



**UNODC**

United Nations Office on Drugs and Crime

# **International Cooperation for Investigation of Corruption Cases in Southeast Asia**

## **HANDBOOK**

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## LIST OF ABBREVIATIONS

ACIWA 1947	Abduction and Criminal Intimidation of Witnesses Act 1947 (Malaysia)
ACL 2005	Anti-Corruption Law 2005 (Vietnam)
ACL 2010	Anti-Corruption Law 2010 (Cambodia)
ACL 2013	Anti-Corruption Law 2013 (Myanmar)
ADFFS 1955	An Act Declaring Forfeiture in favour of the State any property found to have been unlawfully acquired by any public officer or employee and providing for the proceedings therefore 1955 (Philippines)
ADPCP 1991	Act Defining and Penalising the Crime of Plunder 1991 (Philippines)
AGCPA 1960	Anti-Graft and Corrupt Practices Act 1960 (Philippines)
AML 2014	Anti-Money-Laundering Law 2014 (Myanmar)
AMLA RIRR 2003	AMLA 2001 Revised Implementing Rules and Regulations 2003 (Philippines)
AMLA 1999	Anti-Money Laundering Act B.E. 2542 (1999) (Thailand)
AMLA 2001	Anti-Money Laundering Act 2001 (Philippines)
AMLACFT 2007	Law on Anti-Money Laundering and Combating Financing of Terrorism 2007 (Cambodia)
AMLAT	ASEAN Treaty on Mutual Legal Assistance in Criminal Matters
AMLATFA 2001	Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (Malaysia)
AML Law 2012	Law on the Prevention of Money Laundering 2012 (Thailand)
AML Law 2014	Anti-Money Laundering Law 2014 (Myanmar)
AOCOSOA 2502	Act on Offences Committed by Officials of State Organizations or Agencies B.E. 2502 (1959) (Thailand)
AORSBSA 2542	Act on Offences Relating to the Submission of Bids to State Agencies B.E. 2542 (1999) (Thailand)
ARTA 2007	Anti-Red Tape Act 2007 (Philippines)
AGCPA 1960	Anti-Graft and Corrupt Practices Act 1960 (Philippines)
CA 1967	Customs Act 1967 (Malaysia)
CARO 2012	Criminal Asset Recovery Order 2012 (Brunei Darussalam)
CC 1951	Criminal Code 1951 (Brunei Darussalam)
CC 2499	Criminal Code B.E. 2499 (1956) (Thailand)
CC 1982	Criminal Code 1982 (Indonesia)
CC 2009	Criminal Code 2009 (Cambodia)
CC 2015	Criminal Code 2015 (Vietnam)
CCESPOE 1989	Code of Conduct and Ethical Standards for Public Officials and Employees 1989 (Philippines)
CDSA 1992	Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (Singapore)
CPC 1934	Criminal Procedure Code B.E. 2477 (1934) (Thailand)
CPC 1935	Criminal Procedure Code 1935 (Malaysia)
CPC 1898	Code of Criminal Procedure 1898 (Myanmar)
CPC 1981	Law No. 8 of 1981 Concerning the Criminal Procedure (Indonesia)
CPC 2007	Criminal Procedure Code 2007 (Cambodia)
CPC 2012	Criminal Procedure Code 2012 (Malaysia)
CPC 2015	Criminal Procedure Code 2015 (Vietnam)
Extradition Act 2008	Extradition Act B.E. 2551 (2008) (Thailand)
Extradition Law 1979	Law No.7 of 1979 Concerning Extradition (Indonesia)
FIBA 2551	Financial Institutions Business Act B.E. 2551 (2008) (Thailand)
IA 1965	Interpretation Act 1965 (Singapore)

LAML 2015	Law on Anti-Money Laundering and Counter-Financing of Terrorism 2015 (Lao PDR)
LCECC 1999	Law No.31 Concerning Eradication of the Crime of Corruption 1999 (Indonesia)
LCEML 2010	Law No.8 regarding Countermeasures and Eradication of Money Laundering 2010 (Indonesia)
LCP 2012	Law on Criminal Procedure (Amended) 2012 (Lao PDR)
LLA 2007	Law on Legal Assistance 2007 (Vietnam)
LPML 2012	Law on the Prevention of Money Laundering 2012 (Vietnam)
MACCA 2009	Malaysian Anti-Corruption Commission Act of 2009 (Malaysia)
MLA	Mutual legal assistance
MLA Act 1992	Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) (Thailand))
MLA Act 2001	Mutual Assistance in Criminal Matters Act 2001 (Singapore)
MLA Act 2002	Mutual Assistance in Criminal Matters Act 2002 (Malaysia)
MLA Law 2004	Mutual Assistance in Criminal Matters Law 2004 (Myanmar)
MLA Law 2006	Law No. 1 of 2006 Concerning Mutual Legal Assistance in Criminal Matters (Indonesia)
MLA Order 2005	Mutual Legal Assistance in Criminal Matters Order 2005 (Brunei Darussalam)
MLA Regulations 2003	Mutual Assistance in Criminal Matters Regulations 2003 (Malaysia)
MLA Regulations 2005	Mutual Legal Assistance in Criminal Matters Regulations 2005 (Brunei Darussalam)
MLA Reg No.1 of 1994	Ministerial Regulations No. 1 B.E. 2537 (1994) Issued under the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) (Thailand)
MLA Reg No.2 of 1994	Ministerial Regulations No. 2 B.E. 2537 (1994) Issued under the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) (Thailand)
MOFA	The Ministry of Foreign Affairs
MOHA	The Ministry of Home Affairs
OA 1989	The Ombudsman Act of 1989 (Philippines)
OAAC 2542	Organic Act on Anti-Corruption B.E. 2542 (1999) (Thailand)
OAG	Office of the Attorney General
PCA 1960	Prevention of Corruption Act 1960 (Singapore)
PCA 1981	Prevention of Corruption Act 1981 (Brunei Darussalam)
PC 1861	Penal Code 1861 (Myanmar)
PC 1930	Revised Penal Code 1930 (Philippines)
PC 1936	Penal Code 1936 (Malaysia)
PC 1872	Penal Code 1872 (Singapore)
PLCA 2535	Public Limited Companies Act B.E. 2535 (1992) (Thailand)
POAPCO 1981	Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders 1981 (Presidential Decree) (Philippines)
PPA 1947	Property Protection Act 1947 (Myanmar)
PPL 1963	Property Protection Law 1963 (Myanmar)
PSA 1936	Public Service Act 1936 (Philippines)
RPC 1930	Revised Penal Code 1932 (Philippines)
SEA-PAC	South East Asia Parties against Corruption
WPSBA 1991	Witness Protection, Security and Benefit Act 1991 (Philippines)

## BACKGROUND

The implementation of the United Nations Convention Against Corruption (UNCAC) by ASEAN States is essential to the fight against corruption. Corruption is not only endemic in some domestic systems, but occurs across borders and in conjunction with other transnational crimes, and remains a significant obstacle to ASEANs' development. The First UNCAC Review Mechanism—a peer review process that assists States to effectively implement the Convention by identifying their successes, good practices and challenges—focused on criminalization, law enforcement and international cooperation, and identified gaps in legislative frameworks, knowledge and technical capacities within ASEANs necessary to engage in international cooperation.

The ability to facilitate efficient and effective MLA and extradition—the bedrocks of international cooperation—is vital to combatting corruption committed within States and across their borders, particularly in complex corruption cases. Evidence can be destroyed and suspects abscond before a request for MLA or extradition can be made.

The UNCAC review process identified common challenges facing States in its implementation. Differences in legal systems, laws and procedures; cumbersome and lengthy MLA and extradition procedures resulting in delays which impact investigations and prosecutions; limited resources for processing requests and utilising modern technology such as video-conferencing; and linguistic and terminology differences have all impacted the extent to which most States can provide and receive assistance.

In the ASEAN region, in particular, there are insufficient legal bases for cooperation and significant gaps or barriers in States' legislative frameworks. The small number of bilateral MLA and extradition treaties has a significant impact upon their capacity to assist each other as well States outside the ASEAN region to combat transnational crime. Although many States will provide MLA or extradite suspects upon a reciprocity basis, this is a cumbersome and time-consuming process which adds an additional basis for delay. Further, central and competent authorities in requesting States have, to varying degrees, limited understanding of other States' MLA and extradition laws, procedures and request requirements, and limited published information available to them to improve their knowledge, greatly hindering the speed with which requests can be prepared, processed and executed.

The purpose of this guide is to improve capacity to facilitate MLA and extradition by assisting practitioners—lawyers, prosecutors, judges, police and others—involved in submitting MLA and extradition requests to understand cooperation frameworks in ASEANs. The guide provides an overview of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (AMLAT) as well as the legislative frameworks in each ASEAN governing MLA and extradition and application in practice. Additional supporting material is provided in annexes. Annex A identifies each State's legislative provisions criminalising UNCAC offences. Annexes B and C set out the mandatory and discretionary grounds for refusal of MLA and extradition under AMLAT, bilateral treaties among ASEANs, and domestic laws. Annexes D to J provide model checklists and request forms for MLA. Finally, Annex K provides the model extradition request form for Myanmar.

In addition to resources contained in the annexes, States can use:

- (i) The UNODC's MLA request writer tool, an electronic template for drafting MLA requests that is available for download and online (<https://www.unodc.org/mla/en/index.html>);
- (ii) The UNODC's Manual on Mutual Legal Assistance and Extradition ([http://www.unodc.org/documents/organized-crime/Publications/Mutual\\_Legal\\_Assistance\\_Ebook\\_E.pdf](http://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf)), the latter of which contains checklists for drafting MLA and extradition requests and for extradition casework planning; and
- (iii) The UNODC's online directory of competent national authorities.

Given the complex web of domestic laws that apply in the execution of a request for MLA or extradition, the guide does not purport to be a thorough summary of the criminal procedures applied by States for each type of MLA request or when determining extradition. Rather, it provides guidance to States on the requirements they need to meet and procedures they need to follow when submitting a request to an ASEAN State, as well as any standards that impact those requirements and procedures.

It also doesn't purport to provide an overview of the requirements of each bilateral MLA and extradition treaty entered into by ASEAN States. Rather, it includes the requirements of bilateral treaties entered into between ASEAN States where they were available, or relies upon extracts of treaties between ASEAN States contained in the first UNCAC review reports. Specific note is made if a treaty between ASEAN States was unavailable.

There are several international best practice requirements that are applied almost uniformly throughout ASEAN States and therefore have not be included in each country chapter. These rules, set out below, apply in each ASEAN State with minor variations, unless otherwise stated:

**Bank secrecy** (arts.44(16), 46(22), UNCAC; art.3(5), AMLAT;): The fact that a request relates to bank secrecy or fiscal matters is not a ground for refusal of MLA or extradition, except with respect to fiscal matters for requests by Switzerland to the Philippines.

**Rule of specialty** (art.46(19), UNCAC; art.8(1), AMLAT; art.33, UNODC Model Law on MLA; art.34, UN Model Law on Extradition; art.14, General Assembly Model Treaty on Extradition): Assistance provided pursuant to MLA cannot be used other than for the purpose for which it was provided unless the requested State consents. This includes that a person who is transferred to a requesting State to give evidence cannot be compelled to provide evidence in relation to another matter, unless they had the opportunity to leave the country within a specified time period and did not, or they left and returned. Any testimony provided by a person can only be used for the purpose for which it was given, unless it is used for contempt or related proceedings.

A person who has been extradited to a requesting State cannot be prosecuted, sentenced, detained, subjected to any other restriction of personal liberty in the requesting State or re-extradited to a third State for any offence committed prior to surrender other than that for which they was extradited, unless they had the opportunity to leave the country within a specified time period and did not or left and returned, or the person or requested State consents.

A requested State may consent for assistance to be used in another matter or a person to be prosecuted for another offence upon the request of the requesting State.

Rule of specialty requirements vary in practice. Some States require the requesting State's law to guarantee compliance or the requesting State to provide a written assurance upon request, and others only require compliance as a matter of their own domestic law. Those requirements are set out in the chapters below and, where constituting a basis for refusal of MLA or extradition, in Annexes B and C.

**Safe conduct** (art.46(27), UNCAC; art.16, AMLAT; arts.19, 32, UNODC, Model Law on MLA): A person transferred to a requesting State pursuant to an MLA request cannot be detained, prosecuted, punished or subjected to any other restriction of personal liberty or any civil proceedings for an act or omission which occurred prior to their departure, and they shall be returned as agreed between the States. Where the person is required to be kept in custody, the requesting State must keep them in custody unless otherwise notified by the requested State. The person's period in custody while being transferred and in detention in requesting State shall be taken into account in the calculation of their sentence.

**Dual criminality** (art.43(2), UNCAC; art.3, UN Model Law on Extradition; art.2, General Assembly Model Treaty on Extradition): Pursuant to article 43(3) of UNCAC, whenever dual criminality is considered a requirement under domestic law, it must be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties. For the purposes of MLA, article 46(9)(b) provides: "States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention."

With the exception of Myanmar, all ASEAN States apply conduct-based dual criminality as required by article 43(3) of UNCAC, such that they only require the conduct of the suspect or convicted person—acts or omissions—to constitute an offence in the requested and requesting States, rather than requiring the offences to use the same terminology or fall within the same category of offences.

Finally, this guide should be used as a tool in conjunction within cooperation between States outside MLA and extradition frameworks, where lawful. This includes direct and informal relationships between competent bodies for the exchange of information and knowledge, participation in membership-based networks such as INTERPOL, ASEANAPOL, the Egmont Group, the Asia Pacific Group of Financial Intelligence Units and the South-East Asian Parties Against Corruption (SEA-PAC), and the conduct of joint investigations.

Informal cooperation between competent agencies can be useful—e.g. locating persons, obtaining company records, obtaining information to facilitate witness interviews, exchanging information between financial intelligence units, interviewing witnesses on a voluntary basis and obtaining information about the travel plans of an accused person—

provided the information or documents obtained are not required as evidence in criminal proceedings and do not need to be in an admissible format under States' evidentiary rules. Such cooperation preceding MLA and extradition not only improves the efficiency of procedures but, in some cases, can obviate the need for MLA entirely when it relates to such non-coercive measures.

## **ASEAN TREATY ON MUTUAL LEGAL ASSISTANCE**

The ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (AMLAT) provides a treaty basis for mutual legal assistance in each ASEAN, subject to the application of domestic law (art.7(1)). Some States rely upon AMLAT as the primary framework with which to provide MLA, while others use it as a treaty basis and apply it subject to their domestic laws.

The treaty does not apply to the enforcement of foreign criminal judgements except to the extent permitted in the receiving State, the transfer of persons in custody to serve sentences or transfer of proceedings in criminal matters (art.2(1)).

### **(i) Dual criminality**

States may request assistance where conduct-based dual criminality is met or, in the absence of dual criminality, where domestic law allows (art.3(1)(e)). States must reciprocate assistance granted in respect of an equivalent offence irrespective of the applicable penalty (art.3(10)).

### **(ii) Submission procedure and rules**

Subject to domestic requirements, requests must be submitted in writing or any means capable of producing a written record, in English with a translation into the requested State language (arts.5(1), 6(3)). Urgent requests can be submitted orally and through INTERPOL or ASEANAPOL provided the written request is submitted within five days (art.5).

Requested States should allow requesting States to be represented in any criminal proceedings arising out of a request and must otherwise represent the interests of the requesting State (art.7(2)).

Requests must contain:

- The name of the requesting office and the competent authority conducting the investigation or criminal proceedings to which the request relates;
- The purpose of the request and the nature of the assistance sought;
- A description of the nature of the criminal matter and its current status, and a statement setting out a summary of the relevant facts and laws;
- A description of the offence to which the request relates, including its maximum penalty;
- A description of the facts alleged to constitute the offence and a statement or text of the relevant laws;
- A description of the essential acts or omissions or matters alleged or sought to be ascertained;
- A description of the evidence, information or other assistance sought;
- The reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed;
- Specification of any time limit within which compliance with the request is desired; and
- Any special requirements for confidentiality and the reasons for it; and

- Such other information or undertakings as may be required under the domestic laws of the requested State or which is otherwise necessary for the proper execution of the request.

To the extent necessary, requests must contain (art.6(2)):

- The identity, nationality and location of the person or persons who are the subject of the investigation or criminal proceedings;
- The identity and location of any person from whom evidence is sought;
- The identity and location of a person to be served, that person's relationship to the criminal proceedings, and the manner in which service is to be made;
- Information on the identity and whereabouts of a person to be located;
- A description of the manner in which any testimony or statement is to be taken and recorded;
- A list of questions to be asked of a witness
- A description of the documents, records or items of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;
- A statement as to whether sworn or affirmed evidence or statements are required;
- A description of the property, asset or article to which the request relates, including its identity and location; and
- Any court order relating to the assistance requested and a statement relating to the finality of that order (art.6(1)).

**Authentication:** Upon request, any documents provided must be authenticated by being (i) signed (including digitally) by a judge, magistrate or officer of the requesting State, and (ii) verified by oath or affirmation of witness or government officer or sealed with official or public seal (or otherwise subject to domestic law) (art.24).

**Confidentiality:** Requests and their supporting documents are confidential (subject to domestic laws) unless publication is necessary for execution and the requesting State consents (art.9(1)). Assistance granted is confidential except to the extent needed for purposes described in request (art.9(2)).

**Rule of specialty:** States parties agree to comply with the rule of specialty (art.8).

**Postponement of assistance:** Assistance may be postponed if it's immediate execution would interfere with ongoing criminal matters (art.3(6)). Before refusing assistance, requested party must consider whether to assist subject to conditions (art.3(7)).

**Costs:** The requested State pays the ordinary costs of executing a request, except the costs of (unless otherwise agreed):

- Counsel retained at request of requesting State;
- Expert witnesses;
- Translation, interpretation and transcription;
- Transport of a person to the requesting State and fees, allowances and expenses payable to that person;
- Transporting custodial or escorting officers; and
- The costs of live video/television links and other communication facilities, interpreters and traveling expenses and allowances to witnesses (art.25).

**(iii) Assistance available**

AMLAT provides the following non-exhaustive list of assistance that may be provided (art.1(2)(k)), including through video or tele-conferencing or other appropriate communication facilities (arts.11(3), 14(4)):

**Obtain voluntary statements** (art.10): No additional rules.

**Obtain evidence, including sworn or affirmed testimony, documents or records taken from or obtained from witnesses:** Where sworn or affirmed testimony is to be taken, the requesting party may, subject to requested State laws, appear and question the person (art.11). A person may decline to give evidence if requested or requesting State law permits or requires them to do so in similar circumstances in the requested State. The requesting State must provide a certificate to the requested State as to the existence of such a right if the person claims reliance on it (art.12).

**Access publicly available documents or records:** The requested party must provide publicly available documents or records in the possession of the government, but may refuse to provide documents or records that are not publicly available (art.13).

**Make arrangements for persons to give evidence or to assist in criminal matters in requesting State, including persons in custody:** The requested State may grant request if satisfied satisfactory arrangements for person's safety and the person consents. The person must be informed of expenses or allowances payable (art.14). A person who does not consent shall not be subject to any penalty, liability or otherwise prejudiced in law (art.16(4)).

For persons in custody, the requesting State must undertake to bear expenses associated with the transfer in custody, keep the person under lawful custody and return the person as soon as their presence is no longer required (art.15). The person is subject to a right of safe conduct (art.16).

The requirements for transit of persons custody are set out in article 17.

**Search, seizure and delivery of documents:** There must be reasonable grounds for believing the documents relate to a criminal matter in the requesting State, and the requesting State must observe any conditions imposed by the requested State to protect the documents, records or items to be returned (art.18). The documents, records or items must be returned to the requested State at the conclusion of the criminal matter, or returned temporarily at an earlier time if necessary for a criminal matter in the requested State (art.19).

**Location or identification of persons:** The requested party must use its best endeavours to locate or identify a person (art.20).

**Effect service of documents:** A request for service of a document which requires a response or appearance in the requesting State must be submitted at not later than 30 before the

scheduled response or appearance. Service shall be carried out pursuant to domestic laws, and manner of return proof of service shall be mutually agreed between the States (art.21).

**Assistance in forfeiture proceedings:** Subject to domestic law, the requested State will seek to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime. The request must be accompanied by the original (or duly authenticated copy of the) signed order. The property forfeited or confiscated may accrue to the requesting party subject to the domestic laws of the requested State, unless otherwise agreed. Expenses incurred by the requested party may be deducted from the transferred amount if agreed with the requesting State (art.22).

## BRUNEI DARUSSALEM

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### Mutual Legal Assistance

#### (i) Legal Basis

MLA is largely governed by the Mutual Legal Assistance in Criminal Matters Order 2005 (MLA Order 2005) and Mutual Legal Assistance in Criminal Matters Regulations 2005 (MLA Regulations 2005). The Criminal Asset Recovery Order 2012 applies to requests for asset recovery, and Chapter 7 of the Criminal Procedure Code applies unless otherwise stated in the MLA Regulations 2005 (art.4, MLA Regulations 2005).

MLA can be provided on the basis of a convention, bilateral treaty, memorandum of understanding or other agreement between Brunei Darussalam and the requesting State. Assistance may otherwise be provided on the basis of reciprocity, depending upon the seriousness of the relevant offence, the objects of the MLA Order 2005 and any other matter the Attorney General considers relevant (art.22(1), MLA Order 2005). Brunei Darussalam has ratified UNCAC, UNTOC, AMLAT, and the Commonwealth Harare Scheme.

## **(ii) Dual criminality**

Brunei Darussalam applies conduct-based dual criminality on a discretionary basis (art.24(2)(c), MLA Order 2005), unless required by treaty (art.24(1)(1), MLA Order 2005).

## **(iii) Submission procedure and rules**

Requests must be submitted in writing in English or accompanied by an English translation to the Attorney General (arts.21, 23, MLA Order 2005). Urgent requests can be submitted orally then confirmed in writing in English (art.23, MLA Order 2005).

Requests must contain:

- Purpose of the request;
- Nature of assistance sought;
- Person who initiated the request;
- A statement describing the criminal matter and setting out the relevant facts and law;
- The name, identity, nationality, location or description of the suspect involved in the offence or location and description of connected property, if known, and a statement setting out the basis for the suspicion;
- A description of the offence, including its maximum penalty;
- Details of the procedure the requesting country wishes Brunei Darussalam to follow, including the manner and form in which any information, article or thing is to be supplied;
- Any confidentiality requirements, with reasons;
- The preferred time period for execution;
- If the request involves a person travelling to the requesting country, details of allowances and accommodation provided;
- Any information required under any treaty, MOU or other relevant agreement; and
- Any other information that may assist or which is required under the MLA Order (see below) (art.23, MLA Order 2005).

**Procedure followed:** Brunei Darussalam will follow the procedure specified by the requesting State for executing the request, unless contrary to domestic law, in which case the Criminal Procedure Code will apply with the necessary modifications (art.4(2), MLA Regulations 2005).

**Rule of speciality:** The requesting State is required to provide an undertaking to comply with the rule of speciality (art.24(1)(g), MLA Order 2005).

## **(iv) Assistance available**

The MLA Order 2005 provides a non-exhaustive list of assistance that may be granted, including:

**Arrangements for a person in Brunei Darussalam to give evidence or assist an investigation:** Upon receipt of a request for taking witness evidence, the Attorney General may grant written authorization to a Magistrate (Form 4, MLA Regulations 2005), who shall take the evidence in the presence or absence of the person who the criminal matter relates to or his/her legal representative who, in addition to the “relevant person of that country”, may examine or cross-examine (including through live television link) the person giving evidence or producing

a document, article or other thing (S27(3)-(4)). Evidence may also be given through video link (art.28, MLA Order 2005). The magistrate shall reduce the evidence to writing and certify that it was taken by him/her, the presence of other persons and any objections to taking the evidence under the requesting country's laws (art.27(5)-(6), MLA Order 2005; Form 5, MLA Regulations 2005).

The law of compulsion in Brunei Darussalam applies as far as possible. The person to whom a criminal matter in the requesting States relates is competent but not compellable to give evidence (art.27(6)-(7), MLA Order 2005).

Evidence taken cannot be used for proceedings in Brunei Darussalam, unless required for the prosecution of perjury or contempt of court in relation to the giving of that evidence (art.27(8), MLA Order 2005) or for an offence under the Prevention of Corruption Act (art.24A, Prevention of Corruption Act 1981; see also ss.117, Criminal Procedure Code 1951).

**Production of a document, article or other thing:** A State may request access to government records, documents or information and, at the court's discretion, items subject to legal privilege (art.29(3), MLA Order 2005), and, subject to the Attorney General's written order, information, documents, articles or other things in the possession of a financial institution (including whether a person holds or is signatory to an account and its current balance, details of transactions, details of any related accounts and any transaction by the financial institution on behalf of the person) (arts.3(a)(g), 29, 30, MLA Order 2005).

Upon a request by the Attorney General to a Court for a production order (Form 6, MLA Regulations 2005), the Court must hold proceedings *in camera*, in the presence or absence of the person to whom the criminal proceedings relate in the requesting State or their legal representative. The court must record any objection that the person could not be compelled under the law in the requesting State (art.29, MLA Order 2005). If satisfied it is necessary or desirable for the purposes of a criminal matter, the Court may order a person to produce a document, article or other thing (Form 7, MLA Regulations 2005).

**Assistance in taking written witness statement:** The Attorney General may arrange an authorized person to take a written witness statement in accordance with Chapter 7 of the Criminal Procedure Code where a person in Brunei Darussalam consents (art.34, MLA Order 2005; Form 9, MLA Regulations 2005).

**Attendance of persons, including prisoners, in requesting State to give evidence or provide assistance in a criminal matter with their consent:** The Attorney General may agree to the transfer of a person to give evidence or assist in an investigation if the person consents and if the requesting State gives an undertaking to provide safe conduct and comply with the rule of specialty (with the exception of perjury or contempt proceedings relating to the giving of evidence or assistance) and that the person will be returned as soon as possible. With respect to prisoners, the requesting State must also undertake to detain them during their transfer and bear costs associated with their release, if applicable (arts.3(b), 35-57, MLA Order 2005). Additional related matters are dealt with in sections 36(4)-(10) (process for transferring a prisoner), 38 (refusal of consent), 39 (remand or prisoner), 40 (custody in transit), and 41 (escape from custody). Forms 10 and 11 of the MLA Regulations 2005 are to be used by the

Attorney General to direct the competent authorities to arrange the transfer of persons to the requested State. Forms 12 and 13 relate to custody and removal of a prisoner transiting through Brunei.

**Confiscation of property in respect of an offence:** The process for confiscation of property is governed by the Criminal Asset Recovery Order 2012 (CAR Order 2012), which provides (see also s.3(c), MLA Order 2005):

- That upon request, the Attorney General can apply to the High Court for 30-day (extendable upon request) restraining order in relation to a serious offence (i.e. where the maximum penalty is death, imprisonment of 6 months or more, a fine of not less than \$1,000 or a more severe penalty for an offence (or acts and omissions constituting an offence) under Brunei Darussalam law) for which a criminal proceeding have commenced or are reasonably believed to be about to commence in the foreign country (arts.2, 93, CAR Order 2012).
- That upon request, the Attorney General can apply to the High Court for the registration of a foreign restraining order, and the enforcement of foreign confiscation and benefit recovery orders in relation to serious offences. The High Court must be satisfied that (i) the foreign order is in force and not subject to appeal, and (ii) the relevant person was given sufficient notice of the proceedings to defend themselves or had absconded or died. A statement by the requesting State to such effect is *prima facie* evidence of such. A facsimile copy of the foreign order may be provided but ceases to have effect unless a duly authenticated order is provided within 21 days (art.94, CAR 2012).
- For the location of the proceeds of crime (art.96, CAR 2012).
- For the exercise of investigative powers to locate or seize property (art.97, CAR 2012).
- For the sharing of confiscated property through an asset sharing agreement (art.98, CAR 2012).

**Search and seizure of an article or thing:** The Attorney General may appoint a competent authority (Form 14, MLA Regulations 2005) to apply to the Court for a search and seizure warrant (art.42, MLA Order 2005) if there are reasonable grounds for believing an article or thing relevant to a criminal matter is located in Brunei Darussalam and a production order for that article or thing has not been complied with or it is necessary or desirable to do so (art.43, MLA Order 2005). The requesting State can ask the Attorney General to provide a written declaration concerning the results of the search, the place and circumstances of the seizure and the custody of any article or thing (art.47, MLA Order 2005). Additional related matters are set out in sections 44 (seizure and retention powers, and obstruction of search and seizure), 45 (immunities for compliance with warrant in good faith), and 46 (custody and disposal of article or thing seized).

**Location or identification and location of persons:** The Attorney General may authorize an appropriate agency (Form 15, MLA Regulations 2005) to attempt to locate or identify and locate a person if there are reasonable grounds for believing they could give or provide evidence or assistance and they are located in Brunei Darussalam (arts.3(e), 48, MLA Order 2005).

**Service of Process:** The Attorney General may direct an authorized officer (Form 16, MLA Regulations 2005) to arrange service of process on a person in Brunei Darussalam if there are

reasonable grounds to believe the person concerned is in Brunei Darussalam, and the requesting State has given details to the person of the consequences of a failure to comply and an adequate undertaking that the person will not be subject to any penalty or liability or, if is a summons to appear as a witness, otherwise prejudiced in law by refusal or failure to accept or comply with the summons (arts.49(1)-(2), 50, MLA Order 2005). Brunei Darussalam will follow the procedure for service set out in the request or, if that process is unlawful in Brunei Darussalam, the relevant Rules of the Supreme Court (art.49(3), MLA Order 2005). Any person who fails to comply with a summons to appear as a witness cannot be subject to a penalty or liability or otherwise prejudiced in law for their failure (art.51, MLA Order 2005).

## **Extradition**

### **(i) Legal Basis**

Under the Extradition Order 2006, Brunei Darussalam may facilitate extradition of persons to countries designated in the second schedule (none as yet), countries with which Brunei Darussalam has entered into a treaty or convention, Commonwealth countries and other countries the Attorney General declares to be an extradition country for the purposes of a particular request. Brunei Darussalam has entered into bilateral treaties with Malaysia and Singapore, and will rely upon UNCAC and UNTOC as a basis for extradition (art.5 and First and Second Schedules, Extradition Order 2006; Extradition (Malaysia and Singapore) Act 1984).

The Extradition Order 2006 applies to all requesting countries unless otherwise stated or, for treaty countries, subject to any limitations, conditions, exceptions or qualifications contained in the treaty (art.39, Extradition Order). Part 7 of the Criminal Procedure Code applies in relation to matters not covered by Extradition Order 2006 where not inconsistent with it (art.57, Extradition Order 2006).

### **(ii) Dual criminality**

Brunei Darussalam applies conduct-based dual criminality if the offence attracts a minimum of one-year imprisonment in Brunei Darussalam and provided the (i) offence is listed in an extradition treaty or (ii) it is an offence against the law of the requesting country for which the maximum penalty is death or a minimum of one-year imprisonment (art.3, Extradition Order 2006). A taxation, customs or other revenue related offence may be an extradition offence even if Brunei Darussalam does not impose a duty, tax, impost or control of that kind (art.3(4), Extradition Order 2006).

### **(iii) Submission procedure and rules**

Requests must be submitted by a diplomatic officer, consular officer or a Minister of the requesting State to the Attorney General directly (art.9, Extradition Order 2006). The language required is not specified in law.

Requests must contain:
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- A description of the person sought and information to help establish their identity and nationality;
- The text of the law creating the offence and prescribing the penalty or, if the offence or penalty is not created or prescribed by statute, a statement of the offence and prescribed penalty;
- A statement of acts constituting the offence with details of the time and place;
- The foreign warrant of arrest (if not convicted) or documents (or duly authenticated copies) evidencing the conviction and sentence, including whether the sentence has been carried out or is immediately enforceable (art.15(1), Extradition Order 2006);
- (Commonwealth countries) A record of the case (recital of supportive evidence and an authenticated copy, reproduction or photograph of all exhibits and documentary evidence), including (i) an affidavit by the investigating officer that they produced the record and the evidence in the record has been preserved for trial, (ii) a certificate from the requesting country stating their opinion that the record of the case disclosed evidence that is sufficient to justify prosecution in the requesting country (art.24, Extradition Order).

**Authentication:** Supporting documents must be duly authenticated by being signed or certified by a foreign judge, magistrate or other judicial officer, and authenticated by the oath of a witness or sealed with an official or public seal (art.15(4), Extradition Order 2006).

**Rule of speciality:** The requesting State must provide an assurance to comply with the rule of speciality (art.17(3)(a), Extradition Order 2006).

#### **(iv) Arrest and extradition procedure**

##### **a. Provisional arrest**

A State can apply for a provisional arrest warrant if the person is in or believed to be in or on their way to Brunei Darussalam and the requesting State intends to make an extradition request. Such requests can be submitted directly or through ICPO-Interpol to a Magistrate (art.6, Extradition Order 2006).

The requesting country must provide the following accompanying documents:

- A copy of the arrest warrant issued in the requesting State (or, upon a request by a designated country, an affidavit stating the warrant has been issued but is not yet available);
- A description of the person sought;
- A statement of acts constituting the offence; and
- The text of the law creating the offence and prescribing the penalty or, if the offence or penalty is not created or prescribed by statute, a statement of the offence and prescribed penalty (arts.6-7, 26, Extradition Order 2006).

A person arrested on a provisional warrant must be brought before a magistrate as soon as possible, who can remand them in custody or release them on bail for 60 days, 28 days for a designated country or other period specified by treaty, extendable up to 60 days or other reasonable period, after which they must be released or the sureties for bail discharged (arts.7-8, 27, 30, Extradition Order 2006)

##### **b. Extradition procedures**

Upon receipt of an extradition request, the Attorney General can authorize a magistrate to proceed unless grounds for refusal or other reasons for rejecting the request apply (art.9(1)(2), Extradition Order 2006).

**Arrest warrant:** If not already arrested, the magistrate must issue an arrest warrant for the suspect, who must be brought before the magistrate as soon as possible to be remanded in custody or bailed (arts.9-10 Form 7 (Fourth Schedule), Extradition Order 2006).

**Simplified extradition:** If satisfied that the suspect has voluntarily consented to extradition, the magistrate must inform them of the consequences before remanding them custody. The Attorney General may issue a surrender warrant or temporary surrender warrant for the extradition offence, as well as any additional offence the suspect consents to (arts.9, 11, 33, Extradition Order 2006). In the case of designated countries, the magistrate must issue the surrender warrant (arts.33(4), 36, Extradition Order 2006).

**Extradition proceedings:** A magistrate shall conduct extradition proceedings to determine whether they should be surrendered provided the suspect and requesting country have had reasonable time to prepare for them (arts.12, 31, 34, Extradition Order 2006). Proceedings must be conducted in the same manner and with the same jurisdiction and powers as if the suspect was accused of the offence in Brunei Darussalam, applying the *prima facie* standard (art.23, Extradition Order 2006). The suspect may not adduce evidence to contradict the allegation they committed an offence (arts.12-14, 32, Extradition Order 2006).

**Appeal:** No appeal rights are set out in the Extradition Order 2006.

**Executive decision:** If the person does not successfully appeal the extradition decision within 15 days, the Attorney General may make a final determination regarding whether the person should be surrendered, considering any grounds for refusal (arts.14, 16-17, 35, Extradition Order 2006).

### c. Surrender

The Attorney General (or magistrate for designated countries) issues a written surrender warrant or temporary warrant specifying the offence/s for which the suspect is being extradited (arts.17-18, 34, 36, and Forms 3-5, Fourth Schedule, Extradition Order 2006). If not surrendered within two months of the warrant being issued, the suspect must be released unless the magistrate determines there is reasonable cause for delay. Reasonable cause for delay exists because *inter alia* it would have been a danger to the suspect's life or prejudicial to their health, there was no suitable means of transporting them, the requesting country delayed responding to a request to transport them although all reasonable steps were taken to obtain that permission, and because of the remoteness of the requesting country (arts.20, 28 Extradition Order 2006).

If the requesting State does not take the surrendered accused, they may not request their extradition for the same offense again (S.55, Extradition Order 2006 Brunei Darussalam).

**Conditional surrender:** If the suspect has not yet been convicted in the requesting State, the Attorney General must issue a temporary surrender warrant if the requesting State gives an adequate undertaking they will be given a speedy trial and returned to Brunei Darussalam at its conclusion. They may be surrendered again to the requesting State after the completion of their trial and any sentence in Brunei Darussalam, unless it would be unjust or oppressive to do so because of changed circumstances (arts.19, 34, 37, Forms 4 and 6, Fourth Schedule, Extradition Order 2006).

**Delay and temporary surrender:** If a suspect is serving a custodial sentence or is on bail for an offence in Brunei Darussalam, the surrender warrant shall not be executed until they have been released from custody or the bail sureties have been discharged (art.18, Extradition Order 2006).

**(xii) Endorsement of warrants**

Where an arrest warrant has been issued in a designated country (including Malaysia), the requesting State may apply to a magistrate for the endorsement of a warrant pending an extradition request. The magistrate may endorse the warrant if satisfied the person in the warrant is in or on their way to Brunei Darussalam (art.28, Extradition Order 2006). A person arrested on an endorsed warrant shall be brought before a magistrate as soon as possible, who shall remand them in custody or release them on bail (art.29, Extradition Order 2006). If remanded or bailed for 28 days, and no request for extradition request has been made, the magistrate must release them or discharge the sureties for bail (arts.30, Extradition Order 2006).

**(xiii) Prosecution in Brunei Darussalam**

If extradition is refused, the person may be prosecuted in Brunei Darussalam if they are a Brunei Darussalam citizen or Brunei Darussalam has jurisdiction over the offence (art.55, Extradition Order 2006).

**(xiv) Additional assistance provided**

**Search and seizure:** The Attorney General may order that anything seized by a police officer upon the arrest of the suspect or upon a magistrate's order which may be material as evidence in proving the extradition offence or has been acquired by the person as a result of the offence be provided to the requesting State if a surrender warrant or temporary surrender warrant is issued (arts.44, 46, Extradition Order 2006).  
(art.44, Extradition Order 2006).

**Taking of evidence:** The requesting State may request that the Public Prosecutor authorize a magistrate to take evidence for the purpose of criminal proceedings (art.54, Extradition Order 2006).

**(xv) Concurrent requests**

Where simultaneous requests are made for surrender of the same suspect, the Attorney General has discretion to surrender them to any country, considering all the circumstances of the case, in particular:

- The seriousness of the offences;
- The dates on which the requests were made; and
- The citizenship or other national status of the suspect and their ordinary residence (art.60, Extradition Order 2006).

## CAMBODIA

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## Mutual legal assistance

### (i) Legal Basis

Cambodia does not have a dedicated MLA law, and relies upon treaties and provisions of other domestic laws to provide and receive assistance. The Anti-Corruption Law 2010 (ACL 2010) provides limited guidance on assistance that may be requested for corruption offences, for which the procedures in treaties apply. Cambodia has a bilateral MLA treaty with Vietnam, and is a party to AMLAT. UNCAC and UNTOC could, in theory, also provide a basis for MLA. MLA can also be provided on the basis of reciprocity. The Criminal Procedure Code 2007 (CPC 2007) and Law on Money Laundering and Combatting the Financing of Terrorism 2007 (LMLCFT 2007) apply to the extent they are relevant.

### (ii) Dual criminality

Cambodia applies conduct-based dual criminality for requests for judicial assistance.

### (iii) Submission procedures and rules

Requests must be submitted in writing in English or Khmer to the Ministry of Justice through the diplomatic channel. There is no special procedure for urgent requests.

**Contents:** Cambodian law does not set out requirements for the content of requests, and instead relies upon any requirements contained in treaties. For locating or identifying a person, in practice a copy of the person's ID card or passport is required.

**Confidentiality:** Confidentiality of requests and supporting documents is provided for, unless they are required to be disclosed to an accused person because they are exculpatory (arts.83, 121, CPC 2007; art.39, ACL 2010; art.9, AMLAT).

**Rule of specialty:** No assurance is required under domestic law.

**Consultation:** In practice, Cambodia will consult with the requested State before refusing assistance.

**Procedures followed:** In practice, Cambodia will provide assistance in accordance with procedures set out in a request, unless contrary to domestic law.

**Costs:** The ordinary costs of executing a request are borne by Cambodia.

#### **(iv) Assistance available**

Other than the ACL 2010, Cambodian law does not specify the types of assistance that may be granted.

Under the ACL 2010, the court authority of Cambodia may obtain power from a competent court of a foreign State to provide the following assistance:

- Collect evidence/proof or answer/response through court means;
- Inform about documents of the court;
- Search, arrest and confiscate;
- Examine objects and crime scene;
- Provide information and exhibit;
- Issue original process-verbal or its authentic copies and dossier, including bank statement, accounting transactions, records of concerned institution, records of concerned company and trade records, as well as authentic and private documents;
- Identify or provide expert witnesses and others, including detainees who agree to assist in the investigation or participate in the legal proceedings;
- Identify or seek resources, property, equipment, and materials that derive from offence and offence means;
- Place under temporary holding the products and properties obtained from corruption offences as well as equipment, materials being used or kept for committing offences;
- Enforce the decision of confiscation, seizure or repatriation of products, properties, equipment, material derived from offence;
- Order to confiscate all objects as stated above;
- Inform about the criminal charge;
- Interrogate the accused based on criminal procedure; and

- Find out and identify witnesses and suspects (art.51, ACL 2010).

Any court hearings can, in practice, take place by video-conference, although resources to support this are limited. The transfer of detained persons only possible pursuant to rules set out in treaties (e.g. AMLAT).

## **Extradition**

### **(i) Legal Basis**

Extradition is subject to the terms of any international conventions or treaties and, in the absence of a treaty, the CPC 2007 and the ACL 2010 (art.567, CPC 2007; art.50, ACL 2010). Cambodia has entered into bilateral treaties with Thailand, Lao PDR, Vietnam (not yet in force), China, the Republic of Korea, France (not yet in force) and Russia (not yet in force), and in theory could use UNCAC and UNTOC as the legal basis for extradition. Cambodia also observes reciprocity in practice.

