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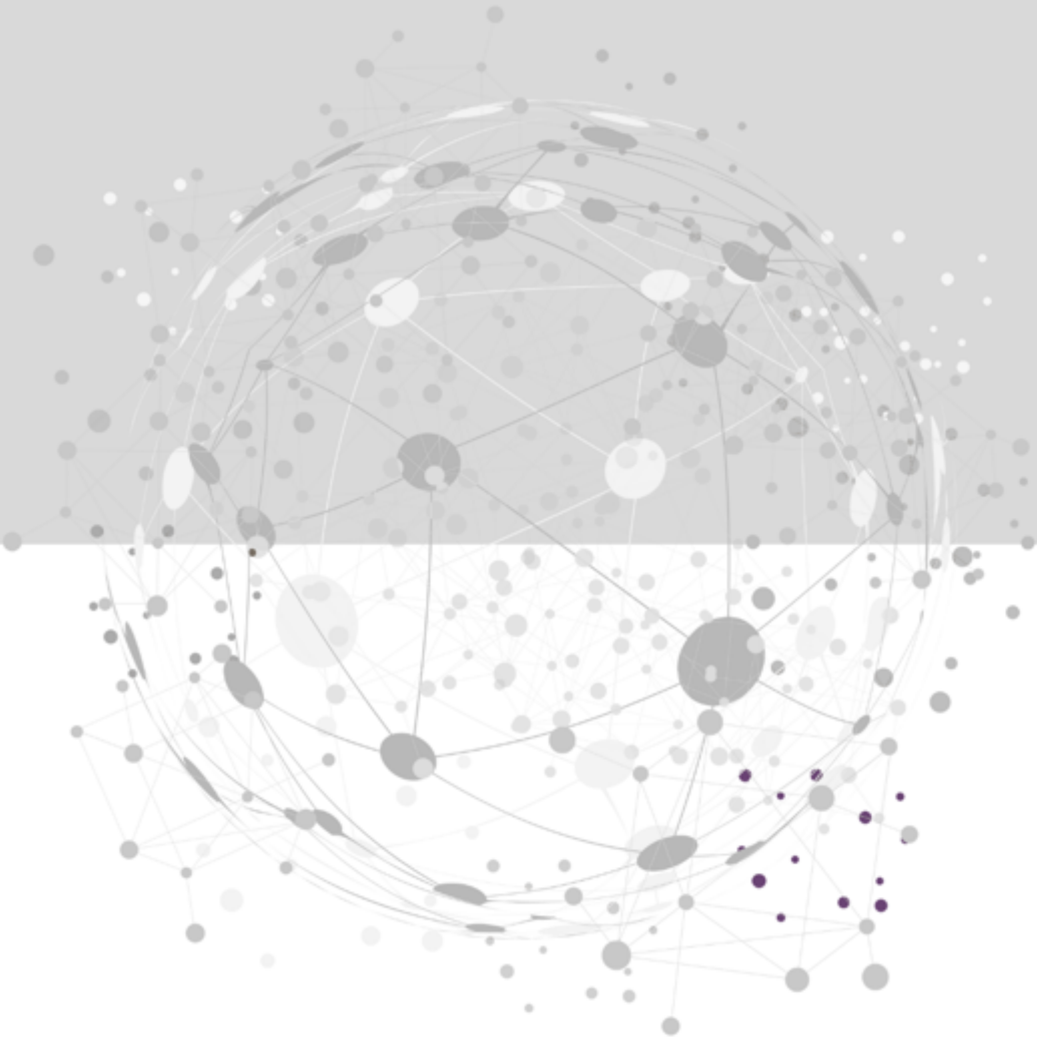
ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases

COUNTRY SUMMARIES

2025



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Brunei Darussalam

A. LEGAL RESPONSE TO TRAFFICKING IN PERSONS

a) **UN Protocols:** Brunei Darussalam is a party to the UN Trafficking Protocol. It is not a party to the Migrant Smuggling Protocol.

b) **Regional Convention:** Brunei Darussalam ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in April 2020.

c) **Domestic Legislation**: *The Anti Trafficking in Persons Act*, **Chapter 230** criminalises the offence of people trafficking in **Sec 5(1)** and the offence of trafficking in children in **Sec 5(2)**.

