

EXTRADITION LAWS OF SINGAPORE – A BRIEF OVERVIEW

Introduction

The primary legislation in Singapore governing the extradition of fugitives to and from foreign countries is the Extradition Act, Chapter 103 of the Statutes of the Republic of Singapore ("Extradition Act")¹. Under Singapore law, fugitives can only be extradited to and from the following states:

- (i) 40 declared Commonwealth countries as listed in the Extradition (Commonwealth Countries) Declaration 2007;
- (ii) The United States of America ("USA"), by virtue of an extradition treaty between the United Kingdom ("UK") and the USA dated 22nd December 1931, which continues to apply to Singapore by virtue of an exchange of letters between Singapore and the USA between 23rd April 1969 and 10th June 1969;
- (iii) The Federal Republic of Germany ("Germany"), by virtue of an extradition treaty between the UK and Germany dated 23rd February 1960, which continues to apply to Singapore by virtue of an exchange of notes on 16th July 1960;
- (iv) The Hong Kong Special Administrative Region of the People's Republic of China ("HKSAR"), by virtue of an extradition treaty between Singapore and HKSAR dated 22nd May 1998.

2... In addition, Singapore has ratified various international conventions such as the International Convention for the Suppression of the Financing of Terrorism, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, the International Convention for the Suppression of Terrorist Bombings, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the Convention for the Suppression of Unlawful Seizure of Aircraft, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Under these conventions, Singapore has obligations vis-à-vis extradition of fugitives to and from convention states for some of the offences listed in these conventions. However, not all convention states are declared Commonwealth countries or have extradition treaties with Singapore. As such, Singapore has domestic legislation to provide that a Gazette notification may be issued to apply as if an extradition treaty exists between Singapore and the stated convention country for the extradition to and from Singapore for the relevant convention offence.

Extradition Crime & Dual Criminality

3 Under the Extradition Act, a fugitive may only be extradited to and from Singapore for having committed an extradition crime. Generally, an extradition crime for a declared Commonwealth country means an offence which is punishable with a maximum penalty of death or imprisonment for not less than 12 months, and is an offence described in the First Schedule to the Extradition Act (both in Singapore and in the declared Commonwealth country).

4 Where there is an extradition treaty in force between Singapore and a foreign state, the term extradition crime would mean an offence against the law of the foreign state, and if the act had taken place in Singapore, would have constituted an offence as described in the list of extraditable offences contained in the relevant treaty.

¹ A copy of the Extradition Act is annexed for reference.

5 For the purpose of establishing dual criminality, Singapore law does not insist on a strict elements test, and uses a conduct-based approach instead - examination is therefore made of the underlying conduct as a whole, and not based on the label or elements of the offence in the foreign State. Technical differences in the manner in which another country categorises or denominates the offence accordingly does not pose an impediment to the provision of extradition.

Evidence

6 To enable Singapore to extradite a fugitive, the declared Commonwealth country or the foreign state would have to provide us with sufficient details to identify the fugitive. Such details would usually include a photograph of the fugitive, the physical description of the fugitive, the name and known aliases of the fugitive, the last known address of the fugitive in Singapore, and the fingerprint records of the fugitive.

7 In addition, it is necessary to provide Singapore with a duly authenticated warrant in respect of the fugitive, issued by the declared Commonwealth country or the foreign state.

8 The declared Commonwealth country or the foreign state would also have to furnish evidence which would, according to the law in Singapore, justify the trial of the fugitive if the act or omission constituting the crime had taken place within Singapore's jurisdiction. This would entail providing credible evidence to prove a *prima facie* case against the fugitive.

Exclusionary Conditions

9 Singapore cannot extradite a fugitive if there are substantial grounds to believe that:

- (a) The requisition for the surrender of the fugitive was made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
- (b) If the fugitive is surrendered to the declared Commonwealth country or foreign state, he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions.

10 In addition, a fugitive will not be extradited to a foreign state or a declared Commonwealth country if:

- (a) The offence to which the requisition for his surrender relates 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) He has been acquitted or pardoned by a competent tribunal or authority in any country, or has undergone the punishment provided by the law of, or of a part of, any country, in respect of that offence or of another offence constituted by the same act or omission as that offence;
- (c) The fugitive is already being held in custody in Singapore in respect of an offence that is committed in Singapore, or is undergoing a sentence for a conviction in Singapore, he will not be surrendered until he has been discharged from custody (either because of his acquittal, expiration of his sentence or otherwise).

11 Additionally, for a request from a declared Commonwealth country, extradition will be refused if it would be unjust, oppressive or too severe a punishment to surrender the fugitive taking

into consideration the circumstances under which the offence is alleged to have been committed, and:

- (a) The trivial nature of the offence;
- (b) The accusation against the fugitive is not made in good faith or in the interests of justice; or
- (c) The passage of time from the commission of the offence.

Extradition Process

12 The Criminal Justice Division of the Attorney-General's Chambers of Singapore ("AGC") is the lead agency processing extradition requests.

Urgent Cases

13 In cases of urgency, a request for provisional arrest may be made to the AGC. The request should contain the warrant in respect of the fugitive, issued by the declared Commonwealth country or the foreign state, information to identify the fugitive and a summary of the facts and evidence of the case.