The CPC 2007 defines a wanted person for the purposes of extradition to exclude Cambodian nationals, such that a request for nationals' extradition cannot be made. As set out below, however, a request for Cambodian authorities to pursue an investigation and prosecution of the national for offences committed outside Cambodia may be made.

### **(ii) Dual criminality**

Cambodia requires conduct based dual criminality. The offence must be punishable by a maximum of at least 2 years' imprisonment (1 year for Lao PDR and Thailand) in the requesting State, or for a request relating to the enforcement of sentence, a sentence of at least 6 months' imprisonment which has come into effect (arts.569, 571, CPC 2007; arts.1-2, Cambodia-Thailand Extradition Treaty; art.2, Cambodia-Lao PDR Extradition Treaty; art.2, Cambodia-Vietnam Extradition Treaty).

Under the CPC 2007, Cambodia does not permit extradition for ancillary offences, however extradition for ancillary offences not meeting the dual criminality requirements is permitted for requests by Lao PDR and Thailand (art.1, Cambodia-Thailand Extradition Treaty; art.2, Cambodia-Lao PDR Extradition Treaty).

When the act charged was committed outside the territory of the requesting State, extradition is only possible if the suspect is the citizen of the requesting State (art.572, CPC 2007; art.2 Cambodia-Vietnam Extradition Treaty).

### **(iii) Submission procedure and rules**

Requests must be submitted in writing in English, Khmer or French (or certified translation) (in English for Thailand) to the Ministry of Justice through the diplomatic channel (art.579, CPC 2007; art.7, Cambodia-Lao PDR Extradition Treaty; arts.6-7, Cambodia-Thailand Extradition Treaty; art.9, Cambodia-Vietnam Extradition Treaty). Once satisfied the request is

valid, the Ministry of Justice will submit it to the Prosecutor General of the Court of Appeal in Phnom Penh (art.580, CPC 2007).

Requests must contain the following (in triplicate for Vietnam):

- Sufficient documents to identify the wanted person and their probable location;
- A report on the facts to be charged;
- Legal texts applicable to the acts and possible punishment, as well any time limit on the prosecution or execution of punishment;
- A copy of the arrest warrant, or in the case of a person who has been convicted, the sentencing decision (art.579, CPC 2007; art.7, Cambodia-Lao PDR Extradition Treaty; art.7, Cambodia-Thailand Extradition Treaty; art.8, Vietnam Treaty).

*Under the Lao PDR, Thailand and Vietnam extradition treaties:*

- For a request for extradition of a person sought for prosecution, evidence justifying that person's arrest and committal for trial;
- For a request for extradition of a person who has been found guilty:
  - (i) Evidence showing the judgement refers to that person;
  - (ii) A statement showing to what extent the sentence has been carried out; and
  - (iii) A statement as to the legal means available to the person to prepare their defence or have the case retried in their presence (art.7, Cambodia-Lao PDR Extradition Treaty; art.7, Cambodia-Thailand Extradition Treaty; art.8, Cambodia-Vietnam Extradition Treaty).

**Authentication:** All documents must be signed by a competent person and affixed with an official seal, and placed in a closed envelope (art.579, CPC 2007; art.7; Lao PDR Extradition Treaty; art.10, Cambodia-Thailand Extradition Treaty).

**Rule of speciality:** The requesting State must provide an assurance to comply with the rule of specialty (art.577, CPC 2007). Under the Lao PDR, Thailand and Vietnam treaties, the States agree to comply with the rule of specialty (art.15, Cambodia-Lao PDR Extradition Treaty; art.15, Cambodia-Thailand Extradition Treaty; art.17, Cambodia-Vietnam Extradition Treaty).

**Consultation:** Cambodia may request additional information within specified timeframe. If the requesting State fails to provide the information, the request shall be considered revoked (art.8, Lao PDR-Cambodia Extradition Treaty; art.11, Cambodia-Vietnam Extradition Treaty).

**Costs:** Expenses are borne by requesting State (art.589, CPC 2007). Under the Lao PDR, Thailand and Vietnam treaties, expenses incurred until the time of extradition are borne by Cambodia (art.19, Cambodia-Thailand Extradition Treaty; art.19, Cambodia-Lao PDR Extradition Treaty; art.20, Cambodia-Vietnam Extradition Treaty).

#### **(iv) Arrest and extradition procedure**

##### **a. Provisional arrest**

In urgent cases, a State may request the provisional arrest of a person before submitting an extradition request. The CPC 2007 is silent on the alternative request procedure. For Lao PDR,

Thailand and Vietnam, a request must be submitted in writing through the diplomatic channel or INTERPOL (or by electronic means for Vietnam), and contain:

- A description of the person sought and their location, if known;
- A brief statement of facts;
- A statement of the existence of the warrant of arrest or judgement; and
- A statement that a request for extradition will follow (art.9, Cambodia-Lao PDR Extradition Treaty; art.9, Cambodia-Thailand Extradition Treaty).

The Vietnam treaty additionally requires:

- A statement indicating the reasons for urgency; and
- The provisions of the law setting out the elements of the offence and punishment (art.12, Cambodia-Vietnam Extradition Treaty).

The person must be released automatically if an extradition request is not received within two months (or 60 days for Lao PDR and Vietnam) from the arrest, without prejudice to a future extradition request (art.581, CPC 2007; art.9, Cambodia-Thailand Extradition Treaty; art.9, Cambodia-Lao PDR Extradition Treaty; art.12, Cambodia-Vietnam Extradition Treaty). This does not preclude their earlier conditional release earlier if the requested party learns of a mandatory or discretionary ground of refusal or the request is revoked (art.9, Cambodia-Lao PDR Extradition Treaty; art.9, Cambodia-Thailand Extradition Treaty).

#### **b. Extradition procedures**

**Arrest warrant:** Upon receipt of a request, the Prosecutor General may order the arrest and detention of the suspect (art.582, CPC 2007; art.11, Cambodia-Thailand Extradition Treaty). Upon arrest, the suspect should be brought before a competent prosecutor to be notified of the arrest and detention order and be interviewed, and may request to make a statement (art.582, CPC 2007).

**Simplified extradition:** A person may consent to extradition after being fully informed of the consequences, and the Investigation Chamber of the Phnom Penh Court (see below) should include such agreement in its final order for extradition (art.588, CPC 2007). For requests by Lao PDR, Thailand and Vietnam, the suspect must consent (irrevocably) in writing (art.10, Cambodia-Thailand Extradition Treaty; art.10 Cambodia-Lao PDR Extradition Treaty; art.9, Cambodia-Vietnam Extradition Treaty).

**Extradition hearing:** The Prosecutor General prepares and files a dossier with the Investigation Chamber of the Phnom Penh Court of Appeal (art.584, CPC 2007). Extradition proceedings are held *in camera* before the investigation chamber, in which the suspect may be accompanied by a lawyer of their choice or one appointed under the Law on the Statute of Lawyers.

**Executive Decision:** If the Investigation Chamber grants extradition, the Minister of Justice may refer the case to the Royal Government to determine whether to issue a sub-decree ordering extradition (art.589, CPC 2007). The suspect may request bail (art.587, CPC 2007).

**Appeal:** The suspect may appeal against a decision to grant of extradition and the prosecutor against a decision not to grant extradition within 15 days (art.417-418, 420, CPC 2007; art.38, Constitution).

### **c. Surrender**

The requesting State must start repatriation procedures within 30 days of the decision (15 days for Lao PDR and Thailand, and a reasonable period for Vietnam) or the suspect will be released with prejudice to a later extradition request for the same offence (art.589, CPC 2007; art.12, Lao PDR-Cambodia Extradition Treaty; art.12, Cambodia-Thailand Extradition Treaty; art.14(5), Cambodia-Vietnam Extradition Treaty).

**Delay and temporary surrender:** Where the suspect is being prosecuted in Cambodia for another offence, their extradition may be suspended until the sentence is delivered but not served or they may be temporarily transferred until the conclusion of the trial in the requesting State (art.578, CPC 2007; art.13, Cambodia-Lao PDR Extradition Treaty; art.13, Cambodia-Thailand Extradition Treaty; art.16, Cambodia-Vietnam Extradition Treaty).

#### **(v) Prosecution in Cambodia**

Cambodia will exercise jurisdiction over nationals based on the active personality principle, if it has jurisdiction over the offence. The requesting State is required to furnish the documents and evidence to Cambodia (art.40, CPC; art.5, Lao PDR-Cambodia Extradition Treaty; art.5, Cambodia-Thailand Extradition Treaty; art.4, Cambodia-Vietnam Extradition Treaty). If prosecution is based on article 19 of the Penal Code (offence by Cambodian citizen committed outside Cambodia), a complaint by the victim or formal information from the country in which the offence was committed is required (art.21, Penal Code).

#### **(vi) Additional assistance provided**

For requests by Lao PDR, Thailand and Vietnam, Cambodia may seize and hand over property which may be required as evidence or which has been acquired as a result of the offence. Under the Lao PDR, Thailand and Vietnam treaties , property may be transferred where extradition cannot be executive because of the death, disappearance or escape of the suspect. If the suspect is being prosecuted in Vietnam, transfer of the property may be postponed until conclusion of proceedings in Vietnam or may be temporary transferred until the conclusion of the investigation in the requesting State. If the property is liable to seizure or confiscation in Cambodia, Cambodia may temporarily retain it or hand it over on condition it be returned (art.16, Lao PDR-Cambodia Extradition Treaty; art.16, Cambodia-Thailand Extradition Treaty; art.15, Cambodia-Vietnam Extradition Treaty).

#### **(vii) Concurrent requests**

The following factors will be considered:

- The obligations under relevant treaties;
- The seriousness of the offense;
- The time and place where the offense was committed;

- The date and the order of the receipt of requests;
- The nationality, domicile, residence of the wanted person and the victim; and
- The possibility of the requesting State in returning the wanted person (art.576, CPC 2007; see also art.14; Lao-PDR Cambodia Extradition Treaty; art.13 Cambodia-Vietnam Extradition Treaty).

## INDONESIA

<p><b>CENTRAL AUTHORITY</b></p>	<p>Department of Law and Human Rights          Ministry of Justice          Jl. H.R. Rasuna Said          Kav. 6-7          Jakarta 12940          Tel: +62 21 520 2391          Fax: +62 21 526 1082          Website: <a href="https://www.kemenkumham.go.id/">https://www.kemenkumham.go.id/</a></p> <p>Directorate General of Law and International Treaties          Ministry of Foreign Affairs          Jl. Pejambon No.6.          Jakarta. 10110          Tel: +62 21 3849618          Fax: +62 21 3524154          Website: <a href="http://www.deplu.go.id">www.deplu.go.id</a></p>
<p><b>COMPETENT AUTHORITIES</b></p>	<p>Commission for the Eradication of Corruption (KPK)          Jln. Kuningan Persada Kav-4          Jakarta 12950          Tel: (021) 2557 8300  <a href="http://www.kpk.go.id">www.kpk.go.id</a></p> <p>Pusat Pelaporan Dan Analisis Transaksi. Keuangan (Financial Intelligence Unit)          Jl. Ir. H. Djuanda No.35          Jakarta 10120          Tel: +6221 385. 0455 / 3922          Fax: +6221 385 6809/6826          Email: <a href="mailto:contact_us@ppatk.go.id">contact_us@ppatk.go.id</a>          Website: <a href="http://www.ppatk.go.id">http://www.ppatk.go.id</a></p>

### Mutual legal assistance

#### (i) Legal Basis

Under the Law No. 1 of 2006 Concerning Mutual Legal Assistance in Criminal Matters (MLA Law 2006) MLA can be provided pursuant to treaty or on a reciprocity basis (art.5). Indonesia is a party to the AMLAT and has entered into bilateral MLA treaties with Australia and the People’s Republic of China. It has also ratified UNCAC and UNTOC, which may be used as a basis for MLA.

#### (ii) Dual criminality

Indonesia applies the conduct-based dual criminality requirement on a discretionary basis (art 7(a), MLA Law 2006).

#### (iii) Submission procedure and rules

Requests must be submitted in English and/or the language of the requesting State, with a translation into Indonesian (art.28(4), MLA Law 2006), directly or through the diplomatic

channel to the Minister of Law and Human Rights (art.27, MLA Law 2006). The request is transferred to the Chief of National Police (Kalpori) or the Attorney General to process (art.29, MLA Law 2006), or to Commission for the Eradication of Corruption in corruption cases. There is no special procedure for urgent requests.

Requests must contain:

- Purpose of the request;
- Description of requested assistance;
- Name of Agency and Official conducting the related investigation, prosecution or examination before the court;
- Description of the crime, case settlement phase, statutory provisions, content of articles and sanctions imposed;
- Description of the conduct alleged to constitute an offence, except for requests for service of process;
- Relevant judgment and information that such judgment has permanent legal force in the event of the request for assistance to execute a judgment;
- Details of any specific procedures or requirements to be complied with, including information concerning whether or not legal depositions, documents or other legal means of proof must be made under oath or pledge;
- Any confidentiality requirements, with reasons for such; and
- The desired time limit for providing assistance (art.28(1), MLA Law 2006).

To the extent that it is necessary, the request must contain the following:

- Identity, citizenship, and domicile of the person;
- Description of the requested Statement or deposition;
- Description of required documents or other legal means of proof to be submitted, including a description concerning the person deemed able to provide such evidence; and
- Information concerning expenses and accommodation associated with the presence of the person in requesting State (art.28(2) MLA Law 2006).

**Confidentiality:** The Minister must keep evidence provided confidential, unless required for a criminal case related to the request (art.58, MLA Law 2006).

**Rule of speciality:** The requesting State must provide an assurance to comply with the rule of specialty (art.6(f), MLA Law 2006).

**Consultation:** The Minister of Law and Human Rights may ask the requesting State for more information if request requirements are not met (art.28(3), MLA Law 2006).

**Costs:** Costs are borne by the requesting State, unless otherwise agreed (art.55, MLA Law 2006)

There are no provisions on authentication, the procedure followed or the postponement of assistance.

**(iv) Assistance available**

The MLA Law 2006 provides for a non-exhaustive list of assistance that may be provided (see also art.3(2), MLA):

**Identifying and locating persons:** A request for identifying and locating a person must additionally include information confirming:

- The request relates to an investigation, prosecution and examination before a requesting State court;
- The person is suspected or reasonably suspected to be involved in a crime or able to give evidence or assistance in relation to it; and
- The person is presumed to be in Indonesia (art.31(2), MLA Law 2006).

Where request requirements are met, the Minister must order the Chief of National Police to execute it (art.31(3)), MLA Law 2006).

**Deriving (oral or written) statements, documents and other evidence voluntarily:** A request for obtaining such evidence must additionally include:

- Confirmation that the person is a suspect or witness in relation to an investigation, prosecution and examination before a requesting State court;
- Matters about which the person will be questioned; and/or
- Confirmation that the deposition, or documents or other means of proof are in Indonesia (art.32, MLA Law 2006).

A person involved in the process of investigation, prosecution and examination before the court in the requesting State may not be forced to give a deposition in Indonesia. Any other person cannot be forced to give a deposition, to deliver documents or legal means of proof or answer any question if Indonesian law would not require the same person in the same position to do so, prove of which can be made through an authenticated immunity certificate (art.33, MLA Law 2006).

**Attendance of person, including persons in custody, before a requesting State court:** The requesting State must confirm that the appearance of the person before the court relates to an investigation, prosecution or examination and that person is deemed to be able to give a statement relating to them. It must also guarantee that the person will be given safe conduct, and that the rule of specialty applies, except in relation to the provision of false information or perjury, and the person will be returned to Indonesia as soon as possible (arts.35(2), 36, MLA Law 2006). The person must consent to the transfer, and cannot be penalized for refusing to provide consent (arts.35(3), 38, MLA Law 2006). Additional matters relating to the transfer of detainees are set out in articles 37 and 39 (custody of detainees) and 40 (transit requirements) of the MLA Law 2006.

**Search and seizure of articles or assets (and evidence of ownership and related documents) based on requesting State warrant:** The requesting State must provide a warrant issued by the requesting State and a guarantee that anything seized and transferred to the requesting State will be returned (art.47, MLA Law 2006). The Chief of National Police or the Attorney General must apply to the Head of the local District Court (art.41, MLA Law 2006) for a warrant. The District Court may issue the warrant if it is believed that goods, articles and assets are at a certain place that are:

- allegedly obtained from or are the proceeds of crime that (allegedly) has been committed under the law of the Requesting State;
- used to commit or prepare such crime;
- particularly designed or allocated to commit such crime;
- related to such crime;
- believed to be evidence in such crime; or
- used to hamper the investigation, prosecution and examination of a crime (art.42, MLA Law 2006).

The Minister may enter into an agreement with a foreign State to obtain shares on properties seized in Indonesia (art.57, MLA Law 2006).

**Implementing confiscation and forfeiture of assets, imposition of penalty and payment of confiscation orders:** The requesting State must provide a description of the assets and their location and a certificate of ownership (art. 51, MLA Law 2006). The Attorney General must submit the application for a seizure warrant to the Local District Court, which, once issued, is carried out by the Prosecutor’s office (art.52, MLA Law 2006). Changes to a request may be made before the announcement of confiscation, following which the Attorney must apply to the District Court for a new stipulation, revocation or, where appropriate, to annul the previous stipulation and replace it with a new one (art.54, MLA Law 2006). The Minister may enter into an agreement with a foreign State to obtain shares on properties seized in Indonesia (art.57, MLA Law 2006).

**Service of letters, including summons:** If the letter is a summons, the request must be made 45 days before the person is expected to appear (arts.48(2)(c)(1), MLA Law 2006). The requesting State must guarantee that the rule of specialty applies (unless the evidence if required for proceedings relating to the provision of false information or perjury), the person will be returned to Indonesia as soon as possible, and the person shall not be penalized for refusing or failing to fulfil the summons (arts.36, 48(2)(c)(2), 49, MLA Law 2006).

Upon the Minister’s order, the Chief of National Police must serve the letter in accordance with any procedure proposed in request or, if such procedure violates Indonesian law or is inappropriate in Indonesia, in accordance with Indonesian law (art.48(3)(4), MLA Law 2006).

## **Extradition**

### **(i) Legal Basis**

Under the Law No.7 of 1979 Concerning Extradition (Extradition Law 1979), extradition may be granted based on treaty or reciprocity (art.2, Extradition Law 1979). Indonesia has entered into extradition treaties with Malaysia, Philippines, Singapore, Thailand, and Vietnam and is a party to UNCAC, pursuant to which it may provide extradition<sup>1</sup>.

### **(ii) Dual criminality**

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<sup>1</sup> The Indonesia-Vietnam treaty was not available during the drafting of this guide.

Extradition may be granted for listed offences, or other crimes at Indonesia's discretion. Listed offences include bribery, embezzlement, blackmail or extortion by threats or abuse of authority, fraudulent conversion, fraudulent false accounting, obtaining property, money, valuable securities or credit by false pretences or other form of deception (arts.1, 4, annex, Extradition Law 1979).

The dual criminality requirements under bilateral treaties with ASEANs differs:

- For Malaysia and Thailand, extradition is permitted for the same range of offences as well as misappropriation (art.2, annex 2, Indonesia-Thailand Extradition Treaty; art.2, annex, Indonesia-Malaysia Extradition Treaty).
- For the Philippines, extradition is permitted for malversation, extortion, bribery, corruption, graft, as well as other crimes punishable under the laws of both States and at the discretion of Indonesia, punishable by both States with death or more than one year of imprisonment (art.II, Indonesia-Philippines Extradition Treaty).
- For Singapore, extradition is permitted for bribery and other acts of corruption, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud, including fraud against banks, blackmail or extortion by means of threats or by abuse of authority, an offence against the law relating to benefits derived from corruption, or any other offence made extraditable under extradition laws of both parties and enacted to give effect to obligations under an international convention to which both are parties, provided they are punishable under the laws of both States by more than 2 years' imprisonment or a more severe penalty (art.2, Indonesia-Singapore Extradition Treaty).

### **(iii) Submission procedure and rules**

Requests must be submitted in writing through the diplomatic channel to the Ministry of Justice and, where based on reciprocity, for conveyance to the President (arts.22, 39, Extradition Law 1979). Requests by Malaysia and the Philippines must be in English, and by Singapore, in Indonesian (arts.13, 15, Indonesia-Malaysia Extradition Treaty; art.XVII, Indonesia-Philippines Extradition Treaty; arts.6, 10, Indonesia-Singapore Extradition Treaty). Where request requirements are met, the Minister of Justice must forward the request to the Chief of National Police and Attorney General (art.24, Extradition Law 1979).

A request for extradition of a person suspected of committing an offence must contain:

- An order of custody / warrant of arrest (original or authenticated copy) issued by a competent official from the requesting country;
- An explanation on the offence, including date, time and place of commission and written evidence thereof;
- The text of the legal provisions applicable to the offence, the designation of the offence for which extradition is requested and a statement of the punishment which the offence carries, including any law relating to the limitation on the institution of proceedings, or on the execution of any punishment for that offence;
- Testimony of witnesses under oath regarding the offence;
- A statement to identify the identity and nationality of the person; and
- Any request for seizing evidence.

A request for extradition of a person to serve their sentence must contain:

- The court judgment (original or authenticated copy) relating to conviction and or sentencing of the person that is final;
- In the case of requests by or to Singapore under the Singapore-Indonesia Extradition Treaty:
  - (i) a statement that the person has been convicted but not sentence if applicable; or
  - (ii) a statement by the competent authority that the sentence is enforceable and the extent to which the sentence remains to be served; and
  - (iii) if convicted in absentia, documents describing the manner in which that person had the opportunity to be present at his trial and confirming that, if surrendered, he will be entitled to be re-tried in his presence; and
- A statement to identify the identity and nationality of the person;
- An order of custody (original or authenticated copy) issued by a competent official from the requesting country.

(Article 22, Extradition Law 1979; art.XVII, Indonesia-Philippines Extradition Treaty; art.15, Indonesia-Malaysia Extradition Treaty; art.6, Indonesia-Singapore Extradition Treaty).

Under the Singapore-Indonesia Extradition Treaty, the Attorney General must also certify that the documents submitted disclose the existence of sufficient evidence under the laws of the Requesting Party to justify a prosecution (art.6, Indonesia-Singapore Extradition Treaty).

**Authentication:** For requests from Singapore, documents (or their copies) must be (i) certified by a judge or magistrate or relevant Minister of the Requesting Party and (ii) sealed with the official seal of the Requesting Party (Art.9, Indonesia-Singapore Extradition Treaty).

**Rule of speciality:** A request for extradition will be denied if the requesting State will not comply with the rule (art.15, Extradition Law 1979). Under the Malaysia, Philippines, Singapore and Thailand treaties, the States agree to comply with the rule of specialty (art.8, Indonesia-Malaysia Extradition Treaty; art.IX, Indonesia-Philippines Extradition Treaty; art.15, Indonesia-Singapore Extradition Treaty; art.8, Indonesia-Thailand Extradition Treaty).

**Costs:** Costs incurred in requested State are borne by them (art.XVI, Indonesia-Philippines Extradition Treaty; art.14, Indonesia-Malaysia Extradition Treaty; art.14, Indonesia-Thailand Extradition Treaty; art.16, Indonesia-Singapore Extradition Treaty).

#### **(iv) Arrest and extradition procedure**

##### **a. Provisional arrest**

Urgent requests for provisional arrest may be submitted (i) to the Chief of National Police and/or Attorney General through INTERPOL (art.7, Indonesia-Singapore Extradition Treaty), through the diplomatic channel or directly through post or telegram (arts.18-19, Extradition Law 1979; art.XI, Indonesia-Philippines Extradition Treaty; art.9, Indonesia-Malaysia Extradition Treaty; art.9, Indonesia-Thailand Extradition Treaty).

The request must include:

- A statement that the documents required for an extradition request are available and will be submitted before the period required for the person's release (arts.18, 21; art.XI,

Indonesia-Philippines Extradition Treaty; art.9, Indonesia-Malaysia Extradition Treaty; art.9, Indonesia-Thailand Extradition Treaty; art.7, Indonesia-Singapore Extradition Treaty);

- The description of the extradition crime including when and where it was committed;
- A description of the person sought (art.XI, Indonesia-Philippines Extradition Treaty, art.9, Indonesia-Malaysia Extradition Treaty; art.9, Indonesia-Thailand Extradition Treaty), including their identity, nationality, and probable location (art.7, Indonesia-Singapore Extradition Treaty);
- The warrant of arrest or judgment of conviction (original or authenticated copies) against the suspect (art.7, Indonesia-Singapore Extradition Treaty).
- Copies of the charges against the suspect (art.7, Indonesia-Singapore Extradition Treaty); and
- A sworn statement setting out the facts of the case, including the sentence that can be or has been imposed for the offence and, where applicable, how much of that sentence remains to be served (art.7, Indonesia-Singapore Extradition Treaty).

The suspect may be detained for 20 days (art.XI, Indonesia-Philippines Extradition Treaty; art.9, Indonesia-Malaysia Extradition Treaty; art.9, Indonesia-Thailand Extradition Treaty) or 45 days, without extension (arts.7-8, Indonesia-Singapore Extradition Treaty).

## **b. Extradition procedures**

### ***Procedure for treaty-based requests***

**Arrest:** If requested, pursuant to the Law No. 8 of 1981 Concerning the Criminal Procedure (CPC 1981) the suspect may be arrested and detained by the Police pending extradition proceedings (art.25, Extradition Law 1979). Within seven days, the Attorney General must request the District Court to conduct the extradition hearing (arts.26-27, Extradition Law 1979). The suspect must be released upon court order or after 30 days, unless detention is extended by the Court (for consecutive 30 days periods) (arts.34-35, Extradition Law 1979).

**Extradition hearing:** If not detained, the AG shall summon the suspect to the extradition hearing, providing at least three days preparation time. The hearing is held in public unless the Trial Chairperson determines otherwise, in the presence of the suspect and their lawyer (arts.27, 2933, Extradition Law 1979). The applicable evidentiary standard is not specified in the Extradition Law. Under the Singapore Treaty, the requesting State must meet the *prima facie* standard (art.3, Indonesia-Singapore Extradition Treaty).

**Executive decision:** The Court's determination is transmitted to the Minister (arts.32-33, Extradition Law 1979), who can request further information from the requesting State. The Minister then submits the Court's order, along with the Minister's considerations and those of the Minister of Foreign Affairs and the Chief of the National Police, to the President to issue a decision by Presidential Decree (art.36, Extradition Law 1979).

**Appeal:** The Extradition Law is silent on the appeal process. CPC 1981 provides the suspect with the right to appeal against judgements of a court of first instance to the High Court (arts.67, 233, CPC 1981).

### ***Procedure for reciprocity-based requests***

The Minister of Justice must report the request and their recommendation, as well as the recommendation of the Minister of Foreign Affairs, to the President to decide (art.39, Extradition Law 1979). If the request is granted, the Minister of Justice shall implement the decision in accordance with the provisions governing treaty-based requests (art.39(4), Extradition Law 1979).

#### **c. Surrender**

If the suspect is not surrendered within 15 days of the date determined by the Minister of Justice, they must be released. At the expiration of 30 days of such date, a further extradition request may be refused by the President. Within the 30 days period, a new date may be agreed if extraordinary circumstances prevent one State from executing the surrender of the accused by one State (arts.40-41, Extradition Law 1979; art.XII, Indonesia-Philippines Extradition Treaty; art.10, Indonesia-Malaysia Extradition Treaty; art.12, Indonesia-Singapore Extradition Treaty).

**Delay and temporary surrender:** Indonesia may postpone the suspect's surrender to conduct proceedings against them for another offence or, if the person has already been convicted, in order that they may serve their sentence (art.17, Extradition Law 1979; art.XIII, Indonesia-Philippines Extradition Treaty; art.11, I Indonesia-Malaysia Extradition M Treaty; art.11, Indonesia-Thailand Extradition Treaty). For Singapore, the request must be rejected without prejudice to a future request (art.13, Indonesia-Singapore Extradition Treaty).

#### **(v) Prosecution in Indonesia**

Under the Malaysia, Philippines and Thailand treaties, where the request for extradition of a national is refused, upon request by the requesting State, Indonesia must submit the case to their competent authorities for prosecution if they have jurisdiction, and all material supporting the extradition request must be surrendered to Indonesia (art.VI, Indonesia-Philippines Extradition Treaty; art.4, Indonesia-Malaysia Extradition Treaty; art.4, Indonesia-Thailand Extradition Treaty).

#### **(vi) Additional assistance provided**

Subject to the provisions of the CPC 1981 (art.42, Extradition Law. 1979), Indonesia may seize and hand over property including evidence and proceeds of crime, even if the suspect dies or absconds. Such property may be temporarily retained or handed over on condition it be returned as soon as possible after trial if liable to seizure of confiscation in Indonesia (art.43, Extradition Law 1979; art.XIV, Indonesia-Philippines Extradition Treaty; art.12, Indonesia-Malaysia Extradition Treaty; art.13, Indonesia-Singapore Extradition Treaty (subject to any terms and conditions)).

## (vii) Concurrent requests

Priority is given to requests from treaty (or other arrangement/agreement) based States. The following factors must also be considered:

- The relative seriousness or gravity of the offences;
- The time and place of the commission of the offences;
- The relative dates on which the requests were made; and
- The citizenship or other national status and ordinary residence of the suspect (art.11, Extradition Law 1979).

Under the Indonesia-Philippines Extradition Treaty, Indonesia must also consider the circumstances and the possibility of a later extradition with the Philippines and the provisions of any extradition agreements with other requesting State/s (Art.XVIII, Indonesia-Philippines Extradition Treaty).

## LAO PEOPLE'S DEMOCRATIC REPUBLIC

Central authorities	Minister of Justice (AMLAT; Korea-Lao PDR Extradition Treaty; MLA under LCP) P.O. Box 08 Lane Xang Avenue Vientiane Tel: 856 21 414 101 Fax: 856 21 414 102  Office of the Supreme People's Prosecutor (Extradition; Lao PDR-Vietnam Legal Assistance Treaty). Ban Beungkhayong, Sisatanak District Thadeua Road, Km3 PO BOX 3841 Vientiane Capital, Lao PDR
Competent authorities	State Inspection and Anti-Corruption Authority (SIAA) Km6, Kaysonephomvihane Road, Sivilay Village, Vientiane. Tel +856 21 911 255  Anti-Money Laundering Intelligence Office Bank of the Lao PDR, Ministry of Finance T4 Road, Saysettha District Vientiane Capital, Lao PDR

## Mutual legal assistance

### (i) Legal Basis

Lao People's Democratic Republic (Lao PDR) is currently drafting a dedicated MLA law. Although treaties are not self-executing in Lao PDR, they can be directly implemented in the absence of domestic law or if they are not in conflict with domestic law. Accordingly, pursuant to the limited provisions in the Law on Criminal Procedure (Amended) 2012 (LCP 2012) and the Law on Anti-Money Laundering and Counter-Financing of Terrorism 2015 (LAML 2015), and to the extent consistent with the Constitution, Lao PDR directly applies AMLAT and

bilateral MLA treaties with Vietnam (also governing extradition), the Democratic People's Republic of Korea and China (arts.270-271, LCP 2012). In theory, UNCAC and UNTOC could also provide a basis for MLA. Lao PDR may also provide assistance in the absence of a treaty on a case-by-case basis pursuant to the "the principles of mutual cooperation" (art.271, LCP 2012).

## **(ii) Dual criminality**

Although not prescribed in the LCP 2012, Lao PDR requires dual criminality, however will render non-coercive assistance in accordance with Article 46 of UNCAC.

## **(iii) Submission procedure and rules**

Requests must be submitted in writing to the Ministry of Justice or, for requests from Vietnam, the Supreme People's Prosecutor, through the diplomatic channel. All other requirements are governed by treaty. Requests pursuant to the Vietnam treaty can be submitted in Vietnamese or Laos (art.15, Lao PDR-Vietnam Legal Assistance Treaty). There is no special procedure for urgent requests.

For requests relating to money laundering under the AMLA 2015, requests must contain (art.45):

- Official letter from the relevant authority of the requesting State;
- Name and surname, position of the officer of requesting State who is in charge of investigation, prosecution or ruling on a case;
- Name and surname, position of the officer of requested State investigation, prosecution or ruling on a case;
- The purpose and necessity of the request;
- The facts in support of the request;
- Any known details that may facilitate identification of the person concerned, in particular name and surname, marital status, nationality, address and location, occupation and other necessary details;
- Any important information necessary for identifying and tracing the natural persons, funds or properties, taking provisional measures, according to the request;
- Legislative reference towards offences of the accused and the suspect;
- For requests for provisional measures, a description of the requested measures sought;
- For requests for issuance of a seizure or confiscation order, a statement of the relevant facts, disputes and arguments to enable the competent authorities to issue the order;
- For requests for the enforcement of a seizure or freezing order:
  - (i) A certified copy of the order and statement of the grounds for issuing the order if not indicated in the order itself;
  - (ii) A statement that the order is enforceable and not subject to appeal;
  - (iii) Where necessary and if possible, any documents and information concerning third party rights in relation to the funds or property.

**Confidentiality:** Requests relating to money laundering offences are confidential (art.47, LAML 2015).

**Rule of specialty:** No assurance is required under domestic law.

**Consultation:** Lao PDR may request additional information where necessary to execute a request (art.118, LCP 2012; art.46, LAML 2015). For requests under LAML 2015, requesting States must be notified of any delays in granting assistance (art.48, LAML 2015).

**Costs:** The LCP 2012 is silent on costs. Under the Vietnam treaty, each party is responsible for costs incurred in its territory (art.16, Lao PDR-Vietnam Legal Assistance Treaty).

#### **(iv) Assistance available**

The LCP 2012 provides a non-exhaustive list of assistance that may be granted, including: the seizure or sequestration of assets of the suspect or defendant; the provision of criminal information, information, materials, and items relating to the case; enforcement of a court verdict; cooperation in combating international crime; and other assistance (art.272, LCP 2012). No rules governing these types of assistance are provided. Domestic procedures set out under the LCP 2012 and the LAML 2015, as well as any procedures set out in treaties, therefore apply.

The Penal Law 2005, the LAML 2015 and the Law on Anti-Corruption 2015 (LAC 2015) govern asset recovery measures, which include confiscation of instrumentalities and proceeds of crime, including in some instances benefits derived from the proceeds of crime (art.34, Penal Law 2005; art.41, LAML 2015), and assets acquired by a public servant who commits a corruption offence (art.51, LAC 2015), seizure or freezing of funds related to money laundering or the financing of terrorism (arts.38-39, LAML 2015).

Under the Lao PDR-Vietnam treaty, parties may request the service of documents, the taking of a declaration from an “involved person”, a witness or concerned person; and an investigation and transfer of the resulting the evidence and case file to the requesting party (art.5, Lao PDR-Vietnam Legal Assistance Treaty). Additional rules are provided as follows.

**Summons of witnesses and others:** Under the Vietnam Treaty, the remuneration provided to an expert must be specified in the summons, the person transferred may be paid an advance on their allowances and any remuneration, and they have the right to refuse the transfer without any coercive measures being applied (art.8, Lao PDR-Vietnam Legal Assistance Treaty).

**Service of documents:** The requesting State must provide a full translation of the documents to be served, which must contain the full name and address of the addressee and name of document to be served (art.9, Lao PDR-Vietnam Legal Assistance Treaty). Requesting States can serve documents on their nationals through their embassies and consulates, without the right to apply coercive measures (art.11, Lao PDR-Vietnam Legal Assistance Treaty).

There is no restriction on providing access to government records, documents or information available to the general public under domestic laws.

**Recognition and enforcement of sentences and decisions of the Court:** Under the Lao PDR Treaty, upon request, Vietnam must recognise and enforce judgements and decisions on property in criminal cases issued by Lao PDR, provided:

- The judgement or decision is legally enforceable in Lao PDR;
- The affected parties and their representatives were able to attend the proceedings giving rise to the judgment or decision and their procedural rights were ensured; and
- Enforcement of the judgment or decision does not prejudice national sovereignty or security and is not in conflict with the fundamental principles of Vietnamese law (art.45, Lao PDR-Vietnam Legal Assistance Treaty).

The application for enforcement must contain:

- The original or copy of the judgment or decision and, where the judgment or decision does not clearly state its effect, certification that the judgment or decision is legally valid and enforceable;
- Documentation relating to the person against whom the judgement or decision is to be enforced and that that persona and affected parties have been afforded the right of appeal;
- A certified translation of the request and supporting documents (art.47, Lao PDR-Vietnam Legal Assistance Treaty).

The enforcement of judgments and decisions of courts must comply with Vietnamese laws (art.49, Lao PDR-Vietnam Legal Assistance Treaty).

## **Extradition**

### **(i) Legal Basis**

Extradition is governed by the Extradition Law 2012 subject to the provisions of any applicable treaties. Lao PDR has entered into extradition treaties with Vietnam, Thailand, Cambodia, China, the Democratic People’s Republic of Korea and Russia. Extradition may also be provided on a reciprocity basis.

### **(ii) Dual criminality**

Conduct-based dual criminality is required (art.4(3), Extradition Law 2012). The offence must also be punishable under the law of both parties by more than 1-year imprisonment or heavier penalty. Where a request is for the enforcement of a judgement of imprisonment, at least six months must remain to be served (art.7, Extradition Law 2012; also art.2, Cambodia-Lao PDR Extradition Treaty; arts.1-2, Lao PDR-Thailand Extradition Treaty; art.60, Lao PDR-Vietnam Extradition Treaty). Extradition may also be granted for ancillary offences not meeting the dual criminality requirement (art.7, Extradition Law 2012; art.2, Cambodia-Lao PDR Extradition Treaty; art.2, Lao PDR-Thailand Extradition Treaty). Because some Lao PDR corruption offences carry a penalty of less than one-year imprisonment under Lao law, they are not considered extraditable offences.

### **(iii) Submission procedure**

Requests must be submitted to the Office of the Supreme People’s Prosecutor through the diplomatic channel (art.12, Extradition Law 2012), or directly in urgent cases. The Ministry of

Foreign Affairs reviews the request for validity before forwarding it to the Supreme People's Procuracy or the requesting State (arts.16, 33, Extradition Law 2012). Requests must be in writing with a translation in Lao (arts.13-14, Extradition Law 2012; art.7(4), Cambodia-Lao PDR Extradition Treaty; art.7(4), Lao PDR-Thailand Extradition Treaty) or Vietnamese (art.6, Lao PDR-Vietnam Legal Assistance Treaty), or other language prescribed by treaty (art.14, Extradition Law 2012).

Requests must contain:

- Name of requesting organization;
- Name, surname, age, gender, nationality, a photograph, the type and number of documents relating to a description or identity, occupation and address or residence and other information regarding the person sought;
- A summary describing the offence, date, time, location and effects of the offence;
- The provisions of the law describing the accusation or category of the offence, punishment and court jurisdiction of the Requesting State;
- The legal provisions prescribing the time limits for prosecution and the execution of the sentence;

Requests for the purposes of prosecution must contain:

- A copy of the warrant of arrest issued by a prosecutor, judge or other competent officer of the Requesting State;
- Such evidence as would justify the arrest and committal to trial of the person sought, including evidence establishing that the person sought is the person to whom the warrant of arrest refers.

Requests for the enforcement of a sentence must contain:

- An (original or certified) copy of final judgement or sentence passed by the Requesting State;
- Evidence showing that the person sought for extradition is the person whom the judgement or sentence refers;
- A statement showing to what extent the sentence according to the court decision has been carried out and the amount of the sentence yet remaining;
- In case of a trial in absentia, a directive or certification assuring that the person sought can defend themselves or that the proceedings will be reperformed with the person sought being present.

Arts.13-15, Extradition Law 2012; art.45, LAML 2015; art.7, Cambodia-Lao PDR Extradition Treaty; art.7, Lao PDR-Thailand Extradition Treaty; arts.6, 62, Lao PDR-Vietnam Legal Assistance Treaty.

**Authentication:** All accompanying documents must be officially signed or sealed and accompanied by a translation in Lao or a language prescribed by treaty (art.14, Extradition Law 2012; art.7, Cambodia-Lao PDR Extradition Treaty).

**Consultation:** If the request does not meet the submission requirements, MOFA or the Supreme People's Procuracy must request additional information from the requesting State within 15 days, which must provide additional information within 45 days (or specified period, extendable up to two months for Vietnam) or the request is considered withdrawn without prejudice (art.16, Extradition Law 2012; also art.8, Lao PDR-Cambodia Extradition Treaty; art.63, Lao PDR-Vietnam Legal Assistance Treaty).

**Rule of specialty:** There are no rules governing the rule of specialty in the Extradition Law 2012. Under the Cambodia and Vietnam treaties, the States agree to comply with the rule of specialty (art.15, Cambodia-Lao PDR Extradition Treaty; art.72, Lao PDR-Vietnam Legal Assistance Treaty).

**Costs:** Unless a treaty specifies otherwise, costs incurred in extraditing a person to a requesting State are borne by the requesting State (art.28, Extradition Law 2012). For Cambodia, Thailand and Vietnam, costs incurred until the time of extradition are borne by Lao PDR (art.19, Cambodia-Lao PDR Extradition Treaty; art.19, Lao PDR-Thailand Extradition Treaty; art.76, Lao PDR-Vietnam Legal Assistance Treaty).

#### **(iv) Arrest and extradition procedure**

##### **a. Provisional arrest**

Where there is a treaty basis for doing so, in urgent cases, a State may request the provisional arrest and detention of a suspect before submitting an extradition request. Under the Vietnam treaty, the request may be submitted by mail, phone or other means (art.65, Lao PDR-Vietnam Legal Assistance Treaty). Under the Cambodia and Thailand extradition treaties, such requests must be submitted in writing through the diplomatic channel or INTERPOL, and contain:

- A description of the person sought and their location, if known;
- A brief statement of facts;
- A statement of the existence of the warrant of arrest or judgement; and
- A statement that a request for extradition will follow (art.9, Cambodia-Lao PDR Extradition Treaty; art.9, Lao PDR-Thailand Extradition Treaty).

