

Treaty Between the Republic of India and the Kingdom of Thailand on Extradition

UNION OF INDIA

India

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Rule

TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-THE-KINGDOM-OF THAILAND OF 2017

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Treaty Between the Republic of India and the Kingdom of Thailand on ExtraditionPublished vide Notification No. G.S.R. 418(E), dated 25th April, 2017Ministry of External AffairsG.S.R. 418(E). - Whereas, the Treaty between the Republic of India and the Kingdom of Thailand on Extradition was signed at Bangkok on 30th day of May, 2013 and the Instruments of Ratifications of the said Extradition Treaty were exchanged at Bangkok on 29th June, 2015;And Whereas, the said Extradition Treaty entered into force with effect from the 29th day of June, 2015 in accordance with the provisions of paragraph (2) of Article 22 of the Treaty;And Whereas, the said Extradition Treaty is specified in the Schedule to this Order;Now, therefore, in exercise of the powers conferred by sub-section (1) read with clause (a) of sub-section (3) of section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than the provisions of Chapter III, shall apply to the Kingdom of Thailand with effect from the date of entry into force of the said Extradition Treaty.

Schedule

Treaty Between the Republic of India and the Kingdom of Thailand on ExtraditionThe Republic of India and the Kingdom of Thailand (hereinafter referred to as "the Contracting States");Desirous of promoting effective cooperation between the two countries in the suppression of crime by concluding a treaty on extradition;Have agreed as follows:Article 1

1. Obligation to Extradite.

The Contracting States undertake to extradite to each other, in accordance with the provisions of this Treaty, persons found in the territory of one of the Contracting States who are wanted for prosecution, trial or for the imposition or execution of punishment in the territory of the other State for an extraditable offence. Article 2

2. Extraditable Offences.

1. For the purposes of this Treaty, extraditable offences are offences that are punishable under the laws of both Contracting States by imprisonment or any other form of deprivation of liberty for a period of at least one year, or by a more severe penalty.

2. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or any other form of deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least six months of such sentence remains to be served.

3. In determining whether an offence is an offence punishable under the laws of both Contracting States, it shall not matter whether:

(a) the laws of both Contracting States place the acts or omission constituting the offence within the same category of offence or denominate the offence by the same terminology; (b) under the laws of both Contracting States, the constituent elements of the offence differ, the totality of the acts or omission alleged against the person sought shall be taken into account.

4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matter, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting State.

5. An offence which is punishable by imprisonment, or any other forms of deprivation of liberty for a period of less than one year may be subject to extradition if it relates to the extraditable offence for which the extradition has been granted, irrespective of whether the request was made at the same time as the initial request or afterwards.

6. Extradition shall also be granted in respect of an attempt to commit, or aiding, abetting, inciting or participating as an accomplice in the commission of an extraditable offence.

7. 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 the punishment of an offence committed outside its territory in similar circumstances, and if the requirements of extradition under this Treaty, and its domestic laws are otherwise met. If the laws of the Requested State do not so provide, the Requested State may, at its discretion, grant extradition.

Article 3

3. Central Authorities.

The Central Authority for the Republic of India shall be the Ministry of External Affairs and the Central Authority for the Kingdom of Thailand shall be the Attorney General. Each Contracting State shall inform the other Contracting State of any change of the Central Authority through diplomatic channels. Article 4

4. Grounds for Mandatory Refusal.

Extradition shall not be granted under this Treaty in any of the following circumstances:

1. The Requested State considers the offence for which the request for extradition is made by the Requesting State as a political offence. Reference to a political offence shall not include the following:

(a) taking or attempt to take the life or an attack, or an attempt to attack on the person or deprivation of liberty of the Head of State or the Head of Government of the Requesting State or a member of his or her family; (b) any acts or omissions which are punishable as a criminal offence according to the obligations under multilateral treaties to which both Contracting States are party;

2. The Requested State has substantial grounds for believing that a request for extradition for a criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion or that the position of the person sought may be prejudiced for those reasons;

- 3. The offence for which the request for extradition is made is exclusively an offence under the military law of the Requesting State and does not constitute an offence under the criminal law of the Requesting State;**
- 4. The prosecution or the enforcement of a sentence in respect of the offence for which extradition is requested has become barred by lapse of time according to the laws of the Requesting State; or**
- 5. There has been a final judgement rendered against the person in the Requested State in respect of the offence for which the person's extradition is requested.**

Article 5

5. Grounds for Discretionary Refusal.

Extradition may be refused if:

- 1. the Requested State has jurisdiction over the offence for which extradition is requested. If the Requested State so refuses, it shall submit the case to its competent authorities in order that proceedings for prosecution of the person may be considered. For this purpose, the Requesting State shall submit documents and evidence relating to the offence for which extradition is requested to the Requested State. If the competent authorities of the Requested State decide not to prosecute in such a case or the prosecution is not feasible because of whatever reason, the request for extradition shall be reconsidered;**
- 2. the Requested State is in the process of proceeding against the person sought in respect of the same offence;**
- 3. in exceptional cases, the Requested State while taking into account the seriousness of the offence and the interests of the Requesting State deems that, because of the age or health of the person sought, the extradition would be incompatible with humanitarian considerations.**

Article 6

6. Extradition of Nationals.

1. Each Contracting State shall have the right to refuse extradition of its own nationals.

2. If extradition is not granted pursuant to paragraph 1 of this Article, the Requested State shall, at the request of the Requesting State, submit the case to its competent authority for prosecution. For this purpose, the Requesting State shall submit documents and evidence relating to the case to the Requested State.

Article 7

7. Request for Extradition and Required Documents.

1. A request for extradition shall be made in writing and transmitted to the Central Authority of the Requested State through diplomatic channels. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 10.

2. The request for extradition shall be accompanied by:

(a) a description of the person sought, together with any other information which would help to establish the person's identity, nationality and probable location; (b) a statement of facts, including time and location of the commission of the offence for which extradition is requested; (c) the text of laws establishing each offence and describing the penalty which may be imposed; and (d) a statement as to whether there is any limitation under the laws of the Requesting State in respect of proceedings or punishment.

3. If the request relates to an accused person sought for prosecution, it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for prosecution if the offence had been committed in the territory of the Requested State, including evidence that the person sought is the person to whom the warrant of arrest refers.

4. If the person has been convicted of an offence but no sentence has been imposed, it shall also be accompanied by documents providing evidence of the conviction including a copy of the judgement or certificate of conviction and a copy of the warrant of arrest.

5. If the person has been convicted of an offence and has been sentenced, it shall also be accompanied by documents providing evidence of the conviction including a copy of the judgement or certificate of conviction and a copy of the warrant of arrest and the sentence imposed including a statement indicating the sentence is enforceable and how much of the sentence remains to be served.

Article 8

8. Additional Information.

1. If the Requested State considers that the information provided in support of a request for surrender is not sufficient, it may request that additional information be furnished within such time as it specifies.

2. If the person sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person sought may be released. Such release shall not preclude the Requesting State from making a fresh request for the extradition of the person.

Article 9

9. Language of Documentation.

All documents submitted in accordance with this Treaty shall be in, or translated into, an official language of the Requested State. Article 10

10. Authentication.

1. Documents supporting a request for extradition shall be admitted in evidence, if authenticated, in any proceedings in the territory of the Requested State.

2. Documents are duly authenticated for the purposes of this Treaty if they purport to be:

(a) signed or certified by a judge, magistrate or other competent authority of the Requesting State, and (b) sealed with the official seal of a competent authority of the Requesting State. Article 11

11. Provisional Arrest.

1. In case of urgency, one Contracting State may request the other Contracting State to provisionally arrest the person sought. Such a request shall be made in writing and transmitted to the Central Authority of the Requested State through diplomatic channels.

2. The application for provisional arrest shall contain:

(a) an indication of intention to request the extradition of the person; (b) a statement about the reason for urgency; (c) information concerning identity, nationality and probable location and a description of the person; (d) a brief description of the offence and the punishment prescribed there under; (e) A brief statement of the facts of the case, including, if possible, the time and the location of the offence; and (f) a statement of the existence of a warrant of arrest or a judgment of conviction against the person.

3. The Requesting State shall be notified without delay of the result of its request.

4. A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of that person's arrest if a request for extradition and supporting documents specified in Article 7, have not been received. This provision shall not prevent the institution of proceedings to extradite the person sought if the request for extradition is subsequently received.

5. The release of a person pursuant to paragraph 4 shall not prejudice the extradition of the person sought if the extradition request and supporting documents are subsequently received.

Article 12

12. Surrender.

- 1. The Requested State shall notify the Requesting State without delay of its decision on the request for extradition, as soon as a decision has been made.**
- 2. Where extradition is granted, the Requested State shall surrender the person from a convenient point of departure in the Requested State as agreed by the Contracting States.**
- 3. The Requesting State shall remove the person sought from the territory of the Requested State within the period specified by the Requested State.**
- 4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited, it shall notify the other Contracting State. The Contracting States shall agree upon a new date of surrender, in accordance with the law of the Requested State.**
- 5. If the person sought is not removed within the agreed period specified in paragraph 3 or paragraph 4, the person sought shall be released.**
- 6. If the Requesting State fails to remove the person sought within the period specified in paragraph 3 or paragraph 4, the subsequent request for extradition of the person sought for the same offence may be refused in accordance with the law of the Requested State.**

Article 13

13. Postponed and Temporary Surrender.

- 1. When the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may, to the extent permitted by its law, surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested State shall inform the Requesting State of any postponement.**

2. To the extent permitted by its law, where a person serving a sentence in the Requested State has been found extraditable, the Requested State may temporarily surrender the person sought for the purpose of prosecution to the Requesting State in accordance with conditions to be determined between the Contracting States. A person who is returned to the Requested State following a temporary surrender may be finally surrendered to the Requesting State to serve any sentence imposed, in accordance with the provisions of this Treaty.

