued or shall be terminated.

Except Crimes against humanity, genocide and war crimes have no statute of limitations the time limitation for bringing a criminal action is as follows:

- *fifteen years for a felony;*
- *five years for a misdemeanour; and*
- *one year for a petty offense*

An extradition order may be issued if under the law of the requesting state the punishment against the wanted person amounts to at least two year imprisonment.

However, an extradition order may also be issued if the wanted person has been finally sentenced by the court of the requesting state to at least six month imprisonment, regardless of the maximum length of imprisonment provided by the law

V. STEPS TO FOLLOW WHEN SEEKING EXTRADITION FROM KINGDOM OF CAMBODIA

In general, the steps outlined below should be followed for extradition from **KINGDOM OF CAMBODIA**:

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority *should be contact directly to* the Central Authority of **KINGDOM OF CAMBODIA** or *Diplomatic Channel* in advance of making a request for extradition, particularly in the most serious cases, to ensure the extradition which you seek is available under the laws of **KINGDOM OF CAMBODIA** and the request will meet the legal requirements of **KINGDOM OF CAMBODIA**. In addition, the following steps should be followed in every case.

Step 2: INDICATE THE MECHANISM USED TO SEEK EXTRADITION

In drafting your request, begin by clearly identifying the bilateral treaty or international convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the extradition from **KINGDOM OF CAMBODIA**.

Step 3: SUMMARIZE THE CASE

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution.

Step 4: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

1. *Code of Criminal Procedure (Art. 566 – Art. 595)*
2. *Law on Counter Terrorism (Art. 94 – Art. 102)*
3. *Law on the Control of Drugs (Art. 111 – Art. 113)*

Step 5: PROVIDE AMPLE EXHIBITS

Enclose diverse and sufficient evidence as the court demands that the allegations be substantiated thoroughly during extradition hearings.

Step 6: PROVIDE A LIST OF RELEVANT CONTACT POINTS IN YOUR COUNTRY

Include a list of names and contact numbers for key law enforcement/prosecution authorities dealing with the case. You should include the name and, where applicable, the

contact information of your Central Authority, in the event the foreign state wishes to contact you for the purpose of clarification or obtaining additional information.

Kingdom of Cambodia has designate the Central authority in the Ministry of Justice, where is the Contact Information for facilitating the request of the requesting state.

The Contact points for states seeking Mutual Legal Assistance:

1. MR. CHAN SATHA, *Director of International Relation Department and Permanent Member of Cambodia Central Authority;*

2. MR. NGETH DAVUTH, *Deputy Director of International Relation Department and Permanent Member of Cambodia Central Authority;*

3. MR. POV VIBOL, *Bureau Chief of Foreign Affairs and Member of Cambodia Central Authority.*

Telephone: **+855 23 219 570**

E-mail: **ird.moj@hotmail.com**

Step 7: TRANSLATE THE REQUEST

KINGDOM OF CAMBODIA requires incoming requests for extradition to be provided, in writing, in its official language(s), namely [identify official language(s) **Khmer or English**].

VI. OTHER RELATED ISSUES

(i) Deportation

In case of the requesting state has the treaty or none treaty and in the urgent circumstance, the police Interpol request approval from the Minister of Interior to issue the sub-degree to deport the person sought.

(ii) Effect of Interpol Red-Notice

- *In case of the Cambodia has received the Interpol Red-Notice, Police Interpol of Cambodia examine the Interpol Red-Notice as following:*
- *If the requesting state has the Treaty with Cambodia, Police Interpol prepares the document to The Minister of Justice for take action with the procedure for extradite the person sought.*
- *But if the requesting state do not has the treaty, the Cambodia's Police Interpol only examine whether the person sought in the Cambodia territories and then inform to the concerning state.*

VII. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON EXTRADITION

- *The current status of Bilateral Treaty on Extradition:*
 - 1- Thailand 1998
 - 2- China 1999
 - 3- Lao PDR 1999
 - 4-South Korea 2010

- *Currently Cambodia is negotiating with the other countries such as:*
 - 1-Russia
 - 2-Vietnam
 - 3-France

I, [name], [position], [institution], hereby certify that the documents attached to this certificate relate to the request to the Republic of Indonesia by the [requesting country] for the extradition of:

[Name of Fugitive and alias/if any]

AND

I further certify that the seal affixed to this certificate is the seal of the [institution] in [requesting country]

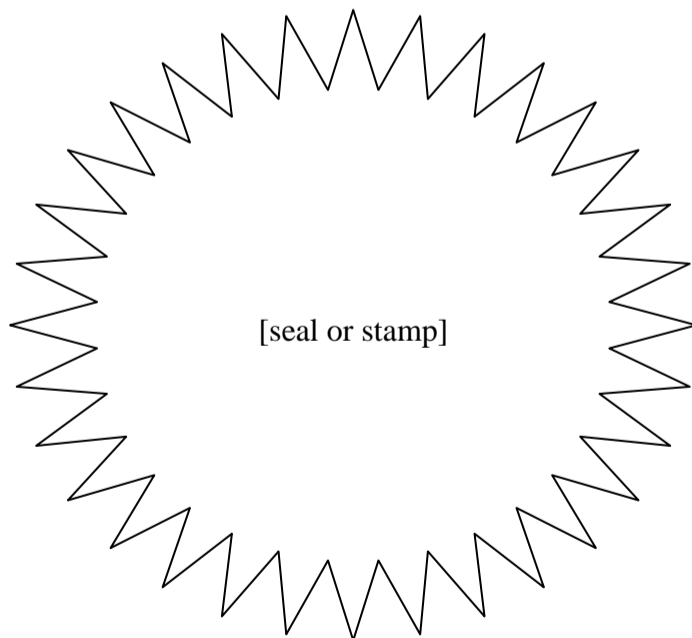
AND

I further certify that the above-mentioned seal of the [institution] in [requesting country] authenticates all documents and translations attached to this certificate

Given and signed by [position], [institution] and affixed to the tape binding all of the attached documents

(signed)

[name]
[position]
[institution]
[requesting country]



REQUEST FOR EXTRADITION OF
[Name of Fugitive and alias/if any]
FROM THE REPUBLIC OF INDONESIA TO *[Requesting Country]*

- 1 This is the Detail of Request for Extradition conveyed by the Government of the (as the Requesting Country) to the Government of the Republic of Indonesia (as the Requested Country) which submitted pursuant to the Article 2 paragraph (2) Indonesian Act Number 1 Year 1979 on Extradition.
- 2 This extradition request to the competent authority in *[Requesting Country]* is submitted by the undersigned:

[Name of Officer], [Position], [Institution].

I perform under assignment which designated by *[Institution]*, as the technical officer who have authority to conveying and receiving extradition request, conducting coordination and consultation on conveying and receiving extradition request referring to the *[insert national legislation or regulation related to the authorization in the extradition matter]*. I am designated officer in the *[Institution]* in making detail of request for extradition to foreign authorities and have a power to sign this detail of request letter. I am officer which have responsible in extradition matter since *[year]*.

- 3 These requests submitted to the authority in the Republic of Indonesia for arrest, detain, and extradited a criminal offender in Indonesia name *[name of fugitive and alias/if any]*, which became fugitive for *[prosecution or execution for criminal sentence]* in *[requesting country]*.

Model Extradition Form to Indonesia
C: standard form/non treaty

- 4 *[name of fugitive and alias/if any]* as *[suspected or convicted]* criminal offenders in *[requesting country]* has wanted as fugitive and has been searching by *[authority in requesting country]* through ICPO-Interpol with issuing Red Notice Control Number *[information of number]*.
- 5 *[authority in requesting country]* was indicate for the location of *[name of fugitive and alias/if any]* in Indonesia under *[please insert the information regarding the reason from the requesting country believes that the fugitive was located in Indonesia]*.
- 6 Detail of description and supporting document related to the location of the person sought attached on ATTACHMENT A *[please attached the relevant identity of the person including photograph, fingerprints, number of passport or ID Card, or others]*

DOCUMENT AUTHORIZING THE APPREHENSION OF *[Name of Fugitive and alias/if any]*

- 7 Date on *[dd/mm/yy]*, Arrest Warrant *[insert the information on arrest warrant]* was issued which signed by *[name, position, institution which have authority in issuing the warrant for arrest the fugitive person]* for arrest and detain *[name of fugitive and alias/if any]* as the person who became a fugitive and wanted for *[prosecution or execution of the criminal sentence]* in *[requesting country]*. The copy of Arrest Warrant attached in ATTACHMENT B. *[please attached this document with the arrest warrant]*

Model Extradition Form to Indonesia
C: standard form/non treaty

- 8 **[name of authority]** is the **[investigation and/or prosecution and execution of the criminal sentence]** authority in the **[requesting country]** which authorized to conduct the arresting and detaining referred to the **[insert the legislation and text of provision in support the statement of authority in apprehension of the fugitive person]**