The Supreme People's Procuracy will request the Vientiane Prosecutor's Office to issue an arrest warrant within 30 days (as per LCP 2012). The extradition request must be made within 60 days (30 days for Vietnam) of the suspect's provisional arrest, or they will be released with prejudice to a future provisional release request but without prejudice to future extradition request. Otherwise, the suspect cannot be released until final adjudication of extradition request made (art.17, Extradition Law 2012; art.9, Cambodia-Lao PDR Extradition Treaty; art.9, Lao PDR-Thailand Extradition Treaty; art.66, Lao PDR-Vietnam Legal Assistance Treaty). Under the Cambodia and Thailand treaties, the suspect may be subject to conditional release earlier if Lao PDR believes a mandatory or discretionary ground of refusal might apply (art.9, Cambodia-Lao PDR Extradition Treaty; art.9, Lao PDR-Thailand Extradition Treaty).

##### **b. Extradition procedures**

**Arrest warrant:** Upon receiving an eligible request, within seven days of receiving a request the Supreme Prosecutor's Office will request the Vientiane Prosecutor's Office to issue an arrest warrant for the suspect, if not already detained (art.17, Extradition Law 2012; art.11, Cambodia-Lao PDR Extradition Treaty; art.11, Lao PDR-Thailand Extradition Treaty; art.65, Lao PDR-Vietnam Legal Assistance Treaty).

**Simplified extradition:** For requests from Cambodia and Thailand, the suspect may consent irrevocably in writing to extradition after being informed of the right to extradition proceedings by the competent authority, without being subject to extradition proceedings (art.10, Cambodia-Lao PDR Extradition Treaty; art.10, Lao PDR-Thailand Extradition Treaty). Consent is not provided for under the Extradition Act 2012 or Lao PDR-Vietnam Legal Assistance Treaty.

**Extradition hearing:** Within 30 days of the suspect's arrest, the Vientiane Prosecutor's Office must submit a summary of the case to the Vientiane People's Court, which must commence extradition proceedings within 30 days of receipt. Proceedings can be carried out in the presence of the Head of the People's Prosecutor, members of the police force, the person sought, an attorney at law, an interpreter, representatives from the Embassy or Consulate of the Requesting State and other competent authorities of the Lao PDR (art.18, Extradition Law 2012). The Extradition Law 2012 is silent on the burden of proof for extradition.

**Appeal:** If extradition is granted, the suspect may appeal to the Central Region People's Court within 30 days, which must issue a determination within 15 days of receipt of the appeal. If the Central Region People's Court upholds the appeal, the person must be released immediately (arts.20-21, Extradition Law 2012).

If the Vientiane People's Court rejects extradition, the Vientiane Prosecutor's Office may propose to the Central Region Prosecutor's Office to file an objection within 30 days of the decision. If an objection is not filed within 30 days, the suspect must be released (art.20, Extradition Law).

### **c. Surrender**

The suspect must be surrendered within 30 days (15 days for Cambodia, Thailand and Vietnam, extendable for another 15 days for Vietnam) of the decision or they will be released with prejudice to a subsequent request for the same offence. If surrender is delayed for reasons beyond the States' control, they must promptly reach an agreement for transfer at a later time (arts.19, 23, Extradition Law 2012; art.12, Cambodia-Lao PDR Extradition Treaty; art.12, Lao PDR-Thailand Extradition Treaty; art.69 Lao PDR-Vietnam Legal Assistance Treaty).

**Delay and temporary surrender:** Lao PDR may postpone extradition where the person sought is undergoing legal proceedings or serving a sentence for another offence in Lao PDR. If delay would cause the time period for prosecution to expire or impede the investigation, Lao PDR may temporarily extradite the person until a time agreed by the States (art.42, Extradition Law 2012; art.13, Cambodia-Lao PDR Extradition Treaty; art.13, Lao PDR-Thailand Extradition Treaty; arts.67-68, Lao PDR-Vietnam Legal Assistance Treaty).

### **(v) Prosecution in Laos**

Lao PDR must prosecute citizens, alien residents or stateless persons residing in Lao PDR who cannot be extradited. The requesting State must submit the relevant case file and information for such purposes (art.11, Extradition Law 2012). Under the Cambodia, Thailand and Vietnam treaties, the requirement to prosecute only applies to nationals (art.5, Cambodia-Lao PDR

Extradition Treaty; art.5, Laos PDR-Thailand Extradition Treaty). The Vietnam Treaty sets out a detailed framework requiring Vietnam to request prosecution and provide evidence and the case file (arts.54-58, Lao PDR-Vietnam Legal Assistance Treaty).

Lao PDR has a legal basis to enforce a sentence issued by a requesting State in Lao PDR where permitted by the People's Court (art.4, Law on Judgement Enforcement 2004; arts.44-45, 47-50, 59, Lao PDR-Vietnam Legal Assistance Treaty). Vietnam may request the enforcement of a sentence through an MLA request (see above).

**(vi) Additional assistance provided**

Lao PDR may transfer seized or confiscated evidence and the proceeds of crime to the requesting State upon surrender of the suspect or in the event the suspect dies or evades extradition. If the suspect is being prosecuted in Lao PDR, transfer of the property may be postponed until conclusion of proceedings in Lao PDR or may be temporary until the conclusion of the investigation in the requesting State. Any property shall be returned at the conclusion of proceedings. If the property is liable to seizure or confiscation in Lao PDR, Lao PDR may temporarily retain it or hand it over on condition it be returned (art.26, Extradition Law 2012; art.16, Cambodia-Lao PDR Extradition Treaty; art.74, Lao PDR-Vietnam Legal Assistance Treaty).

**(vii) Concurrent requests**

MOFA determines which request takes priority based on:

- (i) The principles and obligations prescribed in the treaties on extradition;
- (ii) The time and location of the offence;
- (iii) The severity of the offence;
- (iv) The time of receiving the request;
- (v) Nationality and domicile of the person sought;
- (vi) The victims; and
- (vii) The purpose of extradition (art.15, Extradition Law 2012; see also art.14; Lao-PDR Cambodia Extradition Treaty).

## MALAYSIA

Central authority	<p>Mutual Legal Assistance: International Affairs Division Attorney General's Chambers No. 45 Persiaran Perdana Precinct 4 62100 Putrajaya Tel: +60 3 8885 5000 Fax: +60 3 8888 3518 / +60 3 8888 6368 / (for urgent requests, copy to) +603 8890 5622</p> <p>Webpage: <a href="http://www.agc.gov.my/">http://www.agc.gov.my/</a> (in English)</p> <p>Extradition: Ministry of Home Affairs Block D1, D2 &amp; D9, Complex D Administrative Centre, Federal Territory 62546 Putrajaya Tel: +603 8886 8000 / 3000 Fax: +603-88891613 / 0 Website: <a href="http://www.moha.gov.my">www.moha.gov.my</a></p>
Competent authorities	<p>Malaysian Anti-Corruption Commission (MACC) No.2 Lebu Wawasan Presint 7, 62250 Putrajaya Tel: +603 8870 0000 Fax +603 8870 0901 Website: <a href="http://www.sprm.gov.my">www.sprm.gov.my</a></p> <p>Financial Intelligence Unit Bank Negara Malaysia PO Box 10922 50929 Kuala Lumpur Fax: +603 2174 1515 Email: <a href="mailto:bnmtelelink@bnm.gov.my">bnmtelelink@bnm.gov.my</a> <a href="http://www.amlcft.gov.my">www.amlcft.gov.my</a></p>

### Mutual legal assistance

#### (i) Legal Basis

MLA is governed by the Mutual Assistance in Criminal Matters Act 2002 (MLA Act 2002) and Mutual Assistance in Criminal Matters Regulations 2003 (MLA Regulations 2003) and provided pursuant to bilateral treaties or on a reciprocity basis. Malaysia has also entered into bilateral treaties with Hong Kong, Australia, USA, Korea, India and the UK, and is party to AMLAT. Application of the Mutual Assistance in Criminal Matters Act 2002 to treaty States is only possible where the Minister has issued an order under section 17. Although Malaysia has ratified UNTOC, UNCAC and the Harare Scheme, they cannot be used as a basis for MLA.

For requests based on reciprocity, the Minister responsible for legal affairs must issue a special direction under section 18 of the MLA Act 2002. Orders 39 and 66 of the Rules of the Court apply to letters rogatory (reciprocity).

## **(ii) Dual criminality**

Malaysia applies conduct based dual criminality (art.20(1)(f), MLA Act 2002). Some forms of assistance (identified in section (iii) below), are restricted to serious offences, defined as an act of money laundering, or one for which a minimum punishment of one-year imprisonment or the death penalty may be imposed (arts.2, 20(1)(f), MLA Act 2002). UNCAC offences are serious offences.

## **(iii) Submission procedure and rules**

Requests must be submitted in writing in English to the Attorney General through the diplomatic channel (art.19, MLA Act 2002). Urgent requests can be sent through INTERPOL, and advance copies in electronic format and orally where urgent if later confirmed in writing. When submitting requests, ASEAN countries should use the forms provided by the Secretary for the Treaty's website (see Annex E). The Attorney General's Chambers will transmit any evidence obtained pursuant to a request to the requesting State without going through the diplomatic channels.

Requests must contain (art.19(3), MLA Act 2002):

- (a) specify the purpose of the request and the nature of the assistance being sought;
- (b) identify the person or authority that initiated the request; and
- (c) be accompanied by—
  - (i) a certificate from the appropriate authority of that prescribed foreign State that the request is made in respect of a criminal matter within the meaning of this Act;
  - (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
  - (iii) where the request relates to—
    - (A) the location of a person who is suspected to be involved in or to have benefited from the commission of a foreign serious offence; or
    - (B) the tracing of property that is suspected to be connected with a foreign serious offence,  
the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in subparagraph (A) or (B);
- a description of the offence to which the criminal matter relates, including its maximum penalty;
- details of the procedure which that prescribed foreign State wishes Malaysia to follow in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that prescribed foreign State pursuant to the request;
- where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign forfeiture order have not been instituted in that prescribed foreign State, a statement indicating when the judicial proceedings are likely to be instituted;
- a statement setting out the wishes of that prescribed foreign State concerning the confidentiality of the request and the reason for those wishes;
- details of the period within which that prescribed foreign State wishes the request to be met;
- if the request involves a person travelling from Malaysia to that prescribed foreign State, details of allowances to which the person will be entitled, and of the arrangements for

security and accommodation for the person while he is in that prescribed foreign State pursuant to the request;

- any other information required to be included with the request under any treaty or other agreement between Malaysia and that prescribed foreign State, if any; and
- any other information that may assist in giving effect to the request or which is required under the provisions of this Act or any regulations made under this Act.

**Authentication:** Documents are authenticated if they are signed or certified by a judge, magistrate, or officer in or of the foreign State and verified by the oath or affirmation of a witness, or of an officer of the government of that prescribed foreign State or sealed with an official or public seal of the requested State (art.42, MLA Act 2002; see also s.86, Evidence Act 1950). A court order or judgment bearing the court seal or signature of a judge, magistrate or officer of the court and a copy of an order or judgement which is duly authenticated are deemed without further proof to be signed by that person or a true copy (art.33(1), MLA Act 2002; s.6, Summonses and Warrants (Special Provisions) Act 1971).

**Confidentiality:** The requesting State may specify whether it wishes the request to remain confidential (art.19(3)(c)(vii), MLA Act 2002).

**Rule of speciality:** The requesting State must provide an assurance to comply with the rule of specialty (art.20(1)(j), MLA Act 2002).

**Procedure followed:** The procedure specified by the requesting State can be followed, unless contrary to written law and the Regulations (art.4, MLA Regulations 2003).

**Costs:** If costs are excessive, the Attorney General must consult with the requesting State regarding payment of costs before refusing assistance on that basis (art.20(4), MLA Act 2002). The travel and incidental costs for attendance of a person in the requested State are payable to the requested State (r.17(4), MLA Regulations 2003).

There are no provisions on consultation in domestic law. Some non-ASEAN treaties provide for consultation.

#### **(iv) Assistance available**

The MLA Act 2002 provides a non-exhaustive list of assistance that may be granted, including:

**Taking evidence for criminal proceedings:** The Attorney General may authorize a judge (r.13, Form 10, MLA Regulations 2003) to summon a witness to take their evidence in writing on oath and with certification pursuant to domestic procedures (arts.13(1)(2), MLA Act 2002; s.14, Form 11, MLA Regulations 2003). The proceedings may be conducted in the presence or absence of the person to whom the criminal proceedings in the requesting State relates and/or of his legal representative certificate (arts.13(3)-(5), MLA Act 2002).

The person requested to give evidence cannot be compelled to give evidence and or answer questions that a person would not be compelled to answer in proceedings in the requesting

State, for which a foreign law immunity certificate is admissible (arts.2, 13(6)-(9), MLA Act 2002).

Evidence taken is not admissible in Malaysian proceedings except for prosecution for contempt or perjury with respect to that evidence, unless it may be used for impeaching their credibility in any judicial proceedings (arts.13(10)-(11), MLA Act 2002; s.155, Evidence Act 1950).

**Production orders:** The Attorney General or an authorized person (r.16(1), Form 12, MLA Regulations 2003) may apply for a court order for a person to produce a thing (including government records) or give an authorized officer access to the thing within seven days or other appropriate period (art.23(3), MLA Act 2002; r.16(2), Form 13, MLA Regulations 2003). The Court must be satisfied there are reasonable grounds for suspecting that the person has committed or benefited from a foreign serious offence, and for believing the thing is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter and does not consist of or include items subject to legal privilege. The court must also be satisfied the order is not contrary to the public interest or any written law (art.23(4), MLA Act 2002).

The proceedings may be conducted in the presence or absence of the person to whom the criminal proceedings in the requested State relate (art.23(5), MLA Act 2002). In practice, an *ex parte* production order is required for disclosure of bank information.

The person ordered to produce a thing cannot be compelled to do so unless they could be compelled in the requesting State, for which a foreign law immunity certificate may be provided (arts.2, 23(6)(7), MLA Act 2002).

Sections 24 and 26 of the MLA Act 2002 provide further detailed rules, including regarding access to evidence on “data equipment”, the protection of legal privilege and responsibility for failure to comply with the order or knowingly producing false or misleading information.

**Attendance of person in prescribed foreign State:** The person requested for attendance in the requesting State must consent in writing to attend after being informed by the Attorney General or authorized person of the rights and liabilities set out in Rule 17 of the Regulations (rr.17-18, Forms 15-16, MLA Regulations 2003; s.31, Prison Act 1995). A person cannot be subjected to any penalty for refusing to consent (art.27(4), MLA Act 2002). Consent by a prisoner after a warrant has been issued for their transfer cannot be withdrawn (r.18(5), MLA Regulations 2003).

The Attorney General will make arrangements for the person’s travel where satisfied:

- the request relates to a foreign serious offence (defined in section (i) above);
- there are reasonable grounds to believe the person is capable of giving evidence or assistance;
- the person has freely consented to attend;
- the requesting State has given an undertaking as to safe custody, including that any evidence obtained will only be used for the offence of contempt or perjury in relation to the giving of evidence; and

- In the case of a detained person, the requesting State has undertaken to pay the transfer costs, to keep the person in lawful custody and to return them immediately once assistance is provided (art.27(2)-(3), 28, MLA Act 2002).

Malaysia has provision for evidence to be given by video-conference in domestic proceedings (see s.272B, Criminal Procedure Code 2012).

Malaysia will recognize summonses for witnesses to appear issued by Singapore as if they were issued by a Malaysian court. Failing to comply with the summons is an offence (art.4, Summonses and Warrants (Special Provisions) Act 1971)

**Enforcing a foreign forfeiture order and obtaining a restraining order in relation to foreign serious offences:** The Attorney General or an authorized person (r.22(1), Form 20, MLA Regulations 2003), may apply to the High Court for registration of a foreign forfeiture for property reasonably believed to be in Malaysia. The application must be supported by:

- (i) A statement with the name and description the relevant authority in the requesting State and grounds upon which their request is made,
- (ii) Affidavits verifying the facts relied on; and
- (iii) A copy of the sealed or authenticated copy of the foreign forfeiture order (r.27, Form 30, MLA Regulations 2003).

The Court may register the foreign order if satisfied:

- (i) It is not subject to further appeal;
- (ii) Affected persons in the requesting State received notice of the proceedings and opportunity to defend them, and
- (iii) Enforcing the order would not be contrary to the interests of justice (arts.31(1)(a), (2)(a), 32(1)-(2), MLA Act 2002; r.27(2), Form 31, MLA Regulations 2003).

Rules 27-28 and 30-31 of the MLA Regulations 2003 provide further rules regarding registration and enforcement of foreign forfeiture orders and protection of *bona fide* third-party interests.

The Attorney General or authorized person will make an *ex parte* application to a Judge in Chambers for a restraining order for property believed to be in Malaysia (r.22(2), Form 21, MLA Regulations 2003). The application must include a duly authenticated copy of any court or other order relating to the property, and a certificate from the requesting State stating:

- (i) Judicial proceedings have been instituted or when they are intended to be instituted;
- (ii) Grounds for believing a foreign forfeiture order may be made in the proceedings;
- (iii) The particulars of the relevant property and person/s holding it;
- (iv) The particulars of the link between the defendant and the property; and
- (v) The details of any court or other orders against the defendant in respect of the property (art.24(1)(c), MLA Regulations 2003).

The judge must be satisfied:

- (i) Judicial proceedings have begun or are to be instituted in the requesting State;
- (ii) A foreign forfeiture order has been made or there are reasonable grounds for believing a foreign forfeiture order may be made.

The High Court may not make the order if it is contrary to the interests of justice (art.31(1)(b), MLA Act 2002; s.23(2)(4), Form 23, MLA Regulations 2003). The High Court must extinguish the order if the foreign forfeiture order is not made within 3 months, or a lesser period determined by the Court (art.23(3), MLA Regulations 2003).

In urgent situations, the Attorney General can issue an interim restraint order for 14 days maximum pending the issuance of the restraint order by the Court (r.24(8)-(10), Form 26, MLA Regulations 2003).

Rule 26 of the MLA Regulations 2003 provides further rules regarding the discharge or variation of a restraint order.

For the purposes of the above proceedings, without further proof, the court may receive as evidence a certificate issued by the requesting State stating that:

- (i) Judicial proceedings have been instituted and not concluded or are to be instituted in the requesting State;
- (ii) A foreign forfeiture order is in force and not subject to appeal;
- (iii) All or part of the sum payable or property recoverable under the foreign forfeiture order remains unpaid or unrecovered in the requesting State;
- (iv) A person has been notified of any judicial proceedings in accordance with the law of the requesting State; or
- (v) A requesting State order, however described, has the purpose of:
  - a. recovering, forfeiting or confiscating payments or other rewards received in connection with a foreign serious offence or their value, or property derived or realized, directly or indirectly, from payments or other rewards or its value; or
  - b. forfeiting, destroying or otherwise disposing of any drugs or other substance related to or used in connection with the commission of an offence in the requesting State (art.34(1), MLA Act 2002; r.24(5), Form 25, MLA Regulations 2003).

A duly authenticated document (or copy thereof) received into evidence containing a statement or summary of evidence is admissible of the facts stated (art.34(2), MLA Act 2002).

**Request for search and seizure in relation to foreign serious offences:** The Attorney General or authorized officer (r.32, Form 37, MLA Regulations 2003) may apply to the court (High Court where property is in possession of a financial institution) for a search warrant upon receipt of a request relating a foreign serious matter where there are reasonable grounds for believing a relevant thing is located in Malaysia (art.35(1)-(2), MLA Act 2002). The court may issue the warrant:

- (i) If a previously issued production order was not complied with; or
- (ii) If:
  - a. there are reasonable grounds for suspecting the person specified in the request has committed or benefited from a foreign serious offence;
  - b. there are reasonable grounds for believing the thing is likely to be of substantial value (whether alone or together with another thing) to the

- criminal matter and does not consist of or include items subject to legal privilege; and
- c. it is not contrary to the public interest (art.36,(1)-(2), MLA Act 2002).

**Assistance in locating or identifying a person:** The Attorney General may authorize (r.33, Form 38, MLA Regulations 2003) assistance in locating or identifying a person where there are reasonable grounds for believing that the person is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter and is in Malaysia (art.39(2), MLA Act 2002).

**Assistance in service of process:** The Attorney General may authorize (r.34, Form 39, MLA Regulations 2003) the service of process where:

- (i) There are reasonable grounds for believing the person to be served is in Malaysia;
- (ii) The requesting State has furnished sufficient details of the consequences of a failure to comply with such process; and
- (iii) The request relates to the service of a summons to appear as a witness in the requesting State, the requesting State has given an undertaking that the person will not be subjected to any penalty or liability or otherwise prejudiced in law by refusing or failing to accept or comply.

**The identification or tracing of proceeds of crime and property and instrumentalities derived from or used in the commission of a serious offence or a foreign serious offence** (art.3, MLA Act 2002): No additional rules.

**Recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence** (art.3, MLA Act 2002): No additional rules.

**Examination of things and premises** (art.3, MLA Act 2002): No additional rules.

## **Extradition**

### **(i) Legal Basis**

Extradition for prosecution or enforcement of sentence is governed by the Extradition Act 1992 and is provided pursuant to bilateral treaties and on a reciprocity basis (arts.2-3, Extradition Act 1992). Malaysia has entered into bilateral extradition treaties with Thailand (based on a United Kingdom – Siam Treaty given effect in Malaysia and Thailand by the Exchange of Notes between Thailand and Malaysia), Indonesia, United States, Hong Kong, Australia, India, and Korea. Although Malaysia has ratified UNTOC, UNCAC and the London Scheme, it can only apply the conventions as a legal basis for extradition if the Minister issues a special direction under section 3 of the Extradition Act 1992.

Malaysia has entered into a warrant of arrest scheme with Singapore and Brunei Darussalam, which are governed by special provisions in the Extradition Act 1992 and obviate the need for formal extradition requests (discussed below).

The provisions of the Criminal Procedure Code 1935 (as at 1 November 2012) apply to the extent they are not inconsistent with the Extradition Act 1992 (art.44, Extradition Act 1992).

## **(ii) Dual criminality**

Malaysia applies conduct based dual criminality for offences punishable by at least one-year imprisonment or death in the requesting State and Malaysia (art.6, Extradition Act 1992). Some bilateral treaties prescribe offences for which conduct-based dual criminality will be applied, which include some if not all corruption offences (see art.2, Indonesia-Malaysia Extradition Treaty; art.2, Malaysia-Thailand Extradition Treaty).

Extradition may not be granted for ancillary offences and requesting States must adhere to the rule of specialty (arts.6, 8, 10, Extradition Act 1992; art.8, Indonesia-Malaysia Extradition Treaty; art.6, Malaysia-Thailand Extradition Treaty).

## **(iii) Submission procedure and rules**

Requests must be submitted in writing in English to the Ministry of Home Affairs (MOHA) through the diplomatic channel (art.12, Extradition Act 1992; art.15, Indonesia-Malaysia Extradition Treaty; art.VII, Malaysia-Thailand Extradition Treaty). In corruption cases, the Malaysian Anti-Corruption Commission (MACC) will cooperate with MOHA to execute the request. In urgent cases, an advance copy of the request can be sent to MOHA, who will prepare to execute it pending receipt of the original request through the diplomatic channel.

Requests must contain (art.12(2), Extradition Act 1992; art.15, Indonesia-Malaysia Extradition Treaty; art.VI, Malaysia-Thailand Extradition Treaty):

- Particulars of the suspect criminal whose return is requested and of the facts upon which and the law under which he is accused or was convicted;
- Evidence sufficient to justify the issue of a warrant for his apprehension under section; and
- In the case of a suspect criminal accused of an offence, a warrant for his apprehension issued in that country; or
- In the case of a suspect criminal unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that country and a statement of the amount, if any, of that sentence which has been served.

**Authentication:** Warrants, depositions or statements (or copies) and certificates of or judicial documents stating the fact of conviction are authenticated if certified by a Judge, Magistrate or officer of the country where they were issued, taken or took place, and if authenticated by a witness oath or official seal of the Minister of Justice or other Minister of State (art.24, Extradition Act 1992).

**Confidentiality:** All incoming requests are confidential.

**Rule of specialty:** The requesting State's domestic law or an applicable treaty must provide that the requesting State will comply with the rule of specialty (art.8(e)(f), Extradition Act 1992). Under the Malaysia and Thailand treaties, the States agree to comply with the rule of

specialty (art.8, Indonesia-Malaysia Extradition Treaty; art.VI, Indonesia-Thailand Extradition Treaty).

**Consultation:** In practice, MOHA will consult with the requesting State before refusing a request for assistance.

**Costs:** The Extradition Act 1992 is silent on costs. Under the Indonesia and Thailand treaty, costs incurred by the requesting State are to borne by them (art.14, Indonesia-Malaysia Extradition Treaty; art.XV, Malaysia-Thailand Extradition Treaty).

#### (iv) Arrest and extradition procedure

##### a. Provisional arrest

Where based on treaty, a request for provisional arrest of a suspect that is in or on their way to Malaysia may be submitted through INTERPOL or directly to MOHA. A magistrate may issue an arrest warrant upon evidence that would justify the issuance of a warrant for an offence committed in Malaysia (art.13(2), Form D, Extradition Act 1992). Under the Indonesia and Thailand treaties, evidence as to the existence of a warrant of arrest or judgement against the suspect and intention to submit an extradition request is required (art.9, Indonesia-Malaysia Extradition Treaty; art.IX, Malaysia-Thailand Extradition Treaty). The suspect must be brought before the Magistrate upon arrest, who shall order their remand in custody for a reasonable time (20 days for Indonesia; 2 months for Thailand), taking into account any period prescribed by treaty or other arrangement, and transmission of the case to the Sessions Court (arts.15-16, Extradition Act 1992; art.9, Indonesia-Malaysia Extradition Treaty; art.XIII, Malaysia-Thailand Extradition Treaty). The period of remand may be extended upon receipt of an extradition request (art.16(2)(b), Extradition Act 1992), or the person released where a request has not been received within the period the Magistrate prescribed (art.16(3), Extradition Act 1992).

##### b. Extradition proceedings

**Arrest:** Upon receipt of a request, if the suspect is not already in custody, MOHA may order a Magistrate to issue an arrest warrant (arts.12(3), 13, Forms B & C, Extradition Act 1992) and the person shall be remanded in custody and their case transmitted to the Sessions Court (art.17, Extradition Act 1992).

**Simplified extradition:** When brought before the Sessions Court, the suspect may consent to surrender where the court is satisfied they do so voluntarily and after receiving advice from the court that they will be committed to prison, they lose their right to *habeas corpus*, and they will be tried for the extradition offence, any lesser offence and any other offence to which the Minister consents (art.22, Extradition Act 1992). The Minister will issue an order for surrender (or temporary surrender) of the suspect (art.22(3), Form H, Extradition Act 1992).

**Extradition hearing:** An extradition hearing is held before a Sessions Court, which shall apply the *prima facie* standard (art.19(4)(5), Extradition Act 1992; art.XI, Malaysia-Thailand

Extradition Treaty), unless a different standard is prescribed by treaty (art.4, Extradition Act 1992).

If a request is made pursuant to a treaty, the Sessions Court is not permitted to receive evidence that the suspect is responsible for act alleged to have been done or omitted by him. The Sessions Court must commit the accused to await the Minister's extradition order:

- After hearing any representation made in support of the extradition request;
- Upon the production of supporting documents in relation to the offence;
- Upon being satisfied the dual criminality requirement is met;
- Upon being satisfied no ground of refusal applies; and
- Upon being satisfied the suspect is not accused of another offence or serving a sentence for another offence in Malaysia (art.20, Extradition Act 1992).

Pursuant to non-treaty-based requests, the Sessions Court can commit the suspect to await the Minister's extradition order after receiving evidence tendered by or on behalf of the suspect to show:

- They did not do or omit to do the alleged act;
- They are not the person against whom the warrant was issued;
- That the alleged act or omission is not an extradition offence;
- That a ground for refusal does not apply (art.19, Extradition Act 1992)

**Executive decision:** Upon extradition being granted and committal warrant being issued by the Sessions Court (Forms E & F, Extradition Act 1992), and the expiration of the period for appeal, MOHA will issue an order for surrender of the suspect (art.21(2), Form G, Extradition Act 1992).

MOHA may revoke an extradition order at any time by reason of the trivial nature of the case or the request not being made in good faith or interests of justice or for political reasons, or if for any other reason it would be unjust or oppressive to return the suspect (art.47, Extradition Act 1992).

**Appeals:** Any suspect committed to prison has the right to apply for *habeas corpus* under the Criminal Procedure Code 1935 (CPC 1935) (art.32, Extradition Act 1992). A suspect for which extradition has been granted has the right to apply to the High Court for *habeas corpus* within a period determined by the Minister, which shall not be less than 15 days (art.21(1), Extradition Act 1992; see s.365, CPC 1935).

Where extradition is refused, within 10 days and upon the requesting State's request, the Public Prosecutor may apply to the High Court for review, pending which the suspect may be granted bail (art.37, Extradition Act 1992).

### c. Surrender

If a person is not surrendered within 3 months, upon application by the suspect, MOHA may order they be discharged unless sufficient cause is shown to continue to detain them (art.43, Extradition Act 1992). Under the Indonesia treaty, the suspect may be released after 15 days, and must be released after 30 days, unless extraordinary circumstances apply, in which case

the States can agree on an alternate date, after which another request for their extradition may be refused if the suspect is not surrendered (art.10, Indonesia-Malaysia Extradition Treaty). Under the Thailand Treaty, they may be released after 15 days (art.XI, Malaysia-Thailand Extradition Treaty).

**Conditional surrender:** A suspect serving a sentence in Malaysia for another offence may be temporarily surrendered for the purpose of undergoing trial in the requesting State, where the requesting State undertakes to return them upon completion of the trial, and to be responsible for their custody and take all appropriate and necessary measures to ensure their safe return (art.29, Form I, Extradition Act 1992). After the suspect is returned to Malaysia, the suspect may be surrendered to the requesting country to serve their sentence after they have completed their sentence in Malaysia (art.31, Form J, Extradition Act 1992). International Transfer of Prisoners Act 2012 provides for the enforcement of a foreign sentence imposed upon prisoner transferred back to Malaysia (art.16, International Transfer of Prisoners Act 2012).

**Delay and temporary surrender:** For Indonesia, extradition may be postponed if the suspect is being prosecuted or serving a sentence in Malaysia (art.11, Indonesia-Malaysia Extradition Treaty).

#### **d. Endorsement of warrants issued in Brunei Darussalam and Singapore**

A Magistrate in Malaysia may endorse an arrest warrant or summons issued by judicial authorities in Brunei Darussalam and Singapore for offences punishable by more than six months under issuing States law, upon which the warrant may be executed as if it was issued in Malaysia (arts.25-26, Extradition Act 1992; ss.3, 5, Summonses and Warrants (Special Provisions) Act 1971). Upon arrest, a Magistrate will order the person to be transferred in custody if satisfied they are the person named in the warrant, and may release them on bail if it is in the interests of justice (art.28, Extradition Act 1992; s.5, Summonses and Warrants (Special Provisions) Act 1971).

#### **(v) Prosecution in Malaysia**

Where the Minister uses their discretion not to extradite, they must submit the case to the Public Prosecutor for prosecution under Malaysian law (art.49, Extradition Act 1992), who may exercise their discretion to prosecute under the CPC 1936.

#### **(vi) Additional assistance provided**

Everything found in the suspect's possession upon arrest which may be material as evidence may be transferred with them subject to a deferment if it is needed as evidence in Malaysia and an undertaking by the requesting State it be returned and the rights of any third party, even if the suspect has died or absconded (art.45, Extradition Act 1992; art.12, Indonesia-Malaysia Extradition Treaty).

The Minister may order a Magistrate to take evidence for the purpose of an extradition matter pending in any country, in the presence or absence of an accused person. Witnesses

may be compelled to answer questions and produce documents for such purposes (arts.50-51, Form L, Extradition Act 1992).

**(vii) Concurrent requests**

The Minister shall determine priority, considering:

- The relative seriousness of the offence;
- The relative dates on which the requests were made; and
- The citizenship or other national status of the suspect criminal and his ordinary residence (art.48(2), Extradition Act 1992).

## MYANMAR

<p>Central authority</p>	<p>Committee (Minister of Home Affairs (Chair), Deputy Minister of Home Affairs (Vice Chair), Deputy Minister of Foreign Affairs, Deputy Minister of Finance and Revenue, Deputy Minister of Immigration and Population, Deputy Chief of Justice, Deputy Attorney General, Ministry of Defence Member, Director-General of the General Administration Department, Director General of the Myanmar Police Force (Secretary) and Chief of Police (Joint Secretary))</p> <p>Ministry of Home Affairs (Focal point for MLA)          Building No 10          Nay Pyi Taw          Tel: +95 67 412 537 / 576          Email: <a href="mailto:office@myanmarmoha.org">office@myanmarmoha.org</a>          Website: <a href="http://www.myanmarmoha.org">www.myanmarmoha.org</a></p> <p>Office of the Attorney General          Building No 25          Nay Pyi Taw          Tel: +95 67 404 054          Fax: +95 67 404 146          Email: <a href="mailto:ago.h.o@mptmail.net.mm">ago.h.o@mptmail.net.mm</a>          Website: <a href="http://www.oag.gov.mm">www.oag.gov.mm</a></p> <p>Ministry of Foreign Affairs (extradition)          Office No 9          Nay Pyi Taw          Website: <a href="http://www.mofa.gov.mm/">http://www.mofa.gov.mm/</a></p>
<p>Competent authorities</p>	<p>Anti-Corruption Commission          Cluster 1, Sports' Village          Wunna Theikdi Ward, Nay Pyi Taw          Tel: + 95 678 103 347          Fax: + 95 678 103 370          Email: <a href="mailto:myanmaracc2014@gmail.com">myanmaracc2014@gmail.com</a>          Website: <a href="http://www.accm.gov.mm/">http://www.accm.gov.mm/</a></p> <p>Financial Intelligence Unit          Zabuthiri Tsp, Nay Pyi Taw          PO Box 116, Nay Pyi Taw          Tel: +95 67 342 1761 / 56          Fax: +95 67 342 1761          Email: <a href="mailto:head.fiu@mfiu.gov.mm">head.fiu@mfiu.gov.mm</a> / <a href="mailto:mfiu.str1@mfiu.gov.mm">mfiu.str1@mfiu.gov.mm</a> / <a href="mailto:str2.mfiu@mfiu.gov.mm">str2.mfiu@mfiu.gov.mm</a> / <a href="mailto:mfiu.str3@mfiu.gov.mm">mfiu.str3@mfiu.gov.mm</a> / <a href="mailto:mfiu.str4@mfiu.gov.mm">mfiu.str4@mfiu.gov.mm</a>          Website: <a href="http://www.mfiu.gov.mm">www.mfiu.gov.mm</a></p>

### Mutual legal assistance

#### (i) Legal Basis

MLA is governed by the Mutual Assistance in Criminal Matters Law 2004 (MLA Law 2004), the Mutual Assistance in Criminal Matters Rules and, where gaps arise, the Code of Criminal Procedure 1898 (CPC 1898). MLA may be granted on the basis of an international convention or multilateral or bilateral treaty, or reciprocity (arts.2, 16, MLA Law 2004). Myanmar also

entered into a bilateral MLA treaty with India in 2010. Although Myanmar is party to UNCAC, UNTOC and AMLAT, they do not provide a convention basis for MLA.

## **(ii) Dual criminality**

Strict dual criminality is required, including for non-coercive measures. A minimum one-year imprisonment punishment requirement applies (arts.3(a), 15(a), MLA Law 2004).

## **(iii) Submission procedure and rules**

Requests must be submitted in Burmese or English (art.12, MLA Law 2004) to the central authority (where treaty based) or through diplomatic channels (where reciprocity based) (art.10, MLA Law 2004). Where urgent, requests may be submitted orally or by facsimile, email or other electronic means, provided the original letter of request is sent without delay (art.13, MLA Law 2004).

Requests must contain:

- Name and designation of the authority making the request;
- Statement setting out a summary and nature of the case relevant to the request;
- Necessary identity, address and nationality of the person concerned;
- Procedures for rendering assistance in matters for obtaining evidence, in particular requirements for taking witness statements/testimony, documentary evidence, search and seizure, and enforcing orders to seize or confiscate criminal proceeds;
- Period and limitation during which the request is to be complied with, including any urgency;
- Information to be exposed and evidence to be obtained;
- Statement to perform confidentially if required;
- Extract of relevant laws, rules and procedures exercised in one's own State in respect of the assistance of requested and reasons thereof;
- Name, function and responsibility of the person conducting investigation, prosecution and judicial proceedings in one's own State;
- Treaty or other basis of request;
- Limitations on use of evidence provided; and
- Other necessary information (art.12, MLA Law 2004).

**Confidentiality:** Myanmar will maintain the confidentiality of the information contained in a request and the assistance provided if required by the requesting State, unless it is exculpatory and required to be disclosed to an accused person in criminal proceedings (arts.12, 22(1), 24, MLA Law 2004).

**Rule of specialty:** No assurance is required under domestic law.

**Consultation:** Myanmar may request additional information and supporting evidence, or meet with a person or body of persons from the requesting State to make inquiries and request supporting evidence, if required (art.14, MLA Law 2004).

**Procedure followed:** In practice, Myanmar will follow the procedure specified in the request, unless it conflicts with domestic law.

**Costs:** Myanmar will pay the ordinary costs associated with a request (art.37, MLA Law 2004). Other costs are determined by agreement (art.15(d), MLA Law 2004).

**Postponement of assistance:** Assistance may be postponed in whole or in part, where it interferes with an ongoing investigation, prosecution or judicial proceeding in Myanmar (art.17, MLA Law 2004).

**Return of assistance:** Documents, records and property may be handed over on condition they be returned once no longer necessary for the purposes of the request (art.22(b), MLA Law 2004).

**(vi) Assistance available**

The MLA Law 2004 provides a non-exhaustive list of assistance that may be granted, including:

**Taking evidence or a statement from any person** (art.11(a), MLA Law 2004): No additional rules. Myanmar permits hearings to take place by videoconference under certain circumstances (art.60A, Evidence Act 1872).

**Transferring persons to the requested State to provide testimony, a statement, or an expert opinion** (arts.28-32, MLA Law 2004): A person, including a person in custody, may be transferred where both the person and Myanmar consents (art.28(a), MLA Law 2004). A person may refuse to assist if they would be prohibited from giving such assistance under Myanmar's domestic law (art.30, MLA Law 2004). Myanmar must obtain a safe conduct undertaking from the requesting State before transfer (art.31, MLA Law 2004).

**Rendering service so that judicial documents shall have effect** (art.11(b), MLA Law 2004): No additional rules.

**Examining objects and sites** (art.11(c), MLA Law 2004): No additional rules.

**Identifying or tracing money or property to be used for evidentiary purpose to be relevant to the offence** (art.11(d), MLA Law 2004): No additional rules.

**Executing searches, seizures, control, issuing restraining order and confiscation of exhibits** (arts.11(e), 25-27, MLA Law 2004): The Central authority will instruct a competent authority to issue an order to search, seize, control, restrain or confiscate an exhibit in conformity with "existing laws" (art.25, MLA Law 2004). The central authority will administer the exhibit in conformity with the applicable bilateral agreement (s26(a), MLA Law 2004). Where no such agreement exists, confiscated property vests in the State (art.26(b), MLA Law 2004). The Anti-Corruption Act and Anti-Money Laundering Law governs the recovery of proceeds of crime or their monetary equivalent (arts.51-54, ACL 2013; art.52, AML Law 2014), permitting the ACC to seize all forms of property in the execution of searches and conduct of investigations (art.17, ACL 2013; rule 8(e), ACL 2013) and refer it to the Court for confiscation (arts.516A-517, 523-524, CPC 1898). Instrumentalities and income and benefits of the proceeds of crime can be confiscated (art.517, CPC 1898; s.3(q), AML Law 2014).

**Obtaining information, documents to be used for evidentiary purpose, records and expert opinion:** In practice, documents in the public domain can be provided upon request; others on a case-by-case basis. No additional rules are provided (see art.11(f), MLA Law 2004).

**Providing originals or certified copies of relevant documents and records to be used for evidentiary purpose** (art.11(g), MLA Law 2004): No additional rules.

**Exposing the residential address of offender, location of the exhibit and other necessary information** (art.11(h), MLA Law 2004): No additional rules.

## **Extradition**

### **(i) Legal Basis**

Extradition is governed by the Extradition Law 2017 and the Anti-Money Laundering Law 2014 (AML Law 2014) and is granted pursuant to treaty or on a reciprocity-basis (art.2, Extradition Law 2017). Although ratified, UNCAC does not form the basis of extradition. Myanmar is yet to enter into any bilateral extradition treaties.

### **(ii) Dual criminality**

The Extradition Law 2017 requires dual criminality and a minimum penalty of two years' imprisonment (arts.3(d), 5(b), Extradition Law 2017). Money laundering is an extraditable offence (art.54, AML Law 2014). Extradition is not permitted for ancillary offences.

### **(iii) Submission procedure and rules**

Requests must be submitted in English or Burmese to the Ministry of Foreign Affairs (MOFA) through the diplomatic channel (art.7, Extradition Law 2017). MFA forwards to the Ministry of Home Affairs (MOHA) (art.8, Extradition Act 2017) to make a recommendation to the President after obtaining legal advice from the Union Attorney General's Office (art.11, Extradition Law). If approved, MOHA makes a proposal (copied to the Attorney General) to establish a tribunal (art.13, Extradition Law 2017).

Requests must contain:

- The biography of the person sought, including the name, figure, nationality, address, photo, deoxyribonucleic acid (DNA) and fingerprint and etc.;
- The number of the First Information Report or case number of the court and the summary of the case;
- The necessary documentary evidence, an original or a certified copy of warrant for investigation and prosecution;
- The provision of the relevant legislation for the jurisdiction of the requesting State with regard to the offence;
- Substantial grounds and evidence to believe by the requesting State that the person sought has been in the State;
- The contact department, name and address of the contact person of the requesting State; and

- |  |
|--|
| <ul style="list-style-type: none"><li>- The information prescribed in Form 1 (Extradition Request) and Form 2 (Biography of Person) annexed to the Law and at Annex F of this Guide (art.7, Annex A (Form 1 and Form 2), Extradition Law).</li></ul> |
|--|

**Authentication:** A copy of an arrest warrant must be certified (art.7(c), Extradition Law 2017), however no certification requirements are specified.

