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EXTRADITION TREATY
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDIA
AND
THE GOVERNMENT OF MALAYSIA

THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF MALAYSIA hereinafter referred to collectively as "Contracting States";

DESIRING to provide for more effective cooperation between the two States in the suppression of crime by concluding a treaty on the reciprocal extradition of offenders;

HAVE AGREED AS FOLLOWS:

ARTICLE 1
OBLIGATIONS TO EXTRADITE

The Contracting States agree to extradite to each other, upon request and pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have accused or convicted of an extraditable offence within the jurisdiction of the Requesting State, whether such offence was committed before or after the entry into force of this Treaty.

ARTICLE 2
EXTRADITABLE OFFENCES

1. An offence shall be an extraditable offence if it is punishable under the laws of the Contracting States by a term of imprisonment for a period of not less than one year or with death.

2. An offence shall also be an extraditable offence if it consists of an attempt or a conspiracy to commit or an abetment of the commission of any offence described in paragraph 1.

3. An offence shall be an extraditable offence notwithstanding that it is one of a purely fiscal character.

4. For the purposes of this Article, an offence shall be an extraditable offence –

(a) whether or not the laws in the Contracting States place the acts or omissions constituting the offence within the same category of offences or describe the offence by the same terminology; or

(b) whether or not under the laws of the Contracting States the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the Requesting State shall be taken into account.

ARTICLE 3
NATIONALITY

1. Extradition of own national is permissible under this Treaty.

2. If extradition of own national is not granted for an extraditable offence, the Requested State shall, at the request of the Requesting State and if the laws of the Requested State so allow, submit the case to its competent authorities for the purpose of prosecution.

3. For the purposes of this Article, nationality shall be determined as at the time of the commission of the offence.

ARTICLE 4
JURISDICTION

1. If the Requested State considers that the offence was committed within its jurisdiction, it may deny extradition. For the purpose of this paragraph, jurisdiction means the territory of the Requested State, its air space and territorial waters or maritime zone in which it is claiming jurisdiction, and any vessel or aircraft registered in that State if such aircraft or vessel is on the high seas or in flight. If extradition is denied pursuant to this paragraph, the Requested State shall submit the case to its competent authorities for prosecution.

2. If the competent authorities of the Requested State are unable to proceed with the prosecution in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

3. If the offence has been committed outside the territory of the Requesting State, extradition shall be granted if the laws of the Requested State provide for punishment of an offence committed outside its territory in similar circumstances, and if the requirements of extradition under this Treaty are otherwise met. If the laws of the Requested State do not so provide, the executive authority of the Requested State may, in its discretion, deny extradition.

ARTICLE 5
PRIOR PROSECUTION

1. Extradition shall not be granted when the person sought has been convicted, acquitted or pardoned in the Requested State for the offence for which extradition is requested.

2. Extradition shall not be precluded by the fact that the authorities in the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested, or have decided to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

ARTICLE 6
RESTRICTIONS ON SURRENDER

1. A fugitive offender shall not be surrendered if the Requested State is satisfied that –

(a) the offence of which that person is accused of or was convicted is an offence of a political character; or

(b) if the prosecution for the offence in respect of which his return is sought is, according to the laws of the Requesting State barred by time.

2. For the purposes of this Treaty, the following offences shall not be considered to be of a political character –

(a) murder or other wilful crime against the person of a Head of State or Head of Government of one of the Contracting States, or a member of his immediate family;

(b) an offence for which the Contracting States have the obligation pursuant to a multilateral/international treaty to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; or

(c) an attempt, abetment or a conspiracy to commit any of the foregoing offences.

3. The executive authority of the Requested State may refuse extradition –

(a) for offences under military law which are not offences under ordinary criminal law; or

(b) if it appears by reason of –

(i) the trivial nature of the case; or

(ii) the application for the return not being made in good faith or in the interests of justice or being made for political reasons or for any other reason, it would, having regard to all the circumstances, be unjust or oppressive to return the person to the Requesting State.