14 Once there is sufficient information and evidence to support the provisional arrest, an application will be made to a Magistrate for the issue of a warrant for the apprehension of the fugitive who is, or is suspected of being, in Singapore. Upon the issuance of the warrant, the relevant law enforcement agency will proceed to effect arrest of the fugitive, and bring him before the Magistrate as soon as practicable. The Magistrate may then remand him in custody or release him on bail.

15 In the meantime, the Magistrate will send a report to the Minister for Law stating that such a warrant has been issued, and state the evidence produced before him in support of the application for the warrant.

16 After the provisional arrest of the fugitive, the declared Commonwealth country or the foreign state would have to, with a reasonable time, make a formal request for extradition. This is to enable the AGC to process the request and forward the matter to the Minister for Law to issue a notice in writing to the Magistrate. If such notice is not issued within a reasonable time, the fugitive may be released.

Formal Request

17 After the provisional arrest of a fugitive in urgent cases, or in all other non-urgent cases, the declared Commonwealth country or the foreign state should send in a formal requisition for the surrender of the fugitive. This requisition should contain the duly authenticated warrant in respect of the fugitive, issued by the declared Commonwealth country or the foreign state, the evidence to support the extradition (such as affidavits or depositions of witnesses, law enforcement officers and prosecutors, as well as copies of relevant documentary exhibits). In addition, the necessary undertakings will also have to be furnished to AGC. These undertakings include:

- (a) an undertaking that the fugitive will only be prosecuted for the offence(s) for which extradition was granted, and that the fugitive should not be detained for transfer to a third State to face prosecution for offences committed prior to extradition, unless the fugitive has first been returned to or given the opportunity to return to Singapore; and

(b) an undertaking that the fugitive has not been acquitted or pardoned by a competent tribunal or authority in any country, or has not undergone the punishment provided by the law of, or of a part of, any country, in respect of that offence or of another offence constituted by the same act or omission as that offence.

18 The documents will then be forwarded by AGC to the Minister for Law, who may, in his discretion, issue a notice to the Magistrate that such a requisition has been made. If no provisional arrest had been made, and the evidence so justifies, the Magistrate will then issue a warrant for the apprehension of the fugitive. Upon the issuance of the warrant, the relevant law enforcement agency will proceed to effect arrest of the fugitive, and bring him before the Magistrate as soon as practicable. The Magistrate may then remand him in custody or release him on bail.

Committal Hearing

19 After the Magistrate has either remanded the fugitive or released the fugitive on bail, the matter will be scheduled for a committal hearing before a Magistrate.

20 At the committal hearing, the evidence provided by the declared Commonwealth country or the foreign state will be formally admitted before the Magistrate. The fugitive may also give evidence. The role of the Magistrate at the hearing is to enquire whether a *prima facie* case has been made out by credible evidence.

21 Once the Magistrate is satisfied that a duly authenticated warrant in respect of the fugitive, issued by the declared Commonwealth country or the foreign state has been produced, and that there is sufficient evidence to justify the trial of the fugitive if the act or omission constituting the crime had taken place within Singapore's jurisdiction, he shall commit the fugitive to prison to await the warrant of the Minister for the surrender. If such evidence or warrant is lacking, the Magistrate shall order the release of the fugitive. Upon the committal of a fugitive, the Magistrate shall issue a certificate to the Minister for Law informing that the fugitive has been committed to prison pending surrender.

Habeas Corpus

22 When the Magistrate commits the fugitive to prison, he shall inform him that he will not be surrendered until after the expiration of the period of 15 days from the date of the committal. If the fugitive asserts that the detention is unlawful, he may apply for an Order for Review of Detention ("writ of *habeas corpus*")².

23 If *habeas corpus*³ proceedings are filed, the High Court will call upon the Public Prosecutor, the committing Magistrate and the foreign government concerned to show cause as to why the writ should not be issued.

24 At the proceedings, the High Court does not rehear the case that was before the Magistrate. Rather, the High Court's function is to consider whether the fugitive has been lawfully detained. The fugitive may challenge the validity of the requisition, whether the offences involved are extradition crimes, or that the charge against him is political in nature.

² Order 54 of the Rules of Court.

³ This is a prerogative writ used to challenge the detention of a person either in official custody or in private hands. The court, if satisfied that the detention is *prima facie* unlawful may order the custodian to appear to justify the detention. If the detention cannot be justified, the court will order the person's release.

The Surrender

25 In the 15-day interim when the surrender cannot be effected, the declared Commonwealth country or the foreign state would have to provide the particulars of the escorting officers and the arrival dates of the escorting officers to AGC.

26 Once the 15-day period has elapsed and the fugitive has not applied for a writ of *habeas corpus*, or is unsuccessful in obtaining such a writ, the Minister may, in his discretion, issue the Warrant of Surrender. With the Warrant of Surrender, the declared Commonwealth country or the foreign state may then escort the fugitive out of Singapore.

27 The fugitive has to be escorted out of Singapore no later than two months after the date of the committal or the decision of the court vis-à-vis the application for a writ of *habeas corpus*, whichever is later. If not, the fugitive may apply to the High Court for an order that he be released.

Malaysia and Brunei Darussalam

28 There is an expedited, simplified and reciprocal process of endorsement of warrant between Singapore, Malaysia and Brunei Darussalam. In cases where warrant or summons has been issued by a Magistrate in one of these countries, the warrant or summons may be endorsed by a Magistrate in the other countries. Thereupon, the warrant or summons may then be executed or served accordingly.