B. MUTUAL LEGAL ASSISTANCE

a) Mutual Legal Assistance Treaties

i. ***Multilateral:*** Brunei Darussalam is a party to UNTOC, UNCAC and to the ASEAN MLAT.

ii. ***Bilateral:*** Brunei Darussalam has not concluded any bilateral treaties concerning mutual legal assistance in criminal matters.

b) National Law on Mutual Legal Assistance

The national law on mutual legal assistance is the Mutual Assistance in Criminal Matters Order 2005 (MACMO). This Order comprehensively sets out the requirements and restrictions for mutual legal assistance requests made both by and to Brunei Darussalam. Assistance under this Order may be provided in relation to any criminal matter, including any criminal investigation, criminal proceedings or ancillary matters relating to a trafficking offence.

i. Requirements

- **Evidentiary test:** Where there is a request for the taking of evidence or production of documents, articles or other things in Brunei Darussalam, the Attorney General is to be satisfied that:
  - the request relates to a criminal matter in that country; and
  - there are reasonable grounds for believing that the evidence can be taken or, as the case may be, the documents, articles or other things can be produced in Brunei Darussalam– **Sec. 27.** Further, where a production order is sought, the Court is to be satisfied that the requested production of the document, article or other thing is necessary or desirable for the purposes of the criminal matter to which the request relates – **Sec. 29**.

- **Dual criminality:** A request may be refused if the relevant act or omission would not have constituted an offence in Brunei Darussalam – **Sec. 24(2)(c).**

- **Reciprocity:** Assistance may be provided even in the absence of any formal agreement or treaty. However, in such circumstances, there must be an assurance given by the requesting country that it will entertain a similar request by Brunei Darussalam for assistance in criminal matters – **Sec 22(1)(c)(i)**.

- **Speciality:** A request shall be refused if the Requesting State has failed to undertake that the article or thing requested will not be used, except with the consent of the Attorney General, for a matter other than the criminal matter in respect of which the request was made – **Sec. 24(1)(g)**.

ii. Restrictions and Exceptions

- Double Jeopardy/Ongoing Proceedings: A request shall be refused if the provision of assistance could prejudice a criminal matter in Brunei Darussalam – **Sec. 24(1)(j).**

- Human Rights: A request shall be refused if there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to that person on account of his colour, race, ethnic origin, sex, religion, nationality or political opinions[1]– **Sec. 24(1)(c)**.

- Death Penalty: there is no death penalty exception.

- Political/Military Offence: A request shall be refused if it relates to the investigation, prosecution or punishment of a person in respect of an omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam – **Sec. 24(1)(b).**

- National/Public Interest: A request for assistance shall be refused if it would be contrary to the interests of the public and prejudicial to the sovereignty, security or national interests – **Sec. 24(1)(f)**.

iii. Procedure

- **Form**: Requirements for the form of the request are set out in **Sec. 23**.
  Sample forms are also available at:
  http://agc.gov.bn/AGC%20Site%20Pages/MLA%20Secretariat.aspx [the various forms are available under Form of Requests].

- **Language**: Under **Sec. 23(a)** requests must be submitted in English.

- **Urgent Procedures:** In urgent circumstances a request may be made orally under **Sec. 23(b)** but must be subsequently confirmed in writing.

- Attendance of officials: There are no provisions regarding attendance of officials.