ARTICLE 7
DEFERRED SURRENDER

1. The Requested State may, after making its decision on the request for extradition, postpone the surrender of the person sought, in order to proceed against that person, or if that person has already

been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case, the Requested State shall advise the Requesting State accordingly.

2. The Requested State may, instead of postponing surrender, temporarily surrender the person sought to the Requesting State in accordance with conditions to be determined between the Contracting States.

ARTICLE 8
PROCEDURE AND DOCUMENTATION

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through diplomatic channels, and the channels of communications shall be in accordance with the procedures designated by the Contracting States.

2. A request shall be supported by statutory declarations or statements given on oath or affirmed before a competent authority of the Requesting State setting out –

(a) as accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;

(b) information describing the facts of the offences;

(c) the text of the relevant provisions of the law creating the offence (including case laws, if any) and a statement of the law

relevant to the offence and a statement of the penalty that can be imposed for the offence; and

(d) the documents, statements, or other types of information or evidence specified in paragraph 3 or 4 of this Article, as applicable.

3. A request for extradition of a person who is sought for prosecution shall, in addition to the information referred in paragraph 2, also be supported by statutory declarations or statements given on oath or affirmed before any competent authority of the Requesting State setting out –

(a) a warrant or order of apprehension, issued by a court or other competent judicial authority or a certified copy of that warrant or order;

(b) a copy of the charging document or a report/statement containing the particulars of the acts and/or omissions constituting the alleged offence, including an indication of the time and place of its commission, submitted before the court of the Requesting State; and

(c) such evidence as according to the laws of the Requested State that would establish, according to the evidentiary standards of the Requested State that the person is a party to the offence committed to justify his committal for trial if the offence had been committed under the laws of the Requested State PROVIDED THAT neither State shall require, as a condition to extradition pursuant to this Treaty that the other State prove a prima facie case against the person sought.

4. A request for extradition relating to a person who has been convicted and sentenced or convicted but not yet sentenced shall also be supported by statutory declarations or statements given on oath or affirmed before any competent authority of the Requesting State setting out –

(a) a certified copy of the judgment of conviction, or, if such copy is not available, a statement by a judicial authority that the person has been found guilty;

(b) information establishing that the person sought is the person to whom the finding of guilt refers; and

(c) a certified copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing the extent to which the sentence has been carried out.

ARTICLE 9
PROVISIONAL ARREST

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. An application for provisional arrest may be forwarded through the diplomatic channels as specified in Article 8 or through the International Criminal Police Organisation (INTERPOL).

2. The application for provisional arrest shall contain –

(a) a description of the person sought;

(b) the location of the person sought, if known;

(c) a statement of the facts of the case, including the offence alleged to have been committed and the time and place of commission of the offence;

(d) a description of the laws violated;

(e) a copy of, or a statement of the existence of, a warrant of arrest or a finding of guilt or judgment of conviction against the person sought; and

(f) a statement that a request for extradition for the person sought will follow.

3. On receipt of the application, the Requested State shall take appropriate steps to secure the arrest of the person sought. The Requesting State shall be notified without delay of the disposal of its application and the reasons for any denial.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 8. Upon

application of the Requesting State, this period may be extended up to an additional thirty (30) days.

5. The discharge of the person from custody pursuant to paragraph 4 of this Article shall not prevent the subsequent re-arrest and extradition of that person if the extradition request and supporting documents are subsequently received at a later date.

ARTICLE 10
ADDITIONAL DOCUMENTATION

1. If the Requested State considers that the documents furnished in support of the request for the surrender of a person sought are not sufficient to fulfill the requirements of this Treaty, that State shall request the submission of necessary additional documents. The Requested State may set a time-limit for the submission of such documents, and may grant a reasonable extension of the time-limit upon application of the Requesting State setting forth reasons thereof.

