

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