[1] Under the Interpretation and General Clauses Act, words importing the masculine gender include females.

c) Transmission of Requests

i. ***Under ASEAN MLAT, UNTOC and UNCAC:*** The designated Central Authority under the ASEAN MLAT and UNCAC is the Attorney General. Contact details are as follows:

Mutual Legal Assistance and Extradition Secretariat
Attorney General's Chambers
The Law Building
KM 1, Jalan Tutong
Bandar Seri Begawan BA1910
Email address: mla@agc.gov.bn
Telephone No: +673 2244872
Fax No: +673 2223100

ii. ***Under UNTOC:*** see (i) above.

iii. ***Under National Law:*** Under **Sec. 21** of the MACMO, all requests made under the Act are to be made to the Attorney General (contact details above).

C. MUTUAL LEGAL ASSISTANCE TO RECOVER PROCEEDS OF CRIME

a) Treaties

i. ***Multilateral***: Brunei Darussalam is a party to UNTOC, UNCAC and the ASEAN MLAT, which provide for mutual legal assistance to identify and recover proceeds of crime.

ii. ***Bilateral***: Brunei Darussalam has not concluded any bilateral treaties concerning mutual legal assistance to recover proceeds of crime.

b) National Law

Within Brunei Darussalam the recovery of proceeds of crime are dealt with under the *Criminal Asset Recovery Order, 2012* ('CARO'). The provision of mutual legal assistance in the recovery of proceeds of crime is covered in Part IV of this Order, as well as in the *Mutual Assistance in Criminal Matters Order, 2005* ('MACMO'). Under the MACMO, assistance may be provided in relation to "ancillary criminal matters", including their straining, seizure, forfeiture and confiscation of property.

- **Definition of Proceeds of Crime**: Under **Sec. 2** of the CARO, "proceeds of crime" means (a) any property or benefit derived or realized directly or indirectly from a serious offence; (b) any property or benefit derived or realized from a disposal or other dealing with proceeds of a serious offence; and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offence; and any property used or intended to be used in the commission of any serious offence. **Sec. 2** of CARO also defines "tainted property" which is referenced in other Brunei Darussalam's asset recovery orders. It defines "tainted property" as: (a) property used in or in connection with the commission of the offence, if it was in the person's possession at the time of, or immediately after, the commission of the offence; (b) property derived, obtained or realised as a result of or in connection with the commission of an offence if it was acquired by the person before, during or within a reasonable time after the period of the commission of the offence of which the person is about to be charged, charged or convicted; (c) proceeds of crimes; (d) that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property; and (e) tainted property includes property of a corresponding value to property defined in paragraphs (a), (b), (c) and (d); or (f) property which, due to any circumstance such as, but not limited to, its nature, value, location or place of discovery, or the time, manner or place of its acquisition, or the person from whom it was acquired, or its proximity to other property referred to in the foregoing paragraphs, can be reasonably believed to be property falling within the scope of paragraph (a), (b), (c) or (d).

- **Identification and Tracing**: Under the MACMO, assistance may be provided in relation to "ancillary criminal matters", including the restraining, seizure, forfeiture and confiscation of property. Available assistance includes obtaining evidence, requiring production of documents or other items, and issuing warrants for search and seizure.

- **Freezing and Seizure**: Chapter II of Part V, in particular **Sections 93-97** of CARO which deals with foreign countries' requests for recovery of proceeds. The relevant provisions are as below:

  - Confiscation: Under **Sec. 94**, the Court may register an external confiscation order made by a court in a designated country, upon application by the Attorney General on behalf of the government of the designated country.

  - Repatriation of Funds: **Sec. 98** provides for the sharing of confiscated property with foreign countries.