**Rule of specialty:** A request may be refused where there are substantial grounds for believing it was made for the purpose of transferring a person to a third State (art.6(h), Extradition Law 2017).

**Consultation:** The Ministry of Home Affairs can request additional information if request requirements are not met, which must be submitted within 30 days of the request being returned (art.9, Extradition Law 2017).

**Costs:** Costs are borne by the requesting State, unless otherwise approved by the Union Government (arts.35-37, Extradition Law 2017).

#### **(iv) Arrest and extradition procedure**

##### **a. Provisional arrest**

There is no provision for the arrest of a suspect without the submission of an extradition request.

##### **b. Extradition procedures**

**Arrest:** The Myanmar Police Force (and Prison Department if suspect is imprisoned) must search and arrest the suspect if not in custody (art.16, Extradition Law 2017). The MOHA must inform the requesting State through the MFA that the suspect has been arrested (art.30, Extradition Law 2017). If the suspect must be detained for more than 24 hours, the Police must bring them before the nearest judge with jurisdiction to apply for remand (art.16(d), Extradition Law 2017). The judge may remand the suspect in custody no more than 14 days each time (art.17, Extradition Law 2017).

If the suspect sought is not arrested within 60 days, the Police must report it to the Tribunal (see below under “Extradition Hearing”), which must report the closing of the case to MOHA. MOHA must report it to the President and, subject to the President’s approval, notify the requesting State of the outcome through the MFA (arts.16, 18-19, Extradition Law 2017).

**Simplified extradition:** After the Tribunal explains the conditions and situation to the suspect, and the suspect consents to extradition without a hearing, the Tribunal may decide that the suspect is eligible for extradition (art.15(f), Extradition Law 2017).

**Extradition hearing:** A Tribunal composed of the Deputy Minister of MOHA and “four suitable citizens” is appointed to conduct an extradition hearing (art.14(a), Extradition Law 2017). The Tribunal has the power to *inter alia* request the requesting State, through the MOHA and

MOFA, to fulfil a specified requirement or furnish additional information, explain the conditions and situations to the suspect, and elicit their consent or refusal, and summon and examine any suspect as necessary. When making a determination, the Tribunal must consider, in addition to the dual criminality requirement and grounds of refusal, any existing foreign policy, nationality, right of defence of the suspect sought and other related cases, but shall not permit evidence to be adduced to contradict the allegation the suspect committed the alleged offence (art.15, Extradition Law 2017).

**Executive decision:** After the Tribunal submit its determination to the Union Government, MOHA, MOFA, and the Attorney General's Office, MOHA must inform the President, who may grant, refuse or suspend extradition (arts.15(n), 24, Extradition Law 2017).

**Appeal:** The suspect has the right to appeal to the Union Government within seven days of the decision, which may confirm, revise, or set aside the decision or determine to re-investigate (arts.15(m), 20, 21, Extradition Law 2017).

The President may determine that, irrespective of the applicability of a ground of refusal, the trial of a suspect in the country where the offence was committed is more appropriate and approve extradition (art.38, Extradition Law 2017).

**Delay in extradition hearing:** Myanmar may postpone an extradition hearing if the suspect is sought under any proceedings in any court in Myanmar for another offence (art.29, Extradition Law 2017).

### **c. Surrender**

The suspect must be surrendered within 30 days, unless there are sufficient grounds for delay (art.23(e), Extradition Law 2017).

### **(v) Prosecution in Myanmar**

In practice, Myanmar will prosecute nationals not extradited for offences committed outside Myanmar (arts.3-4, Penal Code; s.2, Anti-Corruption Law 2013).

Myanmar must also prosecute suspects for whom an extradition request has been rejected and suspects for whom the requesting State does not accept surrender within 30 days without sufficient grounds for delay, where a jurisdictional basis exists (arts.22, 23(e), Extradition Law 2017).

### **(vi) Additional assistance provided**

There are no provisions on the provision of evidence or assets upon extradition.

### **(vii) Concurrent requests**

The Ministry of Home Affairs must determine, in consultation with relevant ministries, the prioritization of competing requests based upon a consideration of:

- Existing treaty's obligations;
- Time and place of an offence;
- Time sequence of the receipt of the request;
- Nationality of the suspect sought and the victims;
- Ordinary place of residence of the suspect sought and the victims;
- Possibility of re-extradition of the suspect sought;
- Whether extradition is requested for the purposes of prosecution or imposition or enforcement of a sentence; and
- Seriousness of the offence (art.10, Extradition Law 2017).

## PHILIPPINES

Central authority	<p>Requests under bilateral treaty: Office of the Chief State Counsel Department of Justice Padre Faura Street Ermita 1000 Manila Tel: +63 2 525 0764 / +63 2 521 6264 Fax: +63 2 525 2218 Email: <a href="mailto:lycean79@gmail.com">lycean79@gmail.com</a> / <a href="mailto:dojlegalstaff@gmail.com">dojlegalstaff@gmail.com</a> / <a href="mailto:rff@doj.gov.ph">rff@doj.gov.ph</a> Website: <a href="http://www.doj.gov.ph">www.doj.gov.ph</a> (in English)</p> <p>Requests under the Anti-Money Laundering Act or in the absence of a bilateral treaty: Office of the Ombudsman Agham Road, North Triangle Diliman, Quezon City 1101 Tel: +63 2 926 9032-50 Fax: +63 2 926 8776 Email: <a href="mailto:omb1@ombudsman.gov.ph">omb1@ombudsman.gov.ph</a> Website: <a href="http://www.ombudsman.gov.ph">www.ombudsman.gov.ph</a> (in English)</p> <p>Urgent requests for provisional arrest: Director National Bureau of Investigation NBI Building, Taft Avenue Ermita 1000 Manila Tel: +63 523-8231 to 38 Fax: +63 526-1216, 523-7414 Email: <a href="mailto:director@nbi.gov.ph">director@nbi.gov.ph</a> Website: <a href="http://www.nbi.gov.ph">www.nbi.gov.ph</a></p>
Competent authorities	<p>Anti-Money Laundering Council 5th Floor, EDPC Building Bangko Sentral ng Pilipinas (BSP) Complex Mabini corner Vito Cruz Street, Malate Manila Tel: +63 2 708 7069 / 7701 Fax: +63 2 708 7909/ +63 2 708 7207 Email: <a href="mailto:legal@amlc.gov.ph">legal@amlc.gov.ph</a> Website: <a href="http://www.amlc.gov.ph">http://www.amlc.gov.ph</a></p>

### Mutual legal assistance

#### (i) Legal Basis

The Philippines does not have a dedicated MLA law. The Anti-Money Laundering Act 2001 (AMLA 2001) contains provisions on MLA applicable to requests involving money laundering, which are executed by the Anti-Money Laundering Council (AMLC). The Philippines provides MLA pursuant to bilateral or multilateral treaties or on a reciprocity basis, and has entered into bilateral treaties with Australia, China, Hong Kong, Republic of Korea, Spain, Switzerland, United Kingdom, and the United States of America, as well as AMLAT. Although the Philippines has ratified UNTOC and UNCAC, they do not provide a legal basis for providing MLA.

Reciprocity based requests are limited to non-coercive measures.

**(ii) Dual criminality**

Although the absence of dual criminality is a discretionary ground of refusal under some treaties, in practice, requests for assistance are not denied on the basis of dual criminality. Requests for assistance under the AMLA 2001 do not require dual criminality. All treaties provide for assistance for UNCAC offences.

**(iii) Submission procedure and rules**

Requests should be submitted in English directly to the Office of State Chief Counsel in the Department of Justice. Requests involving money laundering should be submitted to the Office of the Ombudsman and the Anti-Money Laundering Council. There is no special procedure for urgent requests.

A request relating to money laundering should:

- Confirm that an investigation or prosecution is being conducted in respect of a money launderer named therein or that he has been convicted of any money laundering offence;
- State the grounds on which any person is being investigated or prosecuted for money laundering or the details of his conviction;
- Give sufficient particulars as to the identity of said person;
- Give particulars sufficient to identify any covered institution believed to have any information, document, material or object which may be of assistance to the investigation or prosecution;
- Ask from the covered institution concerned any information, document, material or object which may be of assistance to the investigation or prosecution;
- Specify the manner in which and to whom said information, document, material or object obtained pursuant to said request, is to be produced;
- Give all the particulars necessary for the issuance by the court in the requested State of the writs, orders or processes needed by the requesting State; and
- Contain such other information as may assist in the execution of the request (13(e), AMLA 2001).

**Authentication:** Documents attached to a request relating to money laundering are authenticated if signed or certified by a judge, magistrate or equivalent in the requesting State, and authenticated by the oath or affirmation of a witness or sealed with an official or public seal, or certification by any Philippines officer in the foreign service stationed in the requesting State authenticated by the seal of his office (13(f), AMLA 2001 2001; r.13.g.2, Revising Implementing Rules and Recommendations).

**Confidentiality:** In practice, requests are confidential.

**Rule of specialty:** No assurance is required under domestic law.

**Consultation:** In practice, the Philippines will consult with a requesting State before refusing assistance.

**Procedures followed:** All bilateral treaties state that the Philippines will apply the procedures identified by the requesting State where not contrary to domestic law.

**Bank secrecy / fiscal matters:** The bilateral treaty with Switzerland provides that a request may be refused if it involves fiscal matters.

**Postponement of assistance:** Bilateral treaties include the possibility for postponing assistance. In practice, the Philippines will consult with a requesting State before postponing assistance.

**Costs:** Bilateral treaties provide that costs are borne by the requesting State, except in cases provided for in the treaty.

#### **(iv) Assistance available**

##### ***Requests pursuant to treaty***

In addition to the range of assistance listed in article 46(3) of UNCAC, bilateral treaties provide for the transfer of persons, including persons in custody, to give evidence or provide assistance in the requesting State (or by video-conference) upon their voluntary consent and with a guarantee of safe conduct; and access to government records, documents or information available to the public under domestic law and the possibility of access to them where not available to the public under such conditions as the Philippines deems necessary.

##### ***Requests relating to money laundering***

For requests relating to money laundering, the AMLC can execute a request for assistance from a requesting State by:

**Tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity under the procedures laid down in this Act:** Upon *ex parte* petition by the AMLC and a demonstration that probable cause exists that any deposit or investment or related accounts, is in any way related to an unlawful activity, the Court may issue a 20-day freezing order, extendable by the Court (art.10, 13(b), Anti-Money Laundering Act 2001). A court order is required to inquire into a related account (art.10, Anti-Money Laundering Act 2001).

**Giving information needed by the foreign State within the procedures laid down in this Act:** Upon *ex parte* petition by the AMLC, a Court may order the provision of deposit or investment information from any bank or financial institution where there is probable cause it is related to corruption, plunder, robbery and extortion, illegal gambling, piracy, qualified theft, swindling, smuggling, electronic commerce act violations, fraud or a money laundering offence (arts.3(i), 11, 13(b), AMLA 2001). A court order is not required for kidnapping, drug offences, hijacking and civil aviation violations, destructive arson and murder including by terrorists, felonies or offences of a similar nature which are punishable under the laws of other countries, and terrorism or conspiracy to commit terrorism (art.11, AMLA 2001).

**Applying for an order of forfeiture of any monetary instrument or property in the court:** The request must contain a requesting State forfeiture order relating to a monetary instrument or property of a person convicted of a money laundering offence, and a certification or an affidavit stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either (arts.12, 13(b), AMLA 2001).

A State may also request attachment of Philippine properties in the name of persons convicted of any unlawful activity defined in the AMLA 2001 (listed above), execution and satisfaction of final judgments of forfeiture, application for examination of witnesses, procuring search warrants, production of bank documents and other materials and all other actions not specified in the AMLA 2001 (r.13.g.1, Revising Implementing Rules and Recommendations).

## **Extradition**

### **(i) Legal Basis**

Extradition to requesting States is governed by the Extradition Law 1977, under which extradition may only be granted pursuant to a treaty or convention (arts.3-4, Extradition Law 1977).

The Philippines has ratified UNTOC and has entered into bilateral treaties with Australia, Canada, China, Hong Kong, India, Indonesia, Republic of Korea, Micronesia, Spain, Switzerland, Thailand, United Kingdom, and the United States of America. Although it is a party to UNCAC, the Philippines has declared it does not accept UNCAC as a treaty basis for extradition.

In the case of conflict between the Extradition Law 1977 and a treaty, the treaty prevails, unless the treaty was entered into after the Law and provides otherwise. Under the Thailand and Indonesia treaties, the extradition procedure is governed by domestic law (art.XIV, Philippines-Thailand Extradition Treaty; art.XV, Indonesia-Philippines Extradition Treaty).

### **(ii) Dual criminality**

Dual criminality is required under the Extradition Law 1977. Where the request relates to a criminal investigation, the offence must be punishable under the laws of both States by imprisonment or as prescribed by extradition treaty or applicable convention. Where it relates to the execution of a prison sentence, the offence it must be of a duration stipulated in the governing treaty or convention for an offence committed within the territorial jurisdiction of the requesting State (art.3, Extradition Law 1997). The majority of bilateral treaties require punishment of at least one year, or more in some cases.

The Indonesia, Hong Kong and Thailand treaties provide a list of extraditable offences, and extradition may be granted for non-listed offences according to domestic law. Listed offences under the Indonesia treaty include malversation, extortion, bribery, corruption, and graft, and other offences punishable by both States by more than one-year imprisonment or death (art.II, Indonesia-Philippines Extradition Treaty). Listed offences under the Thailand treaty

include embezzlement, misappropriation, malversation, cheating, fraud, deceit, extortion, threats, coercion, bribery, corruption and graft, or for other crimes for which it can be granted under both States' laws, carrying a sentence of imprisonment for more than one year. The requirement is met provided the elements of the extradition crime correspondent to one or more of the crimes under the law of the requested State (art.II, T Philippines-Thailand Extradition Treaty).

Money laundering is deemed to be an extraditable offence in any extradition treaty concluded with a party to UNCAC (r.13.h, Revising Implementing Rules and Recommendations).

### **(iii) Submission procedure and rules**

Extradition requests must be submitted in writing in English to the Secretary of Justice through the diplomatic channel (art.5, Extradition Law 1977).

Requests must contain:

- The original or an authentic copy of
  - (i) the decision or sentence imposed upon the accused by the court of the requesting State or government; or
  - (ii) the criminal charge and the warrant of arrest issued by the authority of the requesting State or government having jurisdiction of the matter or some other instruments having the equivalent legal force.
- A recital of the acts for which extradition is requested, with the fullest particulars as to the name and identity of the accused, his whereabouts in the Philippines, if known, the acts or omissions complained of, and the time and place of the commission of these acts;
- The text of the applicable law or a statement of the contents of said law, and the designation or description of the offense by the law, sufficient for evaluation of the request; and
- Such other documents or information in support of the request (art.4, Extradition Law 1977).

**Authentication:** Sworn statements are admissible if duly authenticated by the principle consular office of the Philippines in the requesting State (art.9(1), Extradition Law 1977).

**Rule of specialty:** In practice, the Philippines requires a rule of specialty undertaking. Under the Indonesia and Thailand treaties, the States agree to comply with the rule of specialty (art.IX, Indonesia-Philippines Extradition Treaty; art.IX, Philippines-Thailand Extradition Treaty).

**Costs:** Unless provided otherwise by treaty, all costs incurred in extradition are to be paid by the requesting State (art.18, Extradition 1977). Under the Indonesia and Thailand treaties, the State in whose territory expenses are incurred is responsible for them (art.XV, Indonesia-Thailand Extradition Treaty; art.XVI, Indonesia-Philippines Extradition Treaty).

### **(iv) Arrest and extradition procedure**

#### **a. Provisional arrest**

Where urgent, and pursuant to a relevant treaty or convention, a requesting State may submit a request to the Director of the National Bureau of Investigation via the diplomatic channel, post or telegraph for the provisional arrest of an accused pending submission of an extradition request (art.20, Extradition Law 1977; art.XI, Indonesia-Philippines Extradition Treaty; art.X, Indonesia-Thailand Extradition Treaty). The Director should immediately obtain a provisional arrest warrant from the Court of First Instance. If an extradition request has not been submitted within 20 days of the suspect's arrest, the suspect must be released (art.20, Extradition Law 1977; art.XI, Indonesia-Philippines Extradition Treaty; art.X, Indonesia-Thailand Extradition Treaty).

A request must state:

- That the documents required for an extradition request are available and an extradition request will be sent;
- The crime for which extradition will be requested and when and where such crime was committed; and
- Shall so far as possible give a description of the suspect sought (art.XI, Indonesia-Philippines Extradition Treaty; art.X, Indonesia-Thailand Extradition Treaty).

#### **b. Extradition proceedings**

**Arrest warrant:** The DOJ must file a petition in the Court of First Instance for a summons or an arrest warrant. Upon receipt of a petition the Court must summon the suspect, or issue an arrest warrant if satisfied it will serve the ends of justice. The suspect may apply for bail under rules 112-113 of the Rules of Criminal Procedure 2000. If the accused fails to appear for the extradition hearing on the designated day, an arrest warrant will be issued (arts.5-6, 8(3), Extradition Law 1977).

**Extradition hearing:** Extradition proceedings before the suspect are held in public unless determined otherwise on the suspect's request (art.7, Extradition Law 1977). The Rules of Court are applied insofar as practicable and not inconsistent with the summary nature of the proceedings.

The Court may grant extradition if satisfied there is a *prima facie* case against the accused (art.10, Extradition Law 1977). Certified copies of affidavits of witnesses are usually required; an affidavit by a prosecutor summarizing the evidence will not suffice.

**Appeal:** The suspect may appeal to the Court of Appeal within 10 days from receipt or service of the decision (art.12, Extradition Law 1977). The Rules of the Court apply, except that the parties may file written briefs within 15 days of a notice to do so (art.13, Extradition Law 1977).

#### **c. Surrender**

Under the Indonesia and Thailand treaties, the suspect must be released if not surrendered within 15 days unless circumstances beyond the requesting State's control prevent it from taking custody. The suspect must be released after 30 days, with prejudice to a future request

for the same offence (art.XII, Indonesia-Philippines Extradition Treaty; art.XI, Philippines-Thailand Extradition Treaty).

**Delay and temporary surrender:** Under the Indonesia and Thailand treaties, where the suspect is being prosecuted in the Philippines for another offence, their extradition may be postponed until the sentence is delivered. If they have been convicted in the Philippines, they may serve their sentence in the requesting State (art.XIII, Indonesia-Philippines Extradition Treaty; art.XII, Philippines-Thailand Extradition Treaty).

The Philippines does not permit conditional transfer or the enforcement of sentences issued by requesting States in the Philippines.

#### **(v) Prosecution in Philippines**

Under the Indonesia and Thailand treaties, if extradition is refused on the basis that the accused is a national, upon the requesting State's request, the Philippines must prosecute the suspect, unless they have no jurisdiction over the offence. The requesting State must transfer the case file and evidence (art.VI, Indonesia-Philippines Extradition Treaty; art.VI, Philippines-Thailand Extradition Treaty).

#### **(vi) Additional assistance provided**

Upon request, the Court may order that articles found in the possession of the suspect upon arrest (or subsequently under the Indonesia-Philippines Extradition Treaty) be seized and delivered to the requesting State (art.XIV, Indonesia-Philippines Extradition treaty; s.17, Extradition Law 1977; art.XIII, Philippines-Thailand Extradition Treaty;). Under the Thailand Treaty, the property may be handed over whether the suspect to be extradited escapes or dies. If the property is liable to seizure or confiscation in the requested State, it may be handed it over on condition that it be returned without charge to the requested State (art.XIV, Indonesia-Philippines Extradition Treaty; art.XIII, Philippines-Thailand Extradition Treaty).

#### **(vii) Concurrent requests**

The Secretary of Foreign Affairs, after consultation with the Secretary of Justice, is responsible for prioritising concurrent requests (art.15, Extradition Law 1997). Under the Indonesia Treaty, the Philippines must consider:

- The circumstances and the possibility of a later extradition with Indonesia;
- The seriousness of each crime, in the place where the crime was committed;
- The nationality of the suspect sought;
- The dates upon which the requests were received; and
- The provisions of any extradition agreements between the Philippines and other State/s (Art.XVIII, Indonesia-Philippines Extradition Treaty).

## SINGAPORE

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### Mutual legal assistance

#### (i) Legal Basis

MLA is governed by the MLA Act 2001 (MLA Act 2001) and Order 89B of the Rules of the Court. Countries with which Singapore has existing MLA Treaties are gazetted as “prescribed foreign countries” under the Act (art.17, MLA Act 2001). Countries which are not gazetted may be rendered assistance upon providing a reciprocity undertaking (art.16(2), MLA Act 2001). The Attorney General may also provide a more limited range of assistance to countries which are not prescribed and which do not provide a reciprocity undertaking (arts.16(1)(a), 20(2)(d), MLA Act 2001).

Singapore has entered into bilateral MLA treaties with Brunei Darussalam, India, Indonesia, Hong Kong, the United Kingdom, and the United States, and is party to UNCAC, UNTOC, and AMLAT. Brunei Darussalam and Indonesia are prescribed foreign countries (Mutual Assistance in Criminal Matters (Brunei Darussalam) Order 2006 for the purposes of providing MLA.

## **(ii) Dual criminality**

Conduct-based dual criminality is applied to requests requiring coercive measures, i.e. to take evidence for foreign criminal proceedings, for production orders in criminal proceedings, for enforcement of a foreign confiscation order or obtaining a restraining order (property or value-based), and for search or seizure. Assistance may be granted for serious offences listed in the schedule to the MLA Act 2001 or offences imposing a penalty which may extend to four or more years' imprisonment (arts.2(1), 20(3), MLA Act 2001). Serious offences include concealment, organized crime, bribery, and obstruction of justice (2<sup>nd</sup> schedule, MLA Act 2001).

Dual criminality does not apply to requests to take evidence for foreign criminal proceedings or for production orders where the proceedings are for foreign tax evasion offences (art.20(4), MLA Act 2001). It also does not apply to enforcement of a foreign confiscation order, obtaining a restraining order (property or value-based) or for search or seizure where the proceedings are for foreign tax evasion offences and Singapore has entered into Avoidance of Double Taxation Agreement, International Tax Compliance Agreement or an Exchange of Information arrangement with the requesting State (art.20(5), MLA Act 2001).

Requests involving non-coercive measures, e.g. assistance in locating and identifying a person, for the voluntary provision of a witness statement, the provision of information in the public domain, or for service of process, do not require dual criminality (art.20(3), MLA Act 2001).

## **(iii) Submission procedure and rules**

Requests must be submitted in English to the Attorney General (through the diplomatic channel if the requesting State prefers), who may instruct the Attorney General to take or not take action if he or she thinks that the taking of action is or is not (respectively) in the interests of the sovereignty, security or public order of Singapore (art.41, MLA Act 2001). Urgent requests may be sent by fax or email prior to the submission of a hard copy.

Requests for MLA must:

- Specify the purpose of the request and the nature of the assistance being sought;
- Identify the person or authority that initiated the request; and
- Be accompanied by:
  - (i) a certificate from the appropriate authority of that country that the request is made in respect of a criminal matter within the meaning of this Act;
  - (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
  - (iii) where the request relates to:
    - (A) the location of a person who is suspected to be involved in or to have benefited from the commission of an offence; or
    - (B) the tracing of property that is suspected to be connected with an offence; the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in sub-paragraph (A) or (B);

- (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
- (v) details of the procedure that that country wishes to be followed by Singapore in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that country pursuant to the request;
- (vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign confiscation order have not been instituted in that country, a statement indicating when they are likely to be instituted;
- (vii) a statement setting out the wishes of that country concerning the confidentiality of the request and the reason for those wishes;
- (viii) details of the period within which that country wishes the request to be met;
- (ix) if the request involves a person travelling from Singapore to that country, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person while he is in that country pursuant to the request;
- (x) any other information required to be included with the request under any treaty, memorandum of understanding or other agreement between Singapore and that country; and
- (xi) any other information that may assist in giving effect to the request or which is required under the provisions of this Act s.19, MLA Act 2001).

Template requests for specific types of assistance are available on the AGC's website:  
<https://www.agc.gov.sg/our-roles/international-law-advisor/mutual-Legal-assistance>.

**Authentication:** A document is duly authenticated if signed by a judge, magistrate or official in the foreign country and verified by oath of a witness or official from the requesting State or official or public seal of the requesting State (art.42(2), MLA Act 2001). A court order or judgement is signed or sealed or copy thereof authenticated if it bears the court seal or is signed by a judge, magistrate or court officer and a copy (art.31, MLA Act 2001).

**Confidentiality:** In practice, the request and assistance are subject to confidentiality unless disclosure is required to execute the request.

**Rule of speciality:** The requesting State must provide an assurance to comply with the rule of specialty (art.20(1)(j), MLA Act 2001).

**Procedure followed:** The Rules of Court govern proceedings under the MLA Act 2001, including for summoning witnesses, production of documents, taking evidence on oath, administering oaths, and the payment of expenses and allowances of witnesses (art.46, MLA Act 2001).

**Postponement of assistance:** Singapore may postpone assistance where it interferes with an ongoing investigation, prosecution or judicial proceeding (art.20(1), MLA Act 2001).

**Costs:** In practice, Singapore may bear the costs of executing requests and will consult with the requesting State regarding liability for them.

#### (iv) Assistance available

The MLA Act 2001 provides a non-exhaustive list of assistance that may be granted, including:

### ***Any foreign country***

**Taking evidence for criminal proceedings:** The Attorney General may by notice authorize a Magistrate to take the evidence of a witness as if they were doing so for an offence in Singapore, reduce it writing and certify that it was taken by them. The laws relating to compulsion of witnesses in Singapore apply. The person to whom the proceedings in the requesting State relate apply is not compellable to give evidence. No person who is required to give evidence can be compelled to answer any question unless they could be so compelled in the requesting State, for which purpose a foreign law immunity certificate is admissible (arts.2, 21 MLA Act 2001). Hearings may take place by video-conference.

**Custody of persons in transit:** A person from one State consenting to give evidence or assistance in another may be transported through Singapore if the first country gives prior notice (art.27(1), MLA Act 2001).

**Assistance in locating or identifying persons:** The Attorney General may authorize an appropriate agency in Singapore to assist a requesting State to locate or identify and locate a person where there are reasonable grounds for believing that the person (i) is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter and (ii) is in Singapore (art.37, MLA Act 2001).

**Assistance in service of process:** The Attorney General may direct an authorized officer or Supreme Court process server to serve a document if satisfied (i) that there are reasonable grounds for believing that the person to be served is in Singapore, (ii) the requesting country has furnished sufficient details of the consequences of a failure to comply with such process, and (iii) where the request relates to the service of a summons to appear as a witness in that country, that that country has given an adequate undertaking that the person will not be subject to any liability or prejudice for refusing or failure to comply with the summons (arts.38-39, MLA Act 2001). A person cannot be subject to any liability or prejudice for refusing or failure to comply with a summons to appear (art.40. MLA Act 2001).

### ***Prescribed foreign countries, and countries giving reciprocity undertakings***

**Production orders for criminal matters:** The Attorney General or authorized person may apply to the High Court, which, after *in camera* proceedings, can order a person to produce a thing or give an authorized officer access to a thing within seven days if satisfied there are reasonable grounds for suspecting that the person has committed or benefited from a foreign offence and for believing the thing is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter; and does not consist of or include items subject to legal privilege. The court must be satisfied the order is not contrary to the public interest or any written law (art.22(1)-(4), MLA Act 2001; Order 89B, rr.2-3, Rules of the Court).

The proceedings may be conducted in the presence or absence of the person to whom the criminal proceedings relate (art.23(5), MLA Act 2002). The person ordered to produce a thing cannot be compelled to do so unless they could be compelled in the requested State

(art.23(6)). A foreign law immunity certificate regarding compulsion in the requested State is admissible (art.23(7), MLA Act 2001; see also s.2).

Sections 23-25 of the MLA Act 2001 provide further rules, including regarding access to evidence on “data equipment”, legal privilege and responsibility for failure to comply with the order or knowingly producing false or misleading information.

**Requests for attendance of person to give evidence or provide assistance:** The Attorney General may grant the request if satisfied that: (i) there are reasonable grounds for believing the person is capable of providing relevant evidence or assistance; (ii) the person has freely consented; (iii) the person is not a prisoner or otherwise detained; and (iii) the requesting State has given safe conduct and rule of specialty undertakings, and an undertaking to return the person to Singapore, as well as any other undertakings required by the Attorney General. The person cannot be subject to any penalty or prejudice for refusing or failing to attend (art.26, MLA Act 2001). Singapore does not permit the transfer of persons in custody to give evidence.

Singapore will recognize summonses for witnesses to appear issued by Malaysia as if they were issued by a Malaysian court. Failing to comply with the summons is an offence.

**Custody of persons in transit:** A person being transported through Singapore may be kept in custody with an authorized officer as directed in writing by the Attorney General if the aircraft, vessel or train stops in Singapore. The person may be returned to the first country if the person’s transportation does not continue within a reasonable time (art.27(2), MLA Act 2001).

**Enforcement of a foreign confiscation order and instrumentality forfeiture order:** Upon a request for enforcement and satisfaction of a foreign confiscation order against property reasonably believed to be in Singapore, the Attorney may apply to the High Court for registration of the order. If satisfied the order is in force and not subject to further appeal, that the affected person has sufficient notice of the proceedings to defend them and it is not contrary to the interests of justice, the High court may register the order (arts.29-30, MLA Act 2001). Section 32 sets out the facts that may be proved by a certificate issued by or on behalf of a requesting State authority duly authenticated by the signature of a judge, magistrate or judicial officer or other appropriate authority. Upon registration of a forfeiture order, the High Court may order that property be forfeited and disposed of in accordance with its directions (arts.11, 18, Third Schedule, MLA Act 2001). Section 10 of the Third Schedule sets out the procedure for realization of the property. Rules 4-10, 15-16 and 18-19 of Order 89B of the Rules of the Court set out additional rules regarding application for and the registration and enforcement of foreign confiscation orders.

**Restraining of dealing in property:** Upon a request for the restraint of property reasonably believed to be located in Singapore, and where there are reasonable grounds for believing a foreign confiscation order may be made in judicial proceedings which have been or are to be instituted in that country, the Attorney General (or receiver appointed by the Attorney General when a confiscation order has been registered) may file an *ex parte* application the High Court to issue a restraint order (for securing property) or charging order (for securing a

fixed amount of money) (art.29(1)(b), (2)(b), Third Schedule (arts.6-8), MLA Act 2001). The High Court may issue the order unless it is contrary to the public interest to do so (art.6(4), MLA Act 2001).

Upon an application by the Attorney General, the High Court may also issue a restraint order in relation to property to which an instrumentality forfeiture order has been made, or where there are reasonable grounds for believing it may be issued in proceedings which are to be instituted (art.17, Third Schedule, MLA Act 2001).

The restraint or charging order will be discharged if judicial proceedings do not commence within 3 months (arts.6(3), 17(4), Third Schedule, MLA Act 2001).

Rules 11-16 of Order 89B of the Rules of the Court set out additional rules regarding restraint and charging orders.

**Search and seizure:** The Attorney General may apply to the High Court *ex parte* for a search and seizure warrant where satisfied there are reasonable grounds for believing a thing relevant to the criminal matter in the requesting State is located in Singapore. A warrant with respect to a financial institution cannot be made unless the thing can be particularized (art.33, MLA Act 2001; Order 89 B, r.20, Rules of the Court). The Court may issue the warrant if:

- (i) a production order previously issued was not complied with, or
- (ii) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from a foreign offence, there are reasonable grounds for believing the thing is likely to be of substantial value (whether by itself or together with another thing) to the criminal matter and does not consist of or include items subject to legal privilege, and it is not contrary to the public interest (s34, MLA Act 2001).

The Attorney General may order that any thing seized be sent to the requesting State (art.35(3), MLA Act 2001).

## **Extradition**

### **(i) Legal Basis**

Extradition is governed by the Extradition Act 1968 and may be granted to States on a treaty basis or where orders issued under Extradition Acts prior pre-dating 1968 continue to apply (art.3-5, Extradition Act 1968). Extradition may also be granted to Commonwealth States declared by the Minister (art.19, Extradition Act 1968).

Singapore has entered into extradition treaties with over 40 countries, which include Indonesia and special arrangements for the endorsement of warrants with Brunei Darussalam and Malaysia. Singapore does not consider UNCAC as a treaty basis for extradition.

Where a treaty basis does not exist for MLA, extradition may not be granted. Singapore may provide other assistance, such as information about a suspect's movements.

## **(ii) Dual criminality**

*Foreign countries:* Singapore applies conduct-based dual criminality to offences listed in the schedule to the Act (including UNCAC offences) or offences that would be so described if the description contained a reference to any intent or state of mind of the accused or to any circumstance of aggravation necessary to constitute the offence (art.2(1), 1<sup>st</sup> Schedule, Extradition Act 1968).

*Declared Commonwealth countries:* The same requirements apply as for foreign countries, except that the maximum penalty must be imprisonment of not less than 12 months or death (not applicable to the US, Germany or Hong Kong) (arts.2(1), 18, Extradition Act 1968).

## **(iii) Submission procedure and rules**

Requests must be submitted in writing English to the AGC directly or through the diplomatic channel. The AGC will review the request before making a recommendation to the Minister of Law (the Minister), who will determine whether to proceed with the request (art.10, Indonesia-Singapore Extradition Treaty). Urgent requests can be submitted by fax or email provided a hard copy is subsequently provided.

**Contents:** Content requirements are governed by the applicable treaty. Under the Indonesia-Singapore Extradition Treaty, the request must contain written confirmation by the central authority of the Requesting Party certifying that in his opinion, the documents submitted disclose the existence of sufficient evidence under the laws of the Requesting Party to justify a prosecution (art.6, Indonesia-Singapore Extradition Treaty).

**Authenticity:** Testimony given on oath or declared or affirmed to be true by a person or document received into evidence and a document certifying a person was convicted of an offence in a proceeding in a foreign State or declared Commonwealth country on a date specified are admissible as evidence for its contents if (i) certified by a Judge, Magistrate or officer in or of that State or country to be the original document containing or recording that testimony or a true copy of that original document and (ii) authenticated by the oath of a witness or by an official seal (art.42, Extradition Act 1968). A foreign warrant must be (i) signed by a Judge, Magistrate or officer in or of that State or country to be the original document containing or recording that testimony or a true copy of that original document and (ii) authenticated by the oath of a witness or by an official seal (art.42, Extradition Act 1968; Art.9, Indonesia-Singapore Extradition Treaty).

**Rule of specialty:** The requesting State's domestic law or an applicable treaty must provide that the requesting State will comply with the rule of specialty (art.7(2), Extradition Act 1968). Under the Indonesia Treaty, the States agree to comply with the rule of specialty (art.15, Indonesia-Singapore Extradition Treaty).

**Costs:** Costs are determined by treaty. Under the Indonesia treaty, Costs incurred in requested State are borne by them (art.16, Indonesia-Singapore Extradition Treaty).

#### (iv) Arrest and extradition procedure

##### a. Provisional arrest

Urgent requests for provisional arrest may be submitted directly to a Magistrate prior to the submission of an extradition request. A magistrate (or district court judge) may issue an arrest warrant when requested directly without Ministerial authorization (arts.10(1)(b),(2), 23(1)(b),(2), Extradition Act 1968), but must notify the Minister of such. The Minister may cancel the warrant (art.10(4),(5), 24(4),(5) Extradition Act 1968). If arrested, the suspect must be brought before a magistrate, and may be remanded in custody or bailed for a period of seven days, renewable for consecutive periods of seven days. The suspect must be released, however, if the Minister does not issue a notice authorizing the arrest within the seven-day period (arts.11(1)-(6), 25(1)-(6), Extradition Act 1968). Under the Indonesia Treaty, the suspect may be detained for a maximum of 45 days (arts.7-8, Indonesia-Singapore Extradition Treaty).

Under the Indonesia treaty, the request may be submitted through INTERPOL and include:

- A statement that the documents required for an extradition request are available and will be submitted before the period required for the suspect's release;
- The description of the extradition crime including when and where it was committed;
- A description of the suspect, including their identity, nationality, and probable location;
- The warrant of arrest or judgment of conviction (original or authenticated copies) against the suspect;
- Copies of the charges against the suspect; and
- A sworn statement setting out the facts of the case, including the sentence that can be or has been imposed, where applicable, how much of that sentence remains to be served (art.7, Indonesia-Singapore Extradition Treaty).

##### b. Extradition proceedings

**Arrest warrant:** The Minister may authorize by notice a magistrate (or district court judge) to issue an arrest warrant, or notify the magistrate of the extradition request if the suspect has already been arrested (arts.9(1), 23(1), Forms 1-2, Second Schedule, Extradition Act 1968). If the suspect has not been arrested, the magistrate may issue the warrant if they could do so if the crime had been committed in Singapore (arts.10(1), 24(1), Extradition Act 1968). After arrest, the magistrate may remand the suspect in custody or bail them for a period of seven days, renewable for consecutive periods of seven days (arts.11(1)-(4), 25(1)-(4), Extradition Act 1968). The suspect may be held other than in a prison if it would be dangerous to their life or prejudicial to their health (arts.11(8), 25(8), Extradition Act 1968).

**Extradition hearing:** The Magistrate may grant extradition and issue a detention order where (i) provided with a duly authenticated foreign warrant for the requisition of the suspect; and (ii) satisfied there is sufficient evidence to justify the trial of the suspect in Singapore if the offence had been committed there (*prima facie* standard) or, if already convicted in the foreign State, sufficient evidence that the suspect has been convicted (arts.11(7), s.25(7), Form 5, Second Schedule, Extradition Act 1968; art.3, Indonesia-Singapore Extradition Treaty). A person convicted of an offence in their absence will be treated as a suspect accused

of that offence when determining whether extradition should be granted (art.2(6), Extradition Act 1968).

**Appeal:** The suspect may apply for review of the decision within 15 days (arts.12(1), 27(1), Extradition Act 1968).

### **c. Surrender**

After 15 days, the Minister may order a warrant for surrender (arts.12(2), 27(2), Form 6, Extradition Act 1968). If the suspect is not surrendered within 2 months (30 days under the Indonesia treaty), upon their application to be released and proof that reasonable notice has been given to the Minister of the application, the Magistrate may order their release, unless reasonable cause for delay is shown (arts.13, 28, Extradition Act 1968; art.12, Indonesia-Singapore Extradition Treaty). Under the Indonesia treaty, a further extradition request may be refused if they are not surrendered by the deadline (art.12, Indonesia-Singapore Extradition Treaty).

**Delay and temporary surrender:** The surrender of a suspect held in custody or admitted to bail for an offence alleged to have been committed in Singapore, or undergoing a sentence for a conviction in Singapore, may be delayed until they have been discharged from custody or bail, whether as a result of his acquittal, on the expiration of his sentence or otherwise (arts.7(3), 21(2), Extradition Act 1968). Conditional surrender and enforcement of sentences is not provided for under Singaporean law. For requests from Indonesia, the request must be rejected without prejudice to a future request (art.13, Indonesia-Singapore Extradition Treaty).

### **d. Endorsement of Malaysian arrest warrants**

A Magistrate in Singapore may endorse an arrest warrant issued by judicial authorities in Malaysia for offences punishable by more than six months under issuing States' laws, upon which the warrant may be executed as if it was issued in Malaysia and the magistrate may order the suspect be surrendered to Malaysia (art.35(6), Form 9, Extradition Act 1992). (arts.32-33, Form 7, Extradition Act 1968). Upon arrest, the Magistrate may remand the suspect in custody or release them on bail for periods not exceeding seven days at a time (art.35(2), Extradition Act 1968).

If the Malaysian warrant is not produced to the Singaporean Magistrate, or the Magistrate requires further information or proof before endorsing the Malaysian warrant, the Magistrate may also issue their own warrant under circumstances that, in their opinion, justify the warrant, pending receipt of the Malaysian warrant (art.34, Form 8, Extradition Act 1968). If the Malaysian warrant is not produced in a reasonable time the suspect must be released or bail discharged.

**Surrender:** If the suspect is not surrendered within one month of the date of the court's final decision, upon their application to be released and proof that reasonable notice has been given to the Minister of the application, the Magistrate may order their release, unless reasonable cause for delay is shown (art.38, Extradition Act 1968).

The Magistrate may order that surrender be delayed if it would be dangerous to the suspect's life or prejudicial to their health, or would be unjust, oppressive or too severe a punishment given the trivial nature of the offence, the accusation not being made in good faith or the passage of time, until such factors are no longer present (arts.35(7), 36, Extradition Act 1968).

**Appeal:** The suspect may apply to the High Court for review of the decision to endorse the warrant or delay surrender (art.37, Extradition Act 1968).

**(v) Prosecution in Singapore**

Singapore does not place restrictions on extradition of nationals and has no *aut dedere aut judicare* provisions under its domestic law. Singapore may prosecute suspects for which extradition was refused on other grounds.

**(vi) Additional assistance provided**

Any property in the possession of the prisoner at the time of his apprehension that may be material as evidence in proving the offence can be transferred if the Minister approves (arts.12(5), 27(5), 35(11), Extradition Act 1968). Under the Indonesia treaty, such property may be temporarily retained or handed over on condition it be returned as soon as possible after trial if liable to seizure or confiscation in Indonesia (art.13, Indonesia-Singapore Extradition Treaty (subject to any terms and conditions)).

**(vii) Concurrent requests**

Upon receipt of concurrent requests, the Minister must consider all the circumstances of the case, in particular:

- The relative seriousness of the offences;
- The relative dates on which the requests were made; and
- The citizenship or other national status of the suspect and his ordinary residence (art.41, Extradition Act 1968).