>>> (Alternative statement):

STATEMENT OF AUTHORITY TO PROSECUTE **[Name of Fugitive and alias/if any]**

[if the fugitive person will be prosecute in the requesting country, please give the information regarding the judicial authority for prosecute the fugitive person, including the legislation which support those authority]

[OR]

STATEMENT OF AUTHORITY TO EXECUTION OF JUDGEMENT OF **[Name of Fugitive and alias/if any]**

[if the fugitive person will extradited for the execution of the criminal sentence by the court in the requesting country, please give the information regarding the authority for execution of the fugitive person, including the legislation which support those authority]

OFFENCES FOR WHICH EXTRADITION IS SOUGHT

- 9 Extradition of **[name of fugitive and alias/if any]** to **[requesting country]** is wanted for **[prosecution or execution of the criminal sentence by the court]** for the offences:

Model Extradition Form to Indonesia
C: standard form/non treaty

[please insert the detail of information regarding the offence and also including the criminal legislation underlying the offence]

[it is more support the extradition request if this information also attached with the prevailing legislation in suport the criminal legislation against the person]

MAXIMUM PUNISHMENT THAT CAN BE IMPOSED FOR THE CRIMINAL OFFENCE FOR WHICH EXTRADITION IS REQUESTED

10 *[please insert the detail of information regarding the maximum punishment and also the legislation in the requesting country]*

STATEMENT OF STATUTORY PROVISION ON LIMITATION OF PROCEEDINGS

11 *[please insert the detail of information regarding the provision regarding the limitation of proceedings in the requesting country, i.e. legislation on statute of limitation]*

STATEMENT FOR ALLEGED CONDUCT DONE BY *[Name of Fugitive and alias/if any]*

12 *[please insert the summary of the offence which has been done by the fugitive person]*

SUMMARY OF FACT

13. *[please insert the detail of conduct which describe the fact which done by the fugitive person including the main elements of crime against the criminal legislation in the requesting country]*

STATEMENT OF DOUBLE JEOPARDY

14. *[Name of Fugitive and alias/if any]* never been prosecute or serving the sentence related to the criminal offence which mentioned above.

STATEMENT OF RECIPROCITY

15. *[please insert the statement relating the assurance from the requesting country on reciprocity]*

CONTACT OFFICER

16. Authority in Indonesia could contact the following authority in *[requesting country]* which concern in this request:

[please insert the detail contact in this extradition matter for liaison or correspondence in the future process, including name, telephone number, facsimile, and e-mail]

PRIOR CONTACT

17. *[please insert the prior contact, if any]*

CONFIDENTIALITY

18. We request that the existence and contents of this request for extradition be treated as VERY CONFIDENTIAL until the arrest of the person by authorities in Indonesia.

URGENCY

19. We request that this extradition request be considered as soon as possible.

(dd/mm/yy)

(signed)

[JAPAN]

I. INTRODUCTION

Japan provides extradition under the guarantee of the reciprocity, regardless of the existence of an applicable treaty/convention between Japan and the requesting state.

(i) Non-Treaty Based Requests

(a) Requirements for extradition

Extradition request is executed on the basis of the reciprocity principle and in accordance with requirements provided for in the Extradition Law. Requirements are the followings;

- ▶reciprocity – the requesting state guarantees that it will honour requests of the same sort from Japan
- ▶Non political offence – the offence for which extradition is sought is not a political offence, and the extradition request is not deemed to have been made with a view to trying or punishing the fugitive for a political offense
- ▶minimum punishment of requested offence– the requested offense is punishable by death, life imprisonment with or without work for life or for a long term of three years or more according to the laws and regulations of the requesting country
- ▶dual criminality (general) – the act constituting the requested offense is deemed to have been committed in Japan and would be punishable under the laws and regulations of Japan by death or imprisonment with or without work for life or for a long term of three years or more
- ▶dual criminality (specific) – when it is deemed that the act that constitutes the requested offense was committed in Japan or the trial for the offense was held in Japan, but the imposition or the execution of punishment on the fugitive for the requested offense would be not barred under the laws and regulations of Japan (e.g. statute of limitation)
- ▶probable cause – except in the case of a fugitive who was convicted in the requesting country for the requested offense, there needs to be probable cause to suspect that the fugitive committed the act constituting the requested offense
- ▶a criminal prosecution based on the act constituting the requested offense is not pending in a Japanese court, or the judgment in such case has not become final
- ▶pending case of other offence in Japanese court etc. – a criminal prosecution for an offense committed by the fugitive other than the requested offense is not pending in a Japanese court, or the fugitive has not been sentenced to punishment in a Japanese court with offense committed by the fugitive other than the requested offense, etc
- ▶nationality – the fugitive is not a Japanese national
- ▶the Minister of Justice deems it appropriate to honour the request

As mentioned above, dual criminality (general) is one of the legal requirements for providing assistance. At the same time, Japan does not examine the requirement of dual criminality by superficially comparing the constituent elements of crimes of both countries. Rather, Japan seeks whether the facts constituting the offense for which extradition is requested and other facts related thereto contain, as a whole, a

constituent element of a crime prescribed in the Japanese laws, regardless of whether such offense is categorized in the same manner or denominated by the same terminology. In this way, Japan examines and applies the requirement of dual criminality as flexibly as possible. Thus, there are few cases in which Japan refuses to render extradition on the grounds that dual criminality requirement is not met.

As of probable cause, the requesting state must provide enough evidence to show probable cause that fugitive has committed the crime (see IV Step 5 for more information).

(b) Requirements for provisional arrest

Extradition Law allows provisional arrest if there is a notification from the requesting state that an arrest warrant has been issued and there is assurance that an extradition request will be made. Extradition request should be made and notified to custodial facility within 2 month after fugitive is detained in that facility, otherwise fugitive will be released.

In addition, red notice issued by ICPO is not regarded as the legal basis for provisional arrest in Japan.

Legal provision does not require evidence for seeking provisional arrest. However, as a matter of practice, especially in convincing the court, it is recommended that the requesting state presents some kind of evidentially documents to show the existence of evidence that will show probable cause in the future extradition request.

(ii) Requests Made Under a Treaty/Convention

If there is an applicable treaty/convention between Japan and the requesting state, Japan provides assistance to extradition as a matter of legal obligation under the treaty/convention. Such treaties/conventions include but not limited to: bilateral extradition treaties (United States and Korea), United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; OECD Anti-Bribery Convention; and Convention on Cybercrime (Japan has signed UNTOC and UNCAC, but not yet ratified).

(a) Requirements for extradition

While Law of Extradition forms the domestic legal base for extradition, some requirements stated above are relaxed by treaties/conventions. For example, bilateral extradition treaties (United States and Korea) relax the requirements as followings;

▶minimum punishment of requested offence –“punishable by death, life imprisonment with or without work for life or for a long term of *one year* or more (Korea) / more than *one year* (United States) according to the laws and regulations of the requesting country”.

▶dual criminality (general) – “punishable under the laws and regulations of Japan by death or imprisonment with or without work for life or for a long term of *one year* or more (Korea) / more than *one year* (United States)”.

▶the pending case of other offence in Japanese court etc. – no longer a reason for refusal but a reason for stay.

▶nationality – the extradition of Japanese national is discretionary

(b) Requirements for provisional arrest

The requirements for provisional arrest and efficacy of red notice issued by ICPO are the same as non-treaty based requests. On the other hand, unlike non-treaty based request, extradition request under treaty (United States and Korea) should be made and notified to custodial facility within 45 days after fugitive is detained in that facility.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

(i) Central Authority

Regardless of whether the request is based on treaty or not, all requests shall be sent to Japan through diplomatic channels. Also, the formal communications shall be made through diplomatic channels. Please contact the Japanese Embassy in your state.

(ii) Contact point for general information

The contact point in charge of information on the Japanese criminal justice system and legislation in general, and extradition is the following;
International Affairs Division of Criminal Affairs Bureau of the Ministry of Justice
1-1-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8977 Japan
Telephone: +81 3 3592 7049
Email: info@moj.go.jp
Facsimile: +81 3 3592 7063

III. PROCEDURES OF EXTRADITION

(i) General procedure

There are three key stages, first executive stage, a judicial stage and second executive stage in order. As for first executive stage, the Minister of Justice decides whether the extradition request meets requirements such as dual criminality, non-political offence, probable cause to suspect that the fugitive has committed the offences, etc. As for a judicial stage, the Tokyo High Court decides, upon an application by prosecutor in Tokyo High Public Prosecutors Office, whether the extradition meets those requirements. Finally, as for second executive stage, the Minister of Justice decides it is appropriate to honour the request.

There is no appellate process in extradition cases in Japan and both the prosecutor and the fugitive are not entitled to appeal against the decision of the Tokyo High Court.

