

# **INTERNATIONAL COOPERATION: THE EXTRADITION FRAMEWORK IN SINGAPORE – A GENERAL OVERVIEW**

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## **I. INTRODUCTION**

This paper aims to provide a general overview of the extradition framework in Singapore by addressing the following topics:

- (i) Basic mechanisms, laws and procedures concerning extradition and the agencies responsible for these matters;
- (ii) Legal requirements for making an extradition request to Singapore;
- (iii) Grounds for Refusal;
- (iv) Lessons learnt.

As one of the objectives of this Regional Seminar on Good Governance for Southeast Asian Countries is to provide an opportunity for the participating countries to enhance practical knowledge and mutual understanding of the extradition framework in their respective countries, this paper will focus on extradition requests made by other countries, as Requesting States, to Singapore, as the Requested State.

## **II. BASIC MECHANISMS, LAWS AND PROCEDURES CONCERNING EXTRADITION AND THE AGENCIES RESPONSIBLE FOR THESE MATTERS**

### **A. The Extradition Act**

The principal legislation in Singapore governing the extradition of fugitives to and from foreign countries, including Commonwealth countries, is the Extradition Act, Chapter 103 of the Statutes of the Republic of Singapore (the EA)<sup>1</sup>. The EA was enacted on 1<sup>st</sup> August 1968 and has undergone several amendments since then.

Briefly, the EA provides for 3 different types of frameworks for the extradition of fugitives. The answer to the question of which framework governs a particular request is contingent upon whether the request is made by a foreign state<sup>2</sup>, a declared Commonwealth country<sup>3</sup> or by Malaysia<sup>4</sup>. A 'foreign state' as defined in the EA means any foreign State or any of the territories specified in the Third Schedule between which and Singapore an extradition treaty is in force. A 'declared Commonwealth country' as defined in the EA means a country declared to be a Commonwealth country in relation to which Part IV applies.

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<sup>1</sup> A copy of the EA is available on the Attorney-General's Chambers website at [http://app.agc.gov.sg/What\\_We\\_Do/International\\_Affairs\\_Division/Extradition.aspx](http://app.agc.gov.sg/What_We_Do/International_Affairs_Division/Extradition.aspx)

<sup>2</sup> Governed by Part II of the EA.

<sup>3</sup> Governed by Part IV of the EA.

<sup>4</sup> Governed by Part V of the EA.

A list of declared Commonwealth countries can be found in the Extradition (Commonwealth Countries) Declaration which is available on the Singapore Statutes Online at the following URL address: <http://app.agc.gov.sg/>

Under the EA, the extradition of a fugitive who is suspected of being in, or on the way to Singapore is only possible if there is an extradition treaty or arrangement between the Requesting State and Singapore and the requirement of dual criminality is met.

#### **B. The Criminal Procedure Code**

In addition to the EA, s 121 of the Criminal Procedure Code Chapter 68 (Revised Edition 2012) of the Statutes of the Republic of Singapore ('the CPC'), provides an alternative legal (reciprocal) basis for the extradition of a person who is accused or convicted of an offence against the laws of Malaysia or Brunei Darussalam and who is suspected of being in, or on his way to Singapore.<sup>5</sup> Under this reciprocal arrangement, where a warrant for the apprehension of a person has been lawfully issued by the relevant court in Malaysia or Brunei Darussalam, a Magistrate in Singapore may endorse the said warrant which may then be executed by the relevant law enforcement agency e.g the Singapore Police Force ('SPF') as though it were issued by a Magistrate's court in Singapore. This reciprocal arrangement is commonly referred to as the "endorsement or backing of warrants".

As this is a reciprocal arrangement, the domestic criminal procedure laws of Malaysia and Brunei Darussalam accordingly contain corresponding provisions for the endorsement or backing of warrants issued by a Magistrate court in Singapore. I understand that our colleagues from Brunei Darussalam are not here. As such, I shall leave it in the good hands of my Malaysian colleagues to elaborate on the relevant domestic laws in their country on this point during their presentation. I look forward to their discussion on this.