## THAILAND

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### Mutual legal assistance

#### (i) Legal Basis

Extradition is governed by the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) (MLA Act 1992), Ministerial Regulations No. 1 B.E. 2537 (1994) Issued under the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) (MLA Reg No.1 of 1994) and Ministerial Regulations No. 2 B.E. 2537 (1994) Issued under the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) (MLA Reg No.2 of 1994). Extradition can be granted upon a treaty or reciprocity basis (art.9(1), MLA Act 1992). The MLA Act 1992 applies subject to the provisions of any relevant treaty.

Thailand has ratified UNCAC, UNTOC, and the AMLAT, and entered into MLA treaties with Australia, Belgium, Canada, China, France, India, Malaysia, Norway, the United Kingdom, the United States and others.

#### (ii) Dual criminality

Thailand requires conduct-based dual criminality, unless a treaty specifies otherwise (art.9(2), MLA Act 1992). There is no minimum punishment requirement.

### **(iii) Submission procedure and rules**

Requests pursuant to a treaty should be made to the Attorney General directly and, in the absence of a treaty, through diplomatic channels (arts.7, 10, MLA Act 1992). Requests should be in Thai or English, or accompanied by an authenticated translation into one of these languages. Requests must conform to the forms, regulations, means and conditions defined by the central authority (arts.10, MLA Act 1992). Requests cannot be submitted through INTERPOL or orally.

A board composed of representatives from the Ministry of Defence, MOFA, the Ministry of Interior, MOJ, OAG, a public prosecutor and not more than four others provide opinions on receipt of requests which may affect national sovereignty or security, crucial public interests and international relations or relate to a political or military offence. Where the OAG and Board disagree, the request is referred to the Prime Minister for a decision (arts.8, 11(5), 38(2), MLA Act 1992).

If the requirements are not met, the central authority may refuse assistance with reasons, or impose conditions as necessary (art.11, MLA Act 1992).

There is no special procedure for urgent requests.

Requests must contain:

- (i) Name of the authority of the Requesting State
- (ii) Facts and laws relating to the request;
- (iii) Purpose and necessity of the request;
- (iv) Details as required for each category of the requests as specified in the Act;
- (v) In case of Forfeiture or Seizure of Property:
  - A description of the property and its location
  - For forfeiture: A final court judgment;
  - For seizure: A court order.

**Authentication:** Documents must be the form and means identified in any treaty, or as specified by the OAG (arts.16, 20, MLA Act 1992).

**Confidentiality:** In practice, where requested, Thailand complies with requests for confidentiality.

**Rule of specialty:** No assurance is required under domestic law.

**Postponement of assistance:** Execution of a request may be postponed (or executed with conditions) if it would interfere with the investigation, inquiry, prosecution or other criminal proceeding pending in Thailand (art.11 MLA Act 1992).

**Costs:** Thailand bears the ordinary costs of executing requests. Otherwise costs are governed by any applicable treaties, or shall be paid according to the costs agreed to be borne by the requesting State, with the remainder by the relevant competent authority in Thailand (MLA Reg No.2 of 1994).

**(iv) Assistance available**

The MLA Act 1992 provides a non-exhaustive list of assistance that may be granted., including:

**Taking a witness statement and gathering evidence:** The Director General of the Police Department may to take a statement or gather evidence, including through search and seizure, upon reasonable grounds under the Criminal Procedure Code B.E. 2477 (1934) (CPC 1934) (arts.12(1), 15, MLA Act 1992). Where the requesting State requests the statement to be taken or evidence adduced in court, the request is referred to the Chief Prosecutor for Litigation (art.12(2), MLA Act 1992) to apply to the Court for the process to be carried out under the CPC 1934 (art.17, Chief Prosecutor for Litigation (art.12(2), MLA Act 1992).

**Access to documents or information in government possession:** The request is directed to the agency in possession, who may provide the documents with conditions. The official in possession of the documents or information must attest to them (arts.19-20, MLA Act 1992).

**Service of documents:** The request is directed to the Director General of the Police Department (art.12(1), MLA Act 1992). Where the documents require a person's appearance, the request must be submitted within a reasonable time of the scheduled appearance (art.21, MLA Act 1992). The penalties for non-compliance with service only apply to nationals of the requesting State (art.22, MLA Act 1992).

**Search and seizure of an article:** The request is directed to the Director General of the Police Department (art.12(1), MLA Act 1992), who shall issue a warrant in accordance with the CPC 1934. The authority carrying out the warrant must certify continuance of custody, identity of the article and integrity of its condition (arts.23-25, MLA Act 1992).

Pursuant to domestic procedures, the Anti-Money Laundering Office may apply to the court for a 90-day warrant to access account information, communications data or computer files where there is probable cause to believe that a customer's account at a financial institution, equipment or communication device, or any computer has been used or may be used for the commission of a money laundering offence (art.46, Anti-Money Laundering Act 1999).

**Transfer of persons in custody to give evidence:** The request is directed to the Director General of the Correctional Department for execution (arts.12(3), 26-29, MLA Act 1992). If granted, the Director General of the Department of Corrections should request the person's consent pursuant to the requirements of the regulations, failing which the request should be refused. The person in custody may revoke their consent at any time until their departure from Thailand (arts.1-4, MLA Reg No.1 of 1994; see also *Inquiry Form for Consent of Persons in Custody in Thailand to be Transferred to Testify in the Requesting State*, attached to the Regulations). Articles 6 to 8 of MLA Reg No.1 of 1994 set out the process for the person's transfer and return. Articles 4 to 13 of the Rules of the Chief Justice make provision for evidence to be provided by videoconference.

**Locating persons for the purpose of an investigation, inquiry, prosecution or other criminal proceeding:** The request is directed to the Director General of the Police Department (arts.12(1), 30, MLA Act 1992).

**Initiation of criminal proceedings:** The request is directed to the Director General of the Police Department and Chief Prosecutor for Litigation to carry out in accordance with the CPC 1934 (arts.12(4), 31, MLA Act 1992)

**Forfeiture or seizure of properties:** The request is directed to the Chief Prosecutor for Litigation to apply to the court for a forfeiture or seizure order (arts.12(2), 32, MLA Act 1992). A forfeiture order may be obtained if a requesting State court has issued a final forfeiture order or seizure order obtained if the requesting State court ordered they be seized but has yet issued a final order that they be forfeited, provided the property can be forfeited or seized under Thai law (art.33, MLA Act 1992). The applicable procedure under the CPC 1934 applies (art.34, MLA Act 1992). Direct registration of foreign orders and forfeiture of property of equivalent value is not possible. Properties forfeited become the property of Thailand (art.35, MLA Act 1992). They may be shared pursuant to any treaty to such effect.

The Transaction Committee, appointed by the Anti-Money Laundering Board, can issue an order restraining a transaction for up to 3 business days where there is probable cause that any transaction is involved or may be involved in the commission of a money laundering offence or up to 10 business days where there is evidence of such (arts.35-36, Anti-Money Laundering Act 1999). It can also restrain or seize assets up to 90 days where there is probable cause to believe that there may be a transfer, distribution, placement, layering, or concealment of any asset related to the commission of an offence (48, Anti-Money Laundering Act 1999).

## **Extradition**

### **(i) Legal Basis**

Extradition is governed by the Extradition Act B.E. 2551 (2008) (Extradition Act 2008) to the extent it not inconsistent with treaties to which Thailand is a party (art.4, Extradition Act 2008) and the CPC 1934 to detention and extradition procedures which are provided for in the Extradition Act 2008 (s,18, Extradition Act 2008).

Thailand has ratified UNCAC and UNTOC and has entered into bilateral treaties with Cambodia, Indonesia, Malaysia, the Philippines, and Lao PDR, as well as the United States, the United Kingdom, Canada, China, Belgium, South Korea, Bangladesh, Fiji, and Australia. Thailand does not consider UNCAC as a basis for extradition.

### **(ii) Dual criminality**

Extradition is conditional on conduct-based dual criminality and a minimum punishment of one-year imprisonment or death. Extradition for ancillary offences that do not meet the minimum punishment required is permitted if the offence relates to the offence for which extradition has been granted (art.7, Extradition Act 2008). Under the Cambodia and Lao PDR treaties, where a person has already been sentenced to imprisonment or other form of detention by the requesting party, at least six months must remain to be served (art.1, Cambodia-Thailand Extradition Treaty; arts.1-2, Lao PDR Treaty).

Under the Indonesia, Malaysia and Philippines treaties, extradition is also possible for a list of specified crimes, which includes embezzlement by a public officer (art.II, Malaysia-Thailand Extradition Treaty) and, in the case of Indonesia and the Philippines, misappropriation, bribery, and corruption (art.II, Philippines-Thailand Extradition Treaty; art.2, annex 2, Indonesia-Thailand Extradition Treaty).

### **(iii) Submission procedure and rules**

Requests made pursuant to treaty must be submitted directly to the Office of the Attorney General (OAG). All other requests must be sent through diplomatic channels (art.8, Extradition Act 2008). For requests submitted through diplomatic channels, MOFA will determine whether the request affects international relations and, if so, forward it to cabinet for their approval, before sending it to the Ministry of Justice for execution (art.13, Extradition Act 2008).

Generally, requests must be submitted in writing in Thai (or English under the Cambodian, Lao PDR, Malaysia and Philippines treaties), with certification of the translation.

Requests must be accompanied by:

- For a request for extradition of a suspect sought for prosecution, a copy of the arrest warrant issued by the requesting State and evidence justifying that suspect's arrest and committal for trial;
- For a request for extradition of a person who has been found guilty:
  - (viii) A copy of the judgement;
  - (ix) Evidence showing the judgement refers to that person;
  - (x) A statement showing to what extent the sentence has been carried out; and
  - (xi) A statement as to the legal means available to the person to prepare their defence or have the case retried in their presence;
- The text or a statement of the charges and applicable law, as well any time limit on the prosecution or execution of punishment;
- A recital of acts for which extradition is requested, including the name and identity of the suspect, location if known (as well as documents to identify the person and their probable location), the person's acts or omissions and the time and place of their commission; and
- Evidence which would justify the person's arrest in Thailand for the extradition crime (art.7, Cambodia-Thailand Extradition Treaty; art.VI, Malaysia-Thailand Extradition Treaty; art. XVI, Philippines-Thailand Extradition Treaty).

**Authentication:** Under the Cambodia treaty, the certification of evidence must be signed and sealed (art.7, Cambodia-Thailand Extradition Treaty). Under the Malaysia-Thailand Extradition Treaty, evidence must be certified by a judge, magistrate or officer of the requesting State and authenticated by the oath of a witness or seal of a Minister, or any other mode of authentication provided for under Thai law (art.X, Malaysia-Thailand Extradition Treaty).

**Confidentiality:** In practice, requests are confidential. There is no obligation under domestic law to inform the requesting State if the request will be disclosed.

**Rule of speciality:** A requesting State must comply with the rule of specialty (art.11, Extradition Act 2008). Under the Cambodia, Indonesia, Malaysia and Philippines treaties, the States agree to comply with the rule of specialty (art.15, Cambodia-Thailand Extradition Treaty; art.8, Indonesia-Thailand Extradition Treaty; art.VI, Malaysia-Thailand Extradition Treaty; art.IX, Philippines-Thailand Extradition Treaty).

**Conditions:** If the form (procedure or content) requirements are not met, the OAG may impose conditions (art.14(1), Extradition Act 2008). If the OAG determines the request affects international relations, it shall notify the requesting State or MFA for further action (art.14(4), Extradition Act 2008).

**Costs:** Costs are determined by treaty. Under the Cambodia, Indonesia, Lao PDR, Malaysia and Philippines treaties, expenses incurred until surrender are borne by Thailand (art.19, Cambodia-Thailand Extradition Treaty; art.19, Lao PDR Treaty; art.14, Indonesia-Thailand Extradition Treaty; art.XV, Malaysia-Thailand Extradition Treaty; art. XVI, Philippines-Thailand Extradition Treaty).

#### **(iv) Arrest and extradition procedure**

##### **a. Provisional arrest**

Where urgent, a requesting State may submit a written request directly to the OAG or, where no treaty exists, through the diplomatic channel, for the provisional arrest of an accused pending submission of an extradition request (art.15, Extradition Act 2008; art.9, Cambodia-Thailand Extradition Treaty; art.9, Indonesia-Thailand Extradition Treaty; art.X, Philippines-Thailand Extradition Treaty). In practice, provisional arrest requests may be submitted via fax or email, provided the formal request for provisional arrest is submitted prior to the suspect's arrest.

Under the Cambodia, Lao PDR, Indonesia, Malaysia and Philippines treaties, the request must contain:

- A description of the person sought and their location;
- A brief statement of facts, including a statement as to the crime and where it was committed;
- A statement of the existence of the warrant of arrest or judgement; and
- A statement that a request for extradition will follow (art.9, Cambodia-Thailand Extradition Treaty; art.9, Lao PDR Treaty; art.9, Indonesia-Thailand Extradition Treaty; art.IX, Malaysia-Thailand Extradition Treaty; art.X, Philippines-Thailand Extradition Treaty).

Under the Malaysia treaty, the existence of a sentence or warrant issued by the competent authority of the requesting State must be proved and the nature of the offence be clearly stated (art.IX, Malaysia-Thailand Extradition Treaty).

The OAG will request the public prosecutor to obtain a warrant from the court for the arrest of the suspect, who must be brought before the court without delay to issue a detention order (arts.14(1), 15, Extradition Act 2008).

The extradition request must be submitted within 60 days or by a date prescribed by the court not exceeding 90 days (or, in the case of the Philippines and Indonesia, 20 days; Cambodia, 2 months; Malaysia, 2 months or period applied for), or the person will be released (art.15, Extradition Act 2008; art.9, Cambodia-Thailand Extradition Treaty; 9,art.9, Lao PDR Treaty; Indonesia-Thailand Extradition Treaty; art.XIII, Malaysia-Thailand Extradition Treaty; art.X, Philippines-Thailand Extradition Treaty).

#### **b. Extradition proceedings**

**Arrest warrant:** If the accused is not already detained upon a provisional arrest warrant, the OAG will direct the public prosecutor to seek an arrest warrant for the suspect (art.14(1), Extradition Act 2008; art.11, Cambodia-Thailand Extradition Treaty; art.11, Lao PDR Treaty). The suspect will be detained during trial, unless bailed by the court (art.18, Extradition Act 2008; s.108, Criminal Procedure Code).

**Simplified extradition:** If the suspect voluntarily consents to surrender in writing, the Court upon petition of the prosecutor may order detention for extradition. If consent is revoked, the court shall proceed with an extradition hearing. If the accused consents at any point during the hearing, it shall be suspended (arts.27-28, Extradition Act B.E 2551). Under the Cambodia and Lao PDR treaties, the suspect must be informed of the right to extradition proceedings (art.10, Cambodia-Thailand Extradition Treaty; art.10, Lao PDR Treaty).

**Extradition hearing:** The Prosecutor must file an application to the Criminal Court in Bangkok. The accused must be represented by a private or court-appointed lawyer (art.18, Extradition Act 2008). To grant extradition, the court must investigate the case as if committed in Thailand and be satisfied that there is sufficient evidence against the person sought to commit him/her to trial if the offence had been committed in Thailand (art.19, Extradition Act 2008; arts.VIII, XI, Malaysia-Thailand Extradition Treaty).

**Appeal:** If the court rejects the application, the prosecution must notify the court of its intention to appeal within 72 hours or the accused will be released. An appeal must be filed within 30 days (art.19, Extradition Act 2008). Where the court grants extradition, the accused has 30 days from the date of the detention order to appeal (art.19, Extradition Act 2008).

#### **c. Surrender**

The accused must be extradited within 90 days (in the case of Cambodia, Lao PDR, Indonesia and the Philippines, within 15 days unless reasons for the delay beyond their control exist, and in the case of Malaysia, after 15 days), or any extended period requested by the prosecutor and granted by the court (to a maximum of 30 days for Indonesia and the Philippines), at the end of which the accused must be released with prejudice to a request for extradition for the same offence but not to a request for prosecution in Thailand (arts.20, 22-23, Extradition Act 2008; art.12, Cambodia-Thailand Extradition Treaty; art.12, Lao PDR Treaty; art.10, Indonesia-Thailand Extradition Treaty; art.XI, Malaysia-Thailand Extradition Treaty; art.XI, Philippines-Thailand Extradition Treaty).

**Delay or conditional surrender:** Where the suspect is being prosecuted in the Thailand for another offence, the accused may be surrendered, or their extradition may be suspended until the sentence is delivered but not served or they may be temporarily transferred until the conclusion of the trial in the requesting State (arts.14(2), 24, Extradition Act 2008; art.13, Cambodia-Thailand Extradition Treaty; art.11, Indonesia-Thailand Extradition Treaty; art.XII, Philippines-Thailand Extradition Treaty). Under the Lao PDR treaty, if delay would cause the time period for prosecution to expire or impede the investigation, may temporarily extradite the person until a time agreed by the States (art.13, Lao PDR-Thailand Extradition Treaty).

#### **(v) Prosecution in Thailand**

Thailand may extradite its nationals if the request is made pursuant to treaty or upon a reciprocity basis, or the suspect consents (art.12, Extradition Act 2008).

If extradition is refused, the OAG may notify the public prosecutor for the purposes of criminal prosecution against the person under Thai law (art.25, Extradition Act 2008). Under the Cambodia, Lao PDR, Indonesia and Philippines treaties, the obligation to prosecute applies only to Thai nationals (art.5, Cambodia-Thailand Extradition Treaty; art.5, Lao PDR Treaty; art.4, Indonesia-Thailand Extradition Treaty; art.VI, Philippines-Thailand Extradition Treaty). Thailand has not established jurisdiction over corruption offences when the alleged offender is present in its territory and it does not extradite them because they are a Thai national or for other reasons in cases other than money-laundering (art.6(3) AMLA). The requesting State must transfer the case file.

#### **(vi) Additional assistance provided**

Under the Cambodia and Lao PDR treaties, Thailand may seize and hand over property which may be required as evidence or which has been acquired as a result of the offence and is in the possession of the person at the time of their arrest or subsequently discovered (art.16, Cambodia-Thailand Extradition Treaty; art.16, Lao PDR Treaty). Under the Malaysia and Philippines treaties, upon request, Thailand may hand over any articles seized which were in the possession of the person upon arrest and which serve as proof to the crime (art.XIV, Indonesia-Thailand Extradition Treaty; art.XIII, Philippines-Thailand Extradition Treaty). Under the Philippines Treaty, the property may be handed over whether the person to be extradited escapes or dies (art.XIII, Philippines-Thailand Extradition Treaty).

Under the Cambodia, Lao PDR and Philippines treaties, if the property is liable to seizure or confiscation in Thailand, Thailand may temporarily retain it or hand it over on condition it be returned (art.16, Cambodia-Thailand Extradition Treaty; art.16, Lao PDR Treaty; art.XIII, Philippines-Thailand Extradition Treaty).

#### **(vii) Concurrent requests**

The MOJ shall consider the following factors for determining prioritization of concurrent requests:

- whether or not the Requesting State has an extradition treaty with Thailand;
- the place where each offense was committed;

- the severity of offense which affects Requesting State and penalty;
- the order of request received from Requesting State;
- the nationality of the offender;
- the interest and readiness of prosecution; and
- other reasons with respect to international relation according to the opinion given by the Ministry of Foreign Affairs (art.26, Extradition Act 2008).

Under the Malaysia treaty, the first in time prevails (art.XII, Malaysia-Thailand Extradition Treaty).

## VIETNAM

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### Mutual legal assistance

#### (i) Legal Basis

Under the Law on Legal Assistance 2007 (LLA 2007) and Criminal Procedure Code 2015 (CPC 2015), MLA can be provided in relation to criminal and civil matters. MLA can be provided on a treaty or reciprocity basis (arts.3-4, LLA 2007; arts.491(3), 492, 497, CPC 2015). The Law on the Prevention of Money Laundering 2012 (AML Law 2012) and Anti-Corruption Law 2005 (ACL 2005) also contain provisions on MLA related to money-laundering offences and corruption offences respectively.

Vietnam has entered into bilateral MLA treaties with Lao PDR, Cambodia, Russia, the Czech Republic / Slovakia, Cuba, Hungary, Bulgaria, Poland, China, Belarus, Mongolia, Ukraine,

North Korea, South Korea, India, Spain, Kazakhstan, Australia, France, the United Kingdom and Algeria. Under the Lao PDR-Vietnam treaty, the States apply their domestic laws when implementing an MLA request<sup>2</sup>. Vietnam has ratified UNCAC, UNTOC and AMLAT, although does not use international conventions as a basis for MLA.

## **(ii) Dual criminality**

Vietnam requires conduct-based dual criminality (art.21(1)(e), LLA 2007).

## **(iii) Submission procedure and rules**

Requests must be in writing in English (or with a translation in English) or language stipulated by treaty (Vietnamese under the Lao PDR Treaty) or agreed between the States and submitted to the central authority directly or, where based on reciprocity, to both Supreme People's Procuracy and diplomatic channels (arts.5, 11(2), LLA 2007; art.15, Lao PDR-Vietnam Legal Assistance Treaty). The competent authority must notify the State Bank of Vietnam or the Ministry of Justice if a request is "for coordinated implementation" (art.48(4), AML Law 2012).

Requests for assistance must include three sets of the following documents

- A letter of the competent agency conducting criminal proceedings requesting for legal assistance in criminal matters; and
- A dossier including:
  - (i) Date of and place of the request;
  - (ii) Name and address of the agency making the request;
  - (iii) Name and address or head office of the requested agency;
  - (iv) Full name and address of residence or working place of the individual; name and address or head office of the agency or organization directly relating to the request; and
  - (v) Purposes of the request; a brief description of the criminal case and related circumstances, the applicable article and punishment; progress of the investigation, prosecution and trial; and time limit within which compliance with the request is desired.

The request may also be required by Vietnam to include:

- (i) Identity, nationality and whereabouts of the person sought or of those who are in possession of the information relating to the case;
- (ii) For a request for collection of evidence, matters to be examined; questions to be posed to that person; a description of the documents, records or exhibits to be provided and, if possible, a description of the identity of the person requested to produce those documents, records or exhibits;
- (iii) Actions to be done by, and questions to be posed to the witness or expert to be summoned;
- (iv) For a request for search, seizure, trace or confiscation of asset of crime, a description of the asset sought and place where the asset may be found; grounds on which the requesting State believes that the asset of crime is located in the requested State and may be under jurisdiction of that State;
- (v) For a request for legal assistance in criminal matters, which may lead to the discovery and recovery of proceeds of crime, measures to be taken;

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<sup>2</sup> The Cambodia-Vietnam MLA Treaty was not available during the drafting of this guide

- (vi) Requirements and procedures that the requesting State wants to be followed to ensure successful execution of the request and methods or modes of providing exhibits or articles;
- (vii) Requirement for keeping the request confidential;
- (viii) If a competent person of the requesting State must travel to the territory of the requested State for purposes concerning the request for legal assistance in criminal matters, the purposes, estimated time and schedule of the travel; and
- (ix) The criminal judgment or decision of the court and documents, evidence or other information necessary for the execution of the request.

Arts.18-19, LLA 2007.

**Authentication:** Requests and supporting documents are recognized certified by MOFA, the Vietnamese diplomatic or consulate agencies or other authorized Vietnamese agencies abroad (art.7, LLA 2007; art.16(1), Lao PDR-Vietnam MLA Treaty).

**Confidentiality:** Requests and actions taken to execute them are confidential, unless the request cannot be executed without breaching confidentiality requirements under State secret laws, in which case the central authority and requesting State may agree on alternate measures (art.27(2), LLA 2007).

**Rule of specialty:** Information or evidence can only be used for the purposes for which it was transferred (art.27(1), LLA 2007).

**Procedure followed:** The procedure to be followed may be specified in request (arts.6, 19(2)(e), LLA 2007). The handing over of documents, objects and money must be in accordance with Vietnamese laws (art.9, LLA 2007). For requests from judiciary of requesting State, the procedure specified may be followed unless contrary to domestic law (art.7, Lao PDR-Vietnam MLA Treaty).

**Postponement of assistance:** MLA may be postponed if execution of the request would be an obstacle to an investigation, prosecution or trial, or the enforcement of judgment in Vietnam (art.21(2), MLA Law).

**Costs:** Expenses must be paid by the requesting State, unless otherwise agreed (arts.16, 31, LLA 2007). Under the Lao PDR treaty, each party is responsible for costs incurred in its territory (art.16, Lao PDR-Vietnam Legal Assistance Treaty).

**(iv) Assistance available**

The LLA 2007, the CPC 2015, the AML Law 2012, and the ACL 2005 provide a non-exhaustive list of assistance that may be granted, including:

**Service of summons to appear on witnesses and experts:** A request for service of a summons to appear in the requesting State must be submitted at least 90 days in advance of the required date of the person's attendance in the requesting State. The request may be carried out in accordance with Vietnamese laws (art.24, LLA 2007; art.5, Lao PDR-Vietnam Legal Assistance Treaty).

Under the Lao PDR Treaty, a request by judicial authorities of the requesting State must be accompanied by a duly certified translation in the requested State's language including the name and residence of the recipient, with relevant documents. If the notified address is incorrect, the requested State must take measures to locate the person (art.9, Lao PDR-Vietnam Legal Assistance Treaty). Requesting States can serve documents on their nationals through their embassies and consulates, without the right to apply coercive measures (art.11, Lao PDR-Vietnam Legal Assistance Treaty).

**Transfer of persons in custody to assist a prosecution:** A person in custody may only be transferred if (i) they consent, and (ii) the requesting State confirms in writing it will ensure protection of the life, health, travel, accommodation and meals, time and manner of receiving and returning the person, and any other specific conditions imposed by Vietnam, in accordance with Vietnamese and international law governing transfer of persons (art.25, LLA 2007; art.8(3), Lao PDR-Vietnam Legal Assistance Treaty). The Supreme People's Court is responsible for deciding on a request for transfer of a person who is serving a sentence of imprisonment (art.63, LLA 2007). The CPC 2015 sets out procedures regarding summoning witnesses for deposition (arts.185-188 CPC 2015; see also art.496(2)). Under the Lao PDR Treaty, the remuneration provided to an expert must be specified in the summons, the person transferred may be paid an advance on their allowances and any remuneration, and they have the right to refuse the transfer without any coercive measures being applied (art.8, Lao PDR-Vietnam Legal Assistance Treaty).

**Collection and provision of evidence:** No additional rules (art.17, LLA 2007; art.5, Lao PDR-Vietnam Legal Assistance Treaty).

**Criminal prosecution of person under the criminal procedure code of Vietnam:** The request will be transferred to the People's Procuracy at the provincial level or to the Ministry of Public Security if at the investigation stage, or to the People's Procuracy at the provincial level if in the prosecution stage (arts.17, 29, LLA 2007).

**Investigation of a foreign national residing in Vietnam:** The Supreme People's Procuracy must transfer the request to a competent investigating agency within 5 days (arts.17, 30, LLA 2007).

**Exchange of information and documents, including copies of a final court judgment or decision against a citizen of the requesting State:** There are no provisions preventing the supply of government records or information in the public domain. No additional rules are provided (arts.16, 26, LLA 2007; art.47, AML Law 2012; art.5, Lao PDR-Vietnam Legal Assistance Treaty).

**Search, impound, distrain, freeze, seize and appropriate assets gained through crimes:** The provisions of the CPC 2015 and other Vietnamese laws must be followed when executing such a request (art.507(2), CPC 2015; for procedures, see arts.128-130, 192-195, CPC 2015; see also art.47, AML Law 2012). Any assets must be handled according to international agreements or on a case-by-case basis (art.507(3), CPC 2015). The ACL 2005 requires

Vietnamese authorities to cooperate with treaty States to recover corruption-related properties and return them to their lawful owners (arts.70-71, ACL 2005).

**Cooperating in investigations and special investigative methods and proceedings:** The provisions of the CPC 2015 and other Vietnamese laws must be followed when executing such a request (art.508(2), CPC 2015; art.5, Lao PDR-Vietnam Legal Assistance Treaty; for procedures, see arts.223-228, CPC 2015).

**Recognition and enforcement of sentences and decisions of the Court and economic arbitration:** Under the Lao PDR Treaty, upon request, Vietnam must recognize and enforce judgements and decisions on property in criminal cases issued by Lao PDR, provided:

- The judgement or decision is legally enforceable in Lao PDR;
- The affected parties and their representatives were able to attend the proceedings giving rise to the judgment or decision and their procedural rights were ensured; and
- Enforcement of the judgment or decision does not prejudice national sovereignty or security and is not in conflict with the fundamental principles of Vietnamese law (art.45, Lao PDR-Vietnam Legal Assistance Treaty).

The application for enforcement must contain:

- The original or copy of the judgment or decision and, where the judgment or decision does not clearly state its effect, certification that the judgment or decision is legally valid and enforceable;
- Documentation relating to the person against whom the judgement or decision is to be enforced and that that persona and affected parties have been afforded the right of appeal;
- A certified translation of the request and supporting documents (art.47, Lao PDR-Vietnam Legal Assistance Treaty).

The enforcement of judgments and decisions of courts must comply with Vietnamese laws (art.49, Lao PDR-Vietnam Legal Assistance Treaty).

## **Extradition**

### **(i) Legal Basis**

Under the LLA 2007 and CPC 2015, extradition is may be granted on a treaty or reciprocity basis (arts.3-4, LLA 2007; arts.491(3), 492, 497, CPC 2015). Vietnam has entered into bilateral extradition treaties with Indonesia and Lao PDR (also for MLA, as above), as well countries including as Algeria, Australia, Belarus, Bulgaria, South Korea, the Czech republic / Slovakia, Cuba, Hungary, Mongolia, North Korea, Poland, Russia, and Ukraine. Vietnam has also negotiated a treaty with Cambodia which is yet to be ratified<sup>3</sup>. Vietnam has also ratified UNCAC and UNTOC, although declared that it does not consider UNCAC a basis for extradition.

### **(ii) Dual criminality**

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<sup>3</sup> The Indonesia-Vietnam treaty was not available during the drafting of this guide.

Vietnam requires conduct-based dual criminality for offences carrying a minimum term of imprisonment of one year (two years under the Cambodia Treaty) or life imprisonment or death, or who have been sentenced to imprisonment and the remaining term to be served is at least six months (arts.33, 35(1)(dd), (2), LLA 2007; art.60, Lao PDR-Vietnam Legal Assistance Treaty; art.2, Cambodia-Vietnam Extradition Treaty). A person may be extradited for offences committed outside both the requesting and requested States if they committed acts constituting an offence under Vietnamese law (art.33(3), LLA 2007). Under the Cambodian treaty, Vietnam has discretion to extradite for offences outside requesting State territory where the offence is penalized in Vietnam and the perpetrator is a Cambodian citizen. (art.2 Cambodia-Vietnam Extradition Treaty).

Vietnam can only grant extradition for ancillary offences not meeting the dual criminality requirement on a reciprocity basis (see art.37(1)(dd), LLA 2007).

### **(iii) Submission procedure and rules**

Requests must be submitted in writing in English or with a translation into English or language stipulated in treaty or agreed between parties (Vietnamese under the Cambodia and Lao PDR treaties), to the Ministry of Public Security directly or through INTERPOL or ASEANAPOL, or through diplomatic channels where based on reciprocity (art.5, LLA 2007; arts.8-9, Cambodia-Vietnam Extradition Treaty; arts.6-7, Lao PDR-Thailand Extradition Treaty). Within 20 days of receipt the Ministry of Public Security must forward the request to the competent provincial level People's Courts for consideration (art.38, LLA 2007).

Requests must include three sets of the following documents:

- Written request for extradition containing:
  - (i) Date, month, year and place of making the request;
  - (ii) The reason for the extradition request;
  - (iii) Name and address of the competent body requesting the extradition;
  - (iv) Name and address of the body requested to effect the extradition; and
  - (v) Full name, gender, birth date, nationality, residence place of, and other necessary information on the person requested for extradition.
- A dossier containing:
  - (i) The summarized content of the case;
  - (ii) Legal provisions applicable for the determination of factors constituting the crime and name of the crime, the provisions on penalties, the statute of limitations for penal liability examination or the statute of limitations for enforcement of penalties against that crime;
  - (iii) Papers on the nationality and place of residence of the person requested for extradition, if any; and
  - (iv) Other documents describing the identity and photos of the person requested for extradition as required by international law and practice.

Additionally, requests for the purposes of prosecution must contain:

- A copy of the arrest or detention warrant of a competent body of the extradition- requesting country; and
- Written certification that the person requested for extradition is the one mentioned in the arrest or detention warrant.

Additionally, requests for the purposes of judgement enforcement must contain:

- A copy of the criminal judgment or ruling of the court of the extradition-requesting country; and
- The written certification that the person requested for extradition is the one already sentenced.
- Under the Cambodia Treaty, a statement of the extent to which the sentence has been carried out and of the legal means available to the accused to prepare his or her appeal or have the case retried in his or her presence.

Arts.36-37, LLA 2007; art.8, Cambodia-Vietnam Extradition Treaty; art.62, Lao PDR-Vietnam Legal Assistance Treaty.

**Authentication:** Requests and supporting documents are recognized if certified by MOFA, a Vietnamese diplomatic or consulate agency, or other authorized Vietnamese agency abroad (art.7, LLA 2007; art.10, Cambodia-Vietnam Extradition Treaty; art.16(1), Lao PDR-Vietnam Legal Assistance Treaty).

**Rule of specialty:** The requesting State must provide an assurance to comply with the rule of specialty (art.34, LLA 2007). Under the Lao PDR and Cambodia treaties, the States agree to comply with the rule of specialty (art.17, Cambodia-Vietnam Extradition Treaty; art.72, Lao PDR-Vietnam Legal Assistance Treaty).

**Consultation:** If the request does not meet the submission requirements, the Ministry of Public Security may request the submission of additional information within a specified time period, extendable for up to two months. If the information is not provided, the request will be considered withdrawn (art.11, Cambodia-Vietnam Extradition Treaty art.63, Lao PDR-Vietnam Legal Assistance Treaty).

**Costs:** The requesting State pays costs, unless otherwise agreed (art.48, LLA 2007). Under the Cambodia and Lao PDR treaties, each party is responsible for costs incurred in its territory (art.76, Lao PDR-Vietnam Legal Assistance Treaty; art.20, Cambodia-Vietnam Extradition Treaty).

#### **(iv) Arrest and extradition procedure**

##### **a. Provisional arrest**

The LLA 2007 does not govern the provisional arrest of a suspect prior to the extradition request, however under the Cambodia and Lao PDR treaties, where urgent, the suspect may be provisionally arrested prior to the submission of an extradition request. The request must be made in writing and submitted through INTERPOL or the diplomatic channel, or by other means (including electronic means). Under the Lao PDR treaty, the request may also be made by phone (art.12, Cambodia-Vietnam Extradition Treaty; art. 65, Lao PDR-Vietnam Legal Assistance Treaty). Under the Cambodia Treaty, the request must contain:

- A statement of reasons for the urgency;
- A description of the person sought, including a photograph or fingerprints if possible;
- The location of the suspect, if known;
- A statement of the facts;

- Provisions of the law describing the elements of the offence and punishment;
- A warrant of arrest or final judgement of conviction;
- A statement that punishment can or has been imposed; and
- A statement that the request for extradition will follow (art. 12(3), Cambodia-Vietnam Extradition Treaty).

The suspect must be released if the extradition request is not submitted within 60 days of their arrest (art.12(4), Cambodia-Vietnam Extradition Treaty; art.66, Lao PDR-Vietnam Legal Assistance Treaty). Otherwise, the suspect cannot be released under final adjudication of the extradition decision (art.66, Lao PDR-Vietnam Legal Assistance Treaty).

#### **b. Extradition proceedings**

Within four months of receipt of an extradition request, the provincial level People's Court will determine to consider the request if conditions prescribed by the law are met, or suspend consideration of the request and return the dossier to the Ministry of Public Security if (i) the request does not fall under their jurisdiction, (ii) the requesting State withdraws the request, (iii) the suspect has left Vietnam, or (iv) for some other reasons they cannot proceed (art.40(2), LLA 2007).

**Arrest and other precautionary measures:** Where a court has determined to consider a request for extradition or determined to extradite a person, and the person is suspected of absconding or obstructing consideration of the request or execution of extradition, the president of a provincial People's Court or higher People's Court may decide to subject the suspect to arrest, temporary detainment, residential confinement, the provision of a surety or an exit restriction (art.41, LLA 2007; art.502, CCP 2015; art.65, Lao PDR-Vietnam Legal Assistance Treaty). Any preventative measures must comply with the procedural requirements of the CPC 2015 (see arts.122-124, 133, 503-505, CPC 2015). The following time limits apply:

- Arrest and detention: The detention must not exceed the length of time of the requesting State's arrest warrant or the full or remaining length of the sentence imposed by the requesting State. The provincial People's Court or higher People's Court can request the requesting State to issue orders or decisions to hold the suspect in detention to enable consideration of the extradition request (art.503, CPC 2015; see also art.133).
- Residential confinement, exit restriction and surety: The confinement, restriction or surety must not exceed the time limit for consideration of the request and for appeals or protests against the decision (arts.504-505, CPC 2015; see also arts.122-124).

**Simplified extradition:** Under the Cambodia Treaty, the suspect may consent to extradition even where a request has not been made, after being informed of the consequences of consent (art.9, Cambodia-Vietnam Extradition Treaty).

**Extradition hearing:** If the provincial level People's Court determines to proceed, within 30 days the Court must consider the request and transfer a dossier set to the People's Procuracies of the same level. The hearing is conducted by a council of three judges, with the participation of members of the People's Procuracy of the same level. The suspect and their lawyer have the right to present their opinions. Within 5 days after a determination on

extradition, the decision must be sent to the person, the People's Procuracies of the same level, and the Ministry of Public Security (art.40, LLA 2007).

Within five working days of the extradition decision, the president of the provincial level People's Court must issue an enforcement decision to the People's Procuracies of the same level, the Ministry of Public Security, the requesting country and the suspect, following which competent officer must arrest the suspect under Vietnam's criminal procedure law and applicable treaties if they are not already arrested (art.42(1), LLA 2007).

**Appeal:** The suspect has 15 days and the Supreme People's Procuracy 30 days appeal the decision to the Supreme People's Court, in which case the provincial level People's Court must submit the dossier, appeal and/or protest to the Court (art.40(5), LLA 2007).

### c. Surrender

If the suspect is not surrendered within 15 days (or reasonable period under the Cambodia Treaty) of the decision, extendable for another 15 days for Lao PDR, or the person will be released, with prejudice to a future request (art.43(1), LLA 2007; art.506, CPC 2007; art.14(5), Cambodia-Vietnam Extradition Treaty; art.69 Lao PDR-Vietnam Legal Assistance Treaty).

**Delay or conditional surrender:** If the suspect is being prosecuted or serving their sentence in Vietnam for another offence, their extradition may be suspended until the proceedings have concluded or the sentence is fully or partly served or they may be temporarily extradited if delay would obstruct prosecution in the requesting State (art.44, LLA 2007; art.16, Cambodia-Vietnam Extradition Treaty; arts.67-68, Lao PDR-Vietnam Legal Assistance Treaty).

**Evasion of prosecution:** If the suspect evades prosecution or their sentence after extradition, the requesting State may submit another extradition request, which may be determined by the president of the council responsible for the initial decision (art.45, LLA 2007).

### (v) Prosecution in Vietnam

If extradition is rejected on the basis that the suspect is a Vietnamese citizen, the requesting State may submit a written request to Vietnam to initiate a criminal prosecution or enforce a sentence against them. The competent authority can request supplemental evidence, documents and items from the requesting State for the purposes of the prosecution (arts.498-499, CPC 2015; see also art.29, LLA 2007; art.4, Cambodia-Vietnam Extradition Treaty; art.5, Laos PDR-Thailand Extradition Treaty). The Lao PDR Treaty sets out a detailed framework requiring Lao PDR to request prosecution and provide evidence and the case file (arts.54-58, Lao PDR-Vietnam Legal Assistance Treaty).

Where the request relates to enforcement of a foreign State's sentence against a citizen, within 30 days a panel of three judges of the provincial People's Court must convene a hearing attended by the relevant prosecutor (procurator), the convicted person and their lawyer or representative, each of whom have the right to express their opinions. The Court panel may determine to grant the request, provided the conduct-based dual criminality requirement is met and the requesting State's sentence has come into force. Any approval must specify the

length of time the person must serve, which must be equal to the length of time imposed by the requesting State if the requesting State penalty corresponds with the laws of Vietnam, or no more than the requesting State penalty if it does not correspond with the laws of Vietnam (arts.500-501, CPC 2015; also arts.44-45, 47-50, 59, Lao PDR-Vietnam Legal Assistance Treaty). Lao PDR may request the enforcement of a sentence through an MLA request (see above).

The same appeal and protest rights as for extradition hearings apply (art.501 CPC 2015).

**(vi) Additional assistance provided**

Any articles and material evidence acquired from the commission of the crime or which would serve as proof of the crime may be transferred with the extradited person, in accordance with any applicable treaties (art.46, LLA 2007). Under the Cambodia and Lao PDR Treaties, property may be transferred where extradition cannot be executed because of the death, disappearance or escape of the suspect, and must be returned at the conclusion of the proceedings (art.15, Cambodia-Vietnam Extradition Treaty; art.74, Lao PDR-Vietnam Legal Assistance Treaty). If the suspect is being prosecuted in Vietnam, transfer of the property may be postponed until conclusion of proceedings in Vietnam or may be temporary transferred until the conclusion of the investigation in the requesting State. If the property is liable to seizure or confiscation in Vietnam, Vietnam may temporarily retain it or hand it over on condition it be returned (art.15, Cambodia-Vietnam Extradition Treaty; art.74, Lao PDR-Vietnam Legal Assistance Treaty).

**(vii) Concurrent requests**

Factors that must be considered by the Ministry of Public Security when determining priority for concurrent requests are:

- The effective nationality and last place of residence of the person requested for extradition;
- The legality and compatibility of the extradition request;
- The time and place of crime commission;
- Specific interests of the requesting countries;
- The severity of the crime;
- The nationality of the victim;
- The possibility of subsequent extradition between the extradition-requesting countries;
- The date of making the extradition request; and
- Other relevant factors (art.39, LLA 2007; see also art.13, Cambodia-Vietnam Extradition Treaty).