(ii) Time-frame of proceeding

Time-frame in the extradition proceedings is strictly defined in Extradition Law as follows (see I (i) (b) and I (ii)(b)) as for the case involved provisional arrest);

After Minister of Justice decides an extradition request meets requirements in Extradition Law and forward the request to Tokyo High Prosecutors Office, prosecutor in Tokyo High Prosecutors Office will detain fugitive in principle. Within 24 hours after its detention, prosecutor in Tokyo High Prosecutors Office shall apply the examination to Tokyo High Court. Tokyo High Court shall decide applicability of extradition within 2 month after fugitive detained ~~(including provisional arrest)~~. Within 10 days after a decision by Tokyo High Court, Minister of Justice shall order the surrender. Surrender to foreign official must take place within 30 days after such an order.

IV. STEPS TO FOLLOW WHEN SEEKING EXTRADITION FROM

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE

REQUEST

It is recommended that the requesting authority in your country contact the Central Authority of Japan in advance of making a request for extradition, to ensure the extradition which you seek is available under the laws of Japan and the request will meet the legal requirements of Extradition Law in Japan.

In addition, the following steps should be followed in every case.

Step 2: INDICATE THE MECHANISM USED TO SEEK EXTRADITION

In drafting your request, begin by clearly identifying the bilateral treaty or international convention, or reciprocity (non-treaty based) in seeking the extradition from Japan.

Step 3: SUMMARIZE THE CASE

Provide a detailed outline of the case under investigation, prosecution or conviction, including a summary of the evidence that supports the investigation/prosecution/conviction.

Step 4: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text of all relevant legal provisions under investigation/prosecution/conviction, including applicable penalties.

Step 5: PROVIDE AMPLE EXHIBITS

Enclose diverse and sufficient evidence as the court demands that the allegations be substantiated thoroughly during extradition hearings. There are many cases which requesting states have not been successful in meeting evidentiary requirements. To avoid such situation, it is advised the requesting states consult with the Japanese Ministry of Justice to discuss the extent of evidences needed to establish the probable cause.

As for the format of evidence, Extradition Law does not limit the evidence to be in a certain format. However, as a matter of credibility, direct evidences such as first-person statement rather than hearsay evidence or summary form are most welcomed.

Step 6: PROVIDE A LIST OF RELEVANT CONTACT POINTS IN YOUR COUNTRY

Include a list of names and contact numbers for key law enforcement/prosecution authorities dealing with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign state wishes to contact you for the purpose of clarification or obtaining additional information.

Step 7: TRANSLATE THE REQUEST

Japan requires incoming requests for extradition to be provided, in writing, in its official language, namely Japanese.

GUIDE TO EXTRADITION FROM EAST ASIA AND THE PACIFIC REGION

[Republic of Korea]

I. INTRODUCTION

Request for extradition for criminal investigations, prosecutions and proceedings related to criminal matters may be made under one of following basis: (1) bilateral treaty or multilateral convention; (2) non-treaty letters of requests with an assurance of reciprocity. The extradition is governed, in whole or in part, by the Act on Extradition.

(i) Requests Made Under a Treaty/Convention

Unless provided otherwise in applicable bilateral treaty, a request should be made by the Central or Competent Authority of a foreign country through diplomatic channels. The Central Authority for the Republic of Korea is the Ministry of Justice(MOJ). A request and supporting materials must be accompanied by a copy of Korean translation.

(ii) Non-Treaty Letters of Request

A non-treaty letter of request may also be executed on a discretionary basis. For such request to be executed the Competent Authority of a foreign country must provide an assurance of reciprocity. The procedures would generally be governed by the Act on Extradition.

(iii) Dual Criminality is Required

Absent a specific provision in bilateral treaty dual criminality is a ground for mandatory refusal.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

International Criminal Affairs Division
Criminal Affairs Bureau
Ministry of Justice, Republic of Korea
Gwacheon-Si Gwanmoon-Ro 88, Government Complex Building #5, Postal Code 427-720
Telephone : +82-2-2110-3555
Fax : +82-2-3480-3113

III. PROCEDURE OF EXTRADITION

(i) Request by Foreign Country

All requests for extradition shall be submitted in writing through a diplomatic channel in accordance with the extradition treaty between Korea and requesting country. Receiving the formal request from the requesting country, the Korean Ministry of Foreign Affairs forwards it to KMOJ.

(ii) Review by MOJ

The International Criminal Affairs Division of MOJ reviews the request to determine whether the request complies with the treaty or Act on Extradition. If it is determined that it is not the extraditable case, or the request is rejected according to the treaty or the Act, it shall notify the requesting country of denial.

(iii) Order by MOJ and Filing an Extradition Hearing

If all formalities and substantive requirement under the treaty or Act are met, MOJ transfers the request to the Chief Prosecutor of Seoul High Prosecutors' office and orders the prosecutor to file for an extradition hearing to the Seoul High Court. Arrest warrant is issued by a judge and executed by the police under the supervision of the prosecutor

(iv) Hearing for Extradition

The Seoul High court has the exclusive authority to decide whether to grant extradition or not. The decision cannot be challenged. The court shall determine the extradition within two months from the day when the criminal is in custody.

(v) Final Decision of Minister of Justice

The Minister has the authority to review the decision of the court again and make a final decision even though the court permitted the extradition. Therefore, despite the court's decision, the Minister has an authority to deny the extradition request in consideration of national interest.

(vi) Surrender of Criminal

When the Minister finally decides to extradite, MOJ sends a 'Surrender Order' to the Chief Prosecutor of Seoul High Prosecutors' Office. The prosecutor in the office orders the Chief of the Seoul Detention Center to surrender the criminal to the requesting country.

The date and place of the surrender should be decided by bilateral consultation between KMOJ and CA of requesting country.

IV. REQUIREMENTS OF EXTRADITION

(i) Dual Criminality

Under the treaty or Extradition Act, an offense in the requests for extradition shall be punishable under the legislations in both jurisdictions.

KMOJ takes a flexible approach to the issue of dual criminality, so if the details and contents of the extraditable crime are consistent with those of the crime in Korea, the Korean government does not refuse to extradite the criminal only because the name or element of the offense is different.

(ii) Rule of Specialty

An Extradition Order will state the offense for which the criminal is to be tried or punished in the requesting country, and that constitutes a condition on the requesting state which is precluded to prosecute or punish the criminal for any other offense than the one for which extradition was granted.

KMOJ may grant a waiver of this Rule based on a formal request from an original requesting country after the criminal has been surrendered to that country and is still in its custody. On top of that, if the criminal waives specialty claims, he can be prosecuted or punished for other offenses which were not included in the Extradition Order.

(iii) Surrender of Nationals

Under the treaty or Extradition Act, if the extraditable criminal is a national of a country, KMOJ may refuse to extradite its national to other country.]

If extradition is refused solely on the basis of the nationality of the criminal sought, KMOJ shall, at the request of the Requesting Country, submit the case to its authorities for prosecution.

(iv) Statute of Limitation

Lapse of statute of limitation is either mandatory or discretionary ground for the refusal, according to the clause in the treaty.

V. STEPS TO FOLLOW WHEN SEEKING EXTRADITION FROM Republic of Korea

In general, when seeking extradition from the Republic of Korea, the steps outlined below should be followed:

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contact the Central Authority in advance of making a request for extradition, particularly in the most serious cases, to ensure an extradition is available under the laws of the Republic of Korea, and the request will meet the legal requirements of the Republic of Korea. In addition, the following steps should be followed in every case.

Step 2: INDICATE THE MECHANISM USED TO SEEK EXTRADITION

In drafting your request, begin by clearly identifying the bilateral treaty or international convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the extradition from Republic of Korea.

Step 3: SUMMARIZE THE CASE

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution.

Step 4: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 5: PROVIDE AMPLE EXHIBITS

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 6: PROVIDE A LIST OF RELEVANT CONTACT POINTS IN YOUR COUNTRY

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event KMOJ wishes to contact you for the purpose of clarification or obtaining additional information.

Step 7: TRANSLATE THE REQUEST

Republic of Korea requires incoming requests for mutual legal assistance to be provided, in writing, in its official language(s), namely Korean.

GUIDE TO EXTRADITION FROM EAST ASIA AND THE PACIFIC REGION

[The purpose of this template is to ensure your country's contribution to the Extradition Guide for East Asia and the Pacific region meets the purpose of the guide, especially by providing brief and user-friendly advice on key extradition steps. Please make efforts to use the following headings and instructions. An example of a completed template of the Republic of Korea has been provided to assist you. We have made this template based on the G20 template as a reference.]

Please note that the submission of the guide is not mandatory, but recommended.

We will compile and distribute the guides submitted by each country to all of you.