2. If the person sought is in custody and the additional documents submitted are not sufficient, or if such documents are not received within the period specified by the Requested State, that person may be discharged from custody. Such discharge shall not prejudice the re-arrest and the surrender of the person if the additional documents are subsequently received.

ARTICLE 11
CONCURRENT REQUESTS

If the Requested State receives requests from the other Contracting State and from any other State or States for extradition of the same person, either for the same offence or for a different offence, the executive authority of the Requested State shall determine as to which State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to –

(a) whether the requests were made pursuant to any treaties;

(b) the place where each offence was committed;

(c) the respective interests of the Requesting States;

(d) the gravity of the offences;

(e) the nationality of the victim;

(f) the possibility of further extradition between the Requesting States; and

(g) the order in time in which the requests were received from the Requesting States.

ARTICLE 12
TRANSLATION

1. All documents submitted by the Requesting State shall be translated into the English language unless this requirement is waived by the Requested State.

2. Any documents submitted in support of any requests under this Treaty which were previously translated from the language of the Requesting State shall be duly certified as the correct translation by a competent authority of the Requesting State.

ARTICLE 13
AUTHENTICATION OF DOCUMENTS

1. The warrant of arrest or judicial documents establishing the existence of the conviction, and any deposition or statements or other evidence given on oath or affirmed before any competent authority or any certified copy thereof, shall be received in evidence in any proceedings for extradition –

(a) if authenticated in the case of a warrant by being signed, or in the case of any other original document by being certified by a judge, magistrate or other competent authority of the Requesting State, or in the case of a copy by being certified to be true copy of the original; and

(b) where the Requesting State is the Republic of India, by being sealed with the official seal of the Minister of External Affairs or Minister of State for External Affairs and where the Requesting

State is Malaysia, by being sealed with the official seal of the Minister of Home Affairs or the Deputy Minister of Home Affairs; or

(c) if it is authenticated in such other manner as may be permitted by the laws of the Requested State.

And if the warrant, depositions, statements, copies, certificates and judicial documents are authenticated by the oath of some witness or sealed with the official seal of the Ministers referred to in sub clause (b) above, the courts of the Contracting States shall take judicial notice of such official seal and shall admit the documents so authenticated and receive in evidence without further proof.

2. The authenticated documents described in paragraph 1 shall be received in evidence in the Requested State irrespective of whether the sworn or affirmed documents were made in the Requesting State or in some third State.

ARTICLE 14
REPRESENTATION AND COSTS

1. The Requested State shall advise, assist, appear in court on behalf of the Requesting State and represent the interests of the Requesting State, or otherwise make the necessary arrangements for the Requesting State's legal representation, in any proceedings arising out of a request for extradition.

2. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered including transit costs. The Requested State shall pay

all other expenses incurred in that State by reason of the extradition proceedings.

3. Notwithstanding paragraph 2, where expenses incurred in the Requested State by reason of the request are substantial or extraordinary in nature, the Contracting States shall consult each other to determine the manner in which the cost shall be borne.

4. Neither Contracting State shall make any pecuniary claim against the other Contracting State arising out of the arrest, detention, examination or surrender of persons sought under this Treaty.

ARTICLE 15
CONSULTATION

The Ministry of External Affairs of the Republic of India and the Attorney General's Chambers of Malaysia may consult with each other directly or through the facilities of INTERPOL in connection with the processing of each particular request and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

ARTICLE 16
WAIVER OF EXTRADITION PROCEEDINGS

1. If the persons sought consents to return to the jurisdiction of the Requesting State after personally being advised by a competent judicial authority of the effect of such consent under the laws of the Requested State, the Requested State may surrender him without further proceedings.

2. The surrender of a person pursuant to this Article shall be in accordance with Article 17.

ARTICLE 17
SURRENDER

1. If the request for extradition is granted, the authorities of the Contracting States shall agree on the date and place for the surrender of the person sought.

2. If the person sought is not removed from the territory of the Requested State within the time prescribed by the laws of that State, that person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offence.