## ANNEX A – UNCAC OFFENCES CRIMINALISED IN DOMESTIC LAW

	BRUNEI DARUSSALAM	CAMBODIA	INDONESIA	LAOS	MALAYSIA
<i>Abuse of functions (art.19, UNCAC)</i>	Disciplinary not criminal liability under <i>Public Officers (Conduct and Discipline) Regulations</i>	art.35, ACL 2010; art.586, CC 2009 (no reference to third party beneficiaries)	arts.421-425, CC 1982; art.12(e-i), LCECC 1999 (abuse made with view to enrichment)	arts.153-156, 174, PL 2005; arts.14, 16, 25, ACL 2005.	s.23, MACCA 2009.
<i>Bribery (arts.15-16, 21)</i>	ss.5-6, 10-11, PCA 1981; Ss.161-169, CC 1951	arts.278-280, 517-518, 594, 605, 637-640, CC 2009; arts.33-34, ACL 2010. Legal entities liable under arts.42, 279, 283, 517-519, 605, 625, 640, 644, CC 2009	arts.149, 418-420, CC 1982; arts.5-6, 12-12C, LCECC 1999 (no bribery in the private sector)	arts.157, 174, PL 2005; arts.2, 13, ACL 2005 (no bribery in the private sector)	ss.16-17, 21, MACCA 2009; ss.161-165, 214, PC 1936; s.137, CA 1967.
<i>Bribery of foreign officials and officials of international organisations (art.16(1) UNCAC)</i>	None	arts.33-34, ACL 2010 (no reference to third party beneficiaries)	None	art.157(1), PL 2005 (bribery by public international organization).	s.22, MACCA 2009.
<i>Concealment (art.24, UNCAC)</i>	s.23(2), CARO 2012	art.399, CC 2009; art.37, ACL 2010. Legal entities liable under arts.37, 46, ACL 2010.	arts.221, 231, 480, CC 1982	arts.116, 124, PL 2005.	s.26, MACCA 2009; ss.3-4, AMLATFA 2001.
<i>Illicit enrichment (art.20, UNCAC)</i>	s.12, PCA 1981	art.36, ACL 2010 (only criminalised when done at same time as declaration of assets)	None	art.27, ACL 2005 (requirement to declare assets only)	s.36, MACCA (measures to pursue only permitted when investigation for other offence underway).
<i>Misappropriation / embezzlement (art.17, UNCAC)</i>	ss.403, 405-406, 409, CC 1951	arts.391-393, 592-593, 597, 601, CC 2009 (no reference to third party beneficiaries)	arts.372-377, 415, CC 1982; arts.7-8, LCECC 1999	arts.108-110, 116, 120-121, 124, 174, PL 2005; arts.11-12, ACL 2005 (no embezzlement in private sector offence).	s.403-409, PC 1936; ss.18, 23, MACCA 2009.
<i>Money-laundering (art.23, UNCAC)</i>	ss.23-24, CARO 2012	arts.136-138, 404-406, CC 2009; arts.3, 29 New-1, 30 AMLACFT 2007. Legal entities liable under arts.42, 404, 409, CC 2009.	art.3-10, LCEML 2010. Legal entities liable: art.6, LCEML 2010.	art.64, PL 2005; arts.2, 6, AMLD 2006.	s.26, MACCA 2009; s.3, AMLATFA 2001.
<i>Obstruction of justice (art.25, UNCAC)</i>	s.503, CC 1951 (not “promise, offering or giving of undue advantage”)	arts.546, 548, 568, 607, CC 2009; art.40, ACL 2010. Legal entities liable under arts.42, 548, 554, 556, 559, 568, 607, 625, CC 2009.	art.417, CC 1982	arts.158-159, PL (not physical force, threats or intimidation to interfere with witnesses or production of evidence).	ss.16, 48, MACCA 2009; s.353, PC 1936; ss.2, 5, ACIWA 1947.

<i>Trading in influence (art.18, UNCAC)</i>	None	arts.595, 606, CC 2009 (no reference to third party beneficiaries). Legal entities liable under arts.42, 606, 625, CC 2009	None	None	s.163, PC 1936 (of limited application to taking of gratification for exercise of personal influence with a public servant)
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	<b>MYANMAR</b>	<b>PHILIPPINES</b>	<b>SINGAPORE</b>	<b>THAILAND</b>	<b>VIETNAM</b>
<i>Abuse of functions (art.19, UNCAC)</i>	s.3, ACL 2013; s.217 PC 1861.	s.3, AGCPA 1960. Liability of legal persons: s.2(d), AGCPA 1960.	ss.5-6, PC 2008. Liability of legal persons: s.11, IA 1965; s.11, PC 1872.	s.157 CC 2499: s.123, OAAC 2542.	art.355-357, 359, CC 2015.
<i>Bribery (arts.15-16, 21)</i>	ss.161-165, PC 1861 (only applies to subsidiary offences not covered by ACL 2003); ss.3, 55 - 57, ACL 2013	arts.210-212, PC 1930; s.12, ARTA 2007; s.3, AGCPA 1960 (not private sector). Liability of legal persons: s.2(d), AGCPA 1960.	ss.5-8, PCA 1960; ss.161-165, 213, 215, PC 1872. Liability of legal persons: s.11, IA 1965; s.11, PC 1872.	ss.84(2), 144, 149, 167, 201, CC 2499; s.123, OAAC 1999; s.6, AOCOSOA 2502; s. 215, PLCA 2535; s.145, FIBA 2551; s.5, AORSBSA 2542.	arts.354, 364-365, CC 2015.
<i>Bribery of foreign officials and officials of international organisations (art.16(1) UNCAC)</i>	s.3, ACL 2013	None	ss.5-6, 37, PCA 1960. Liability of legal persons: s.11, IA 1965; s.11, PC 1872.	s.123, OAAC 1999.	art.364, CC 2015.
<i>Misappropriation / embezzlement (art.17, UNCAC)</i>	ss.378-382, 406, 408, 409, PC 1861; s.6, PPA 1947; s.3, PPL 1963.	arts.217, 220, 222, 315, RPC 1930; s.2, ADPCP 1991	ss.405-409, PC 1872. Liability of legal persons: s.11, IA 1965; s.11, PC 1872.	s.147, 151-155, 352-354, CC 2499.	arts.172, 353, 355, CC 2015.
<i>Concealment (art.24, UNCAC)</i>	s.3(n), AML 2014; s.58, ACL 2013. Legal entities liable under ss.43-49, AML 2014.	s.4, AMLA 2001; arts.10, 19, RPC 1930 (not all UNCAC offences)	ss.44, 47, CDSA 1992; ss.410-414, PC 1872. Liability of legal persons: s.11, IA 1965; s.11, PC 1872.	s.357, CC 2499 (not applicable to all corruption offences).	art.389, CC 2015.
<i>Illicit enrichment (art.20, UNCAC)</i>	s.3(c), 31, ACL 2013 (not a criminal offence; only basis for confiscation)	s.2, ADFFS 1955; s.2, ADPCP 1991; s.8, CCESPOE 1989		None	None.
<i>Money-laundering (art.23, UNCAC)</i>	ss.3(n), 5, AML 2014 (excludes predicate offences by foreigners outside Myanmar). Legal entities liable under ss.43-49, AML 2014.	ss.3, 4, 14, AMLA 2001; r.3, AMLA RIRR 2003; arts.8, 10, 16-19, RPC 1930 (not all UNCAC offences). Liability for legal persons: ss.3(e), 14, AMLA 2001.	ss.44, 47, CDSA 1992; chs.V-VA, PC 1872. Liability of legal persons: s.11, IA 1965; s.11, PC 1872.	ss.5-12, 84, 86, 357 (not applicable to all corruption offences), CC 2499; ss.7-9, AMLA 1999. Liability of legal persons: ss.61-62 AMLA; ss.5-8, AORSBSA 2542.	arts.324, CC 2015; arts.4, 7, LPML 2012.

<i>Obstruction of justice (art.25, UNCAC)</i>	ss.107, 109, 114 et seq, 193-199, 204, 228, 332, 333, 353, 503, PC 1861.	ss.1, 180-184, POAPCO 1981; arts.27, 148-151, 231-233, RPC; s.36, OA 1989; s.17, WPSBA 1991	ss.48, 57, CDSA 1992; ss.5(b), 26(a)(b), 204A, 204B, 224-225, 332-333, 353, PC 1872. Liability of legal persons: s.11, IA 1965; s.11, PC 1872.	s.84, 139, 174, 177, 179, 184, CC 2499.	arts.372-375, 381, 384, 389, CC 2015.
<i>Trading in influence (art.18, UNCAC)</i>	s163, PC 1861 (passive only)	s.3(a), (e), (f), 4, AGCPA 1960; ss.11-12, ARTA 2007. Liability for legal persons: s.2(d), AGCPA 1960.	ss.5-8, PCA 1960. Liability of legal persons: s.11, IA 1965; s.11, PC 1872.	s.143, CC 2499 (passive direct commission only); s.123, OACC 1999.	arts.358, 366, CC 2015.

## ANNEX B – GROUNDS FOR REFUSAL OF MLA REQUESTS

The following table lists grounds for refusal of requests for MLA. AMLAT and UNCAC grounds are applicable to states where domesticated or directly applicable. Entries relating to states are based on domestic MLA laws, with the exception of the Philippines (Anti-Money Laundering Act of 2001) and Cambodia (Anti-Corruption Law 2010). “M” denotes mandatory and “D” denotes discretionary grounds. “U” denotes that the mandatory or discretionary basis for a ground is unknown.

	AMLAT / UNCAC	BRUNEI DARUSSALAM	CAMBODIA	INDONESIA	LAOS	MALAYSIA	MYANMAR	PHILIPPINES	SINGAPORE	THAILAND	VIETNAM
<i>Non-compliance with treaty</i>	D (AMLAT; UNCAC)	M	U		D	M	D (pursuant to applicable reservation)		M		M
<i>Assistance required contrary to domestic law</i>	M (AMLAT); D (UNCAC)		U			M	D	D (subject to treaty)			
<i>Assistance could not be carried out in requested state for investigation, prosecution or judicial proceedings for similar offense</i>	D (UNCAC)						D				
<i>Offence under military law not civilian law</i>	M (AMLAT)	M		M		M	D (of requested state)		M	M	
<i>Discrimination on account of colour, race, nationality, ethnic origin, sex/gender, religion or political opinions</i>	M (AMLAT – not colour)	M (not nationality)	U (includes place of birth but not colour)	M (not colour or ethnic origin)		M (not colour)	D (not colour)	M	M (not colour)		
<i>Political offence</i>	M (AMLAT)			M		M		M	M	D	
<i>Insufficient gravity</i>		M				M			M		
<i>Article or thing of insufficient importance or</i>		M				M			M		

<i>could be obtained by other means</i>											
<i>Public order and/or interest, sovereignty, security or national interests</i>	M (AMLAT); D (UNCAC)	M	U	M	D (LAML)	M	D	D (China, Republic of Korea, Switzerland, Spain, United States) / M (Australia, Hong Kong)	M (public interest only)	D	M
<i>No rule of specialty undertaking</i>	M (AMLAT)	M		M		M			M		
<i>Failure to assure evidence obtained will be returned</i>	M (AMLAT)	M		M		M			M		
<i>Prejudice to own criminal matter</i>	M (AMLAT)	M	U	D		M			M		D (may also be postponed)
<i>Prejudice to safety of person in own state</i>	D (AMLAT)	D		D		D			D		
<i>Excessive resource burden</i>	D (AMLAT)	D		D		D			D		
<i>Attendance of prisoner in requesting state not in the public or prisoners' interests</i>		D									
<i>Person acquitted, pardoned, convicted or punished for same offence or act or omission</i>	M (AMLAT)		U	M		M			M	In practice	M
<i>Statute of limitations in requesting state</i>			U								M

<i>Even if criminal offense in requested state, act could not be prosecuted there</i>				M							
<i>Death penalty</i>				D							
<i>Pursuant to any terms prescribed by treaty</i>						D			D		

## ANNEX C – GROUNDS FOR REFUSAL OF EXTRADITION REQUESTS

The following table lists grounds for refusal of requests of extradition. Unless otherwise specified, grounds for refusal are based on the domestic laws governing extradition in the respective countries. References to states in brackets are references to treaty-based grounds additional to those based on domestic law, unless stated that the ground “only” applies in relation to another state under their bilateral treaty. “M” denotes mandatory and “D” denotes discretionary grounds.

	<b>Brunei Darussalam</b>	<b>Cambodia</b>	<b>Indonesia</b>	<b>Laos</b>	<b>Malaysia</b>	<b>Myanmar</b>	<b>Philippines</b>	<b>Singapore</b>	<b>Thailand</b>	<b>Vietnam</b>
<i>National of recipient state</i>	D	M (unless “mutual agreement”); D (only Thailand; Vietnam)	D (Malaysia; Philippines; Singapore - excludes corruption; Thailand)	M (unless treaty basis); Cambodia; Thailand; Vietnam)	D (Indonesia)	D	D (Only Indonesia; Thailand)	M (unless treaty basis, suspect consents, or reciprocal conditions assured); D (Only Indonesia - excludes corruption)	D (Indonesia; Malaysia; Philippines)	D (Cambodia; Lao PDR)
<i>Political offence</i>	M - excludes corruption	M (Lao PDR; Thailand; Vietnam)	M (Malaysia, Philippines, Singapore, Thailand) - excludes corruption	M (Cambodia; Thailand)	M (Indonesia; Thailand) - excludes corruption	D - excludes corruption	M (Only Indonesia; Thailand)	M (Indonesia). - excludes corruption	D; M (only Indonesia; Lao PDR; Malaysia; Philippines)	M (only Cambodia)
<i>Made for purpose of discriminating on the basis of or will be prejudiced at trial based on race, religion, nationality, political opinions, sex or status</i>	M	M (only Lao PDR; Thailand; Vietnam)	M (Singapore (not sex or status))	M (only Cambodia; Thailand (not sex or status))	M - not sex or status	D - not sex or status	D (in practice re Indonesia, Thailand).	M (Singapore) - not sex or status	M (only Lao PDR; Cambodia)	M (only Cambodia) - including person’s position
<i>Person subject to torture or cruel, inhuman or degrading treatment or punishment</i>	D	M (only Vietnam)		D		D				M (Cambodia)
<i>Final judgment against person for the</i>	M	M (Lao PDR; Thailand; Vietnam)	M (Philippines;	M (Cambodia; Thailand; Vietnam)	M; D (only Indonesia)	D	M (only Indonesia)		M (Philippines; Lao PDR)	D; M (Cambodia; Lao PDR)

<i>offence passed in requested state</i>			Thailand); D (Malaysia)							
<i>Person acquitted, pardoned, or punished for same conduct</i>	M	M (only Lao PDR; Thailand; Vietnam)	M (Philippines; Singapore)		M	D	M (only Indonesia; Thailand)	M (Foreign & Commonwealth countries; Singapore)	M (Indonesia; Malaysia; Philippines)	M (Cambodia)
<i>Immunity: time-barred, amnesty or other reason</i>	M	M (Lao PDR; Thailand; Vietnam)	M (Philippines); D (Singapore)	M (Cambodia; Thailand; Vietnam)	M		M (only Indonesia; Thailand)	D (only Indonesia)	M (Philippines; Lao PDR)	D; M (Cambodia; Lao PDR)
<i>Requested state determined not to institute or terminated proceedings for same acts/omissions</i>			D (only Singapore) – excludes corruption	M (Vietnam)				D (only Indonesia - excludes corruption)		D
<i>Prosecution for same offence pending, will commence or has commenced in recipient state</i>	D	D (only Lao PDR; Thailand; Vietnam)	D (Malaysia; Singapore; Thailand); M (only Philippines)	D (Cambodia; Thailand)	D (Indonesia)		M (only Indonesia; Thailand)	M (only Indonesia)	M (only Philippines; Thailand); D (only Lao PDR; Indonesia)	D (Cambodia)
<i>Prosecution for another offence pending or commenced in requested state</i>			M - unless President agrees							
<i>Offence committed outside requesting state and no comparable jurisdictional basis in recipient state</i>	D		M (only Philippines); D (only Singapore)				M (only Indonesia); D (only Thailand)	D (only Indonesia)	D (only Philippines)	
<i>Offence committed wholly or partly in requested state</i>	D		D (Malaysia; Philippines; Singapore - excludes corruption; Thailand)		D (Indonesia)	D	D (only Indonesia; Thailand)	D (only Indonesia - excludes corruption)	D (Indonesia; Philippines)	
<i>Offence committed outside requesting state by non-citizen</i>		M								

<i>Offence under military law not civilian law</i>		M (only Lao PDR; Thailand; Vietnam)	M (Philippines; Singapore)	M (evading obligatory military service or non-performance of an order); Cambodia; Thailand)	M	D	M (only Indonesia; Thailand)	M (only Indonesia)	D; M (Philippines; Lao PDR)	M (Cambodia)
<i>Trial in absentia with no defence opportunity</i>	M	M (only Thailand)	M (only Singapore)	M				M (only Indonesia)		
<i>Liable to trial by ad hoc or extraordinary court</i>	D	D (only Thailand)	M (only Singapore)					M (only Indonesia)		
<i>Substantial grounds to believe will be subject to unfair hearing</i>						D				
<i>National interests, including effective international cooperation and severity of the crime</i>	D									
<i>No rule of specialty undertaking</i>	D	M (only Thailand)			M		M (In practice; Indonesia; Thailand)			M
<i>Person will be prosecuted, convicted or arrested for crimes other than extradition crime</i>			M							
<i>No undertaking not to transfer to third country in law/treaty</i>					M			M (Commonwealth countries)		
<i>Person will be surrendered to third party for other crime</i>			M			D				
<i>Non-compliance with international law or</i>			D (only Singapore)			M		D (only Indonesia)	D	

<i>agreements and/or domestic law</i>										
<i>Incompatible with humanitarian situation of suspect</i>		D (only Lao PDR; Thailand; Vietnam)		D (Cambodia; Thailand)					D (Lao PDR)	D (Cambodia)
<i>No guarantee death penalty won't be imposed</i>		D (only Vietnam)	M (Philippines)				M (only Indonesia)			D (Cambodia)
<i>Unjust, oppressive or too severe a punishment or sentence</i>			D (only Singapore)					M (Commonwealth countries; Malaysia); D (only Indonesia)		
<i>Request considered to be a "special case" under domestic laws</i>				M (Vietnam)						M (Lao PDR)

## ANNEX D – AMLAT MODEL CHECKLIST FOR MLA REQUEST

As at 12 July 2005

### MODEL CHECKLIST OF THE CONTENT OF A REQUEST FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS UNDER THE TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

#### Note:

1. This Model Checklist is intended as a guide and a reference only. The requirements may be modified as necessary to meet the requirements of the domestic law and practice of individual Parties.
2. The proposed Model Checklist also takes into account the Model Checklist being developed under the auspices of the Regional Ministerial Meeting on Counter-Terrorism 2004 (Bali Process) and the work of the Legal Issues Working Group established thereunder.

#### CHECKLIST FOR INCOMING REQUESTS<sup>1</sup>

1. A request for assistance should be submitted in writing<sup>2</sup> through the designated channels and should include the following:
  - (a) the name of the person or authority executing the request<sup>3</sup>;
  - (b) the name of the requesting office and the competent authority conducting the investigation or criminal proceedings to which the request relates;
  - (c) the purpose of the request and the nature of the assistance sought;

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<sup>1</sup> Unless stated otherwise, items listed are based on Article 6 of the Treaty on Mutual Legal Assistance in Criminal Matters.

<sup>2</sup> In urgent cases, requests may be made orally, but to be confirmed in writing within 5 days.

<sup>3</sup> From Bali Process checklist.

- (d) a description of the nature of of the criminal matter and its current status, and a statement setting out a summary of the relevant facts and laws;
- (e) a description of the offence to which the request relates, including its maximum penalty;
- (f) a description of the facts alleged to constitute the offence and a statement or text of the relevant laws;
- (g) a description of the essential acts or omissions or matters alleged or sought to be ascertained;
- (h) a description of the evidence, information or other assistance sought;
- (i) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed;
- (j) specification of any time limit within which compliance with the request is desired;
- (k) any special requirements for confidentiality and the reasons for it; and
- (l) such other information or undertakings as may be required under the domestic laws of the Requested Party or which is otherwise necessary for the proper execution of the request.

2. When appropriate and to the extent necessary, a request may also include the following:

- (a) [where possible, the name,]<sup>4</sup> the identity, nationality, location [and description]<sup>5</sup> of the person or persons who are the subject of the investigation or criminal

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4 From Bali Process checklist.

5 From Bali Process checklist.

proceedings [or who may have information relevant to or who are related to assistance being sought]<sup>6</sup>;

- (b) the identity and location of any person from whom evidence is sought;
- (c) the identity and location of a person to be served, that person's relationship to the [investigation, prosecution or]<sup>7</sup> criminal proceedings, and the manner in which service is to be made [effected]<sup>8</sup>;
- (d) information on the identity and whereabouts of a person to be located;
- (e) [in the case of requests for the taking of evidence or search and seizure, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the Requested Party;]<sup>9</sup>
- (f) a description of the manner in which any testimony or statement is to be taken and recorded;
- (g) a list of questions to be asked of a witness;
- (h) a description of the documents, records or items of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;
- (i) a statement as to whether sworn or affirmed evidence or statements are required;
- (j) a statement as to whether live video or live television links or other appropriate communications facilities will be

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6 From Bali Process checklist.

7 From Bali Process checklist.

8 From Bali Process checklist.

9 From Bali Process checklist.

required and an undertaking to reimburse the Requested Party for costs incurred<sup>10</sup>;

- (k) a description of the property, asset or article to which the request relates, including its identity and location;
- (l) any court order relating to the assistance requested and a statement relating to the finality of the order;
- (m) information as to the allowances and expenses to which a person appearing in the Requesting Party will be entitled<sup>11</sup>;
- (n) in the case of making a detained person available, the person or the authority who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return<sup>12</sup>;
- (j) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request<sup>13</sup>.

<sup>10</sup> Based on Articles 14, 15 and 25 of the Treaty on Mutual Legal Assistance in Criminal Matters.

<sup>11</sup> From Bali Process checklist.

<sup>12</sup> From Bali Process checklist.

<sup>13</sup> From Bali Process checklist.

# ANNEX E – AMLAT MODEL MLA REQUEST FORM

Revised - As at 28 October 2005

FORM 1

## MODEL REQUEST FORM<sup>1</sup>

To:

[name of Central Authority of Requested Party]

From:

[name of Central Authority of Requesting Party]

[Through diplomatic channels]<sup>2</sup>

REQUEST FOR MUTUAL ASSISTANCE IN A CRIMINAL MATTER RE:  
(insert particulars)

### INTRODUCTION

1. I, ....., the (name of agency/office designated as Central Authority), being the designated Central Authority under Article 4 of the Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries (after this referred to as “the Treaty”) to make and receive requests for mutual legal assistance in criminal matters on behalf of (name of country), present this request to the Central Authority of (name of Requested Party) pursuant to the Treaty.<sup>3</sup>

### AUTHORITY FOR REQUEST

2. This request is made under the Treaty.

### NATURE OF REQUEST

- 3.1 This request relates to a (criminal matter)<sup>4</sup> concerning (describe subject of criminal matter).
- 3.2 The personal details of the subject of the request are as follows:

Name/Description:

Date of birth:

Age:

<sup>1</sup> This Model Request Form is intended as a guide and a reference only. The requirements may be modified as necessary to meet the requirements of the domestic law and practice of individual Parties.

<sup>2</sup>This may be deleted where the request is not made through diplomatic channels. Modification suggested by the Philippines vide letter dated 25 August 2005.

<sup>3</sup> Modified as suggested by the Philippines vide letter dated 25 August 2005.

<sup>4</sup> State whether it is an investigation, prosecution or an ancillary criminal matter relating to the restraining of dealing with property or the enforcement or satisfaction of a forfeiture order.

Occupation:  
Nationality:  
Passport No.  
Address/Location:

3.3 The details of the property to be traced/restrained/forfeited are as follows<sup>5</sup>:

Description:  
Location:  
Other relevant details:

3.4 The reasons for suspecting that the person/property is in (name of Requested Party) are as follows<sup>6</sup>:

3.5 The authority having the conduct of the criminal matter is (describe authority in Requesting Party concerned with the criminal matter).

#### STATEMENT OF FACTS

4. (Describe the material facts of the criminal matter including, in particular, those facts necessary to establish circumstances connected to evidence sought in the Requested Party and the relevance of the evidence from the Requested Party to the criminal matter in the Requesting Party.)

#### CRIMINAL OFFENCES/APPLICABLE LEGISLATION/PENALTIES

EITHER:

5.1 (Name of suspects/defendants) are (suspected of having/alleged to have) committed/have been charged with the commission of the following offences, namely -

- (describe offences and provisions of the legislation contravened)

The maximum penalties for the above offences, which are the subject of this (investigation/prosecution) are:

- (specify maximum penalty for each offence and applicable law)<sup>7</sup>.

OR:

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<sup>5</sup> Applicable where request relates to restraint of property or enforcement of a forfeiture order.

<sup>6</sup> Applicable where request relates to restraint of property or enforcement of a forfeiture order.

<sup>7</sup> Applicable where request relates to an investigation or prosecution.

- 5.1 A forfeiture order (has been/may be) made in proceedings in (name of Requested Party). (State basis for any statement that a forfeiture order may be made.)

The forfeiture order is connected with (state the relevant offences) in (name of Requested Party) the maximum penalties for which are (specify maximum penalty for the offence and applicable law)<sup>8</sup>.

- 5.2 A copy/extract of the relevant legislation is attached and marked as "Attachment A" to this request.

### PURPOSE OF THE REQUEST

6. By this request it is intended to (state purpose: e.g. secure admissible evidence for the purpose of the criminal proceedings against the defendants, enforce the abovementioned forfeiture order, etc.)

### MANDATORY UNDERTAKINGS

7. [Insert relevant undertakings, if any]<sup>9</sup>

### DESCRIPTION OF ASSISTANCE REQUESTED

8. The (appropriate authority of the Requested Party) is requested to take the following steps as are necessary to give effect to the following:

- (a) examination on oath or affirmation of a witness before (relevant judicial authority of Requested Party);

(e.g.) Mr. X  
ABC Co., Ltd.  
(address)

to be orally examined on oath or affirmation on the following matters:

- f* (specify clearly the relevant issues/areas relating to the subject-matter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions)

Note:

Specify form in which statement is to be obtained e.g. witness statement or affidavit. Samples forms to be attached.

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<sup>8</sup> Applicable where request relates to restraint of property or enforcement of a forfeiture order.

<sup>9</sup> Requesting Party to insert such undertakings as may be relevant. Modification suggested by the Philippines vide letter dated 25 August 2005.

(b) production of documents, records or items before a court [and obtaining of oral evidence of the witness producing such material for the purpose of identifying and proving the material produced]<sup>10</sup>;

(e.g.) Director  
ABC Co., Ltd.  
(address)

to be required to produce (describe the form of evidence e.g. “certified copies”) of the following documents, records or items for the period (state relevant time frame):

*f* (specify documents, records or items or classes thereof).

The above witness to be orally examined on oath or affirmation on the following matters for the purpose of identifying and proving the documents, records or items produced:

*f* (state relevant particulars).

(e.g.)

- to provide confirmation as to his position in a company/office and that he is responsible for keeping/maintaining/holding the documents, records or items in relation to the subject-matter of the investigation
- that he is authorised by the relevant law of the Requested Party to make the affidavit
- to confirm that he has access to the documents, records or items kept in relation to the subject-matter of the investigation in the normal course of his duties
- to confirm the authenticity of the copies of the documents, records or items supplied
- to confirm that the documents, records or items were created in the ordinary course of business

Note:

Specify form in which statement is to be obtained e.g. witness statement or affidavit. Samples forms to be attached.

(c) search of person or premises for documents, records or items;

(e.g.) The premises of ABC Co., Ltd.  
(address)

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<sup>10</sup> Include this part if it is deemed necessary for the purposes of admissibility of the documents, records or items in evidence.

to be searched under a search warrant for the seizure of the following from the company:

*f* (provide details of the documents, records or items sought to be searched for and seized).

*f* (support any request for originals of documents, records or items seized with reasons).

(d) production of documents, records or items through production orders;

(e.g.) Manager  
ABC Bank Ltd.  
(address)

to be required to produce copies of the following documents, records or items under a production order:

*f* (describe particulars of material required to be produced and where located).

*f* (state grounds for believing that the material sought is likely to be of substantial value to the criminal matter in Malaysia).

*f* (support any request for the production of originals of documents with reasons).

(e) arrangement of travel of person/prisoner from (name of Requested Party) to assist in a criminal matter;

(e.g.) Arrangements to be made for Mr. X  
(address)

to travel to (name of Requesting Party) to give assistance in a (criminal matter)<sup>11</sup> by rendering the following assistance:

*f* (specify the assistance sought).

*f* (provide the undertakings required by the law of (name of Requested Party)).

*f* (provide details of the allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person, while the person is in (name of Requesting Party) pursuant to the request).

(f) enforcement of a forfeiture order/request to assist in the restraining of dealing in property;

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<sup>11</sup> State whether it is an investigation or criminal proceedings of an offence in the Requesting Party or an ancillary criminal matter.

- (state particulars of the forfeiture order to be enforced, or the property to be restrained and present state of related proceedings).
- (g) assistance in locating/identifying and locating a person who is suspected to be involved in/to have benefited from the commission of a serious offence;
- (e.g.) Arrangements to be made to locate/identify and locate Mr. X who is believed to be in (name of Requested Party) with the last known address at (address).
- f* (state particulars of person concerned).
- (h) assistance in tracing property suspected to be connected to a serious offence;
- (e.g.) Arrangements to be made to trace (description of property) believed to be in (name of Requested Party).
- f* (state particulars of property concerned).
- (i) service of process.
- (e.g.) Mr. X  
(address)

to be served with the following documents:

- f* (describe documents to be served).
- f* (specify manner of service and period within which documents to be served).
- f* (specify required proof of service).

## EXECUTION OF REQUEST

### (A) CONFIDENTIALITY

- [9.1. It is requested that the fact that this request has been made and the execution of the request be kept entirely confidential except to the extent necessary to execute the request as (state reasons e.g. the likelihood of interference with witnesses and /or destruction of evidence, etc.)]<sup>12</sup>
- [9.2. It is also requested that the evidence of the witness be taken in camera as there exist reasonable grounds for believing that it is in the interests of the witness to give evidence in camera because (state reasons) and the

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<sup>12</sup> Necessary if confidentiality is requested.

criminal matter would be substantially prejudiced if the examination was conducted in open court because (state reasons).]<sup>13</sup>

(B) PARTICULAR PROCEDURES TO BE FOLLOWED

10. It is requested that the following procedures be observed in the execution of the request:

- (state details of manner and form in which evidence is to be taken and transmitted to Requesting Party, if relevant.)

(e.g.)

- In relation to the evidence obtained on examination on oath/affirmation of a witness, please provide the statement in admissible form. To be admissible, the statement must be made in the form of an affidavit except when recorded in writing by a judicial authority. If documents and records are referred to or are otherwise enclosed, the documents and records must be accompanied by an attestation of authenticity. Copies of the prescribed form for the affidavit and attestation of authenticity are attached to this request and marked as Attachment B and Attachment C respectively.
- In relation to the evidence of (name of relevant witness(es)), please arrange for the evidence to be given in a court in (name of Requesting Party) via live video or live television link (or other appropriate communications facilities) from (name of Requested Party).
- (state any special requirements as to certification/authentication of documents.)

(e.g.)

In relation to evidence to be provided by affidavit-

- (a) the affidavit should be made before a judicial officer or other officer who is authorised to administer oaths or affirmations in (name of Requested Party). When the affidavit has been sworn or affirmed, the affidavit should be sealed with an official or public seal of (name of Requested Party) to ensure compliance with (specify relevant provisions of the relevant legislation of Requesting Party), a copy of which is attached to this request and marked as Attachment D;
- (b) if the affidavit runs for more than one page, each page other than the last should be initialed both by the person who makes the affidavit and by the person before whom the affidavit is made; and
- (c) each page of each attachment should be initialed both by the person who makes the affidavit and by the person before whom the affidavit is made.

(e.g.)

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<sup>13</sup> Applicable if the request relates to the taking of evidence before a court for the purposes of an investigation in Requesting Party.

In relation to documents produced by computers, or a statement contained in such document, the document or statement, as the case may be, is admissible as evidence of any fact stated therein if the document was produced by the computer in the course of its ordinary use, whether or not the person tendering the same is the maker of such document or statement. A certificate signed by a person who either before or after the production of the document by the computer is responsible for the management of the operation of that computer or for the conduct of the activities for which that computer was used must be tendered to the court to prove that a document was produced by a computer in the course of its ordinary use.

An extract of the relevant legislation, (specify relevant provisions of the relevant legislation of Requesting Party) is attached and marked as "Attachment E" to this request.

- (state if attendance by representative of appropriate authority of Requesting Party at examination of witnesses/execution of request is required and, if so, the title of the office held by the proposed representative.)

(e.g.)

Permission is requested for an officer of (name of appropriate authority in Requesting Party) to travel to (name of Requested Party) to assist in the execution of this request.

(C) PERIOD OF EXECUTION

11. It is requested that the request be executed urgently/within (state period giving reasons i.e. specify likely trial or hearing dates or any other dates/reasons relevant to the execution of the request).

(D) TRANSMISSION OF REQUESTED MATERIAL

- 12.1 Any documents, records, items, statements or information obtained in response to this request should be sent to the (Central Authority of Requesting Party) at the following address:

[Provide full address and other contact details such as name of contact officer, telephone and facsimile numbers and email address]

- 12.2 The (Central Authority of Requesting Party) will forward the material to (name of authority in Requesting Party concerned with the criminal matter), being the relevant requesting authority in this matter.

(E) DETAILS OF ALLOWANCES, ARRANGEMENTS FOR SECURITY AND ACCOMODATION<sup>14</sup>

13.1 The allowances to which (name of person) will be entitled are as follows: (State details of allowances)

13.2 The arrangements for the security of (name of person) are as follows: (State details of security arrangements)

13.3 The arrangements for the accommodation of (name of person) are as follows: (State details of accommodation arrangements)

(F) UNDERTAKING ON EXPENSES FOR USE OF LIVE VIDEO LINK<sup>15</sup>

14. The Government of (name of Requesting Party) undertakes to reimburse the Government of (name of Requested Party) for the cost of establishing the live video or television link or other appropriate communications facilities, the costs related to the servicing of the live video or television link or other appropriate communications facilities, the remuneration of interpreters provided by (name of Requested Party) and allowances to witnesses and their traveling expenses in (name of Requested Party).<sup>16</sup>

LIAISON

15.1 The officers of the (Central Authority of Requesting Party) handling this request are:

(state name of officer(s))  
(address)

Telephone Number:  
Facsimile Number:  
Electronic mail address:

15.2 The case officer of (name of authority in Requesting Party concerned with the criminal matter) is:

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<sup>14</sup> If the request involves a person travelling from the Requested Party to the Requesting Party.

<sup>15</sup> If the request involves a person travelling from the Requested Party to the Requesting Party.

<sup>16</sup> If the request involves the giving of evidence by live video or live television link or other appropriate communications facilities, unless the Parties mutually agree otherwise.

(name of officer of authority in Requesting Party concerned with the criminal matter, telephone and facsimile numbers and e-mail address)

- 15.3 The following officer/\*s of (name of appropriate authority in Requested Party) \*has/\*have knowledge of this matter:

(name of officer/\*s of appropriate authority in Requested Party, telephone and facsimile numbers and e-mail addresses).

- 15.4 If permission is given for an officer of (name of authority in Requesting Party concerned with the criminal matter) to travel to (name of Requested Party), the officer is likely to be (name of officer of authority in Requesting Party concerned with the criminal matter).

#### SUPPLEMENTARY REQUEST

16. The (Central Authority of Requesting Party) may wish to make supplementary requests for assistance in this matter if necessary.

#### RECIPROCITY UNDERTAKING

17. The Government of (name of Requesting Party) assures the Government of (name of Requested Party) that the Government of (name of Requesting Party) would, subject to its laws, comply with a request by the Government of (name of Requested Party) to (name of Requesting Party) for assistance of this kind in respect of an equivalent offence.

#### CONCLUSION<sup>17</sup>

18. I, \_\_\_\_\_, the (Central Authority of Requesting Party), pursuant to (specify relevant provisions of the relevant legislation of Requesting Party), and at the instance of (name of authority in Requesting Party concerned with the criminal matter), being satisfied that there are reasonable grounds for believing that there is evidence in (name of Requested Party) that would be relevant to an investigation/criminal proceedings in (name of Requesting Party), make this request to (Central Authority of Requested Party) for assistance in relation to this criminal matter.

OR:

18. I, (name of person), an officer of the (Central Authority of Requesting Party), acting in reliance on a delegation by the (Central Authority of

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<sup>17</sup> Modified as suggested by Singapore vide email dated 8 August 2005.

Requesting Party) under (specify relevant provisions of the relevant legislation of Requesting Party) and on the authority of the (Central Authority of Requesting Party) in the exercise of the executive powers under (specify relevant provisions of the relevant legislation of Requesting Party) to make requests to foreign States for assistance in criminal matters, and at the instance of (name of authority in Requesting Party concerned with the criminal matter), make this request to (name of appropriate authority of Requested Party) for assistance in relation to this criminal matter.

Signed by

Name: \_\_\_\_\_

Office: \_\_\_\_\_

Date: \_\_\_\_\_

# ANNEX F – BRUNEI DARUSSALAM MODEL MLA REQUEST FORMS

## Obtaining attendance of persons

**TO:** The Attorney General of Brunei Darussalam

**FROM:** The Central Authority/ *[name of appropriate authority]* of the *[Requesting Party]*  
*[Through diplomatic channels]*<sup>4</sup>

## REQUEST FOR MUTUAL LEGAL ASSISTANCE IN A CRIMINAL MATTER

### INTRODUCTION

I, *[name, appointment/ position of person making the request]*, on behalf of the Central Authority of *[name of Requesting Party]*, who is responsible for *[state area of responsibility e.g. criminal prosecutions, investigations]* in the *[Requesting Party]* and who is also authorised to make requests for mutual legal assistance in criminal matters, on behalf of the Government of the *[name of Requesting Party]*, respectfully requests the assistance of the Government of Brunei Darussalam in relation to a criminal matter involving *[describe nature of criminal proceedings, e.g. whether a trial or proceedings to determine whether a person should be tried or nature of criminal investigation]*.

### AUTHORITY FOR REQUEST

This request is made to the Government of Brunei Darussalam by the Government of *[name of Requesting Party]* for assistance to be extended under the Mutual Assistance in Criminal Matters Order 2005 and in pursuant to *[name and description of relevant treaty / agreement / convention]*.

### NATURE OF REQUEST

This request relates to *[describe subject of criminal matter]*. The authority having the conduct of the criminal matter is *[describe authority concerned with the criminal matter]*.

### PURPOSE OF THE REQUEST

By this request it is intended to *[state purpose which is intended to be achieved by the assistance sought, e.g. to obtain attendance of persons in Brunei Darussalam in the Requesting Party to give evidence in a criminal proceeding / to render assistance in a criminal offence in the Requesting Party]*.

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<sup>4</sup> If request is not made through diplomatic channels, this may be deleted

## **CRIMINAL OFFENCES / APPLICABLE LEGISLATION / PENALTIES**

*[Set out the offences alleged to have been committed in relation to the criminal proceedings as well as the maximum penalties for these offences].*

*[Attach copies of applicable legislative provisions]*

*[State identity of suspect / accused person, if known]*

## **STATEMENT OF FACTS**

*[Describe the material facts of the criminal proceedings including, facts which have led to the request to Brunei Darussalam being made, and the relevance of such persons whose attendance is requested to the criminal proceedings. Details of persons whose evidence or assistance is sought should also be included, as well as the connection such person or persons have with the criminal proceedings in the Requesting Party and how their evidence or assistance will assist the authority to which the criminal matter relates].*

## **DESCRIPTION OF ASSISTANCE REQUESTED**

The Central Authority of Brunei Darussalam is requested to take the necessary steps to arrange for the attendance of the following person / persons *[who is a prisoner in Brunei Darussalam]*<sup>5</sup> in *[the Requesting Party]* :-

*[List the names, addresses and telephone numbers (if known) of such persons]*

*[If person is a prisoner in Brunei Darussalam: list the name, address of the prison where such person is being imprisoned and telephone numbers of the prison (if known)]*

## **MANDATORY ASSURANCES & UNDERTAKINGS**

It is confirmed that this request:

- (a) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam;
- (b) is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's colour, race, ethnic origin, sex, religion, nationality or political opinions; and
- (c) in absence of the Attorney General of Brunei Darussalam consenting otherwise, any evidence obtained pursuant to this request will not be used for the purposes of a matter other than the criminal matter in respect of which the request was made.