[COUNTRY NAME]

I. INTRODUCTION [Maximum 1 Page]



I. Introduction

The Lao PDR is among the Least Developed Countries (LDC) in the world, ranking 138rd of 187 countries, according to the UNDP's Global Human Development Index (HDI) of 2011¹. It is a land-locked country, sharing its borders with five countries. Its population of 6.25 million people is divided into 49 ethnic groups. About 67% of its population is Buddhist. In 1975, the previous monarchy ended and Laos became a socialist regime. It started to accept foreign investment and establishment of private enterprise in 1988, and Laos became a member of ASEAN in 1997 and a member of the WTO in 2013.

The Lao PDR adopted its Constitution in 1991 and amended it in 2003. Laos' legal system has a civil law system similar in form to that of the French.

¹ United Nations Development Programme, International Human Development Report 2011, Geneva 2012, 127.

The Lao PDR has ratified major international treaties under the auspices of the United Nations and under international, regional and bilateral frameworks. Today, the Lao PDR is party to some 100 multilateral treaties deposited with the UN Secretary General, almost 200 regional treaties including the ASEAN cooperative framework, and more than 300 bilateral treaties.² The Lao PDR attaches importance to international law, in particular treaties not only because they are the legal basis for international interactions and behaviors but also because they constitute a meaningful source for developing the rule of law at the national level. The adoption of the national constitution in 1991 was the turning point in the country's governance system, which has transformed from the one based on executive orders to the rule of law. To date, the National Assembly has adopted more than 90 laws covering several key areas of business and human rights such as land, labour and environment. Subordinate legislation such as decrees and ordinances supplement and define the implementation of state legislation. Additionally, customary law, or traditionally unwritten practices are also practice in the Lao PDR.

The Extradition Law No 18/NA was adopted by the National Assembly on 11 July 2012. The law was developed and drafted from the UNODC Model Law on Extradition (2004), the bilateral agreements and treaties, and conditions of the Lao PDR. There are 9 chapters and 44 articles. The Extradition Law now applies to all extradition proceedings from the Lao PDR. It must be noted that the law is also subject to the provisions of any treaties concerning extradition between the government of the Lao PDR and the foreign countries.

A request for an extradition letter can be made under a treaty or agreement, which the Lao PDR is party to, and the law (non-treaty approach).

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Office Of the Supreme People's Prosecutor

Ban Beung-kha-nyong Thadeua Road Sisattanak Distric Vientiane, Lao PDR

Tel: (856) 21.832006, (856) 21.832008.

International Cooperation Division

<http://www.ospp.net/English/index.php?strmenu=home>

III. PROCEDURES OF EXTRADITION

The extradition process follows these steps:

1. An extradition request is made from a foreign country under the extradition treaty or non-treaty via the diplomatic channel (to the Ministry of Foreign Affairs or the Lao PDR Embassy) to central authority (the Office of the Supreme People's Prosecutor). In urgent cases a 'requested person' (the person a country wants to extradite) can be arrested before the receipt of an extradition request. Within 60 days from the date of arrested of requested person, if there is no official request

² Source: the Department of the International Law and Treaties, the Ministry of Foreign Affairs of Lao PDR.

- and supporting documents as required from the Requesting State, such person shall be released freely and immediately.
2. When the Office of the Supreme People's Prosecutor receipt the official request, it shall review the request whether all conditions set out in the extradition law are met, if the request is made in accordance with the law, the Office of the Supreme Prosecutor shall send it to the Office of the Vientiane Capital Prosecutor to execute the request. Within 30 days of receipt, the office of the Vientiane Capital Prosecutor shall study (on the dual criminality and other tests by the extradition law) and must send the extradition case to the court for hearing and adjudication by the Vientiane Capital Court.
 3. At the hearing the Judges (3 judges) must confirm, on the balance of probabilities:
 - check whether the prosecuted person and brought before the court is the person sought according to the request or not;
 - To check whether the offence as described in the request of extradition is the extraditable offence according to the law or not;
 - To check whether the offence does not fall under the condition where the extradition is refused the law
 4. If the judges are satisfied that the conduct amounts to an extradition offence, and that none of the bars to extradition apply, they must then decide the extradition.

An appeal must be lodged within 30 days of an extradition being ordered to the Central Region People's Court, which shall consider to:

 - Confirmation of judgment of the Vientiane People's Court;
 - Alteration judgment of the Vientiane People's Court and decision to extradite or not to extradite
 5. The requested person can appeal to the Central Region People's Court against their extradition, and the requesting state can appeal against the discharge of someone they have requested extradition for.
 6. The judgment of the Central Region People's Court is final, if it decides not to extradite the person sought, that person shall be released immediately.
 7. The person sought should normally be extradited within 30 days of the final court order. This time limit can be extended in exceptional circumstances, and with the agreement of the requesting state.

IV. REQUIREMENTS OF EXTRADITION

(i) **Dual Criminality**

'Dual criminality' means that for someone to be extradited, their alleged conduct has to be a criminal offence in both the surrendering and the requesting state by the penalty of imprisonment or other form of detention for a period of more than 12 months. It shall not matter whether the penal law of the Lao PDR or the Requesting State places the conduct constituting the offence within the same category of offence or not

Extradition can generally be made for offences such as incitement, conspiracy, attempt etc.

(ii) Rule of Specialty**(iii) Surrender of Nationals**

The Lao PDR refuses to extradite its citizen, alien or stateless person residing in the Lao PDR, that commits a crime outside the territory of the Lao PDR, except that the treaty on extradition provides for otherwise

(iv) Statute of Limitation

Extradition shall not be granted in any of the following circumstances :

1. The Lao PDR has jurisdiction, according to the law, over the offence for which the request for extradition is made and shall institute proceedings against the person sought;
2. The Lao PDR is in the process of proceeding against the person sought in respect of the same offence;
3. The Lao PDR has well-founded reasons to suppose that the request for extradition is not compatible with humanitarian considerations on account of race, nationality, religion, ethnic, gender, social status or economic status of the person sought, which may be subject to torture or inhumane treatment.

V. STEPS TO FOLLOW WHEN SEEKING EXTRADITION FROM THE LAO PDR

In general, the steps outlined below should be followed for extradition from the Lao PDR

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contact the Central Authority of the Lao PDR in advance of making a request for extradition, particularly in the most serious cases, to ensure the extradition which you seek is available under the laws of the Lao PDR and the request will meet the legal requirements of the Lao PDR. In addition, the following steps should be followed in every case.

Step 2: INDICATE THE MECHANISM USED TO SEEK EXTRADITION

In drafting your request, begin by clearly identifying the bilateral treaty or international convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the extradition from the Lao PDR

Step 3: SUMMARIZE THE CASE

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution.

Step 4: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 5: PROVIDE AMPLE EXHIBITS

Enclose diverse and sufficient evidence as the court demands that the allegations be substantiated thoroughly during extradition hearings.

Step 6: PROVIDE A LIST OF RELEVANT CONTACT POINTS IN YOUR COUNTRY

Include a list of names and contact numbers for key law enforcement/prosecution authorities dealing with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign state wishes to contact you for the purpose of clarification or obtaining additional information.

Step 7: TRANSLATE THE REQUEST

The Lao PDR requires incoming requests for extradition to be provided, in writing, in its official language(s), namely Lao or English.

VI. OTHER RELATED ISSUES

- (i) Deportation*
- (ii) Effect of Interpol Red-Notice*

The Lao PDR is a member of Interpol and ASEAN pol, we provide also the cooperation under this framework.

VII. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON EXTRADITION

1. Treaty on Mutual Legal Assistance in Civil and Criminal Matters between the Lao People's Democratic Republic and the Korea People's Democratic Republic in 2011;
2. Treaty between the Lao People's Democratic Republic and the People's Republic

of China on Extradition – 4 February 2002

3. Treaty between the Lao People's Democratic Republic and the Kingdom of Cambodia on Extradition – 21 October 1999
4. Treaty on Extradition between the Lao People's Democratic Republic and the Kingdom of Thailand – 5 March 1999
5. Treaty on Mutual Legal Assistance in Civil and Criminal Matters between the Lao People's Democratic Republic and the Socialist Vietnam – 6 July 1998

GUIDE TO EXTRADITION FROM EAST ASIA AND THE PACIFIC REGION

MALAYSIA

I. INTRODUCTION

1. The Extradition Act 1992 [Act 479] provides the legal basis for the formal process of extradition between Malaysia and foreign States. The Act came into operation on 21 February 1992.
2. Thus far, Malaysia has entered into seven (7) bilateral treaties on extradition with foreign countries.
3. The Minister of Home Affairs is the designated Central Authority for Malaysia for all extradition requests. This means that all requests for extradition made to Malaysia has to be sent to the Minister of Home Affairs in accordance with section 12 of the Act.
4. The Act contemplates two (2) bases for extradition—
 - treaty based scheme
 - non-treaty based scheme
5. For extradition based on treaties, the relevant treaty is published in the *Gazette* in accordance with section 2(1) of the Act.
6. In the absence of a treaty, the extradition request must be sent to the Minister of Home Affairs, and he may give a special direction in writing if he deems it fit to do so that the Act applies to that country and the extradition request may be acted upon.