D. EXTRADITION

a) Extradition Treaties

i. ***Multilateral:*** Brunei Darussalam is a party to UNTOC and UNCAC.

ii. ***Bilateral***: Brunei Darussalam has extradition treaties with the following countries: Malaysia and Singapore.

b) National Law on Extradition

Extradition to and from Brunei Darussalam is provided for in the *Extradition Order (2006).* In the case of arrest warrants issued in Singapore and Malaysia, the Extradition (Malaysia and Singapore) Act (Chapter 154) also provides for such warrants to be endorsed and executed as if they were warrants issued in Brunei Darussalam, and for the person in custody to be transferred to the relevant court in either Singapore or Malaysia. An offence of people or child trafficking (under section 5 of the Anti-Trafficking in Persons, Chapter 230) is an "extradition offence" under **Sec. 3(1)** *Extradition Order (2006)*, as it is an offence which has a maximum penalty of more than one-year imprisonment.

i. **Requirements**

- **Evidentiary Test:** There is no evidence test in most cases, though supporting documentation must be provided in accordance with **Sec. 15**. However, in the case of extradition to Commonwealth countries a prima facie test (**Sec. 23**) may be applied and a "record of the case" (**Sec. 24**) may be required.

- **Dual Criminality:** Dual criminality is required under **Sec. 3(1).**

- **Speciality:** The Attorney General may refuse to surrender the person under **Sec. 17(3)(a)** if the requesting country has not given a specialty undertaking or if the requesting country is not a country with which Brunei Darussalam has a bilateral treaty containing a specialty undertaking – **Sec. 17(3)(b).**

ii. Restrictions and Exceptions

- **Double Jeopardy/Ongoing Proceedings:** There is an extradition objection under **Sec. 4(g)** if the person has already been acquitted or punished for the offence in the requesting country or in Brunei Darussalam. Surrender may also be refused under **Sec. 17(e)** if final judgment has been given against him for the offence in Brunei Darussalam or in a third country.

- **Citizen:** The Attorney General may refuse the surrender of a citizen – **Sec. 17(d).**

- **Political/Military Offence**: There is an extradition objection under **Sec. 4(a)** if the offence is of a political nature, and under **Sec. 4(d)** if it is a military offence.

- **Human Rights**: There is also an extradition objection if there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to the person on account of his/her race, religion, nationality, political opinions, sex or status, or if his/her trial would be prejudiced for these reasons [**Sec 4(b) and (c)**]. Surrender may also be refused under **Sec. 17(i)** if the person has been tortured or subjected to cruel, inhuman or degrading treatment or punishment in the requesting country.

- **Death Penalty**: There is no death penalty exception.

- **Jurisdiction:** Surrender may be refused under **Sec. 17(3)(g)** on the basis that the offence was committed wholly or partly within the territory of Brunei Darussalam.

iii. Procedure

- **Provisional Arrest**: A provisional arrest warrant is provided for under **Sec. 6 and 7**.

- **Form and Contents**: The requirements for a request for provisional arrest are set out in **Sec. 6**. The documents required to be produced to a Magistrate for a surrender determination are set out in **Sec. 15**.

- **Language:** All requests should be in the English language in order for the transmission of the request to be processed expeditiously.

- **Transmission:** An extradition request should be made to the Attorney General by a diplomatic officer, consular officer, or Minister of the Requesting State (**Sec. 9**). The request should be addressed to:

  Mutual Legal Assistance and Extradition Secretariat
  Attorney General's Chambers
  The Law Building
  KM 1, Jalan Tutong
  Bandar Seri Begawan BA1910
  BRUNEI DARUSSALAM
  Email address: mla@agc.gov.bn
  Telephone No: +673 2244872
  Fax No: +673 2223100

- **Consent:** A person may consent to their surrender under **Sec. 11 and 33**.

- **Time Limits:** Where a person has been remanded in custody or released on bail, they are to be released or discharged after 60 days unless an "authority to proceed" has been issued by the Attorney General or will be issued within the next 60 days – **Sec. 8**.

Cambodia

A. LEGAL RESPONSE TO TRAFFICKING IN PERSONS

a) **UN Protocols:** Cambodia is a party to both the UN Trafficking Protocol and the Migrant Smuggling Protocol.

b) **Regional Convention:** Cambodia ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in January 2016.

c) **Domestic Legislation:** The *Law on the Suppression of Human Trafficking and Sexual Exploitation* criminalises various forms of trafficking in persons, and some trafficking-related offences.