Article 14

14. Concurrent Requests.

1. Where requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting State of its decision.

2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:

(a)the existence of a bilateral extradition treaty;(b)if the requests relate to different offences, the relative seriousness of the offences;(c)the time and place of commission of each offence;(d)the respective dates of the requests;(e)the nationality of the person;(f)the ordinary place of residence of the person; and(g)the possibility of any of the Requesting States extraditing the person to another State.

15. Rule of Speciality.

1. A person extradited under this Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State or subjected to any other restriction of personal liberty in the territory of the Requesting State for any offence committed before surrender other than:

(a)an offence for which extradition was granted;(b)any other extraditable offence in respect of which the Requested State consents. A request for consent shall be accompanied by such of the documents mentioned in Article 7 as are sought by the Requested State.

2. Paragraph 1 of this Article does not apply if:

(a) the person has had an opportunity to leave the territory of the Requesting State and has not done so within forty-five days of final discharge in respect of the offence for which the person was extradited; or (b) the person has voluntarily returned to the territory of the Requesting State after leaving it. Article 16

16. Surrender of Property.

1. The Requested State shall, insofar as its law permits and at the request of the Requesting State, seize and, upon the granting of the extradition, surrender property:

(a) Which may be required as evidence; or (b) Which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person sought or which is subsequently detected.

2. The property mentioned in paragraph 1 of this Article shall be surrendered even if extradition, having been granted, cannot be carried out due to the death, disappearance, or escape of the person sought.

3. When the said property is liable to seizure or confiscation in the territory of the Requested State, the Requested State may, in connection with pending criminal proceedings, temporarily retain it or surrender it on condition that it be returned.

4. Any right which the Requested State or any State or individual may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State at its request as soon as possible after the end of the proceedings.

Article 17

17. Simplified Procedure for Extradition.

1. The Requested State may grant extradition, in accordance with its law, if the person sought explicitly consents before a competent authority.

2. The provisions of Articles 12 and 16 shall apply to a person surrendered pursuant to this Article.

Article 18

18. Transit.

1. When a person is to be extradited to a Contracting State from a third State through the territory of the other Contracting State, the former Contracting State shall request the latter to permit the transit.

2. Each Contracting State shall grant the request for transit made by the other Contracting State, provided that it is not against its law.

Article 19

19. Assistance and Expenses.

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interests of the Requesting State.

2. Expenses incurred in the territory of the Requested State relating to the extradition proceedings up to the moment of surrender of the person sought, including the arrest and detention of the person sought, shall be borne by the Requested State.

3. The Requesting State shall bear the expenses incurred in conveying the person sought from the territory of the Requested State.

4. If it becomes apparent that exceptional expenses may be incurred as a result of a request for extradition, the Contracting States shall consult with a view to deciding how these expenses will be met.

Article 20

20. Rights and Obligations under Multilateral Treaties.

This Treaty shall not affect any rights and obligations of the Contracting States arising under Multilateral Treaties to which both Contracting States are party. Article 21

21. Settlement of Disputes.

Any dispute arising from the implementation or interpretation of this Treaty shall be settled by mutual consultation or negotiation between the Contracting States. Article 22

22. Final Provisions.

- 1. The provisions of this Treaty shall apply to requests for extradition including requests for provisional arrest made after its entry into force regardless of the date of the commission of the offence or offences set out in the request.**
- 2. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification.**
- 3. Either of the Contracting States may terminate this Treaty at any time by giving notice in writing to the other Contracting State through diplomatic channels. In that event the Treaty shall cease to have effect on the one hundred and eightieth day from the date on which the other Contracting State receives such notice.**

In Witness Whereof, the undersigned, being duly authorised by their respective governments, have signed this Treaty. Done in duplicate at Bangkok this Thirtieth day of May Two thousand and Thirteen in the Hindi, Thai, and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

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| For the Republic of India (Salman Khurshid) Minister of External Affairs | For the Kingdom of Thailand (Surapong Tovichakchaikul) Deputy Prime Minister and Minister of Foreign Affairs |
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