(i) Requests Made Under a Treaty

The legal basis under which a request is made for bilateral treaty partners, is the treaty entered into between Malaysia and that foreign country, to be read with the Act.

(ii) Non-Treaty Letters of Request

As stated above, in the absence of a treaty, the extradition request must be sent to the Minister of Home Affairs, and he may give a special direction in writing if he deems it fit to do so that the Act applies to that country and the extradition request may be acted upon.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Minister of Home Affairs is the designated Central Authority for Malaysia for all extradition requests.

Ministry of Home Affairs
Block D1 & D2, Complex D,
Federal Government Administrative Centre,
62546 PUTRAJAYA
Telephone no.: +603- 03-8886 8000
Facsimile no.: +603-8889 1763

III. PROCEDURES OF EXTRADITION

REQUEST FOR PROVISIONAL WARRANT OF ARREST

1. Originator

Request for provisional warrant of arrest may be received by way of INTERPOL red notice or from the appropriate Authority in the Requesting State.

2. The Work Process

2.1 Upon receipt of the documents for the request for provisional warrant, verify:

- i. whether Malaysia has a binding arrangement with the country which made the request;
- ii. particulars of the fugitive criminal's identity, including I.C. or Passport Number;
- iii. photographs and fingerprints, if available;
- iv. probable addresses in Malaysia;
- v. the original or copy of a warrant of arrest has been attached and original or copy of charging document has been attached;
- vi. summary of the facts of the case;
- vii. the offence with which he is charged;
- viii. maximum penalty incurred;

- ix. an assurance that extradition will be requested; and
 - x. undertaking of reciprocity.
- 2.2 If the above matters are satisfied, request for a Senior RMP Officer to be in charge, prepare application including notice of Application and affidavit for him to make an application to court.
 - 2.3 Make an application to the magistrate's court (section 13(1)(b) the Act) for the warrant of apprehension. After obtaining it, forward it to the RMP.
 - 2.4 Upon execution of the warrant, to produce the fugitive criminal in court and apply for the case to be transmitted to the Sessions Court for the committal proceedings and for the fugitive criminal to be remanded until his appearance before the Sessions Court (section 16 of the Act).
 - 2.5 Upon receipt of the requisition documents the work process described in below applies (except for the procedures in relation to the application of the warrant of arrest).

FORMAL EXTRADITION REQUEST

1. **Transmission of Documents**

Extradition request shall be made through the diplomatic channel to the Minister of Home Affairs.

2. **Work Process**

- 2.1 Upon receipt of the documents by the Attorney General's Chambers from the Ministry of Home Affairs, to verify:
 - (i) whether Malaysia has binding arrangement with the country which made the request;
 - (ii) the Third Person Note from the Foreign Embassy/High Commission was made by a Diplomatic Representative in Malaysia;
 - (iii) the requisition documents had been authenticated in accordance with section 24 of the Act and contain the following;

- a. The letter of request by the appropriate Authority usually a Minister of Justice or a Minister in the Requesting Country;
 - b. Statements on oath setting out the following:
 - Original or copy of the charging document;
 - Original or copy of warrant of arrest has been attached;
 - Particulars of the fugitive criminal's identity and probable location;
 - Particular of the facts of the offence;
 - Evidence relied upon;
 - The provisions of the law, the essential elements of the offence and the punishment;
 - Sufficient evidence or information to prove a prima facie case for committal;
- (iv) the letter of request or the Third Person Note contains the undertaking that upon his return, the fugitive criminal shall not be detained or tried in that country for any offence other than the extradition offence for which he is sought or any lesser offence proved by the facts on which that return was grounded unless the consent of the Requested Country has been obtained (section 8 (e) of the Act);
- (v) undertaking of reciprocity.
- 2.2 Identify the corresponding offence in Malaysia and determine whether the facts justify the extradition offence.
 - 2.3 Inform the Interpol and request for an officer in charge to assist in determining whether the fugitive criminal is in Malaysia.
 - 2.4 If further evidence or information is required from the Requesting State, to write directly to the Embassy of the Requesting State asking further evidence/ information/ supplementary evidence.
 - 2.5 Advise the Minister of Home Affairs through the Office of the Secretary General of the Ministry of Home Affairs:
 - (i) if there is no extradition offence disclosed, to refuse the request;

- (ii) if there is an extradition offence disclosed, to give effect to the request and to draft the necessary orders which are:
 - (a) In a case where there is a binding arrangement, the order to Magistrate under section 12 (3) of the Act;
 - (b) Where there is no binding arrangement, to advise the Minister to apply the Act to that country through the Special Direction (Section 3 of the Act) and the Order to the Magistrate under section 12(3) of the Act.
- 2.6 If the Minister agrees to give effect to the request, the relevant orders should be signed by the Minister and returned to Chambers accordingly. Upon receipt of these orders, Chambers should immediately apply for the warrant of apprehension. The draft of the warrant is prepared by Chambers.
- 2.7 Having obtained the warrant of apprehension, to forward it to the RMP i.e. Interpol for execution.
- 2.8 After execution of the warrant, Chambers will be immediately alerted by the RMP and to advise the RMP to produce the fugitive criminal in the Magistrate's court immediately, normally the same day the fugitive criminal is arrested.
- 2.9 Upon execution of the warrant, to produce the fugitive criminal in court and apply for the case to be transmitted to the Sessions Court for the committal proceedings and for the fugitive criminal to be remanded until his appearance before the Sessions Court (section 15 of the Act).
- 2.10 The court will then fix the date for inquiry whether a prima facie case is made out in support of the requisition under sections 18 and 19 of the Act.

THE EXTRADITION PROCEEDINGS

1. **Procedures**

There are three different procedures envisaged under the Act:

- (i) A full enquiry under section 18 and 19 of the Act;

- (ii) A simplified procedure where the fugitive criminal informs the court that he consents to a waiver of committal proceedings under section 22 of the Act;
- (iii) The procedures under section 20 of the Act. Under these circumstances, there must be a binding arrangement entered into between Malaysia and the Requesting Country. In that binding arrangement, it is stipulated that the prima facie requirement may be dispensed with. The Minister may thus give a direction that the procedure under section 20 of the Act applies.

2. Conclusion of Proceedings

- 2.1 If the Session Court Judge commits the fugitive criminal to prison under section 19(5) or section 20 of the Act, the fugitive criminal may apply for *habeas corpus* under section 21 of the Act.
- 2.2 If the time for application of *habeas corpus* has lapsed (15 days from the day of committal) or the High Court confirms the order, Chambers has to take the following actions.
 - (a) liaise with RMP and the Embassy/High Commission of the Requesting Country on the time of surrender of the fugitive criminal, the place for surrender and the person who is duly authorized to receive the fugitive criminal; and
 - (b) inform the Ministry of Home Affairs and prepare the Surrender Warrant of the Minister for the return of the fugitive criminal (section 21(2) and Form G of the Act).
- 2.3 Upon receipt of the surrender warrant, to forward it to the RMP for their actions.
- 2.4 If the Session Court Judge discharge the fugitive criminal under Section 19(4) of the Act Chambers to consider taking following action:
 - (a) at the time the Sessions Court Judge makes the order of discharge, give notice of intention to apply to the High Court for a review of the order (section 37 of the Act); and

(b) seek instruction from the Embassy/High Commission of the Requesting Country, enquiring whether the Requesting Country wants the Public Prosecutor to apply to the High Court for a review of the order of discharge on any question of law and to advise the Embassy/High Commission of the Requesting Country opinion on the matter (section 37 (1) of the Act).

3.5 if the Requesting Country request for a review, to file the necessary papers and subsequently conduct the review in the High Court.

IV. REQUIREMENTS OF EXTRADITION

(i) Dual Criminality

- In considering a request from a foreign State for rendering assistance under the extradition regime, the requirements of dual criminality is a mandatory requirement to be fulfilled in order for Malaysia to provide assistance to the foreign States (section 6 of the Act).
- This is to ensure that the offence provided for in the request has the relevant corresponding provision under the Malaysia law and that the offence meets the threshold i.e. must be punishable with imprisonment for not less than a year or with death.

(ii) Rule of Specialty

A fugitive criminal who has been returned to a country and the country concerned cannot try his/her surrender for an extradition offence committed prior to his return other than that for which he/she was extradited unless the consent of the Minister of Home Affairs is obtained (section 10 of the Act).

(iii) Surrender of Nationals

The Minister of Home Affairs may refuse the surrender or the return of a fugitive criminal if he/she is a citizen of Malaysia. However, if the extradition is refused based on this reason, the Minister shall, if the courts in Malaysia has jurisdiction over the extradition offence, submit the case to the Public Prosecutor with a view to having the fugitive criminal prosecuted under the laws of Malaysia (section 49 of the Act).