B. MUTUAL LEGAL ASSISTANCE

a) **Mutual Legal Assistance Treaties**

i. ***Multilateral****:* Cambodia is a party to UNTOC, UNCAC and to the ASEAN MLAT.

ii. ***Bilateral:*** Cambodia had signed a bilateral treaty on mutual legal assistance with Viet Nam, which came into effect on 02 October 2020; with the Russian Federation – 11 March 2021; with the Republic of Korea – 24 February 2021; and with India, which has not yet entered into force.

b) **National Law on Mutual Legal Assistance:**

Cambodia has adopted a national law on Mutual Legal Assistance in criminal Matters on 27 June 2020.

c) Transmission of Requests

i. ***Under Cambodia law on Mutual Legal Assistance in Criminal Matter****:* The Central Authority is the Ministry of Justice of the Kingdom of Cambodia. Contact details are as follows:

- Ministry of Justice of the Kingdom of Cambodia, General Department of General Development of the International Affairs and Judicial, Department of the ASEAN Legal Affairs and Cooperation and Department of the International Relations and Legal Cooperation
  Address: No. 14, St Samdach Sothearos, Sangkat Chey Chumneas, Khan Daun Penh, Phnom Penh, KINGDOM OF CAMBODIA.
  Telephone No: +855 23 210 760
  Facsimile No: +855 23 210 760
  Email address: ca_cambodia@moj.gov.kh
  Website Central Authority: https://www.moj.gov.kh/kh/central-authority

ii. ***Under National Law on Mutual Legal Assistance (Art. 7 and 8):*** A Requesting State shall transmit a request to the Central Authority directly or through a diplomatic channel. A request shall include the following information:

1. name(s) of the authority/ies conducting a prosecutorial investigation, accusation, judicial investigation, trial, or implementation of the criminal proceeding related to the request, such as detailed information of individual(s) capable of responding to enquiries related to the request;

2. a description of characteristics of the criminal case, including a summary of facts, name(s) of the offense, and penalties to be applied, accompanied by relevant legal texts; and

3. a description of the purpose of the request for assistance and types of the assistance sought. The Central Authority may request the Requesting State to give additional and relevant information and documents if it deems the information and documents included in the request is insufficient.

C. MUTUAL LEGAL ASSISTANCE TO RECOVER PROCEEDS OF CRIME

a) ***Treaties***

i. ***Multilateral:*** Cambodia is a party to UNTOC, UNCAC and to the ASEAN MLAT, which provide for mutual legal assistance to identify and recover proceeds of crime.

ii. ***Bilateral:*** Cambodia is a party to a bilateral treaty with Viet Nam covering MLA to recover proceeds of crime (**Art. 16**).

b) ***National* Law**

According to **Art. 30 and 31** of the *National Law on Mutual Legal Assistance in Criminal Matters*, some provisions under this law deal with proceeds of crime and may be applicable to cases in which mutual legal assistance is sought for freezing or seizing property according to a non-final ruling of a court of the requesting state and confiscate of property in compliance with the final ruling of the court of the Requesting State.

- **Definition of Proceeds of Crime: Article 3(b)** of the *Law on Anti-Money Laundering and Combating the Financing of Terrorism* stipulates that it "Shall mean any property derived from or obtained, directly or indirectly, through the commission of any felony or misdemeanour."

- **Identification and Tracing:** Mutual legal assistance in the identification and tracing of proceeds of crime may be undertaken through **Art. 91, 92, 159, 160** of the *Criminal Procedure Code.*

- **Freezing and Seizure: Art. 30 New 1** of the *Amendment to the Law on Anti-Money Laundering and Combating Financing of Terrorism* provides that "[u]pon becoming aware of the existence of any property related or suspected to be involved with the offences or proceeds of a predicate offence, the law enforcement authorities must seize that property without delay and as soon as practicable and sue to the court to freeze such property." Trafficking offences such as trafficking in human beings and sexual exploitation, including sexual exploitation of children, are predicate offences under the amendment.