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<sup>5</sup> Only if applicable

*[The Central Authority of [Requesting Party] also confirms that it undertakes that the person to whom the request relates shall not –*

- (a) Be detained, prosecuted or punished for any offence against the law of the Requesting Party that is alleged to have been committed, or that was committed, before his departure from Brunei Darussalam, other than an offence in respect of which the Attorney General of Brunei Darussalam consents to his being so detained, prosecuted or punished;*
- (b) Be subject to any civil proceedings in respect of any act or omission of that person that is alleged to have occurred, or that did occur, before his departure from Brunei Darussalam, being civil proceedings to which he could not have been subjected to if he were not in that country;*
- (c) Be required to give or provide evidence or assistance in respect of any other criminal matter in the Requesting Party than to which the request relates;*

*The Central Authority of [Requesting Party] further undertakes that –*

- (a) Any evidence given by the person to whom this request relates in the criminal proceedings shall be inadmissible and not otherwise used in any prosecution of that person for any offence against a law of that foreign country other than the offence of perjury or contempt of court in relation or the giving of that evidence; and*
- (b) The person will be returned to Brunei Darussalam in accordance with arrangements agreed by the Attorney General of Brunei Darussalam as soon as practicable after giving or providing the evidence or assistance.]<sup>6</sup>*

*[The Central Authority also confirms that it undertakes that –*

- (a) The appropriate arrangements will be made for the custody of the prisoner, where this is requested by the Attorney General of Brunei Darussalam;*
- (b) The prisoner will not be released from custody in that country without the prior approval of the Attorney General of Brunei Darussalam;*
- (c) If, at the request of the Attorney General of Brunei Darussalam, the prisoner is released in that country before the completion of the proceedings, the Requesting Party will pay for his accommodation and expenses.]<sup>7</sup>*

## **EXECUTION OF REQUEST**

### **Confidentiality**

*[Specify any confidentiality requirements, the reasons thereof, and state the Requesting Party's position on the disclosure of the Request to the Court and / or other parties to any legal proceedings that may be instituted under the Mutual Assistance in Criminal Matters Order 2005.]*

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<sup>6</sup> If request is to arrange attendance of persons in Brunei Darussalam in the Requesting Party

<sup>7</sup> If request is to arrange attendance of a prisoner in the Requesting Party

## **Procedure to be followed**

It is requested that the following procedures be observed in the execution of the request:

*[Indicate if attendance by representative of the Requesting Party to accompany the person / prisoner whose attendance is requested for is required and, if so, the title of the post held by the proposed representative]*

*[Indicate any other procedures that are requested to be followed in effecting attendance of persons in the Requesting Party]*

## **Period of Execution**

It is requested that the request be executed urgently / within *[state period giving reasons, e.g. specify likely trial or hearing dates or any other dates / reasons relevant to execution of request]*.

## **Transmission of Proposed Arrangements To Secure Attendance Of Person / Prisoner**

Any documents or information obtained in response to this request, including those regarding arrangements that the Attorney General of Brunei Darussalam has requested to be made, should be sent to the Central Authority of *[the Requesting Party]* at *[provide full address and other contact details such as the name of the contact officer, telephone and facsimile numbers and email addresses]*.

The Central Authority *[of the Requesting Party]* will forward the material to *[name of requesting authority in the Requesting Party concerned with the criminal matter]*, being the relevant requesting authority in this criminal matter.

## **Details of Allowances, Arrangements for Security and Accommodation**

The allowances to which *(name of person)* will be entitled are as follows:

*(State details of allowances)*

The arrangements for the security of *(name of person)* are as follows:

*(State details of security arrangements)*

The arrangements for the accommodation of *(name of person)* are as follows:

*(State details of accommodation arrangements)*

## **OTHER INFORMATION**<sup>8</sup>

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<sup>8</sup> Applicable only if there is further information that is required to be forwarded under treaty / memorandum of understanding / other agreement between Requesting Party and Brunei Darussalam which is relied upon as the authority for this request

[State further information that is required to be furnished under a treaty / memorandum of understanding / other agreement between (the Requesting Party) and Brunei Darussalam, referring to the specific section or clause in the treaty / memorandum of understanding / other agreement which sets out the said requirement]

### **LIAISON OFFICERS**

The officer of the Central Authority of [name of the Requesting Party] who is handling this request is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

The case officer of [name of authority in Requesting Party concerned with the criminal matter] is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

### **SUPPLEMENTARY REQUEST**

The Central Authority [name of Requesting Party] may make supplementary requests for assistance in this matter if necessary.

### **RECIPROCITY UNDERTAKING**

The Government of [name of Requesting Party] undertakes that it will comply with a future request by the Government Brunei Darussalam for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

[Signature]

Name:

Office:

Date:

## **Search seizure**

**TO:** The Attorney General of Brunei Darussalam

**FROM:** The Central Authority/ *[name of appropriate authority]* of the *[Requesting Party]*

[Through diplomatic channels]<sup>9</sup>

## **REQUEST FOR MUTUAL LEGAL ASSISTANCE IN A CRIMINAL MATTER**

### **INTRODUCTION**

I, *[name, appointment/ position of person making the request]*, on behalf of the Central Authority of *[name of Requesting Party]*, who is responsible for *[state area of responsibility e.g. criminal prosecutions, investigations]* in the *[Requesting Party]* and who is also authorised to make requests for mutual legal assistance in criminal matters, on behalf of the Government of the *[name of Requesting Party]*, respectfully requests the assistance of the Government of Brunei Darussalam in relation to a criminal matter involving *[describe nature of criminal proceedings, e.g. whether a trial or proceedings to determine whether a person should be tried or nature of criminal investigation]*.

### **AUTHORITY FOR REQUEST**

This request is made to the Government of Brunei Darussalam by the Government of *[name of Requesting Party]* for assistance to be extended under the Mutual Assistance in Criminal Matters Order 2005 and in pursuant to *[name and description of relevant treaty / agreement / convention]*.

### **NATURE OF REQUEST**

This request relates to *[describe subject of criminal matter]*. The authority having the conduct of the criminal matter is *[describe authority concerned with the criminal matter]*.

### **PURPOSE OF THE REQUEST**

By this request it is intended to *[state purpose which is intended to be achieved by the assistance sought, e.g. to secure admissible evidence to be used in a trial, to secure evidence to be used in proceedings to determine whether persons are to be charged, etc.]*

### **CRIMINAL OFFENCES / APPLICABLE LEGISLATION / PENALTIES**

*[Set out the offences alleged to have been committed in relation to the criminal proceedings as well as the maximum penalties for these offences and attach copies of applicable legislative provisions. State identity of suspect / accused person, if known]*

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<sup>9</sup> If request is not made through diplomatic channels, this may be deleted

## **STATEMENT OF FACTS**

*[Describe the material facts of the criminal proceedings including, details of article / thing that is to be obtained, facts which have led to the request to Brunei Darussalam being made, and the relevance of such article / thing requested to the criminal proceedings. Details of persons from whom such article / thing can be obtained and grounds for believing that such person is in custody of such article / thing and that such article / thing is located in Brunei Darussalam should also be included].*

*[Specify article / thing to be obtained and state the location and description of the property]*

*[Statement that sets out the basis for suspecting that the property to which this request related is connected with the criminal matter to which this request relates]*

## **DESCRIPTION OF ASSISTANCE REQUESTED**

The Central Authority of Brunei Darussalam is requested to take the necessary steps to search and seize *[specify article / thing]* from the following person:-

*[List the name, address, telephone numbers (if known) of such person]*

OR

*[If there are multiple persons and multiple documents involved:]*

Details of Person	Article / Thing to be Obtained
Name, Address & Telephone no.	

## **MANDATORY ASSURANCES & UNDERTAKINGS**

It is confirmed that this request:

- (a) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam; and
- (b) is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's colour, race, ethnic origin, sex, religion, nationality or political opinions.

The Central Authority of *[Requesting Party]* further undertakes that

- (a) unless the Attorney General of Brunei Darussalam consents otherwise, any evidence obtained pursuant to this request will not be used for the purposes of a matter other than the criminal matter in respect of which the request was made; and

- (b) should the Attorney-General of Brunei Darussalam require the return of any evidence obtained pursuant to this request at the conclusion of [*state particulars of criminal proceedings*] and of all consequential appeals, the evidence will be returned to the Attorney-General of Brunei Darussalam.

## **EXECUTION OF REQUEST**

### **Confidentiality**

[*Specify any confidentiality requirements, the reasons thereof, and state the Requesting Party's position on the disclosure of the Request to the Court and / or other parties to any legal proceedings that may be instituted under the Mutual Assistance in Criminal Matters Order 2005.*]

### **Procedure to be followed**

It is requested that the following procedures be observed in the execution of the request:

[*Provide details of manner and form<sup>10</sup> that the Requesting Party wishes to be followed*]

[*Indicate any specific procedure in relation to the custody of property seized*]

[*Indicate if attendance by representative of the Requesting Party at execution of the request is required and, if so, the title of the post held by the proposed representative*]

[*Indicate any other procedures that are requested to be followed*]

### **Period of Execution**

It is requested that the request be executed urgently / within [*state period giving reasons, e.g. specify likely trial or hearing dates or any other dates / reasons relevant to execution of request*].

### **Transmission of Article / Thing**

Any article / thing or information obtained in response to this request should be sent to the Central Authority of [*the Requesting Party*] at [*provide full address and other contact details such as the name of the contact officer, telephone and facsimile numbers and email addresses*].

The Central Authority [*of the Requesting Party*] will forward the material to [*name of requesting authority in the Requesting Party concerned with the criminal matter*], being the relevant requesting authority in this criminal matter.

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<sup>10</sup> Please provide proforma or form of words as appropriate.

## **OTHER INFORMATION**<sup>11</sup>

[State further information that is required to be furnished under a treaty / memorandum of understanding / other agreement between (the Requesting Party) and Brunei Darussalam, referring to the specific section or clause in the treaty / memorandum of understanding / other agreement which sets out the said requirement]

## **LIAISON OFFICERS**

The officer of the Central Authority of [name of the Requesting Party] who is handling this request is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

The case officer of [name of authority in Requesting Party concerned with the criminal matter] is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

## **SUPPLEMENTARY REQUEST**

The Central Authority [name of Requesting Party] may make supplementary requests for assistance in this matter if necessary.

## **RECIPROCITY UNDERTAKING**

The Government of [name of Requesting Party] undertakes that it will comply with a future request by the Government Brunei Darussalam for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

[Signature]

Name:

Office:

Date:

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<sup>11</sup> Applicable only if there is further information that is required to be forwarded under any treaty / memorandum of understanding / other agreement between Requesting Party and Brunei Darussalam

## **Production order**

**TO:** The Attorney General of Brunei Darussalam

**FROM:** The Central Authority/ *[name of appropriate authority]* of the *[Requesting Party]*

[Through diplomatic channels]<sup>12</sup>

## **REQUEST FOR MUTUAL LEGAL ASSISTANCE IN A CRIMINAL MATTER**

### **INTRODUCTION**

I, *[name, appointment/ position of person making the request]*, on behalf of the Central Authority of *[name of Requesting Party]*, who is responsible for *[state area of responsibility e.g. criminal prosecutions, investigations]* in the *[Requesting Party]* and who is also authorised to make requests for mutual legal assistance in criminal matters, on behalf of the Government of the *[name of Requesting Party]*, respectfully requests the assistance of the Government of Brunei Darussalam in relation to a criminal matter involving *[describe nature of criminal proceedings, e.g. whether a trial or proceedings to determine whether a person should be tried or nature of criminal investigation]*.

### **AUTHORITY FOR REQUEST**

This request is made to the Government of Brunei Darussalam by the Government of *[name of Requesting Party]* for assistance to be extended under the Mutual Assistance in Criminal Matters Order 2005 and in pursuant to *[name and description of relevant treaty / agreement / convention]*.

### **NATURE OF REQUEST**

This request relates to *[describe subject of criminal matter]*. The authority having the conduct of the criminal matter is *[describe authority concerned with the criminal matter]*.

### **PURPOSE OF THE REQUEST**

By this request it is intended to *[state purpose which is intended to be achieved by the assistance sought, e.g. to secure admissible evidence to be used in a trial or documents, articles or things that are vital for investigations or an ancillary criminal matter.]*

### **CRIMINAL OFFENCES / APPLICABLE LEGISLATION / PENALTIES**

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<sup>12</sup> If request is not made through diplomatic channels, this may be deleted

[Set out the offences alleged to have been committed in relation to the criminal proceedings as well as the maximum penalties for these offences and attach copies of applicable legislative provisions. State identity of suspect / accused person, if known]

### **STATEMENT OF FACTS**

[Describe the material facts of the criminal proceedings including, facts which have led to the request to Brunei Darussalam being made, and the relevance of such document / article / other thing requested to the criminal proceedings. Grounds for the Requesting Party believing that such document / article / thing is in such person's custody and that the said document / article / thing is necessary or desirable for the purposes of the criminal matter should also be stated].

[Details of person against whom the production order should be made, and reasons for suspecting that the said document / article / thing is in such person's custody]

[Specify document / article / thing to be obtained]

### **DESCRIPTION OF ASSISTANCE REQUESTED**

The Central Authority of Brunei Darussalam is requested to take the necessary steps to obtain a production order against (name of person) in order to obtain (specify document / article / thing). The name of the said person and his contact particulars<sup>13</sup> as follows:

[List the name, address, telephone numbers (if known) of such person]

OR

[If there are multiple persons and multiple documents involved:]

Details of Person	Article / Thing to be Obtained
Name, Address & Telephone No.	

### **MANDATORY ASSURANCES & UNDERTAKINGS**

It is confirmed that this request:

- (a) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam; and
- (b) is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's colour, race, ethnic origin, sex, religion, nationality or political opinions;

The Central Authority of [Requesting Party] further undertakes that:

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<sup>13</sup> Where available.

- (c) unless the Attorney General of Brunei Darussalam consents otherwise, any evidence obtained pursuant to this request will not be used for the purposes of a matter other than the criminal matter in respect of which the request was made; and
- (d) should the Attorney-General of Brunei Darussalam require the return of any document / article / thing obtained following a production order applied for pursuant to this request at the conclusion of [*state particulars of criminal proceedings*] and of all consequential appeals, the evidence will be returned to the Attorney-General of Brunei Darussalam.

## **EXECUTION OF REQUEST**

### **Confidentiality**

*[Specify any confidentiality requirements, the reasons thereof, and state the Requesting Party's position on the disclosure of the Request to the Court and / or other parties to any legal proceedings that may be instituted under the Mutual Assistance in Criminal Matters Order 2005.]*

### **Procedure to be followed**

It is requested that the following procedures be observed in the execution of the request:

*[Provide details of manner and form in which document / article / thing is to be taken and transmitted to the Requesting Party, if relevant]*

*[Indicate if attendance by representative of the Requesting Party at the execution of the request is required and, if so, the title of the post held by the proposed representative]*

### **Period of Execution**

It is requested that the request be executed urgently / within [*state period giving reasons, e.g. specify likely trial or hearing dates or any other dates / reasons relevant to execution of request*].

### **Transmission of Requested Material**

Any document, record, article, thing or information obtained in response to this request should be sent to the Central Authority of [*the Requesting Party*] at [*provide full address and other contact details such as the name of the contact officer, telephone and facsimile numbers and email addresses*].

The Central Authority [*of the Requesting Party*] will forward the material to [*name of requesting authority in the Requesting Party concerned with the criminal matter*], being the relevant requesting authority in this criminal matter.

## **OTHER INFORMATION**<sup>14</sup>

[State further information that is required to be furnished under a treaty / memorandum of understanding / other agreement between (the Requesting Party) and Brunei Darussalam, referring to the specific section or clause in the treaty / memorandum of understanding / other agreement which sets out the said requirement]

## **LIAISON OFFICERS**

The officer of the Central Authority of [name of the Requesting Party] who is handling this request is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

The case officer of [name of authority in Requesting Party concerned with the criminal matter] is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

## **SUPPLEMENTARY REQUEST**

The Central Authority [name of Requesting Party] may make supplementary requests for assistance in this matter if necessary.

## **RECIPROCITY UNDERTAKING**

The Government of [name of Requesting Party] undertakes that it will comply with a future request by the Government Brunei Darussalam for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

[Signature]

Name:

Office:

Date:

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<sup>14</sup> Applicable only if there is further information that is required to be forwarded under any treaty / memorandum of understanding / other agreement between Requesting Party and Brunei Darussalam

## **Obtaining of evidence**

**TO:** The Attorney General of Brunei Darussalam

**FROM:** The Central Authority/[*name of appropriate authority*] of the [*Requesting Party*]

[Through diplomatic channels]<sup>15</sup>

## **REQUEST FOR MUTUAL LEGAL ASSISTANCE IN A CRIMINAL MATTER**

### **INTRODUCTION**

I, [*name, appointment/ position of person making the request*], on behalf of the Central Authority of [*name of Requesting Party*], who is responsible for [*state area of responsibility e.g. criminal prosecutions, investigations*] in the [*Requesting Party*] and who is also authorised to make requests for mutual legal assistance in criminal matters, on behalf of the Government of the [*name of Requesting Party*], respectfully requests the assistance of the Government of Brunei Darussalam in relation to a criminal matter involving [*describe nature of criminal proceedings, e.g. whether a trial or proceedings to determine whether a person should be tried or nature of criminal investigation*].

### **AUTHORITY FOR REQUEST**

This request is made to the Government of Brunei Darussalam by the Government of [*name of Requesting Party*] for assistance to be extended under the Mutual Assistance in Criminal Matters Order 2005 and in pursuant to [*name and description of relevant treaty / agreement / convention*].

### **NATURE OF REQUEST**

This request relates to [*describe subject of criminal matter*]. The authority having the conduct of the criminal matter is [*describe authority concerned with the criminal matter*].

### **PURPOSE OF THE REQUEST**

By this request it is intended to [*state purpose which is intended to be achieved by the assistance sought, e.g. to secure admissible evidence to be used in a trial, to secure evidence to be used in proceedings to determine whether persons are to be charged, etc.*]

### **CRIMINAL OFFENCES / APPLICABLE LEGISLATION / PENALTIES**

[*Set out the offences alleged to have been committed in relation to the criminal proceedings as well as the maximum penalties for these offences and attach copies of applicable legislative provisions. State identity of suspect / accused person, if known*]

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<sup>15</sup> If request is not made through diplomatic channels, this may be deleted

## **STATEMENT OF FACTS**

*[Describe the material facts of the criminal proceedings including, facts which have led to the request to Brunei Darussalam being made, and the relevance of such evidence requested to the criminal proceedings. Details of persons from whom evidence is sought should also be included, and the connection such person or persons have with the criminal proceedings in the Requesting Party].*

## **DESCRIPTION OF ASSISTANCE REQUESTED**

The Central Authority of Brunei Darussalam is requested to take the necessary steps to record evidence from various witnesses and transmit the evidence so recorded to the Central Authority of *[the Requesting Party]*. The names of the said witnesses, their contact particulars<sup>16</sup> and the questions to be asked of them are as follows:

*[List the names, addresses, telephone numbers (if known) of such witnesses.]*

The list of questions that should be asked from these witnesses is hereby attached as Annexes *[A, B, C etc.]*.

## **MANDATORY ASSURANCES & UNDERTAKINGS**

It is confirmed that this request:

- (a) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam; and
- (b) is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's colour, race, ethnic origin, sex, religion, nationality or political opinions.

The Central Authority of *[Requesting Party]* further undertakes that:

- (e) In absence of the Attorney General of Brunei Darussalam consenting otherwise, any evidence obtained pursuant to this request will not be used for the purposes of a matter other than the criminal matter in respect of which the request was made; and
- (f) should the Attorney-General of Brunei Darussalam require the return of any evidence obtained pursuant to this request at the conclusion of *[state particulars of criminal proceedings]* and of all consequential appeals, the evidence will be returned to the Attorney-General of Brunei Darussalam.

## **EXECUTION OF REQUEST**

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<sup>16</sup> Where available.

## **Confidentiality**

*[Specify any confidentiality requirements, the reasons thereof, and state the Requesting Party's position on the disclosure of the Request to the Court and / or other parties to any legal proceedings that may be instituted under the Mutual Assistance in Criminal Matters Order 2005.]*

## **Procedure to be followed**

It is requested that the following procedures be observed in the execution of the request:

*[Provide details of manner and form<sup>17</sup> in which evidence is to be taken and transmitted to the Requesting Party, if relevant]*

*[Indicate if attendance by representative of the Requesting Party at examination of witnesses / execution of the request is required and, if so, the title of the post held by the proposed representative]*

*[Indicate any other procedures that are requested to be followed in the taking of evidence]*

## **Period of Execution**

It is requested that the request be executed urgently / within *[state period giving reasons, e.g. specify likely trial or hearing dates or any other dates / reasons relevant to execution of request]*.

## **Transmission of Requested Evidence / Material**

Any documents, records, items, statement or information obtained in response to this request should be sent to the Central Authority of *[the Requesting Party]* at *[provide full address and other contact details such as the name of the contact officer, telephone and facsimile numbers and email addresses]*.

The Central Authority *[of the Requesting Party]* will forward the material to *[name of requesting authority in the Requesting Party concerned with the criminal matter]*, being the relevant requesting authority in this criminal matter.

## **Undertaking on expenses for use of live television link<sup>18</sup>**

The Government of *[name of Requesting Party]* undertakes to reimburse the Government of Brunei Darussalam for the cost of establishing the live television link, the costs related to the servicing of the live television link and the remuneration of interpreters provided by Brunei Darussalam.

## **OTHER INFORMATION<sup>19</sup>**

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<sup>17</sup> Please provide proforma or form of words as appropriate.

<sup>18</sup> If the request involves giving of evidence by live television link

<sup>19</sup> Applicable only if there is further information that is required to be forwarded under any treaty / memorandum of understanding / other agreement between Requesting Party and Brunei Darussalam

[State further information that is required to be furnished under a treaty / memorandum of understanding / other agreement between (the Requesting Party) and Brunei Darussalam, referring to the specific section or clause in the treaty / memorandum of understanding / other agreement which sets out the said requirement]

### **LIAISON OFFICERS**

The officer of the Central Authority of [name of the Requesting Party] who is handling this request is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

The case officer of [name of authority in Requesting Party concerned with the criminal matter] is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

### **SUPPLEMENTARY REQUEST**

The Central Authority [name of Requesting Party] may make supplementary requests for assistance in this matter if necessary.

### **RECIPROCITY UNDERTAKING**

The Government of [name of Requesting Party] undertakes that it will comply with a future request by the Government Brunei Darussalam for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

[Signature]

Name:  
Office:  
Date:

## **Service of process**

**TO:** The Attorney General of Brunei Darussalam

**FROM:** The Central Authority/ *[name of appropriate authority]* of the *[Requesting Party]*

[Through diplomatic channels]<sup>20</sup>

## **REQUEST FOR MUTUAL LEGAL ASSISTANCE IN A CRIMINAL MATTER**

### **INTRODUCTION**

I, *[name, appointment/ position of person making the request]*, on behalf of the Central Authority of *[name of Requesting Party]*, who is responsible for *[state area of responsibility e.g. criminal prosecutions, investigations]* in the *[Requesting Party]* and who is also authorised to make requests for mutual legal assistance in criminal matters, on behalf of the Government of the *[name of Requesting Party]*, respectfully requests the assistance of the Government of Brunei Darussalam in relation to a criminal matter involving *[describe nature of criminal proceedings, e.g. whether a trial or proceedings to determine whether a person should be tried or nature of criminal investigation]*.

### **AUTHORITY FOR REQUEST**

This request is made to the Government of Brunei Darussalam by the Government of *[name of Requesting Party]* for assistance to be extended under the Mutual Assistance in Criminal Matters Order 2005 and in pursuant to *[name and description of relevant treaty / agreement / convention]*.

### **NATURE OF REQUEST**

This request relates to *[describe subject of criminal matter]*. The authority having the conduct of the criminal matter is *[describe authority concerned with the criminal matter]*.

### **PURPOSE OF THE REQUEST**

By this request it is intended to *[state purpose which is intended to be achieved by the assistance sought, e.g. to effect service of process on certain person/s]*

### **CRIMINAL OFFENCES / APPLICABLE LEGISLATION / PENALTIES**

*[Set out the offences alleged to have been committed in relation to the criminal proceedings as well as the maximum penalties for these offences and attach copies of applicable legislative provisions. State identity of suspect / accused person, if known]*

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<sup>20</sup> If request is not made through diplomatic channels, this may be deleted

## **STATEMENT OF FACTS**

*[Describe the material facts of the criminal proceedings including, facts which have led to the issuance of the process and the request to Brunei Darussalam being made. Details of persons on whom the process is to be issued and served on, and the connection such person or persons have with the criminal proceedings in the Requesting Party].*

*[Grounds for believing or evidence that such person is in Brunei Darussalam, details of process issued against such person and evidence that such person was aware of the consequences of his /her non-compliance with the process should be included. Any relevant documents, including proof that such document was issued by a Court in the Requesting Party should also be attached]*

## **DESCRIPTION OF ASSISTANCE REQUESTED**

The Central Authority of Brunei Darussalam is requested to take the necessary steps to effect service of process on (*name of person*) as he has not complied with (*description of process e.g. summons etc.*). The name of the said person and his contact particulars<sup>21</sup> are as follows:

*[List the names, addresses, telephone numbers (if known) of such person/s]*

## **MANDATORY ASSURANCES & UNDERTAKINGS**

It is confirmed that this request:

- (a) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam; and
- (b) is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's colour, race, ethnic origin, sex, religion, nationality or political opinions.

The Central Authority of [*Requesting Party*] further undertakes that such person will not be subject to any penalty or liability or otherwise prejudiced in law by reason only of his refusal or failure to accept or comply with the summons, notwithstanding any contrary statement in the summons;

## **EXECUTION OF REQUEST**

### **Confidentiality**

*[Specify any confidentiality requirements, the reasons thereof, and state the Requesting Party's position on the disclosure of the Request to the Court and / or*

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<sup>21</sup> Where available.

*other parties to any legal proceedings that may be instituted under the Mutual Assistance in Criminal Matters Order 2005.]*

### **Procedure to be followed**

It is requested that the following procedures be observed in the execution of the request:

*[Indicate any other procedures that are requested to be followed in the service of process]*

*[Indicate any procedures to be followed in relation to certificate as to service or a statement of the reasons which prevented the service, whichever is applicable]*

*[Indicate if attendance by representative of the Requesting Party at the execution of the request is required and, if so, the title of the post held by the proposed representative]*

### **Period of Execution**

It is requested that the request be executed urgently / within *[state period giving reasons, e.g. specify likely trial or hearing dates or any other dates / reasons relevant to execution of request]*.

### **Transmission of Certificate of Service or Statement of Reasons which Prevented Service**

Any certificate of service or statement of reasons which prevented service obtained in response to this request should be sent to the Central Authority of *[the Requesting Party]* at *[provide full address and other contact details such as the name of the contact officer, telephone and facsimile numbers and email addresses]*.

The Central Authority *[of the Requesting Party]* will forward the material to *[name of requesting authority in the Requesting Party concerned with the criminal matter]*, being the relevant requesting authority in this criminal matter.

### **OTHER INFORMATION**<sup>22</sup>

*[State further information that is required to be furnished under a treaty / memorandum of understanding / other agreement between (the Requesting Party) and Brunei Darussalam, referring to the specific section or clause in the treaty / memorandum of understanding / other agreement which sets out the said requirement]*

### **LIAISON OFFICERS**

The officer of the Central Authority of *[name of the Requesting Party]* who is handling this request is :-

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<sup>22</sup> Applicable only if there is further information that is required to be forwarded under any treaty / memorandum of understanding / other agreement between Requesting Party and Brunei Darussalam

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

The case officer of [*name of authority in Requesting Party concerned with the criminal matter*] is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

### **SUPPLEMENTARY REQUEST**

The Central Authority [*name of Requesting Party*] may make supplementary requests for assistance in this matter if necessary.

### **RECIPROCITY UNDERTAKING**

The Government of [*name of Requesting Party*] undertakes that it will comply with a future request by the Government Brunei Darussalam for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

[Signature]

Name:  
Office:  
Date:

## **Locating/Identifying persons**

**TO:** The Attorney General of Brunei Darussalam

**FROM:** The Central Authority/ *[name of appropriate authority]* of the *[Requesting Party]*

[Through diplomatic channels]<sup>23</sup>

## **REQUEST FOR MUTUAL LEGAL ASSISTANCE IN A CRIMINAL MATTER**

### **INTRODUCTION**

I, *[name, appointment/ position of person making the request]*, on behalf of the Central Authority of *[name of Requesting Party]*, who is responsible for *[state area of responsibility e.g. criminal prosecutions, investigations]* in the *[Requesting Party]* and who is also authorised to make requests for mutual legal assistance in criminal matters, on behalf of the Government of the *[name of Requesting Party]*, respectfully requests the assistance of the Government of Brunei Darussalam in relation to a criminal matter involving *[describe nature of criminal proceedings, e.g. whether a trial or proceedings to determine whether a person should be tried or nature of criminal investigation]*.

### **AUTHORITY FOR REQUEST**

This request is made to the Government of Brunei Darussalam by the Government of *[name of Requesting Party]* for assistance to be extended under the Mutual Assistance in Criminal Matters Order 2005 and in pursuant to *[name and description of relevant treaty / agreement / convention]*.

### **NATURE OF REQUEST**

This request relates to *[describe subject of criminal matter]*. The authority having the conduct of the criminal matter is *[describe authority concerned with the criminal matter]*.

### **PURPOSE OF THE REQUEST**

By this request it is intended to *[state purpose which is intended to be achieved by the assistance sought, e.g. to secure admissible evidence to be used in a trial, to secure person to be charged in Court in Requesting Party, etc.]*

### **CRIMINAL OFFENCES / APPLICABLE LEGISLATION / PENALTIES**

*[Set out the offences alleged to have been committed in relation to the criminal proceedings as well as the maximum penalties for these offences and attach copies of applicable legislative provisions. State identity of suspect / accused person, if known]*

### **STATEMENT OF FACTS**

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<sup>23</sup> If request is not made through diplomatic channels, this may be deleted

*[Describe the material facts of the criminal proceedings including, facts which have led to the request to Brunei Darussalam being made. Details of persons sought to be identified or located should also be included, as well as the connection such person or persons have with the criminal proceedings in the Requesting Party. The Requesting Party should also provide grounds why they suspect such person or persons are in Brunei Darussalam].*

*[Attach any relevant documents in support of suspicion that person or persons are in Brunei Darussalam e.g. immigration records, ticket details etc.]*

*[Where the person to be located is suspected to be involved in or has benefited from the commission of an offence, the name, identity, nationality, location or description of that person]*

### **DESCRIPTION OF ASSISTANCE REQUESTED**

The Central Authority of Brunei Darussalam is requested to take the necessary steps to assist in locating, or identifying and locating a person believed to be in Brunei Darussalam and transmit any information on the result of inquiries made to the Central Authority of *[the Requesting Party]*. The names of the said person/s and his/their contact particulars are as follows<sup>24</sup>:

*[List the names, addresses, telephone numbers (if known) of such persons.]*

### **MANDATORY ASSURANCES & UNDERTAKINGS**

It is confirmed that this request:

- (a) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam; and
- (b) is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's colour, race, ethnic origin, sex, religion, nationality or political opinions.

The Central Authority of *[Requesting Party]* further undertakes that unless the Attorney General of Brunei Darussalam consents otherwise, any evidence obtained pursuant to this request will not be used for the purposes of a matter other than the criminal matter in respect of which the request was made.

### **EXECUTION OF REQUEST**

#### **Confidentiality**

*[Specify any confidentiality requirements, the reasons thereof, and state the Requesting Party's position on the disclosure of the Request to the Court and / or*

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<sup>24</sup> If identity of person/s is known

*other parties to any legal proceedings that may be instituted under the Mutual Assistance in Criminal Matters Order 2005.]*

### **Procedure to be followed**

It is requested that the following procedures be observed in the execution of the request:

*[State any specific procedures that the Requesting Party may wish to have followed or any other relevant information, e.g. precautions to be taken when seeking to locate / identify the person/s sought]*

*[Provide details of manner and form<sup>25</sup> of results of inquiries by Brunei Darussalam when transmitted to the Requesting Party, if relevant]*

*[Indicate if attendance by representative of the Requesting Party at execution of the request is required and, if so, the title of the post held by the proposed representative]*

### **Period of Execution**

It is requested that the request be executed urgently / within *[state period giving reasons, e.g. specify likely trial or hearing dates or any other dates / reasons relevant to execution of request]*.

### **OTHER INFORMATION**<sup>26</sup>

*[State further information that is required to be furnished under a treaty / memorandum of understanding / other agreement between (the Requesting Party) and Brunei Darussalam, referring to the specific section or clause in the treaty / memorandum of understanding / other agreement which sets out the said requirement]*

### **LIAISON OFFICERS**

The officer of the Central Authority of *[name of the Requesting Party]* who is handling this request is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

The case officer of *[name of authority in Requesting Party concerned with the criminal matter]* is :-

Name of Officer :

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<sup>25</sup> Please provide proforma or form of words as appropriate.

<sup>26</sup> Applicable only if there is further information that is required to be forwarded under any treaty / memorandum of understanding / other agreement between Requesting Party and Brunei Darussalam

Address :  
Telephone number :  
Facsimile number :  
Email address :

### **SUPPLEMENTARY REQUEST**

The Central Authority [*name of Requesting Party*] may make supplementary requests for assistance in this matter if necessary.

### **RECIPROCITY UNDERTAKING**

The Government of [*name of Requesting Party*] undertakes that it will comply with a future request by the Government Brunei Darussalam for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

[Signature]

Name:

Office:

Date:

## **Custody of persons in transit**

**TO:** The Attorney General of Brunei Darussalam

**FROM:** The Central Authority/ *[name of appropriate authority]* of the *[Requesting Party]*

*[Through diplomatic channels]*<sup>27</sup>

## **REQUEST FOR MUTUAL LEGAL ASSISTANCE IN A CRIMINAL MATTER**

### **INTRODUCTION**

I, *[name, appointment/ position of person making the request]*, on behalf of the Central Authority of *[name of Requesting Party]*, who is responsible for *[state area of responsibility e.g. criminal prosecutions, investigations]* in the *[Requesting Party]* and who is also authorised to make requests for mutual legal assistance in criminal matters, on behalf of the Government of the *[name of Requesting Party]*, respectfully requests the assistance of the Government of Brunei Darussalam in relation to a criminal matter involving *[describe nature of criminal proceedings, e.g. whether a trial or proceedings to determine whether a person should be tried or nature of criminal investigation]*.

### **AUTHORITY FOR REQUEST**

This request is made to the Government of Brunei Darussalam by the Government of *[name of Requesting Party]* for assistance to be extended under the Mutual Assistance in Criminal Matters Order 2005 and in pursuant to *[name and description of relevant treaty / agreement / convention]*.

### **NATURE OF REQUEST**

This request relates to *[describe subject of criminal matter]*. The authority having the conduct of the criminal matter is *[describe authority concerned with the criminal matter]*.

### **PURPOSE OF THE REQUEST**

By this request it is intended to *[state purpose which is intended to be achieved by the assistance sought, e.g. to secure admissible evidence to be used in a trial, to secure evidence to be used in proceedings to determine whether persons are to be charged, etc.]*

### **CRIMINAL OFFENCES / APPLICABLE LEGISLATION / PENALTIES**

*[Set out the offences alleged to have been committed in relation to the criminal proceedings as well as the maximum penalties for these offences and attach copies of applicable legislative provisions. State identity of suspect / accused person, if known]*

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<sup>27</sup> If request is not made through diplomatic channels, this may be deleted

## **STATEMENT OF FACTS**

*[Describe the material facts of the criminal proceedings including, the relevance of the evidence or assistance of a person in custody who is to be transported through Brunei Darussalam can give or provide. Other information as may be relevant (e.g. the reason why it is necessary for the person in custody to be transported through Brunei Darussalam) should also be stated].*

## **DESCRIPTION OF ASSISTANCE REQUESTED**

The Government of Brunei Darussalam is requested to take such steps as are necessary to permit the transportation through Brunei Darussalam to the *[country to which the person is bound]* of *[name of person]*, being a person in custody in the *[Requesting Party]* and who has consented to give evidence or provide assistance in relation to a criminal matter in the *[country to which the person is bound]*.

## **MANDATORY ASSURANCES & UNDERTAKINGS**

It is confirmed that this request:

- (a) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam; and
- (b) is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's colour, race, ethnic origin, sex, religion, nationality or political opinions.

The Central Authority of *[Requesting Party]* further undertakes that unless the Attorney General of Brunei Darussalam consents otherwise, any evidence obtained pursuant to this request will not be used for the purposes of a matter other than the criminal matter in respect of which the request was made.

## **EXECUTION OF REQUEST**

### **Confidentiality**

*[Specify any confidentiality requirements, the reasons thereof, and state the Requesting Party's position on the disclosure of the Request to the Court and / or other parties to any legal proceedings that may be instituted under the Mutual Assistance in Criminal Matters Order 2005.]*

### **Procedure to be followed**

It is requested that the following procedures be observed in the execution of the request:

*[State any specific procedures that the Requesting Party may wish to have followed, e.g. whether any particular arrangements must be made at the airport or port through which the person is to be transported]*

*[Indicate if attendance by representative of the Requesting Party at execution of the request is required and, if so, the title of the post held by the proposed representative]*

### **Period of Execution**

It is requested that the request be executed urgently / within *[state period giving reasons, e.g. specify likely trial or hearing dates or any other dates / reasons relevant to execution of request]*.

### **OTHER INFORMATION**<sup>28</sup>

*[State further information that is required to be furnished under a treaty / memorandum of understanding / other agreement between (the Requesting Party) and Brunei Darussalam, referring to the specific section or clause in the treaty / memorandum of understanding / other agreement which sets out the said requirement]*

### **LIAISON OFFICERS**

The officer of the Central Authority of *[name of the Requesting Party]* who is handling this request is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

The case officer of *[name of authority in Requesting Party concerned with the criminal matter]* is :-

Name of Officer :  
Address :  
Telephone number :  
Facsimile number :  
Email address :

### **SUPPLEMENTARY REQUEST**

The Central Authority *[name of Requesting Party]* may make supplementary requests for assistance in this matter if necessary.

### **RECIPROCITY UNDERTAKING**

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<sup>28</sup> Applicable only if there is further information that is required to be forwarded under any treaty / memorandum of understanding / other agreement between Requesting Party and Brunei Darussalam

The Government of [*name of Requesting Party*] undertakes that it will comply with a future request by the Government Brunei Darussalam for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

[Signature]

Name:

Office:

Date:

# ANNEX G – MALAYSIA MODEL OUTGOING MLA REQUEST FORM

FORM AGC 1  
[Section 7]

Version 1.2-April 2004

## MODEL FORM FOR REQUEST BY MALAYSIA

**To:**

[name of appropriate authority/Central Authority of requested State]<sup>29</sup>

**From:**

The Attorney General of Malaysia  
Attorney General's Chambers  
Level 16, No. 45 Persiaran Perdana, Precinct 4  
Federal Government Administrative Centre  
62512 PUTRAJAYA  
MALAYSIA.

Through diplomatic channels

### REQUEST FOR MUTUAL ASSISTANCE IN A CRIMINAL MATTER RE: *(insert particulars)*

#### INTRODUCTION

**EITHER:**

1. I, ....., the Attorney General of Malaysia, being the Central Authority designated by Article (*number of the relevant Article*) of the Treaty between the Government of Malaysia and the Government of (*name of requested foreign State*) on Mutual Assistance in Criminal Matters (after this referred to as "the Treaty") to make requests for mutual assistance in criminal matters on behalf of Malaysia, and being empowered by section 7 of the Mutual Assistance in Criminal Matters Act 2002 to make requests for mutual assistance in criminal matters, present this request to the Central Authority of (*name of requested foreign State*).<sup>30</sup>

**OR:**

1. I, ....., the Attorney General of Malaysia, being the appropriate authority by virtue of section 7 of the Mutual Assistance in Criminal Matters Act 2002 to make requests for mutual assistance in criminal matters on behalf of Malaysia present this request to the (*name of appropriate authority of requested foreign State*).<sup>31</sup>

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<sup>29</sup> Please insert the name of the Central Authority if the request is made pursuant to an operative bilateral agreement with Malaysia, which requires requests to be made by a designated Central Authority. In other cases, please insert the name of the appropriate authority.

<sup>30</sup> This version may be used if there is an operative bilateral agreement for mutual assistance in criminal matters between Malaysia and the requested foreign State.

<sup>31</sup> This version may be used if there is no operative bilateral agreement for mutual assistance in criminal matters between Malaysia and the requested foreign State.

## **AUTHORITY FOR REQUEST**

### **EITHER:**

2. This request is made under the Treaty.<sup>32</sup>

### **OR:**

2. Malaysia makes this request for assistance to be extended under the (*specify relevant legislation of requested foreign State*).<sup>33</sup> The request is made in respect of a criminal matter within the meaning of (*specify relevant legislation of requested foreign State*).

## **NATURE OF REQUEST**

- 3.1 This request relates to a (*criminal matter*)<sup>34</sup> concerning (*describe subject of criminal matter*).

- 3.2 The personal details of the subject of the request are as follows:

Name/Description:  
Date of birth:  
Age:  
Occupation:  
Nationality:  
Passport No.  
Address/Location:

- 3.3 The details of the property to be traced/restrained/forfeited are as follows<sup>35</sup>:

Description:  
Location:  
Other relevant details:

- 3.4 The reasons for suspecting that the person/property is in (*name of requested foreign State*) are as follows<sup>36</sup>:

- 3.5 The authority having the conduct of the criminal matter is (*describe authority in Malaysia concerned with the criminal matter*).

## **STATEMENT OF FACTS**

4. (*Describe the material facts of the criminal matter including, in particular, those facts necessary to establish circumstances connected to evidence sought in the requested foreign State and the relevance of the foreign State's evidence to the criminal matter in Malaysia.*)

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<sup>32</sup> This version may be used if there is an operative bilateral agreement for mutual assistance in criminal matters between Malaysia and the requested foreign State

<sup>33</sup> This version may be used if there is no operative bilateral agreement for mutual assistance in criminal matters between Malaysia and the requested foreign State.

<sup>34</sup> State whether it is an investigation, prosecution or an ancillary criminal matter relating to the restraining of dealing with property or the enforcement or satisfaction of a forfeiture order.

<sup>35</sup> Applicable where request relates to restraint of property or enforcement of a forfeiture order.

<sup>36</sup> Applicable where request relates to restraint of property or enforcement of a forfeiture order.

## **CRIMINAL OFFENCES/APPLICABLE LEGISLATION/PENALTIES**

### **EITHER:**

5.1 (Name of suspects/defendants) are (suspected of having/alleged to have) committed/have been charged with the commission of the following offences, namely -

- (describe offences and provisions of the legislation contravened)

The maximum penalties for the above offences, which are the subject of this (investigation/prosecution) are:

- (specify maximum penalty for each offence and applicable law)<sup>37</sup>.