(iv) Statute of Limitation

In general Malaysia does not have any statute of limitation for prosecution of a criminal offence. However, extradition shall be refused if prosecution of the offence in respect of which the return of the fugitive criminal is sought is, according to the law of the Requesting Country, barred by time [sections 8(d) and 20 (1)(d)(ii) of the Act].

V. STEPS TO FOLLOW WHEN SEEKING EXTRADITION FROM MALAYSIA

In general, the steps outlined below should be followed for extradition request made to Malaysia:

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contact the Central Authority of Malaysia in advance of making a request for extradition, particularly in the most serious cases, to ensure the extradition which you seek is available under the laws of Malaysia and the request will meet the legal requirements of Malaysia. In addition, the following steps should be followed in every case.

Step 2: INDICATE THE MECHANISM USED TO SEEK EXTRADITION

In drafting your request, begin by clearly identifying the bilateral treaty or international convention (UNCAC, UNTOC, other) or other avenue of cooperation being referred to in seeking the extradition from Malaysia. However, as stated earlier, in the absence of a bilateral treaty between Malaysia and the foreign country, the extradition request must be sent to the Minister of Home Affairs, and he may give a special direction in writing if he deems it fit to do so that the Act applies to that country and the extradition request may be acted upon.

Step 3: SUMMARIZE THE CASE

Provide detailed documents, facts and information of the case whether it is for the purpose of prosecution or serving sentence to support the extradition request.

Step 4: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text of all relevant legal provisions concerning the criminal offences relating to the prosecution, including applicable penalties.

Step 5: PROVIDE AMPLE EXHIBITS

Enclose sufficient evidence as the court demands that the requisition be substantiated thoroughly during extradition hearings.

Step 6: PROVIDE A LIST OF RELEVANT CONTACT POINTS IN YOUR COUNTRY

Include a list of names and contact numbers for key law enforcement/prosecution authorities dealing with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign state wishes to contact you for the purpose of clarification or obtaining additional information.

Step 7: TRANSLATE THE REQUEST

Malaysia requires incoming requests for extradition to be provided, in writing, in the English language.

VI. OTHER RELATED ISSUES**(i) Deportation**

For Malaysia, deportation is not considered to be extradition. However a person may be surrendered by way of deportation and it is governed by the Immigration Act 1959/1963 [Act 155].

(ii) Effect of Interpol Red-Notice

Interpol Red-Notice may be used for urgent request which requires the provisional warrant of arrest to be issued. However, once a fugitive criminal is arrested, the Requesting Country shall submit the formal extradition request.

VII. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON EXTRADITION

To date Malaysia has seven (7) bilateral extradition treaties as follows:

- (a) Extradition Treaty between Great Britain and Siam (4 March 1911);
- (b) Treaty for Mutual Surrender of Fugitive Criminals between Malaysia and the Republic of Indonesia (11 August 1975);
- (c) Agreement between the Government of Malaysia and the Government of Hong Kong Special Administrative Region of the People's Republic of China for the Surrender of fugitive Offenders (16 June 2001);

- (i) Protocol Supplementary to the Agreement between the Government of Malaysia and the Government of Hong Kong Special Administrative Region of the People's Republic of China for the Surrender of fugitive Offenders (1 November 2007);
- (d) Extradition Treaty between the Government of Malaysia and the Government of the United States of America (2 June 1997);
- (e) Treaty between the Government of Malaysia and the Government of Australia on Extradition (28 December 2006);
- (f) Extradition Treaty between the Government of Malaysia and the Government of the Republic of India (13 February 2011); and
- (g) Treaty between the Government of Malaysia and the Government of the Republic of Korea on Extradition (Signed on 17 January 2013, not yet come into force).

GUIDE TO EXTRADITION FROM EAST ASIA AND THE PACIFIC REGION

[The purpose of this template is to ensure your country's contribution to the Extradition Guide for East Asia and the Pacific region meets the purpose of the guide, especially by providing brief and user-friendly advice on key extradition steps. Please make efforts to use the following headings and instructions. An example of a completed template of the Republic of Korea has been provided to assist you. We have made this template based on the G20 template as a reference.]

Please note that the submission of the guide is not mandatory, but recommended.

We will compile and distribute the guides submitted by each country to all of you.

THE REPUBLIC OF SINGAPORE

I. INTRODUCTION [Maximum 1 Page]

[COUNTRY TO PROVIDE A BRIEF OVERVIEW OF EXTRADITION PROCESS. IN DOING SO, CONSIDER INCLUDING INFORMATION UNDER THE FOLLOWING SUB-HEADINGS IF THEY APPLY TO YOUR EXTRADITION SYSTEM]

(i) Requests Made Under a Treaty/Convention

The primary legislation in Singapore governing the extradition of fugitives to and from foreign countries is the Extradition Act, Chapter 103, of the Statutes of the Republic of Singapore ("the Extradition Act"). A copy of the Extradition Act is annexed.

Under Singapore law, fugitives can only be extradited to and from Commonwealth countries as listed in the Extradition (Commonwealth Countries) Declaration 2007 and countries with which Singapore has a bilateral extradition treaty. The requirements for extradition to declared Commonwealth Countries are set out in Part IV of the Extradition Act, while those to other extradition treaty partners are set out in Part II of the Extradition Act.

In addition, Singapore has ratified various international conventions, such as the International Convention for the Suppression of the Financing of Terrorism, where Singapore can extradite fugitives to and from convention states pursuant to these conventions.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

[COUNTRY TO SET OUT CONTACT INFORMATION FOR ITS CENTRAL AUTHORITY AND/OR OTHER CONTACT POINT FOR STATES SEEKING EXTRADITION]

Completed requests may be sent by the requesting State to the following address:

Director-General
International Affairs Division
The Attorney-General's Chambers
1 Upper Pickering Street
Singapore 058288
Republic of Singapore

In cases of urgent requests, a copy of the request may also be sent by fax to +65 6702 0513 or by email to AGC_CentralAuthority@agc.gov.sg. However, a hard copy of the request is still required to be sent over.

III. PROCEDURES OF EXTRADITION

[SPECIFY THE PROCEDURES FOR EXECUTING AN EXTRADITION REQUEST FROM A FOREIGN COUNTRY]

The specific procedures and requirements for executing an extradition request from a requesting State is set out in the relevant extradition treaty or extradition arrangement. The following sets out in general terms the extradition process under domestic law in Singapore.

The Extradition Process

The International Affairs Division of the Attorney-General's Chambers of Singapore ("AGC") is the Central Authority processing the extradition requests.

- ***Urgent requests***

In cases of great urgency, a request for a provisional arrest may be made to the AGC. The request should contain the warrant in respect of the fugitive, issued by the foreign state, information to identify the fugitive and a summary of the facts and evidence of the case.

Once there is sufficient information and evidence to support the provisional arrest, an application will be made to a Magistrate for the issue of the warrant of the apprehension of the fugitive who is, or is suspected of being, in Singapore. After the provisional arrest of the fugitive, the requesting State would have to, within a reasonable time, make a formal request for extradition.

- Formal requests

The formal request will have to contain a duly authenticated warrant in respect of the fugitive, issued by a court from the requesting State, and the evidence to support the extradition. In addition, the necessary undertakings (in accordance with the extradition treaty and the Extradition Act) will also have to be furnished to the AGC. The documents will then be forwarded by AGC to the Minister for Law, who may, in his discretion, issue a notice to the Magistrate that such a requisition has been made.

- Committal Hearing

The matter will be scheduled for a committal hearing before a Magistrate. The test for committal has been set out below under the section on 'Step 5: Provide supporting evidence'. Once the Magistrate is satisfied that the relevant test has been satisfied, and that the fugitive is liable to be surrendered, he shall commit the fugitive to prison to await the warrant of the Minister for the surrender.

- Order for Review of Detention

The fugitive will not be surrendered until after the expiration of the period of 15 days from the date of his committal to prison. This is to allow the fugitive to apply to the High Court to review his detention if he wants to challenge his committal.

- The Surrender

Once the 15-day period has lapsed and the fugitive has not challenged his committal, or if he has challenged his committal, then after the expiration of 15 days from the date of the dismissal of his challenge, the Minister shall, if he is satisfied that the fugitive is liable to be surrendered to the requesting State, issue the warrant of surrender. With the warrant of surrender, the requesting State may then escort the fugitive out of Singapore.

IV. REQUIREMENTS OF EXTRADITION

[SPECIFY THE INSTRUCTIONS OF YOUR COUNTRY FOR THE FOLLOWING SUBCATEGORIES]

(i) Dual Criminality

A fugitive can be extradited to and from Singapore for having committed an extradition crime. Generally, an extradition crime refers to (a) an offence against the law of a requesting State and the act or omission constituting the offence would, if it took place in or within the jurisdiction of Singapore, constitute an offence against the law in force in Singapore, and (b) is an offence described in the First Schedule to the Extradition Act. In the case of declared Commonwealth countries, there is an additional requirement

that the offence is punishable with a maximum penalty of death or imprisonment for not less than 12 months.

