2019 Model ASEAN Extradition Treaty

1.The Parties agree to extradite to each other, in accordance with the provisions of this Treaty and subject to the requirements of their respective laws, any person who is found in the territory of the Requested Party and is wanted in the Requesting Party for the purpose of prosecution or imposition or enforcement of a sentence in respect of an extraditable offence, as provided in Article 2 of this Treaty.

2.The Parties agree to extradite to each other, in accordance with the provisions of this Treaty, any person who is found in the territory of the Requested Party and is wanted in the Requesting Party for the purpose of prosecution or imposition or enforcement of a sentence in respect of an extraditable offence, as provided in Article 2 of this Treaty.

3.For the purpose of this Treaty, the term ‘territory of the Requesting Party’ shall mean its land territory, internal waters and territorial sea.

4.The provisions of this Treaty shall apply to requests for extradition, including requests for provisonal arrest, made after its entry into force regardless of the date of the commission of the offence or act or omission constituting the offence or offences set out in the request.

5.The provisions of this Treaty shall apply to requests for extradition including requests for provisional arrest made after its entry into force but shall not apply to the offence or act or omission constituting the offence or offences set out in the request committed prior to its entry into force.

6.Extradition shall be granted for an extraditable offence, being an offence coming within any of the following descriptions of offences and which is punishable according to the laws of both Parties by imprisonment of not less than 12/24/48 months, or by a more severe penalty: aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the offences listed in paragraph (1)(a) of this Article.

7.For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least one/two year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least six/twelve months of such sentence remains to be served.

8.An extraditable offence means an offence against the law of the Requesting Party and the act or omission constituting the offence or the equivalent act or omission would, in similar circumstances, if it takes place in or within the jurisdiction of the Requested Party, constitute an offence against the law of the Requested Party.

9.For the purposes of paragraph (1) of this Article, an extraditable offence shall be an offence punishable according to the laws of both Parties if the act or omission constituting the offence was an offence for which extradition could be granted under the laws of both Parties at the time it was committed and also at the time the request for extradition is received.

10.Where an extradition request is made in respect of a fugitive/requested person accused of an extraditable offence, he shall be extradited if, according to the laws of the Requested Party, there is sufficient evidence to institute a criminal case against the fugitive/requested person before its court or tribunal, if the offence was committed within its jurisdiction.

11.Where an extradition request is made in respect of a fugitive/requested person accused of an extraditable offence, he shall be extradited if there is evidence in support of the request for extradition which meets the evidentiary standard of the Requested Party for extradition.

12.Where an extradition request is made in respect of a fugitive/requested person accused of an extraditable offence, he shall be extradited if there is sufficient evidence in support of the request for extradition according to the evidentiary standard of the Requested Party, provided that neither Party shall require as a condition to extradition pursuant to this Treaty that the other Party prove a *prima facie* case against the fugitive/requested person sought.

13.A fugitive/requested person who has been convicted of an extraditable offence shall, subject to the provisions of this Treaty, be extradited if there is proof of conviction and where applicable of sentence imposed by the court of the Requesting Party and that the fugitive/requested person sought is the person convicted of the offence.

14.Extradition shall not be refused on the ground that the fugitive/requested person is a national of the Requested Party.

15.Extradition may be refused on the ground that the fugitive/requested person is a national of the Requested Party.

16.Extradition shall be refused on the ground that the fugitive/requested person is a national of the Requested Party.

17.Paragraph (1) of this Article shall not apply where the offence for which the surrender is sought is one: against laws relating to terrorist acts; which has occurred within the territory of the Requesting Party; or in respect of which substantial harm (damage or injury) arising from or intended by the commission of the offence is in the territory of the Requesting Party.

18.Paragraph 1 of this Article shall not apply where the offence for which the surrender is sought is one against laws relating to terrorist acts and which has occurred within the territory of the Requesting Party, or in respect of which substantial harm (damage or injury) arising from or intended by the commission of the offence is in the territory of the Requesting Party.

19.If the fugitive/requested person whose extradition is requested is a national of the Requested Party, and where extradition is refused on this ground, the Requested Party shall, if allowed by its laws and the Requesting Party so requests, submit the case to its competent authorities with a view to taking appropriate action against the fugitive/requested person in respect of the offence for which extradition had been requested.

20.The nationality of the fugitive/requested person shall be determined as of the date of [the offence for which the extradition is sought] [receipt of the request for extradition].

21.Requests for extradition and supporting documents, and subsequent communications shall be conveyed through diplomatic channel or the appropriate authority as may be notified from time to time by one Party to the other.

22.If the request relates to a fugitive/requested person who is an accused person it shall, in addition to the information required in paragraph (2) above, be accompanied by the warrant of arrest issued by a judge, magistrate or competent authority of the Requesting Party or an authenticated copy thereof and statements/sworn statements of witnesses concerning their knowledge of the offence, and by such evidence as would satisfy the requirements of Article 3 of this Treaty.