#### **C. The Central Authority**

The AGC is designated as Singapore's Central Authority for extradition requests and all matters related thereto. The International Affairs Division of the AGC processes all extradition requests in accordance with the provisions of the EA, CPC and other relevant legislation, as well as any applicable Extradition Treaty ('ET').

#### **D. Other Relevant Ministries and Agencies**

Although the AGC is the Central Authority for all extradition requests, other Ministries and government agencies are ordinarily also involved in the extradition process. For instance, if a Requesting State seeks Singapore's assistance in extraditing a fugitive believed to be located in Singapore for having allegedly committed murder in that state, the Police, which is the relevant law enforcement agency tasked with investigating such serious crimes and which may end up executing the request, will be involved in ascertaining whether the fugitive is in fact in Singapore.

In addition, depending on the terms of the relevant extradition treaty, the Ministry of Foreign Affairs ('MFA') may be involved in the extradition process in receiving the formal requisition from the Requesting State in the form of the Third Person Note ('TPN').

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<sup>5</sup> A copy of the CPC is available on the Attorney-General's Chambers website at <http://statutes.agc.gov.sg/aol/home.w3p>

## **E. The Magistrate**

This part of the paper will now focus on extradition requests made to Singapore, as a Requested State, by a foreign state or declared Commonwealth country as the Requesting State. Under the EA, the Magistrate plays a material role in the extradition process. There are two distinct stages during which the Magistrate is authorised to act. The first is the stage before the warrant for the apprehension of the fugitive is issued ('pre-apprehension stage'), and the second is the stage after the warrant for the apprehension of the fugitive is issued ('post-apprehension stage').

During the pre-apprehension stage, the Magistrate can either issue a warrant for the apprehension of the fugitive pursuant to an application made directly to him, or alternatively, pursuant to a notice given by the Minister for Law authorising him to issue a warrant for the apprehension of the fugitive. The litmus test that must be satisfied is that the Magistrate in Singapore must opine that there is such evidence according to Singapore law to justify the apprehension of the fugitive, or to justify the issue of the warrant, as the case may be, if the act or omission constituting the extradition crime had occurred in, or within Singapore's jurisdiction.

During the post-apprehension stage, the Magistrate may remand a person brought before him, either in custody or on bail, for a period, or periods not exceeding 7 days at any one time. The duty of the Magistrate, at this stage in relation to a fugitive who is accused of an extradition crime, is to consider if there is such evidence, according to Singapore law, as would justify the trial of the fugitive if the act or omission constituting that crime had occurred in Singapore, or within the jurisdiction of Singapore. If so, and if after hearing any evidence tendered by the said fugitive, the Magistrate opines that the fugitive is liable to be surrendered to the foreign state or the declared Commonwealth country, as the case may be, he shall commit the fugitive to prison to await the warrant of the Minister for his surrender. Thereafter, he shall immediately furnish a certificate to the Minister, to that effect and such report, if any, relating to the proceedings, as he thinks fit.

The duty of the Magistrate vis-a-vis a fugitive who is alleged to have been convicted of an extradition crime is to assess if there is sufficient evidence to satisfy him that the said fugitive has indeed been convicted of that crime. If he is so satisfied, he shall similarly commit the said fugitive to prison to await the Minister's warrant for his surrender.

In relation to all extradition requests made by any Requesting State pursuant to the EA, where the Magistrate opines that that it would be dangerous to the life or prejudicial to the health of the apprehended fugitive to commit him to prison, he may, instead, by warrant, order that the fugitive be held in custody at the place where he is at presently, or at any other place to which he can be removed without danger to his life, or prejudice to his health, until such time as he can be removed without such danger or prejudice, be committed to prison, or he is surrendered.

In relation to a fugitive who has been committed to prison pending the issue of the Minister's warrant for his surrender to a foreign state or declared Commonwealth country (hereafter referred to as 'the prisoner'), or ordered to be held in custody at a specified place other than in prison, the Magistrate shall inform him that he shall not be surrendered until after the expiration of the period of 15 days from the date of the committal or order.