(ii) Rule of Specialty

The speciality rule under Singapore extradition law is contained in **section 7(2)** (for foreign States) and **section 22(3)** (for declared Commonwealth countries) of the Extradition Act.

(iii) Surrender of Nationals

There is no restriction on the surrender of nationals under domestic law.

(iv) Statute of Limitation

There is no Statute of Limitation in respect of criminal matters in Singapore.

V. STEPS TO FOLLOW WHEN SEEKING EXTRADITION FROM THE REPUBLIC OF SINGAPORE

In general, the steps outlined below should be followed for extradition from [the Republic of Singapore](#):

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contact the Central Authority of [the Republic of Singapore](#) in advance of making a request for extradition, particularly in the most serious cases, to ensure the extradition which you seek is available under the laws of [the Republic of Singapore](#) and the request will meet the legal requirements of [the Republic of Singapore](#). In addition, the following steps should be followed in every case.

Step 2: INDICATE THE MECHANISM USED TO SEEK EXTRADITION

In drafting your request, begin by clearly identifying the applicable extradition treaty or arrangement, or applicable international convention in seeking the extradition from [the Republic of Singapore](#).

Step 3: SUMMARIZE THE CASE

[Provide a summary of the case on which the fugitive is wanted for prosecution or to serve his sentence.](#)

Step 4: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text of all relevant legal provisions concerning the fugitive's prosecution or conviction, including applicable penalties.

Step 5: PROVIDE SUPPORTING EVIDENCE

To process an extradition request, the requesting State would have to provide Singapore with sufficient details to clearly identify the fugitive, and show that the fugitive is, or is suspected of being, in Singapore. In addition, it is necessary to provide Singapore with a duly authenticated warrant of arrest in respect of the fugitive, issued by the requesting State.

For a fugitive *accused* of an extradition crime in the requesting State, the requesting State would also have to provide evidence which would, according to the law in Singapore, justify the trial of the fugitive if the act or omission constituting the crime had taken place within Singapore's jurisdiction. In other words, the requesting State would have to provide credible evidence to prove a *prime facie* case against the fugitive.

For a fugitive who has been *convicted* of an extradition crime in the requesting State, the requesting State will need to provide sufficient evidence to show that the fugitive has been convicted of that crime.

The relevant evidence would have to be provided in the form of affidavits.

Step 6: PROVIDE A LIST OF RELEVANT CONTACT POINTS IN YOUR COUNTRY

Include a list of names and contact numbers for key law enforcement/prosecution authorities dealing with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign state wishes to contact you for the purpose of clarification or obtaining additional information.

Step 7: TRANSLATE THE REQUEST

The Republic of Singapore requires incoming requests for extradition to be provided, in writing, in its official language(s), namely the English language.

VI. OTHER RELATED ISSUES**(i) Effect of Interpol Red-Notice**

Singapore does not recognise a Red Notice as a formal request for extradition. In an appropriate case, Singapore may recognise a Red Notice as a request of provisional arrest with a view to extradition.

GUIDE TO EXTRADITION FROM EAST ASIA AND THE PACIFIC REGION

Thailand

I. INTRODUCTION

The Extradition Act B.E.2551 (2008) is the Thailand's fundamental legislation for all proceedings so far as it is consistent with the terms of any Treaty, Convention or any Royal Proclamation issued in connection therewith. Thailand may surrender to a foreign state the person accused or convicted of crime committed in the jurisdiction of that state even if no treaty exists, provided that by the laws of Thailand such crimes are punishable with imprisonment of no less than one year. In practice, however, a declaration for reciprocal assistance, as well as certain requirements such as "double criminality," the principle of double jeopardy (*ne bis in idem*), must also be satisfied before the request for extradition accorded.

The request for extradition from a foreign state which does not have a treaty with Thailand shall be sent through diplomatic channels, but the treaties usually contain provisions on the procedure of cooperation, that a request may be sent directly through the Central Authority, who is an exclusive centre for extradition.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

Attorney General of Thailand
Office of the Attorney General
Rajaburi Direkridhhi Building
Governemt Complex
Chaeng Watthana Road, Lak Si
Bangkok 10210, Thailand
Tel; +662 142 1632
Tel; +662 1439798
Email: inter@ago.go.th

III. PROCEDURES OF EXTRADITION

The Ministry of Foreign Affairs will hand the request to the Office of the Attorney General to request to court to issue the arrest warrant. After the court issue the arrest warrant, the Office of the Attorney General shall notify and send the arrest warrant to the police. After the arrest, the fugitive will be sent to the Office of the Attorney General to request to the court to detain him or her. After that, the prosecutor will file the

motion to the court. The court shall conduct the hearing continuously. If the court issues an order to detain the fugitive for extradition, the surrender must be done within 90 days or specific period as court permit since the date of the final court decision.

IV. REQUIREMENTS OF EXTRADITION

(i) *Dual Criminality*

The Extradition Act requires that the conduct constituting the extradition offence be categorized as a criminal offence in both Thailand and the Requesting State. But there are many treaties between Thailand and other countries that do not require dual criminality.

(ii) *Rule of Specialty*

The Requesting State must specify the offence or offenses for which it seeks the person's return and that upon the subject's return, the Requesting State shall only try that person for the offense covered in the request.

(iii) *Surrender of Nationals*

Extraditing Thai nationals is possible if, the treaty permits, or the requested person consents, or reciprocity proposed by the requesting country exists.

V. STEPS TO FOLLOW WHEN SEEKING EXTRADITION FROM THAILAND

In general, the steps outlined below should be followed for extradition from Thailand:

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contact the Central Authority of Thailand in advance of making a request for extradition, particularly in the most serious cases, to ensure the extradition which you seek is available under the laws of Thailand and the request will meet the legal requirements of Thailand. In addition, the following steps should be followed in every case.

Step 2: INDICATE THE MECHANISM USED TO SEEK EXTRADITION

In drafting your request, begin by clearly identifying the bilateral treaty or international convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the extradition from Thailand.

Step 3: SUMMARIZE THE CASE

Provide a detailed outline of the case under investigation or prosecution, including

a summary of the evidence that supports the investigation/prosecution.

Step 4: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 5: PROVIDE AMPLE EXHIBITS

Enclose diverse and sufficient evidence as the court demands that the allegations be substantiated thoroughly during extradition hearings.

Step 6: PROVIDE A LIST OF RELEVANT CONTACT POINTS IN YOUR COUNTRY

Include a list of names and contact numbers for key law enforcement/prosecution authorities dealing with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign state wishes to contact you for the purpose of clarification or obtaining additional information.

Step 7: TRANSLATE THE REQUEST

Thailand requires incoming requests for extradition to be provided, in writing, in its official language(s), namely Thai.

VI. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON EXTRADITION

Thailand has treaties on extradition which the United Kingdom (1911), the Kingdom of Belgium (1936), the Republic of Indonesia (1976), the Republic of Philippines (1981), the United States of America, the People's Republic of China, the Kingdom of Cambodia, the People's Republic of Bangladesh, the Lao People's Democratic of Laos, the Republic of Korea, Hong Kong, Australia

**GUIDE TO EXTRADITION
FROM EAST ASIA AND THE PACIFIC REGION**

VIETNAM

I. INTRODUCTION

(i) What is extradition according to the Vietnamese Laws

Extradition is the surrender by the requested state to the requesting state of a person alleged to have committed an offence or a convicted person present in the territory of the requested state for the prosecution against that person or enforcement of the sentence imposed on that person in the requesting state.

The authorities conducting criminal procedures in Vietnam may:

- (a) request the competent authority of a foreign state to extradite a person who has committed a criminal conduct or has been convicted with a final judgment to Vietnam for prosecution or enforcement of the sentence imposed; and
- (b) execute a foreign state's request for extradition of a foreign national, who has committed a criminal conduct, or has been convicted with a final judgment and is currently present in the territory of Vietnam, to the requesting state for prosecution or enforcement of the sentence imposed.

(Reference: Article 32 of the Law on Mutual Legal Assistance 2007)

(ii) Fundamental and legal grounds

Extradition shall be carried out on the principles of respect for each other's independence, sovereignty and national territorial integrity, non-intervention in each other's internal affairs, equality and mutual benefit.

The implementation of extradition shall be in accordance with Vietnam's Constitution and Laws and international agreements to which Vietnam is a Party.

In case Vietnam and the foreign state concerned have not yet signed or acceded to any international agreement on extradition, the extradition

shall be performed on the principle of reciprocity, provided that this does not contradict the Vietnamese Laws and in compliance with international laws and practices.

(Reference: Article 4 of the Law on Mutual Legal Assistance 2007)

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Central Authority for Extradition of Vietnam is the Ministry of Public Security.