23.If the request relates to a fugitive/requested person who has already been convicted or sentenced by the Requesting Party, it shall, in addition to the information required in paragraphs (2) and (3) above, be accompanied by an authenticated copy of the certificate of the conviction or sentence as the case may be, and if the fugitive/requested person has been convicted but not sentenced, a statement to that effect by the appropriate court; or if the fugitive/requested person has been sentenced, a statement by the competent authority indicating that the sentence is enforceable and the extent to which the sentence remains to be served.

24.In urgent cases the fugitive/requested person sought may, at the discretion of the Requested Party and subject to its law, be provisionally arrested at the request of the Requesting Party.

25.A request for provisional arrest may be transmitted by means of the facilities of the International Criminal Police Organisation (Interpol) or by any means which afford a record in writing, as agreed by the Parties, through the diplomatic channels or by any other channels as the Parties may agree.

26.The Requesting Party shall be promptly notified of the result of its request.

27.The provisional arrest of the fugitive/requested person sought shall be terminated upon the expiration of 30/60 days from the date of the provisional arrest if the request for extradition and supporting documents specified in Article 7 have not been received or where any information requested under Article 9 is not furnished within the time specified. If the fugitive/requested person is released, the Requested Party shall promptly notify the Requesting Party.

28.The release of a fugitive/requested person pursuant to paragraph (5) of this Article shall not prevent a re-arrest and institution of proceedings with a view to the extradition of the fugitive/requested person if the request for extradition and supporting documents are subsequently received.

29.If the Requested Party considers that the information furnished in support of a request for extradition is insufficient to allow the Requested Party to make a decision pursuant to this Treaty, the Requested Party shall request that additional information be provided. The Requested Party may fix a time-limit of 30/60 days from the date the request for additional information is [made by the Requested Party/received by the Requesting Party] for the submission of such information, subject to further extension of time to be granted at the discretion of the Requested Party.

30.If the fugitive/requested person whose extradition is sought is under arrest and the additional information provided is insufficient to allow the Requested Party to make a decision pursuant to this Treaty or is not received within the time-limit specified in paragraph (1) of this Article, the fugitive/requested person may be released. Such release shall not preclude the Requesting Party from making a new request for the extradition of the fugitive/requested person.

31.Where the fugitive/requested person is released from custody in accordance with paragraph (2) of this Article, the Requested Party shall notify the Requesting Party as soon as possible.

32.The Requested Party shall, to the extent contemplated by its laws and legal processes, make its best efforts to keep confidential the fact that a request has been made, the contents of a request and its supporting documents, and other relevant information concerning the execution of a request if such confidentiality is requested by the Requesting Party. [If a request cannot be executed without disclosure of such information, the requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.]

33.Documents supporting a request for extradition shall be admitted in evidence if duly authenticated. Documents are duly authenticated if they purport to be: certified by a judge, magistrate or competent authority of the Requesting Party to be the original document containing or recording that evidence or a true copy of such a document; and sealed with the official seal of the competent authority of the Requesting Party.

34.An authenticated translation of documents submitted by the Requesting Party in support of a request for extradition shall be admissible in proceedings for extradition.

35.All documents submitted in accordance with this Treaty shall be in the English language. The Requested Party may request for translation into its official language.

36.The Treaty Parties shall indicate its official language when submitting its written notification pursuant to Article 26 (1).

37.The costs of supplying the translation shall be borne by the Requesting Party.

38.Where the Requested Party receives requests from two or more States for the extradition of the same fugitive/requested person, the Requested Party shall determine, at its discretion, to which State the fugitive/requested person is to be extradited [and, in doing so, shall give priority to requests from States with whom it has a treaty, agreement or arrangement for the surrender of fugitives/requested persons].

39.In making a determination under paragraph (1) of this Article, the Requested Party shall/may consider all the circumstances of the case, including but not limited to: the relative seriousness or gravity of the offences; the time and place of the commission of the offences; the relative dates on which the requests were made; and the citizenship or other national status and ordinary residence of the fugitive/requested person sought.

40.The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through the competent authority or the diplomatic channel.

41.Where the request for extradition is rejected, the Requested Party shall also inform the Requesting Party of the provisions of this Treaty on which the rejection is based.

42.When a fugitive/requested person is to be surrendered, that fugitive/requested person shall be delivered under the custody of the authorities of the Requested Party to the last point of departure within that Party’s territory. The Parties shall agree on the time and place of the surrender of the fugitive/requested person.

43.Subject to the provisions of paragraph (5) of this Article, the Requesting Party shall remove the fugitive/requested person within the period specified by the Requested Party and if the fugitive/requested person is not removed within that period, the fugitive/requested person may be discharged from custody and the Requested Party may subsequently refuse to surrender that fugitive/requested person for the same offence.

44.If circumstances beyond the control of both parties prevent a Party from surrendering or taking over the fugitive/requested person, it shall notify the other Party. In that case, the Parties shall agree on a new time and place for surrender and the provisions of paragraphs (3) and (4) of this Article shall apply accordingly.

45.If any question arises as to whether the circumstances cited by the Requesting Party are beyond its control and has prevented it from taking over the fugitive/requested person, the decision of the Requested Party shall be determinative.