## **F. Order for the Review of Detention**

If the prisoner asserts that his detention is unlawful, he may apply to the High Court for an Order for Review of Detention. Upon the review of the Magistrate's order, the High Court may confirm, or vary the order, or quash the order and substitute a new order in its stead.

## **G. The Minister for Law**

Under the EA, the final decision on whether or not to surrender a fugitive to a foreign state or a declared Commonwealth country, lies solely with the Minister for Law. Vis-a-vis requisitions from foreign states and declared Commonwealth countries requesting the surrender of a fugitive suspected of being in or on his way to Singapore, the Minister for Law plays a key role in the extradition process, both at the pre-apprehension and post-apprehension stages respectively.

Upon receipt of a requisition for the surrender of a fugitive, the Minister may notify the Magistrate accordingly of the receipt of the said requisition and authorise him to issue a warrant for the apprehension of the fugitive, where no such warrant has been issued by the Magistrate. Where the Magistrate has already issued such a warrant without first having been authorised by the Minister, the Minister, if he is of the view that the fugitive is liable to be surrendered to the foreign state or declared Commonwealth country, he may subsequently proceed to notify the Magistrate that a requisition for the surrender of the said fugitive has been made.

Alternatively, if after the Magistrate has issued a warrant for the apprehension of the fugitive without having been authorised by the Minister, the Minister, if he opines that the fugitive is not liable to be surrendered to the foreign state or declared Commonwealth country, he may, by order in writing, direct that the warrant be cancelled and the fugitive, where he is held in custody, shall accordingly be released. Where the fugitive has been admitted to bail, he shall accordingly be discharged from bail.

During the post-apprehension stage, after the expiration of the period of 15 days from the date of committal or order issued by the Magistrate, or if within that period, an application for an order for review is made by the prisoner and the court to which the application is made does not order that the prisoner be released, after the expiration of the period of 15 days from the date of the decision of the court, the Minister may, if he is satisfied that the prisoner is liable to be surrendered to the foreign state or declared Commonwealth country, by warrant, order that the prisoner be delivered into the custody of a person specified in the said warrant and be conveyed by that person to a place in the foreign state or declared Commonwealth country, or within the jurisdiction of, or of part of, the foreign state or declared Commonwealth country and there be surrendered to a person(s) appointed by the said foreign state or declared Commonwealth country to receive him.

## **III. LEGAL REQUIREMENTS FOR MAKING A FORMAL REQUISITION TO SINGAPORE SEEKING SURRENDER OF FUGITIVES**

### **A. Request for Extradition by a Foreign State or Declared Commonwealth Country**

This applies to situations where Singapore, as the Requested State, receives a requisition complete with supporting documents from a foreign state or declared Commonwealth country as the Requesting State. Such requisitions from foreign states or declared Commonwealth countries should contain the following:

- the formal requisition from the Requesting State in the form of a TPN
- authenticated copy of the foreign warrant or overseas warrant for the apprehension of the fugitive issued by a competent authority which is usually a court of law in that Requesting State
- authenticated supporting documents, including a statement of facts, charge sheet, First Information Report ('FIR'), where applicable, the prosecutor's affidavit, copies of legislation, documents confirming the identity of the fugitive and duly sworn/affirmed affidavits of material witnesses<sup>6</sup>
- where the requisition is in relation to a fugitive who is alleged to have been convicted of an extradition crime, the supporting documents should include original or authenticated copies of any judgment or order recording a conviction against the fugitive for the offences, copies of the relevant legislation applicable to the offences, documentary or other evidence or information enabling the identification of the fugitive e.g recent photographs of the fugitive, his fingerprint records, passport details etc.