(Reference: Article 65 of the Law on Mutual Legal Assistance 2007)

II. PROCEDURES OF EXTRADITION

(i) Receipt of foreign requests for extradition

Within 20 days of receipt of a request for extradition and its supporting documents sent by a foreign competent authority, the Ministry of Public Security shall register and examine the validity of that request. The Ministry of Public Security may request the foreign competent authority to provide additional information if necessary. If the foreign competent authority fails to provide additional information within 60 days from the date on which the letter asking for additional information is sent to the foreign competent authority, the Ministry of Public Security shall return the request for extradition to the competent authority of the requesting state and inform of the reason thereof. If the request for extradition is valid, the Ministry of Public Security shall, without delay, transmit that request to a competent provincial court to be dealt with.

(ii) Decision on extradition

Within 10 working days of the receipt of the request for extradition sent by the Ministry of Public Security, the competent provincial court where the person whose extradition is requested is residing, detained or serving the sentence of imprisonment shall register the request and, in writing, inform the Procuracy at the same level of such registration. Within the period for dealing with the request, the competent provincial court may, through the Ministry of Public Security, request the requesting state to clarify facts and information contained in the request for extradition.

Within a period of 4 months since the date on which the request for extradition is received by the competent provincial court, it shall, depending on certain circumstances, issue one of the following decisions:

- (a) taking the request for extradition into consideration if it satisfies all requirements provided by the Law on Mutual Legal Assistance 2007;
- (b) suspending the handling of the request and return the request to the Ministry of Public Security if the request does not fall within the jurisdiction of the said court, or if the request has been withdrawn by the requesting state, or if the person whose extradition is requested has left Vietnam, or if there are other reasons making the handling of the request impossible.

Where the request for extradition is taken into consideration, the competent provincial court shall, without delay, send a copy of the dossier of the request to the Procuracy at the same level deal with the request for extradition. Within 30 days since the date on which the request is taken into consideration, the competent provincial court shall issue a decision on whether the extradition is carried out or not.

The request for extradition shall be dealt with at a hearing conducted by a chamber consisting of three judges. One of the three judges shall preside the hearing with the presence of a representative of the procuracy at the same level.

The Chamber shall consider the request for extradition according to the following procedures:

- (a) A member of the Chamber presents the contents of the dossier of the request and renders opinions on the legal grounds of the extradition sought;
- (b) The representative of the Procuracy presents opinions regarding the extradition sought;
- (c) The lawyer or legal representative of the person whose extradition is requested presents his/her opinions;
- (d) The person whose extradition is requested presents his/her opinions; and
- (e) Under the provisions of the Law on Mutual Legal Assistance 2007, the Vietnamese relevant Laws and international agreements to which Vietnam is a party, the Chamber shall discuss and decide by majority whether the extradition is granted or not.

Within 10 working days since the day on which the decision on whether the extradition is granted or not, the competent provincial court shall, send such decision to the person whose the extradition is requested, the Procuracy at the same level and the Ministry of Public Security for their legal rights and duties practiced.

The person whose extradition is requested and the Procuracy concerned have the right to make an appeal against the first-instance decision on the request for extradition.

Once being appealed, the first-instance decision shall be reviewed by the court of appeal.

The final decision on the extradition is either the first-instance decision which is not appealed or the decision of the court of appeal after reviewing the first-instance decision.

After the final decision on extradition comes into force, the Ministry of Public Security shall execute the arrest against the person sought. The Ministry of Public Security shall arrange the transfer of the person sought to the requesting state.

The execution of extradition to the requesting state may be postponed if the person sought is also being prosecuted in Vietnam for an offence other than the offence to which the request for extradition relates.

(Reference: Article 38 -45 of the Law on Mutual Legal Assistance 2007)

IV. REQUIREMENTS OF EXTRADITION

(i) Dual Criminality

Dual Criminality is required, accordingly:

Extraditable offences are offences punishable under the criminal law of both Vietnam and the requesting state in force at the time of extradition, provided that those offence:

- (a) may be sentenced to between at least one year of imprisonment and death penalty, or
- (b) if being sentenced, of which the remaining term of imprisonment served is at least six months.

The extraditable offence provided in the criminal laws of both Vietnam and the requesting state is not necessarily the same name or category, and

the elements constituting the offence is not necessarily the same according to the criminal laws of Vietnam and the requesting state.

(Reference: Article 33 of the Law on Mutual Legal Assistance 2007)

(ii) Rule of Specialty

Where Vietnam is the requested state, the requesting state shall not, without prior consent of Vietnam, prosecute the person sought for an offence other than the offence to which the request for extradition relates or extradite that person to the third state.

(iii) Surrender of Nationals

The Police in charge of the execution of extradition shall surrender the person sought at the place and date arranged in writing by the requested state and the requesting state. The time limit for receiving the person sought shall be 15 days of the decision on extradition.

(iv) Statute of Limitation

A foreign request for extradition shall be refused if it falls under one of the followings:

(a) the person whose extradition is requested is the Vietnamese national;

(b) under the Vietnamese laws, the person whose extradition is requested cannot be prosecuted or does not have to serve the sentence imposed due to lapse of time or other legitimate grounds;

(c) the person whose extradition is requested for prosecution has been convicted with a final judgment by a Vietnamese court for the criminal conduct to which the request relates or the case has been closed according to the criminal procedures law of Vietnam;

(d) where Vietnam has reasonable grounds for believing that the request relates to the prosecution or punishment against a person on account of his/her race, religion, sex, nationality, social status or political opinion; or

(e) where the request relates to more than one offences and each of which constitutes a criminal act under the laws of the requesting state but does not constitute a criminal act under the Vietnamese laws.

A foreign request for extradition may be refused if it falls under one of

the followings:

- (a) the conduct committed by the person whose extradition is requested does not constitute an offence under the laws of Vietnam; or
- (b) the person whose extradition is requested is being prosecuted in Vietnam for the offence to which the request relates.

V. STEPS TO FOLLOW WHEN SEEKING EXTRADITION FROM VIETNAM

In general, the steps outlined below should be followed for extradition from Vietnam:

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contact the Central Authority of Vietnam in advance of making a request for extradition, particularly in the most serious cases, to ensure the extradition which you seek is available under the laws of Vietnam and the request will meet the legal requirements of Vietnam. In addition, the following steps should be followed in every case.

Step 2: INDICATE THE MECHANISM USED TO SEEK EXTRADITION

In drafting your request, begin by clearly identifying the bilateral treaty or international convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the extradition from Vietnam.

Step 3: Letter of a request for extradition and its supporting documents

1) Letter of a request for extradition and its supporting documents shall contain the following information:

- Date and place on which the request is made;
- name of the Central Authority of the requesting state;
- name of the Central Authority of the requested state;
- the reasons for which the request is made;
- name, sex, date of birth, nationality, residence or other information of

- the person whose extradition is requested;
 - summary of the case to which the request relates;
 - applicable laws to determine elements constituting the offence, punishment, time limitation for prosecution or enforcement of the punishment relating to that offence;
 - documents indicating nationality and residence of the person sought if any;
 - documents about description of identity of the person sought.
- 2) Where the request for extradition for prosecution, the request shall also include:
- a copy of arrest or detention warrant issued by the competent authority of the requesting state;
 - a written statement certifying that the person sought is the person to whom the arrest or detention warrant refers.
- 3) Where the request for extradition relates to the enforcement of sentence imposed, is also includes:
- a copy of judgment or decision issued by the competent court of the requesting state;
 - a written statement stating that the person sought is the person who has been convicted.

Step 4: PROVIDE AMPLE EXHIBITS

Enclose diverse and sufficient evidence as the court demands that the allegations be substantiated thoroughly during extradition hearings.

Step 5: PROVIDE A LIST OF RELEVANT CONTACT POINTS IN YOUR COUNTRY

Include a list of names and contact numbers for key law enforcement/prosecution authorities dealing with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign state wishes to contact you for the purpose of clarification or obtaining additional information.

Step 6: TRANSLATE THE REQUEST

Where a request for extradition is made under a bilateral treaty on extradition or other international agreements, the use of language shall be in accordance with the provisions of that treaty.

Where a request for extradition is made without any treaty or international agreements, Vietnam requires that request to be made in the official language of the requesting state and accompanied with a translation into Vietnamese or English.

VI. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON EXTRADITION

1. Treaty on Extradition between Vietnam and Algeria (in force)
2. Treaty on Extradition between Vietnam and Australia (in force)
3. Treaty on Extradition between Vietnam and Indonesia (not ratified)
4. Treaty on Extradition between Vietnam and the Republic of Korea (in force)
5. Bilateral Treaties on mutual legal assistance, including extradition provisions, between Vietnam and Russia, Hungary, Poland, Czech Republic, North Korea, China, Ukraine, Mongolia, Belarus, Laos, Cuba
6. UNTOC
7. UNCAC
8. UN Convention against Illicit Traffic Narcotic Drugs and Psychotropic Substances 1988