3. If circumstances beyond its control prevent a Contracting State from surrendering or taking over the person to be extradited, it shall notify the other Contracting State. The Contracting States shall agree to a new date for surrender and the provisions of paragraph 2 of this Article shall apply.

4. Upon the completion of the proceedings against a person surrendered to the Requesting State, the Requesting State shall, upon request, inform the Requested State of the outcome of such proceedings and upon request provide it with a copy of the final court decision.

ARTICLE 18
SURRENDER OF PROPERTY

1. To the extent permitted under its laws, the Requested State may seize and surrender to the Requesting State any property found in the possession of the person sought at the time of his arrest which may be material as evidence in proving the extradition offence.

2. The property mentioned in paragraph 1 may be surrendered even when extradition of the person sought cannot be effected due to his death, disappearance or escape.

3. The Requested State may surrender the property upon satisfactory assurance from the Requesting State that the property will be returned to the Requested State as soon as practicable.

4. The Requested State may also defer surrender of such property if it is needed as evidence in the Requested State.

5. The rights of third parties in such property shall be duly respected.

ARTICLE 19
RULE OF SPECIALITY

1. A person extradited under this Treaty shall not be detained, tried or punished in the Requesting State or subjected to any other restriction of personal liberty except for –

(a) the offence for which extradition has been granted;

(b) any lesser offence proved by the facts on which his extradition was based;

(c) any offence committed after the extradition of the person; or

(d) any other offence in respect of which the executive authority of the Requested State consents. For the purpose of this subparagraph –

(i) the Requested State may require the submission of the documents specified in Article 8; and

(ii) the person extradited may be detained by the Requesting State for ninety (90) days, or for such longer time as the Requested State may authorize, while the Request is being processed.

2. A person extradited under this Treaty shall not be extradited to a third State for an offence committed prior to his surrender unless the Requested State consents.

3. Paragraph 1 and 2 of this Article shall not prevent the detention, trial or punishments of an extradited person, or the extradition of that person to a third State, if that person had an opportunity to leave the territory of the Requesting State and –

(a) that person leaves the territory of the Requesting State and voluntarily returns to it; or

(b) that person does not leaves the territory of the Requesting State within thirty (30) days of his having been free to leave the jurisdiction after final discharge in respect of the offence for which that person was extradited.

ARTICLE 20
TRANSIT

1. Either Contracting State may authorise transportation through its area of a person surrendered to the other Contracting State by a third State. A request for transit shall be made through the diplomatic channels or directly between the Ministry of Home Affairs of the Republic of India and the Ministry of Home Affairs of Malaysia or through the International Criminal Police Organisation (INTERPOL) by any means acceptable to the Requested State such as post, telegraph, facsimile etc. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be kept in custody during the period of transit.

2. No authorization is required where air transportation is used and no landing is scheduled in the territory of the Contracting State. In the event of an unscheduled landing in the territory of a Contracting State, the escorting officer of the Contracting State may request for transit as provided in paragraph 1. The Contracting State shall detain the person to be transported until the request for the transit is received from the other Contracting State and the transit is effected, so long as the request is received within ninety six (96) hours of the unscheduled landing.

ARTICLE 21
OBLIGATIONS UNDER INTERNATIONAL CONVENTIONS/TREATIES

This Treaty shall not affect the rights and obligations of the Contracting State arising from international conventions/treaties to which they are parties.

ARTICLE 22
ENTRY INTO FORCE

This Treaty shall enter into force thirty (30) days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

ARTICLE 23
TERMINATION

Either Contracting State may terminate this Treaty at any time by giving written notice through the diplomatic channels to the other Contracting State, and the termination shall be effective six (6) months after the date of receipt of such notice by the other Contracting State.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at New Delhi this 20th day of January 2010, in duplicate, in Malay, Hindi and English languages, all texts being equally authentic. In the event of any discrepancy in any of the texts, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA

FOR THE GOVERNMENT OF MALAYSIA