46.Notwithstanding that the requirements of Article 7 have not been met, the Requested Party, if not precluded by its law, may grant extradition/surrender the fugitive/requested person to the Requesting Party after receipt of a request for provisional arrest, or for extradition as the case may be, provided that the person sought explicitly consents before a competent authority.

47.The Requested Party, after having made a decision to grant extradition, may postpone the surrender of the fugitive/requested person in order to proceed against him or so that he may serve a sentence in the Requested Party, for any offence other than that for which extradition is requested, until the conclusion of the proceedings and the execution of any sentence imposed, as the case may be.]

48.A fugitive/requested person who has been extradited shall not be tried, sentenced, detained or subjected to any other restriction of personal liberty by the Requesting Party for any offence committed prior to his surrender other than: the offence or offences in respect of which his extradition was granted; or an offence disclosed by the facts in respect of which his extradition was granted, provided such offence is one for which he could be extradited under this Treaty, and provided further that such offence is punishable by a penalty no more severe than the penalty for the offence for which he was extradited.

49.Paragraph (1) of this Article shall not apply if the fugitive/requested person has: first had an opportunity to exercise his right to leave the territory of the Requesting Party and he has not done so within the timeframe prescribed in the law of the Requested Parties or in the absence of such law within 45/60 days; or voluntarily returned to the territory of the Requesting Party having left it.

50.A fugitive/requested person who has been surrendered to a Requesting Party by the Requested Party shall not be re-surrendered by the Requesting Party to a third jurisdiction for an offence committed prior to his extradition to the Requesting Party unless the Requested Party consents to that surrender.

51.The Requested Party may, in accordance with its law, hand over to the Requesting Party, upon a written request, any property seized from the person of the fugitive/requested person at the time of his arrest which is relevant as proof of the offence in respect of which extradition is granted.

52.The Requesting Party shall/may submit a request in writing for the delivery of any property found in the possession of the fugitive/requested person concurrently with the request seeking the extradition of the fugitive/requested person [, failing which the Requested Party shall not be obliged to consider the said request].

53.The handing over of the property referred to in paragraph (1) of this Article shall be subject to such terms and conditions as may be imposed by the Requested Party.

54.Notwithstanding paragraph (2) above, the Requested Party may temporarily retain any property referred to in paragraph (1) of this Article in connection with pending proceedings in its jurisdiction.

55.The handing over of the property referred to in paragraph (1) of this Article shall not prejudice the rights of the Requested Party or of any third party in those items.

56.The Requested Party shall make all necessary arrangements for assistance to the Requesting Party, including legal representation in any proceedings arising out of requests for extradition.

57.The Requested Party shall bear the expenses incurred within its territory arising from the request or by reason of extradition. If it becomes apparent that expenses of an extraordinary nature are likely to be incurred, the Parties shall consult each other to determine how these expenses will be met.

58.The Requesting Party shall bear all expenses following the date when the Requested Party informs the Requesting Party in writing that the fugitive/requested person is ready for surrender to the Requesting Party.

59.The Requesting Party shall bear the costs incurred in conveying the fugitive/requested person from the territory of the Requested Party including transit costs.

60.For the purpose of promoting the most effective use of this Treaty, the Parties may consult, at times mutually agreed upon by them, concerning the interpretation, application or implementation of this Treaty either generally or in relation to a particular case.

61.The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

62.Any difference or dispute between the Parties arising from the interpretation or implementation of the provisions of this Treaty shall be settled amicably through consultation or negotiation between the Parties through diplomatic channels or any other peaceful means for the settlement of disputes as agreed between the Parties.

63.This Treaty may be modified or amended at any time by mutual written consent of the Parties. Such modification or amendment shall enter into force on such date as shall be mutually agreed upon by the Parties and shall form part of this Treaty.

64.Any modification or amendment shall not affect the rights and obligations of the Parties arising from or based on the provisions of this Treaty before the entry into force of such modification or amendment.

65.The Parties may, when signing this Treaty, make a reservation in respect of any provision or provisions of the Treaty.

66.Any Party which has made a reservation in respect of a provision of the Treaty may not claim application of the said provision by any other Party save in so far as it has itself accepted the provision.

67.This Treaty shall be subject to ratification or approval in accordance with the internal procedures of the Parties.

68.The instruments of ratification or approval shall be deposited with the -- who shall promptly inform the other Parties of such deposit.]

69.The provisions of this Treaty shall not affect the rights and obligations of the Treaty Parties arising from international conventions/treaties to which both of them are parties.

70.The provisions of this Treaty shall not affect any other agreement or arrangement, bilateral or multilateral, concluded by any Party that governs or will govern, in whole or in part, extradition.

71.The Parties shall notify each other in writing after their respective requirements for the entry into force of this Treaty have been complied with. This Treaty shall enter into force 30 days from the date of the later notification.

72.Each of the Parties may terminate this Treaty at any time by giving notice to the other through the diplomatic channel. Termination of this Treaty shall have effect months after the receipt of notice

to terminate.