### **OR:**

5.1 A forfeiture order (has been/may be) made in proceedings in Malaysia. (State basis for any statement that a forfeiture order may be made.)

The forfeiture order is connected with (state the relevant offences) in Malaysia the maximum penalties for which are (specify maximum penalty for the offence and applicable law)<sup>38</sup>.

5.2 A copy/extract of the relevant legislation is attached and marked as "Attachment A" to this request.

## **PURPOSE OF THE REQUEST**

6. By this request it is intended to (state purpose: e.g. secure admissible evidence for the purpose of the criminal proceedings against the defendants, enforce the abovementioned forfeiture order, etc.)

## **MANDATORY UNDERTAKINGS**

7.1 It is confirmed that this request:

- (a) does not relate to the investigation, prosecution or punishment of a person for a criminal offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;
- (b) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in (name of requested foreign State), would have constituted a military offence under the laws of (name of requested foreign State) which is not also an offence under the ordinary criminal law of (name of requested foreign State);

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<sup>37</sup> Applicable where request relates to an investigation or prosecution.

<sup>38</sup> Applicable where request relates to restraint of property or enforcement of a forfeiture order.

- (c) is not made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, religion, sex, ethnic origin, nationality or political opinions;
- (d) does not relate to the investigation, prosecution or punishment of a person for an offence in a case where the person -
  - (i) has been convicted, acquitted or pardoned by a competent court or other authority of Malaysia; or
  - (ii) has undergone the punishment provided by the law of Malaysia, in respect of that offence or of another offence constituted by the same act or omission as that offence;
- (e) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in (*name of requested foreign State*), would not have constituted an offence against the laws of (*name of requested foreign State*);
- [(f) does not have as its primary purpose the assessment or collection of tax.]<sup>39</sup>

7.2. I further undertake -

- (a) that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made<sup>40</sup>; and
- (b) that in the case of a request for assistance under (*specify relevant provisions of the relevant legislation of requested foreign State*), to return to the (*appropriate authority of the requested foreign State*), upon its request, any thing obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made<sup>41</sup>.

### **DESCRIPTION OF ASSISTANCE REQUESTED**

8. The (*appropriate authority of the requested foreign State*) is requested to take such steps as are necessary to give effect to the following:

- (a) examination on oath or affirmation of a witness before (*relevant judicial authority of requested foreign State*);

(e.g.) Mr. X  
ABC Co., Ltd.  
(address)

to be orally examined on oath or affirmation on the following matters:

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<sup>39</sup> Necessary only if the criminal matter is an investigation concerning offences relating to taxation and a bilateral agreement between Malaysia and the requested foreign State is in operation.

<sup>40</sup> Not applicable if the appropriate authority of the requested foreign State consents.

<sup>41</sup> Not applicable if the appropriate authority of the requested foreign State consents to waive this requirement.

- *(specify clearly the relevant issues/areas relating to the subject-matter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions)*

**Note:**

This statement is to be obtained in the form of an affidavit in accordance with Form 1 attached to this request.

- (b) production of things (documents, books, etc.) before a court [and obtaining of oral evidence of the witness producing such material for the purpose of identifying and proving the material produced]<sup>42</sup>;

(e.g.) Director  
ABC Co., Ltd.  
(address)

to be required to produce *(describe the form of evidence e.g. "certified copies")* of the following documents for the period *(state relevant time frame)*:

- *(specify documents or classes thereof).*

The above witness to be orally examined on oath or affirmation on the following matters for the purpose of identifying and proving the documents produced:

- *(state relevant particulars).*

(e.g.)

- to provide confirmation as to his position in a company/office and that he is responsible for keeping/maintaining/holding the records in relation to the subject-matter of the investigation
- that he is authorised by the relevant law of the requested foreign State to make the affidavit
- to confirm that he has access to the records kept in relation to the subject-matter of the investigation in the normal course of his duties
- to confirm the authenticity of the copies of the documents supplied
- to confirm that the documents were created in the ordinary course of business

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<sup>42</sup>

Include this part if it is deemed necessary for the purposes of admissibility of the documents in evidence.

**Note:**

This statement is to be obtained in the form of an attestation in accordance with Form 2 attached to this request.

- (c) search of person or premises for things;

(e.g.) The premises of ABC Co., Ltd.  
(address)

to be searched under a search warrant for the seizure of the following from the company:

- *(provide details of the things sought to be searched for and seized).*
- *(support any request for originals of items seized with reasons).*

- (d) production of material (documents, books, etc.) through production orders;

(e.g.) Manager  
ABC Bank Ltd.

to be required to produce copies of the following documents under a production order:

- *(describe particulars of material required to be produced and where located).*
- *(state grounds for believing that the material sought is likely to be of substantial value to the criminal matter in Malaysia).*
- *(support any request for the production of originals of documents with reasons).*

- (e) arrangement of travel of person/prisoner from *(name of requested foreign State)* to assist in a criminal matter;

(e.g.) Arrangements to be made for Mr. X  
(address)

to travel to Malaysia to give assistance in a *(criminal matter)*<sup>43</sup> by rendering the following assistance:

- *(specify the assistance sought).*
- *(provide the undertakings required by the law of (name of requested foreign State)).*

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<sup>43</sup>

State whether it is an investigation or criminal proceedings of an offence in Malaysia or an ancillary criminal matter.

- *(provide details of the allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person, while the person is in Malaysia pursuant to the request).*
- (f) enforcement of a forfeiture order/request to assist in the restraining of dealing in property;
  - *(state particulars of the forfeiture order to be enforced, or the property to be restrained and present state of related proceedings).*
- (g) assistance in locating/identifying and locating a person who is suspected to be involved in/to have benefited from the commission of a serious offence;
  - (e.g.) Arrangements to be made to locate/identify and locate Mr. X who is believed to be in *(name of requested foreign State)* with the last known address at *(address)*.
    - *(state particulars of person concerned).*
- (h) assistance in tracing property suspected to be connected to a serious offence;
  - (e.g.) Arrangements to be made to trace *(description of property)* believed to be in *(name of requested foreign State)*.
    - *(state particulars of property concerned).*
- (i) service of process.
  - (e.g.) Mr. X  
(address)

to be served with the following documents:

  - *(describe documents to be served).*
  - *(specify manner of service and period within which documents to be served).*
  - *(specify required proof of service).*

## **EXECUTION OF REQUEST**

### **(A) CONFIDENTIALITY**

- [9.1. It is requested that the fact that this request has been made and the execution of the request be kept entirely confidential except to the extent necessary to execute the request as *(state reasons e.g. the likelihood of interference with witnesses and /or destruction of evidence, etc.)*]<sup>44</sup>

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<sup>44</sup> Necessary if confidentiality is requested.

- [9.2. It is also requested that the evidence of the witness be taken *in camera* as there exist reasonable grounds for believing that it is in the interests of the witness to give evidence *in camera* because (*state reasons*) and the criminal matter would be substantially prejudiced if the examination was conducted in open court because (*state reasons*).]<sup>45</sup>

**(B) PARTICULAR PROCEDURES TO BE FOLLOWED**

10. It is requested that the following procedures be observed in the execution of the request:

- (*state details of manner and form in which evidence is to be taken and transmitted to Malaysia, if relevant.*)

(e.g.)

In relation to the evidence obtained on examination on oath/affirmation of a witness, please provide the statement in admissible form. To be admissible, the statement must be made in the form of an affidavit except when recorded in writing by a judicial authority. If documents and records are referred to or are otherwise enclosed, the documents and records must be accompanied by an attestation of authenticity. Copies of the prescribed form for the affidavit and attestation of authenticity are attached to this request and marked as Attachment B and Attachment C respectively.

- (*state any special requirements as to certification/authentication of documents.*)

(e.g.)

In relation to evidence to be provided by affidavit-

- (a) the affidavit should be made before a judicial officer or other officer who is authorised to administer oaths or affirmations in (*name of requested foreign State*). When the affidavit has been sworn or affirmed, the affidavit should be sealed with an official or public seal of (*name of requested foreign State*) to ensure compliance with section 424 of the Criminal Procedure Code, a copy of which is attached to this request and marked as Attachment D;
- (b) if the affidavit runs for more than one page, each page other than the last should be initialed both by the person who makes the affidavit and by the person before whom the affidavit is made; and
- (c) each page of each attachment should be initialed both by the person who makes the affidavit and by the person before whom the affidavit is made.

(e.g.)

In relation to documents produced by computers, or a statement contained in such document, the document or statement, as the case may be, is admissible as evidence of any fact stated therein if the document was produced by the computer in the course of its ordinary use, whether or not the person tendering the same is the maker of such document or statement.

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<sup>45</sup> Applicable if the request relates to the taking of evidence before a court for the purposes of an investigation in Malaysia.

A certificate signed by a person who either before or after the production of the document by the computer is responsible for the management of the operation of that computer or for the conduct of the activities for which that computer was used must be tendered to the court to prove that a document was produced by a computer in the course of its ordinary use.

An extract of the relevant legislation, section 90A of the Evidence Act 1950 [Act 56] of Malaysia is attached and marked as "Attachment E" to this request.

- *(state if attendance by representative of appropriate authority of Malaysia at examination of witnesses/execution of request is required and, if so, the title of the office held by the proposed representative.)*

(e.g.)

Permission is requested for an officer of *(name of appropriate authority in Malaysia)* to travel to *(name of requested foreign State)* to assist in the execution of this request.

**(C) PERIOD OF EXECUTION<sup>46</sup>**

11. It is requested that the request be executed urgently/within *(state period giving reasons i.e. specify likely trial or hearing dates or any other dates/reasons relevant to the execution of the request)*.

**(D) TRANSMISSION OF REQUESTED MATERIAL**

- 12.1 Any documents, statements, information or things obtained in response to this request should be sent to the Attorney General of Malaysia at the following address:

The International Affairs Division  
Attorney General's Chambers Malaysia  
Level 6 Block C3  
Federal Government Administrative Centre  
62512 PUTRAJAYA  
MALAYSIA.

For the attention of *(state name of officer)*

Telephone Number:  
Facsimile Number:  
Electronic mail address:

- 12.2 The Attorney General's Chambers of Malaysia will forward the material to *(name of authority in Malaysia concerned with the criminal matter)*, being the relevant requesting authority in this matter.

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<sup>46</sup> Section 23 of the Mutual Assistance in Criminal Matters Act 2002 prescribes a period of 7 days for the production of documents and things under a court order. Where large quantities of documents are involved, a longer period may be required.

**(E) DETAILS OF ALLOWANCES, ARRANGEMENTS FOR SECURITY AND ACCOMODATION<sup>47</sup>**

13.1 The allowances to which (*name of person*) will be entitled are as follows:

*(State details of allowances)*

13.2 The arrangements for the security of (*name of person*) are as follows:

*(State details of security arrangements)*

13.3 The arrangements for the accommodation of (*name of person*) are as follows:

*(State details of accommodation arrangements)*

**LIAISON**

14.1 The officers of the Attorney General's Chambers of Malaysia handling this request are:

*(state name of officer(s))*

Attorney General's Chambers Malaysia  
Level 6 Block C3  
Federal Government Administrative Centre  
62512 PUTRAJAYA  
MALAYSIA.

Telephone Number:

Facsimile Number:

Electronic mail address:

14.2 The case officer of (*name of authority in Malaysia concerned with the criminal matter*) is:

*(name of officer of authority in Malaysia concerned with the criminal matter, telephone and facsimile numbers and e-mail address)*

14.3 The following officer/\*s of (*name of appropriate authority in requested foreign State*) \*has/\*have knowledge of this matter:

*(name of officer/\*s of appropriate authority in requested foreign State, telephone and facsimile numbers and e-mail addresses).*

14.4 If permission is given for an officer of (*name of authority in Malaysia concerned with the criminal matter*) to travel to (*name of requested foreign State*), the officer is likely to be (*name of officer of authority in Malaysia concerned with the criminal matter*).

**SUPPLEMENTARY REQUEST**

15. The Attorney General of Malaysia may wish to make supplementary requests for assistance in this matter if necessary.

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<sup>47</sup> If the request involves a person travelling from the requested foreign State to Malaysia.

**RECIPROCITY UNDERTAKING<sup>48</sup>**

16. The Government of Malaysia assures the Government of (*name of requested foreign State*) that the Government of Malaysia would, subject to its laws, comply with a request by the Government of (*name of requested foreign State*) to Malaysia for assistance of this kind in respect of an equivalent offence.

**EITHER:**

17. I, \_\_\_\_\_, the Attorney General of Malaysia, pursuant to section 7 of the Mutual Assistance in Criminal Matters Act 2002, and at the instance of (*name of authority in Malaysia concerned with the criminal matter*), being satisfied that there are reasonable grounds for believing that there is evidence in (*name of requested foreign State*) that would be relevant to an investigation/criminal proceedings in Malaysia, make this request to (*name of appropriate authority of requested foreign State*) for assistance in relation to this criminal matter.

**OR:**

17. I, (*name of person*), an officer of the International Affairs Division/Prosecution Division of the Attorney General's Chambers of Malaysia, acting in reliance on a delegation by the Attorney General of Malaysia under section 43 of the Mutual Assistance in Criminal Matters Act 2002 and on the authority of the Attorney General of Malaysia in the exercise of the executive powers under section 7 of the Mutual Assistance in Criminal Matters Act 2002 to make requests to foreign States for assistance in criminal matters, and at the instance of (*name of authority in Malaysia concerned with the criminal matter*), make this request to (*name of appropriate authority of requested foreign State*) for assistance in relation to this criminal matter.

Signed by

Name: \_\_\_\_\_

Office: \_\_\_\_\_

Date: \_\_\_\_\_

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<sup>48</sup> Applicable if the request is made by to a foreign State without any operative bilateral agreement with Malaysia. The undertaking should be given by the Attorney General as the designated Central Authority/appropriate authority authorised to give such undertaking on behalf of Malaysia.

# ANNEX H – MALAYSIA MODEL INCOMING MLA REQUEST FORM

FORM AGC 2  
[Section 19]

Version 1.3 – November 2010

## MODEL FORM FOR REQUEST TO MALAYSIA

**To:**

The Attorney General of Malaysia  
Level 16 Attorney General's Chambers Malaysia  
No. 45 Persiaran Perdana  
62100 PUTRAJAYA  
MALAYSIA.

(Attention: Transnational Crime Unit)

**From:**

[name appropriate authority/Central Authority of requesting State]<sup>49</sup>

Through diplomatic channels

### REQUEST FOR MUTUAL ASSISTANCE IN A CRIMINAL MATTER

RE: *(insert particulars)*

#### **INTRODUCTION**

**EITHER:**

1. I/The office of *(name of designated authority under an operative bilateral agreement with Malaysia for mutual assistance in criminal matters)*, being the Central Authority designated by Article *(number of the relevant Article)* of the Treaty between the Government of Malaysia and the Government of *(name of requesting foreign State)* on Mutual Assistance in Criminal Matters (after this referred to as "the Treaty") to make requests for mutual assistance in criminal matters on behalf of *(name of requesting foreign State)*, and being empowered by *(state relevant provisions of empowering legislation of requesting foreign State)* to make requests for mutual assistance in criminal matters, present this request to the Central Authority of Malaysia.<sup>50</sup>

**OR:**

1. I/The office of *(describe appropriate authority, either person or office)*, being an appropriate authority by virtue of *(state relevant provisions of empowering legislation of requesting foreign State)* to make requests for mutual assistance in criminal

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<sup>49</sup> Please insert the name of the Central Authority if the request is made pursuant to an operative bilateral agreement with Malaysia, which requires requests to be made by a designated Central Authority. In other cases, please insert the name of the appropriate authority.

<sup>50</sup> This version may be used by a foreign State having an operative bilateral agreement for mutual assistance in criminal matters with Malaysia.

matters on behalf of (*name of requesting foreign State*), present this request to the Attorney General of Malaysia.<sup>51</sup>

### **AUTHORITY FOR REQUEST**

#### **EITHER:**

2. This request is made under the Treaty.<sup>52</sup>

#### **OR:**

2. (*Name of requesting foreign State*) makes this request for assistance to be extended under the Mutual Assistance in Criminal Matters Act 2002 [Act 621] of Malaysia.<sup>53</sup> The request is made in respect of a criminal matter within the meaning of subsection 2(1) of the Mutual Assistance in Criminal Matters Act 2002.

### **NATURE OF REQUEST**

3.1 This request relates to a (*criminal matter*)<sup>54</sup> concerning (*describe subject of criminal matter*).

3.2 The personal details of the subject of the request are as follows:

Name/Description:  
Date of birth:  
Age:  
Occupation:  
Nationality:  
Passport No.  
Address/Location:

3.3 The details of the property to be traced/restrained/forfeited are as follows<sup>55</sup>:

Description:  
Location:  
Other relevant details:

3.4 The reasons for suspecting that the person/property is in Malaysia are as follows<sup>56</sup>:

3.5 The authority having the conduct of the criminal matter is (*describe authority in the requesting foreign State concerned with the criminal matter*).

### **STATEMENT OF FACTS**

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<sup>51</sup> This version may be used by a foreign State without any operative bilateral agreement for mutual assistance in criminal matters with Malaysia.

<sup>52</sup> This version may be used by a foreign State having an operative bilateral agreement for mutual assistance in criminal matters with Malaysia.

<sup>53</sup> This version may be used by a foreign State without any operative bilateral agreement for mutual assistance in criminal matters with Malaysia.

<sup>54</sup> State whether it is an investigation, prosecution or an ancillary criminal matter relating to the restraining of dealing with property or the enforcement or satisfaction of a foreign forfeiture order.

<sup>55</sup> Applicable where request relates to restraint of property or enforcement of a forfeiture order.

<sup>56</sup> Applicable where request relates to restraint of property or enforcement of a forfeiture order.

4. *(Describe the material facts of the criminal matter including, in particular, those facts necessary to establish circumstances connected to evidence sought in Malaysia and the relevance of Malaysian evidence to the criminal matter in the requesting foreign State.)*

#### **CRIMINAL OFFENCES/APPLICABLE LEGISLATION/PENALTIES**

##### **EITHER:**

- 5.1 *(Name of suspects/defendants) are (suspected of having/alleged to have) committed/have been charged with the commission of the following offences, namely -*

- *(describe offences and provisions of the legislation contravened)*

The maximum penalties for the above offences, which are the subject of this *(investigation/prosecution)* are:

- *(specify maximum penalty for each offence and applicable law)<sup>57</sup>.*

##### **OR:**

- 5.1 A foreign forfeiture order *(has been/may be)* made in proceedings in *(name of requesting foreign State)*. *(State basis for any statement that a foreign forfeiture order may be made.)*

The foreign forfeiture order is connected with *(state the relevant offences)* in *(name of requesting foreign State)* the maximum penalties for which are *(specify maximum penalty for the offence and applicable law)<sup>58</sup>.*

- 5.2 A copy/extract of the relevant legislation is attached and marked as “Attachment A” to this request.

#### **PURPOSE OF THE REQUEST**

6. By this request it is intended to *(state purpose: e.g. secure admissible evidence for the purpose of the criminal proceedings against the defendants, enforce the abovementioned foreign forfeiture order, etc.)*

#### **MANDATORY UNDERTAKINGS**

- 7.1 It is confirmed that this request:

- (a) does not relate to the investigation, prosecution or punishment of a person for a criminal offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;
- (b) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia, would

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<sup>57</sup> Applicable where request relates to an investigation or prosecution.

<sup>58</sup> Applicable where request relates to restraint of property or enforcement of a foreign forfeiture order.

have constituted a military offence under the laws of Malaysia which is not also an offence under the ordinary criminal law of Malaysia;

- (c) is not made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, religion, sex, ethnic origin, nationality or political opinions;
- (d) does not relate to the investigation, prosecution or punishment of a person for an offence in a case where the person -
  - (i) has been convicted, acquitted or pardoned by a competent court or other authority of the (*name of the requesting foreign State*); or
  - (ii) has undergone the punishment provided by the law of (*name of the requesting foreign State*),in respect of that offence or of another offence constituted by the same act or omission as that offence;
- (e) does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia, would not have constituted an offence against the laws of Malaysia;
- [(f) does not have as its primary purpose the assessment or collection of tax.]<sup>59</sup>

7.2. The (*appropriate authority of the requesting foreign State*) further undertakes -

- (a) that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made<sup>60</sup>;
- (b) that in the case of a request for assistance under sections 22, 23, 24, 25 and 26 or sections 35, 36, 37 and 38 of the Mutual Assistance in Criminal Matters Act 2002, to return to the Attorney General of Malaysia, upon his request, any thing obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made<sup>61</sup>;
- (c) that (*name of person*) who attends in (*name of requesting foreign State*) shall not -
  - (i) be detained, prosecuted or punished for any offence against the law of (*name of requesting foreign State*) that is alleged to have been committed, or that was committed, before the his/her departure from Malaysia;
  - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before his/her departure from Malaysia; or

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<sup>59</sup> Necessary only if the criminal matter is an investigation concerning offences relating to taxation and a bilateral agreement with Malaysia is in operation.

<sup>60</sup> Not applicable if the Attorney General consents pursuant to subsection 20(2) of the Mutual Assistance in Criminal Matters Act 2002.

<sup>61</sup> Not applicable if the Attorney General consents to waive this requirement.

- (iii) be required to give evidence or assistance in relation to any criminal matter in *(name of requesting foreign State)* other than the criminal matter to which the request relates, unless he/she has left *(name of requesting foreign State)* or he/she has had the opportunity of leaving *(name of requesting foreign State)* and has remained in *(name of requesting foreign State)* otherwise than for the purpose of giving evidence or assistance in relation to the criminal matter to which the request relates<sup>62</sup>;
- (d) that any evidence given by *(name of person)* in the criminal proceedings to which the request relates, if any, will be inadmissible or otherwise disqualified from use in the prosecution of *(name of person)* for an offence against the law of *(name of requesting foreign State)*, other than for the offence of perjury or contempt of court in relation to the giving of that evidence<sup>63</sup>;
- (e) that *(name of person)* will be returned to Malaysia in accordance with arrangements agreed to by the Attorney General of Malaysia<sup>64</sup>; and
- (f) *(such other matters as the Attorney General of Malaysia considers appropriate)*.

#### **DESCRIPTION OF ASSISTANCE REQUESTED**

8. The Attorney General of Malaysia is requested to take such steps as are necessary to give effect to the following:

- (a) examination on oath or affirmation of a witness before a Sessions Court Judge;
  - (e.g.) Mr. X  
ABC Co., Ltd.  
(address)

to be orally examined on oath or affirmation on the following matters:

- *(specify clearly the relevant issues/areas relating to the subject-matter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions)*

#### **Note:**

This statement is to be obtained in the form of an affidavit in accordance with Form 1 attached to this request.

- (b) production of things (documents, books, etc.) before a court [and obtaining of oral evidence of the witness producing such material for the purpose of identifying and proving the material produced]<sup>65</sup>;

<sup>62</sup> Applicable if request relates to attendance of person in requesting foreign State.

<sup>63</sup> Applicable if request relates to attendance of person in requesting foreign State.

<sup>64</sup> Applicable if request relates to attendance of person in requesting foreign State.

<sup>65</sup> Include this part if it is deemed necessary for the purposes of admissibility of the documents in evidence.

(e.g.) Director  
ABC Co., Ltd.  
(address)

to be required to produce (*describe the form of evidence e.g. "certified copies"*) of the following documents for the period (*state relevant time frame*):

- (*specify documents or classes thereof*).

The above witness to be orally examined on oath or affirmation on the following matters for the purpose of identifying and proving the documents produced:

- (*state relevant particulars*).

(e.g.)

- to provide confirmation as to his position in a company/office and that he is responsible for keeping/maintaining/holding the records in relation to the subject-matter of the investigation
- that he is authorised by the relevant law of the requested foreign State to make the affidavit
- to confirm that he has access to the records kept in relation to the subject-matter of the investigation in the normal course of his duties
- to confirm the authenticity of the copies of the documents supplied
- to confirm that the documents were created in the ordinary course of business

**Note:**

This statement is to be obtained in the form of an attestation in accordance with Form 2 attached to this request.

(c) search of person or premises for things;

(e.g.) The premises of ABC Co., Ltd.  
(address)

to be searched under a search warrant for the seizure of the following from the company:

- (*provide details of the things sought to be searched for and seized*).

- *(support any request for originals of items seized with reasons).*
- (d) production of material (documents, books, etc.) through production orders;
  - (e.g.) Manager  
ABC Bank Ltd.  
(address)

to be required to produce copies of the following documents under a production order:

  - *(describe particulars of material required to be produced and where located).*
  - *(state grounds for believing that the material sought is likely to be of substantial value to the criminal matter in the requesting foreign State).*
  - *(support any request for the production of originals of documents with reasons).*
- (e) arrangement of travel of person/prisoner from Malaysia to assist in a criminal matter;
  - (e.g.) Arrangements to be made for Mr. X  
(address)

to travel to *(name of requesting foreign State)* to give assistance in a *(criminal matter)*<sup>66</sup> by rendering the following assistance:

  - *(specify the assistance sought).*
  - *(provide the undertakings required by the law of Malaysia).*
  - *(provide details of the allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person, while the person is in the requesting foreign State pursuant to the request).*
- (f) enforcement of a foreign forfeiture order/request to assist in the restraining of dealing in property;
  - *(state particulars of the foreign forfeiture order to be enforced, or the property to be restrained and present state of related proceedings).*
- (g) assistance in locating/identifying and locating a person who is suspected to be involved in/to have benefited from the commission of a foreign serious offence;

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<sup>66</sup> State whether it is an investigation or criminal proceedings of an offence in the requesting foreign State or an ancillary criminal matter.

(e.g.) Arrangements to be made to locate/identify and locate Mr. X who is believed to be in Malaysia with the last known address at (*address*).

- (*state particulars of person concerned*).

(h) assistance in tracing property suspected to be connected to a foreign serious offence;

(e.g.) Arrangements to be made to trace (*description of property*) believed to be in Malaysia.

- (*state particulars of property concerned*).

(i) service of process.

(e.g.) Mr. X  
(*address*)

to be served with the following documents:

- (*describe documents to be served*).
- (*specify manner of service and period within which documents to be served*).
- (*specify required proof of service*).

## **EXECUTION OF REQUEST**

### **(A) CONFIDENTIALITY**

[9.1 It is requested that the fact that this request has been made and the execution of the request be kept entirely confidential except to the extent necessary to execute the request as (*state reasons e.g. the likelihood of interference with witnesses and /or destruction of evidence, etc.*)]<sup>67</sup>

[9.2 It is also requested that the evidence of the witness be taken *in camera* as there exist reasonable grounds for believing that it is in the interests of the witness to give evidence *in camera* because (*state reasons*) and the criminal matter would be substantially prejudiced if the examination was conducted in open court because (*state reasons*)].<sup>68</sup>

### **(B) PARTICULAR PROCEDURES TO BE FOLLOWED**

10. It is requested that the following procedures be observed in the execution of the request:

- (*state details of manner and form in which evidence is to be taken and transmitted to requesting foreign State, if relevant.*)

(e.g.)

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<sup>67</sup> Necessary if confidentiality is requested.

<sup>68</sup> Applicable if the request relates to the taking of evidence before a court for the purposes of an investigation in the requesting foreign State.

In relation to the evidence obtained on examination on oath/affirmation of a witness, please provide the statement in admissible form. To be admissible, the statement must be made in the form of an affidavit except when recorded in writing by a judicial authority. If documents and records are referred to or are otherwise enclosed, the documents and records must be accompanied by an attestation of authenticity. Copies of the prescribed form for the affidavit and attestation of authenticity are attached to this request and marked as Attachment B and Attachment C respectively.

- *(state any special requirements as to certification/authentication of documents.)*

(e.g.)

In relation to evidence to be provided by affidavit-

- (a) the affidavit should be made before a judicial officer or other officer who is authorised to administer oaths or affirmations in Malaysia. When the affidavit has been sworn or affirmed, the affidavit should be sealed with an official or public seal of Malaysia to ensure compliance with *(relevant provision of applicable law of requesting foreign State)*, a copy of which is attached to this request and marked as Attachment D;
- (b) if the affidavit runs for more than one page, each page other than the last should be initialed both by the person who makes the affidavit and by the person before whom the affidavit is made; and
- (c) each page of each attachment should be initialed both by the person who makes the affidavit and by the person before whom the affidavit is made.

- *(state if attendance by representative of appropriate authority at examination of witnesses/execution of request is required and, if so, the title of the office held by the proposed representative.)*

(e.g.)

Permission is requested for an officer of *(name of appropriate authority in requesting State)* to travel to Malaysia to assist in the execution of this request.

### **(C) PERIOD OF EXECUTION<sup>69</sup>**

11. It is requested that the request be executed urgently/within *(state period giving reasons i.e. specify likely trial or hearing dates or any other dates/reasons relevant to the execution of the request)*.

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<sup>69</sup> Section 23 of the Mutual Assistance in Criminal Matters Act 2002 prescribes a period of 7 days for the production of documents and things under a court order. Where large quantities of documents are involved, a longer period may be required.

**(D) TRANSMISSION OF REQUESTED MATERIAL**

12.1 Any documents, statements, information or things obtained in response to this request should be sent to (*name of appropriate authority in requesting foreign State*) at the following address:

- (*state address of appropriate authority in requesting foreign State*).
- (*state telephone, facsimile, electronic mail address*).

12.2 The (*appropriate authority in requesting foreign State*) will forward the material to (*name of requesting authority in requesting foreign State*), being the relevant requesting authority in this matter.

**(E) DETAILS OF ALLOWANCES, ARRANGEMENTS FOR SECURITY AND ACCOMODATION<sup>70</sup>**

13.1 The allowances to which (*name of person*) will be entitled are as follows:

*(State details of allowances)*

13.2 The arrangements for the security of (*name of person*) are as follows:

*(State details of security arrangements)*

13.3 The arrangements for the accommodation of (*name of person*) are as follows:

*(State details of accommodation arrangements)*

**LIAISON**

14.1 The case officer of (*name of appropriate authority in requesting foreign State*) is:

*(name of officer of appropriate authority in requesting foreign State, telephone and facsimile numbers and e-mail address)*

14.2 The following Malaysian officers of (*name of appropriate authority in Malaysia*) has knowledge of this matter:

*(name of officer of appropriate authority in Malaysia, telephone and facsimile numbers and e-mail addresses)*.

14.3 If permission is given for an officer of (*name of appropriate authority in requesting foreign State*) to travel to Malaysia, the officer is likely to be ((*name of officer of appropriate authority in requesting foreign State*)).

---

<sup>70</sup> If the request involves a person travelling from the requested foreign State to Malaysia.

**SUPPLEMENTARY REQUEST**

15. The (*name of appropriate authority in requesting foreign State*) may wish to make supplementary requests for assistance in this matter if necessary.

**RECIPROCITY UNDERTAKING<sup>71</sup>**

16. The Government of (*name of requesting foreign State*) assures the Government of Malaysia that it would, subject to its laws, comply with a request by the Government of Malaysia to (*name of requested foreign State*) for assistance of this kind in respect of an equivalent offence.

**EITHER:**

17. I, \_\_\_\_\_, the (*name of appropriate authority of requesting foreign State*), pursuant to (*relevant provision in applicable law of requesting foreign State*) and at the instance of (*name of appropriate authority in requesting foreign State*), being satisfied that there are reasonable grounds for believing that there is evidence in Malaysia that would be relevant to an investigation/criminal proceedings in the (*name of requesting foreign State*), make this request to the Attorney General of Malaysia for assistance in relation to this criminal matter.

**OR:**

17. I, (*name of person*), an officer of the (*name of appropriate authority in requesting foreign State*), acting in reliance on the authority of the (*name of appropriate authority in requesting foreign State*) in the exercise of the executive powers under (*relevant provision of applicable law of requesting foreign State*) to make requests to foreign States for assistance in criminal matters, and at the instance of (*name of relevant authority in requesting foreign State*), make this request to the Attorney General of Malaysia for assistance in relation to this criminal matter.

Signed by

Name: \_\_\_\_\_

Office: \_\_\_\_\_

Date: \_\_\_\_\_

---

<sup>71</sup> Applicable if the request is made by a foreign State without any operative bilateral agreement with Malaysia. The undertaking should be given by the appropriate authority that is authorised to give such undertaking on behalf of the requesting foreign State.

# ANNEX I – MYANMAR MODEL MLA REQUEST FORM

Form – 1

----- State  
----- Department  
(Rule – 3)

To,  
The Chairman  
Mutual Assistance in Criminal Matters  
Central Authority  
Union of Myanmar

Subject: **Request for assistance relating to Mutual Assistance in Criminal Matters.**

In relation to the event, which occurred at ----- a request is hereby made for the assistance from the Union of Myanmar, for investigation and Judicial proceeding.

1. Summary and Nature of the case concerning which the request for assistance is made  
---
2. The Law and section under which action is taken
3. Matter desired to be performed
4. Period during which matter is to be performed (in an urgent Circumstance Statement “to be performed urgently”)
5. Excerpts of relevant Law, Rules, Procedures which are exercised in its own country relating to the request for assistance and grounds
6. If it is for taking of evidence, testimony or expert opinion, the name and address of the said person
7. If it is for the search and seizure of documents and record  
(a) document and type of record

(b) Name and Address of the person in possession

8. If it is for the Search, Seizure, Control, Issue of Restraining Order, Confiscation of Exhibit

(a) Type, form and distinguishing characteristics of the property;

(b) Location and detailed specifications of the property

(c) Order, judgment or decision of the relevant court

9. If it is for disclosure of information, the information to be disclosed

10. If it is a matter to be performed confidentially statement "to be performed confidentially"

11. Name, Designation, Department and function and duty of the Officer who conducts the investigation, prosecution, judicial proceeding of the said offence in its own country

12. Statement of other required facts

Authority Requesting Assistance  
-----Country

Letter No.

Dated

Note: To delete the irrelevant text.

## **ANNEX J – SINGAPORE MODEL MLA REQUEST FORM**

TO: The Central Authority in the Republic of Singapore.  
FROM: The Central Authority in .....

### **REQUEST FOR MUTUAL LEGAL ASSISTANCE IN A CRIMINAL MATTER PURSUANT TO THE TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

#### **CERTIFICATE ON BEHALF OF [THE REQUESTING PARTY]**

I, [name, appointment/ position of person certifying] on behalf of [State name of Central Authority], am responsible for [State area of responsibility e.g. criminal prosecutions, investigations] in [the Requesting Party] and am also authorised to make requests for mutual legal assistance in criminal matters. Being satisfied that there are reasonable grounds for believing that there is evidence in [the Requested Party] that would be relevant to the [criminal matter] in [the Requesting Party], I hereby certify that [the Requesting Party] respectfully requests the assistance of the Government of the Republic of Singapore in a [criminal matter]<sup>1</sup>.

#### **REQUEST**

This request is made by the Government of [the Requesting Party] for assistance to be extended under the Mutual Assistance in Criminal Matters Act (Chapter 190A) Statutes of the Republic of Singapore.

#### **NATURE OF REQUEST**

This request relates to [describe subject of criminal matter]. The authority having the conduct of the criminal matter is [describe or name the authority concerned with the criminal matter].

#### **CRIMINAL OFFENCES / APPLICABLE LEGISLATION / PENALTIES**

[Set out the offences alleged to have been contravened in relation to the criminal matter as well as the maximum penalties for these offences and attach copies of applicable legislative provisions. State identity of suspect/accused person, if known.]

---

<sup>1</sup> State whether it is an investigation, prosecution or an ancillary criminal matter. 'Criminal matter' is defined in section 2 of Singapore's Mutual Assistance in Criminal Matters Act (Chapter 190A). An electronic version of this Act is available at <http://statutes.agc.gov.sg>.

## STATEMENT OF FACTS

[Describe the material facts of the criminal matter including, in particular, those necessary to establish circumstances connected to evidence sought in the Requesting Party and the relevance of Singapore evidence to the criminal matter in the Requesting Party. Such other information as is required where the request relates to particular heads of assistance (e.g. location of persons, enforcement of confiscation order) should also be stated.]

## PURPOSE OF THE REQUEST

By this request it is intended to [state purpose which is intended to be achieved by the assistance sought, e.g. to secure admissible evidence to be used in the trial of .....].

## MANDATORY ASSURANCES AND UNDERTAKINGS

It is confirmed that this request:

- (a) does not relate to the prosecution or punishment of a person for a criminal offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (b) is not made for the purposes of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, religion, sex, ethnic origin, nationality or political opinions;
- (d) does not relate to the investigation, prosecution or punishment of a person for an offence in a case where the person:-
  - (i) has been convicted, acquitted or pardoned by a competent court or other authority of [the Requesting Party]; or
  - (ii)<sup>2</sup> has undergone the punishment provided by the law of [the Requesting Party],in respect of that offence or of another offence constituted by the same act or omission as that offence.

The Central Authority of [the Requesting Party] undertakes:

- (a) That any evidence / thing obtained pursuant to this request, will only be used for the purposes of the request in connection with [state particulars of criminal matter]; and

- (b) That should the Attorney-General of the Republic of Singapore require the return of any evidence / thing obtained pursuant to this request, at the conclusion of [state particulars of criminal matter] and of all consequential appeals, the evidence / thing will be returned to the Attorney-General of the Republic of Singapore.

### ASSISTANCE REQUESTED

The Government of the Republic of Singapore is requested to take such steps as are necessary to give effect to the following:

[Describe particular type of assistance requested]

### EXECUTION OF REQUEST

#### Confidentiality

[State confidentiality requirements of the Requesting Party, if any]

#### Procedure to be followed

It is requested that the following procedures be observed in the execution of the request:

- [State details of manner and form<sup>3</sup> in which evidence is to be taken and transmitted to the Requesting Party, if relevant]
- [State any special requirements as to certification/authentication of documents]
- [State if attendance by representative of the Requesting Party at examination of witnesses/execution of request is required and, if so, the title of the post held by the proposed representative]

#### Period of Execution

It is requested that the request be executed within [state period and give reasons i.e likely trial or hearing dates or any other dates/reasons relevant to execution of request within the time specified].

**TRANSMISSION OF REQUESTED MATERIAL/INFORMATION**

Any documents, records, items, statements or information obtained in response to this request should be sent to [the Central Authority of the Requesting Party] at [state the relevant address].

**RECIPROCITY UNDERTAKING**

The Government of [the Requesting Party] undertakes that it will comply with a future request by the Government of the of the Republic of Singapore for similar assistance, by providing assistance having a comparable effect in respect of an equivalent offence to that requested from the Government of the Republic of Singapore in this case.

The Government of [the Requesting Party] assures the Government of the Republic of Singapore that [the Requesting Party] has laws in place that enable it to provide assistance having a comparable effect in respect of an equivalent offence.

**LIAISON OFFICER**

The officer in [the Central Authority of the Requesting Party] who is in charge of this matter is [name of officer], and he/she can be contacted at [address, telephone number, email].

The case officer in [the enforcement agency or authority in the Requesting Party] who has knowledge of this matter is [name of officer] and he/she can be contacted at [address, telephone number, email].

**PRIOR CONTACT/ USE OF OTHER CHANNELS<sup>4</sup>**

There has been previous contact between [state the relevant authority of the Requesting Party, eg, the police] and [state the relevant authority of the Requested Party] on this matter.

This Request is also being sent to [the Requested Party] by [state the other channel through which the Request is being sent, eg, diplomatic channel].

[Signature]

\_\_\_\_\_  
Name  
Designation/Office  
Date

<sup>4</sup> If this is the first time such a request is being sent, this paragraph may be omitted.

FORM I

**COVER NOTE FOR MUTUAL LEGAL ASSISTANCE REQUEST**

(to be filled in by Requesting Party)

Case Reference Number:

Name of suspect(s):

**Competent Authority who can be contacted regarding the request:**

Organisation:

Address:

Country:

Name & Designation:

Telephone & Fax Number:

Email:

Deadline (if relevant):

- This request is urgent because [reasons].
- Please execute this request before [date].

\_\_\_\_\_  
Signature & Date

---

**ACKNOWLEDGEMENT OF REQUEST**

(to be filled in by Requested Party upon receipt and faxed to Requesting Party)

Case Reference Number:

Date received:

**Central Authority receiving the request:**

Organisation:

Address:

Country:

Name & Designation:

Telephone & Fax Number:

Email:

**Competent Authority who can be consulted regarding the request:**

[As above] OR [Other]

\_\_\_\_\_  
Signature & Date

# ANNEX K – MYANMAR MODEL EXTRADITION REQUEST FORM

## FORM 1

-----State  
-----Department

(Referred to sub-section (g) of section 7)

To  
The Union Minister

The Ministry of Foreign Affairs  
The Republic of the Union of Myanmar

Subject: Request for extradition

1. In relation to the event of ----- which occurred at -- -----, a request is hereby made for extradition, search for and arrest of----- who has been in the Republic of the Union of Myanmar, for prosecution or verification in -----.

2. Criminal information are as follows;

(a) Summary and nature of the case relating to the request for extradition

(b) The Law and section under which action is taken

(c) Matter desired to be performed

(d) Period for the matter to be performed (in an urgent circumstance, description of the matter to be performed)

(e) The abstracts of related law, rules and procedures concerning the matter which are exercised in the requesting State and the grounds for the request

(f) Name, designation, department, function and duty of the officer who conducts the investigation, prosecution, judicial proceeding of the said offence in the requesting State

(g) Statement of other requirements

Authority of the requesting State

----- State

Letter No. ----- Date: -----

Note: To delete the irrelevant text.

## FORM 2

### Biography of the Person Sought

(Referred to sub-section (g) of Section 7)



Photo

1. Name -
2. Other name (if any) -
3. Citizen -
4. Passport No/ National - Scrutiny Card No and Issued date and - Place
5. Occupation -
6. Parents' name -
7. Native town -
8. Permanent Residence -
9. Age/ Date of Birth -
10. Nationality/ Religion -
11. Height - -
12. Appearance –
13. 13. Hair
14. Eyebrows
15. Forehead
16. Eyes
17. Nose
18. Mouth
19. Teeth
20. Fingers
21. Ears
22. Facial feature
23. Complexion
24. Beards
25. Mustache
26. Blue ribbon / Marks
27. Characteristics
28. Fashion

Summary of the case