## **B. Essential Conditions**

The following are the essential conditions that must be satisfied in order to ensure that an extradition request from a foreign state or a declared Commonwealth country is not refused for non-compliance with the provisions of the EA or relevant practical requirements:

- the request must be in respect of an extradition crime as defined in the EA
- the offence must be one that is described in the First Schedule to the EA, or alternatively deemed by other relevant legislation to have been included in the EA
- the offence must satisfy the 'dual criminality' or 'double criminality' rule
- in the case of a declared Commonwealth country, there is an additional requirement that the maximum penalty for that offence is death or imprisonment of not less than 12 months
- the identity of the fugitive must be ascertainable. In this regard, recent photographs of the fugitive and his fingerprint records constitute the best evidence to establish and confirm his identity
- there is sufficient evidence in the depositions in support of each charge in the foreign or overseas warrant.

## **C. Request for Provisional Arrest**

This applies to situations where the request for the apprehension of a fugitive is urgent, for instance, when information is received by the Requesting State that a non-Singapore resident fugitive is transiting through Singapore and will be leaving our territory before the complete set of depositions and documentation in support of a formal requisition can be sent to Singapore. Such requests are sought to prevent the fugitive from evading apprehension due

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<sup>6</sup> s 42 of the EA.

to the delay in preparing the formal requisition for his extradition, together with the complete set of supporting documents.

A request for provisional arrest should contain the following:

- a TPN from the Requesting State or a note from INTERPOL containing the requisite information and request stating that a formal TPN will follow shortly
- authenticated foreign or overseas warrant
- documentary or other evidence or information confirming the identity of the fugitive, e.g. a recent photograph of the fugitive, his fingerprint records, passport details, etc.
- documents setting out the facts of the case, e.g. sworn deposition, criminal complaint, grand jury indictments. Due to the urgency of the request, duly sworn/affirmed affidavits of material witnesses are understandably not required at this stage

Where the request for provisional arrest is acceded to, the relevant law enforcement agency officer will be instructed to make a Magistrate's complaint and apply for a warrant for the provisional arrest of the fugitive.

#### **D. Contact Details of Central Authority and MFA**

Requesting States, viz, foreign states and declared Commonwealth countries, may send their formal requisitions seeking the extradition of a fugitive suspected of being in, or within the jurisdiction of Singapore directly to the AGC as the Central Authority for extradition requests at the following address:

Director-General  
International Affairs Division  
The Attorney-General's Chambers  
1 Coleman Street  
#10-00, The Adelphi  
Singapore 179803  
REPUBLIC OF SINGAPORE

In cases of urgent requests, a copy of the request may also be sent by fax to +65 6338 2979 or by email to [AGC\\_CentralAuthority@agc.gov.sg](mailto:AGC_CentralAuthority@agc.gov.sg). However, a hard copy of the request is still required to be sent over. Queries in relation to extradition matters may be sent to the correspondence address and fax number above, or sent by email to [AGC\\_CentralAuthority@agc.gov.sg](mailto:AGC_CentralAuthority@agc.gov.sg).

Requesting States which are foreign states or declared Commonwealth countries and whose laws or diplomatic protocol require all formal requisitions seeking the extradition of a fugitive suspected of being in, or within the jurisdiction of Singapore, to be addressed to the Ministry of Foreign Affairs in Singapore (i.e. MFA), may accordingly send their formal requisitions to the MFA at the following address:

Ministry of Foreign Affairs,  
Tanglin,  
Singapore 248163  
REPUBLIC OF SINGAPORE

#### **IV. GROUNDS FOR REFUSAL**

##### **A. General Grounds**

In accordance with the EA, the Minister shall refuse a requisition from a foreign state or declared Commonwealth country seeking the extradition of a fugitive who is suspected of being in, or within the jurisdiction of Singapore, if he has substantial grounds for believing that:

- the requisition was made for the purpose of prosecuting or punishing the fugitive on account of his race, religion, nationality, or political opinions
- the fugitive may be prejudiced at his trial, or punished, detained or restricted in his personal liberty by reasons of his race, religion, nationality or political opinions
- if the requisition relates to an offence of a political character
- the requisition seeks the continued detention or trial in the requesting state, of a surrendered fugitive for an offence which was allegedly committed before his surrender
- the requisition seeks the continued detention in the requesting state, of a surrendered fugitive for the purpose of his being surrendered to another country for trial or punishment for an offence which was allegedly committed before his surrender to that foreign state
- the requisition is in respect of a person who is held in custody or has been admitted to bail in Singapore in respect of an offence that is alleged to have been committed in Singapore, or is serving a prison sentence for a conviction in Singapore
- the requisition is in respect of a person who has been acquitted or pardoned by a competent tribunal or authority in any country, or has undergone the punishment provided by the law of, or part of, any country, in respect of that offence or of another offence constituted by the same act or omission as that offence (i.e. autrefois acquit or autrefois convict).

##### **B. Specific Grounds**

In addition to the general grounds for refusal, the following specific grounds for refusal are applicable to requisitions made by foreign states and/or declared Commonwealth countries:

- in the case of requests from foreign states, any grounds for refusal specified in the applicable treaties
- in the case of requests from declared Commonwealth countries, if the Minister is satisfied that by reason of:

- (a) the trivial nature of the offence that the fugitive is alleged to have committed or has committed;
- (b) the accusation against a fugitive not having been made in good faith or in the interests of justice; or
- (c) the passage of time since the offence is alleged to have been committed or was committed,

and having regard to the circumstances under which the offence is alleged to have been committed or was committed, it would be unjust, oppressive or too severe a punishment to surrender the fugitive, or to surrender him before the expiration of a particular period, the Minister shall not issue a warrant under s 27(2) in respect of the fugitive, or shall not issue such a warrant before the expiration of that period, as the case may be.

## **V. LESSONS LEARNT**

### **A. Some Practical Tips**

- Requesting States, viz, foreign states or declared Commonwealth countries, are advised to establish early contact with the AGC as the Central Authority or alternatively, with Interpol Singapore, and to provide as much advance notification to Singapore of their intention to make a request for provisional arrest or extradition of a fugitive to enable the early identification and resolution of possible legal or practical issues
- The relevant law enforcement agency in the Requesting State is advised to liaise with its counterpart in Singapore to confirm, as far as possible, that the fugitive or person accused or convicted of a crime against its law as the case may be, is, or is suspected of being in, or on his way to Singapore. This will enable both states to have a better idea of how much time they have to apprehend the fugitive or the said person and also, whether to make a request for provisional arrest or a request for extradition proper
- Requesting States are advised to note that the key factor in the evaluation of a request for provisional arrest is whether or not the fugitive is a flight risk. Thus, Requesting States are therefore advised to provide its reasons for believing that the fugitive is a flight risk
- Requesting States which have made a request for provisional arrest are advised to note that once the fugitive has been apprehended, they are required to submit the formal requisition together with the complete set of supporting documents as soon as possible, and in any event, before the expiry of the relevant period stated within the applicable extradition treaty or arrangement
- Requesting States that are planning to issue a media statement regarding their request are advised to consult the AGC and to discuss the possible impact such a statement may have on their request, including any court proceedings relating to the execution of the request, eg. committal proceedings and order for review of the Magistrate's order



- If after consultations with the AGC, the Requesting State wishes to proceed to issue the media statement, it is advised to disclose the proposed media statement to AGC to ascertain if the proposed statement could be drafted in a manner that lessens any possible adverse impact on its request
- Requesting States are advised to identify an expert on the law of their respective states who would be able to testify in the court proceedings in Singapore, if necessary, as to the relevant laws constituting the offences in those states in the event a legal challenge to the extradition request is mounted by the fugitive or his legal counsel

## **VI. CONCLUSION**

As stated at the outset, this paper is intended to provide only a general overview of the extradition framework in Singapore where Singapore is the Requested State, rather than the Requesting State. It is hoped that it has achieved its objective and enabled Requesting States to have a better understanding of the extradition process in Singapore.