Thailand Extradition Regime
And
The UNCAC

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Extradition Act of 2008

• Attorney General as Central Authority

• Extradition Conditions
  – Treaty or reciprocity
  – Extraditable offence
  – No violation of double jeopardy:
    • Thai Court or Court of the Requesting State must not have tried and finally acquitted the person sought on the offence; or
    • The person must not have fully served the sentences for the offence;
Extradition Act

– No pardon or amnesty for the offence from the Requesting State.
– Non-expiration of the time limit under the law of the Requesting State

• Extraditable Offence
  – Dual Criminality
  – Punishable At least 1 year imprisonment
  – Non-Political Offence
  – Non-Military Offence
Extradition Act

– Less than 1 year offence extraditable where relating to extraditable offence

• Extradition of Thais permitted where
  – Treaty authorizes
  – Consent
  – Reciprocity

• Channel of Communication:
  – Central Authority for countries with treaty
  – Diplomatic Route for countries without treaty
Extradition Act

• Process:
  • MFA & Central Authority consider the request.
  • Once eligible, the person is arrested.

1. Normal Process
  • Bringing the person before the Court
    – In case of provisional arrest, for further detention pending the filing with the Court of the formal extradition request
      » 60 days from the date of the arrest; or further extension permitted but not more than 90 days from the date of the arrest
      » In case of extradition request, for determining the legality of extradition
Extradition Act

• Decision: either positive or negative
• Appeal permitted/Final judgment
  – Negative decision means extradition denied.
  – Positive decision means extradition is permitted, but it is finally up to the Government to exercise discretion whether or not to extradite.

2. Simplified Process: extradition by consent
• Bringing the person arrested before the Court to verify his consent
• His extradition authorized
Extradition Act

• Principle of extradition of nationals or prosecution
  – Where extradition is denied, the Central Authority will consider to prosecute the non-extradited person under Thai laws.
  – Apparently, jurisdiction will have to be based on other laws, especially the Penal Code, not on the refusal of extradition.
UNCAC

• United Nations Convention against Corruption 2003 (UNCAC)

• Contents of Article 44
  – Extraditable offences under the UNCAC
    • Bribery of national and foreign public officials
    • Embezzlement/Misappropriation
    • Trading in influence
    • Abuse of functions
  – Dual Criminality
UNCAC

– Extradition on non-extraditable offences where it is related to extraditable offence
– Simplified extradition
– Provisional arrest
– Extradition of nationals or prosecution

• The Extradition Act of 2008 has mostly met the requirements under Article 44 of the UNCAC.
UNCAC

• Some incompatible issues, however, remains:
  1. Not all extraditable under the UNCAC is extraditable under the Act
      • Bribery of foreign public official is not yet an offence in Thailand
      • Extradition for this offence barred.
  2. Principle of extradition of nationals or prosecution
      • The UNCAC requires prosecution of non-extradited nationals in all cases; jurisdiction for prosecution prosecute arises exclusively from refusal of extradition.
UNCAC

- The Extradition Act of 2008 does not establish jurisdiction for prosecution of non-extradited nationals on the basis of the refusal of extradition alone.
- Thailand does not always have jurisdiction to prosecute her nationals for offences perpetrated abroad.
- The principle of extradition of nationals or prosecution under the Extradition Act of 2008 does not meet the UNCAC in this regard.

- Once remedied, no chance for corrupt fugitives to use Thailand as a safe haven.
End

• Thank You
• For Your Time and Attentions