- **Confiscation: Art. 48** of the *Law on Suppression of Human Trafficking and Sexual Exploitation* (NS/RKM/0208/005) provides that for an offence under that law, the Court may order the confiscation on of "proceeds or the properties earned by or which resulted from the offence." **Art. 30 New 2** of the Amendment of **Art. 3, Art. 29, and Art. 30** of the *Law on Anti Money Laundering and Combating the Financing of Terrorism* provides for confiscation of property in the event of a conviction for a predicate offence, which includes trafficking in human beings and sexual exploitation.

- **Repatriation of Funds: Art. 36** *Cambodia National Law on Mutual Legal Assistance in Criminal Matters* addresses repatriation of funds. The Treaty on *Mutual Legal Assistance in Criminal Matters* with Viet Nam and with Russia also provide for repatriation of funds

D. EXTRADITION

a) Extradition Treaties

i. ***Multilateral:*** Cambodia is a party to UNTOC and UNCAC.

ii. ***Bilateral:*** Cambodia has concluded bilateral extradition treaties with China, France, the Lao People's Democratic Republic, the Republic of Korea, the Russian Federation, Thailand, and Viet Nam.

- *Extradition Treaty between Cambodia and Viet Nam came into effect on* 01 October 2020;
- *Extradition Treaty between Cambodia and PR China came into effect on 25 July 2000;*
- *Extradition Treaty between Cambodia and Korea came into effect on 06 January 2011;*
- *Extradition Treaty between Cambodia and Lao PDR came into effect on 16 March 2005;*
- *Extradition Treaty between Cambodia and Thailand came into effect on 19 July 1999;*
- *Extradition Treaty between Cambodia and Russia came into effect on 12 December 2018; and*
- *Extradition Treaty between Cambodia and France came into effect on 14 November 2020.*

b) National Law on Extradition

Book 9, Title 1, Chapter 2 of the *Criminal Procedure Code* sets out the extradition process in Cambodia. This Chapter makes provision for the extradition of foreign nationals only, and only permits extradition to a Requesting State if the offence was committed in that State or if the person sought is a citizen of that State (**Art. 572**). Extradition for an offence of trafficking in persons may be executed under this Chapter, as it is an offence under the laws of Cambodia.

i. Requirements

- **Evidentiary Test:** There are no provisions regarding an evidentiary test.
- **Dual Criminality:** Under **Art. 569** the acts charged must be an offence under the laws of both the Requesting State and Cambodia.
- **Specialty:** Under **Art. 577** the Requesting State must undertake not to prosecute the person for any offence other than that specified in the extradition request, except with the approval of Cambodia.

ii. Restrictions and Exceptions

- **Double Jeopardy/Ongoing Proceedings:** Extradition will not be permitted under **Art. 574** if the offence was committed and tried in Cambodia. Further, if the person has been charged with an offence in Cambodia, extradition will be postponed under **Art. 578** during prosecution of that offence.

- **Citizens:** There is no provision for the extradition of a citizen of Cambodia. **Art. 33** of the Cambodian Constitution states that a Khmer citizen shall not be deprived of his/her nationality, exiled, or arrested to be extradited to a foreign country, except in case of mutual agreement.

- **Political/Military Offence:** Extradition will not be permitted under **Art. 573** if the offence is political, however, a political offence is not one which causes danger to life, physical integrity or individual freedom.

- **Human Rights:** There are no human rights exceptions.

- **Death Penalty:** There is no death penalty exception. **Art. 32** of the Cambodian Constitution states that “everyone has the right to life, liberty and security of person.”

- **Jurisdiction:** There is no general exception when Cambodia has jurisdiction over the offence, except where the offence is both committed and tried in Cambodia. **Art. 574** of the Criminal Procedure Code states that an extradition order may not be issued where the prosecuted acts were committed in the territory of the Kingdom of Cambodia and a trial has been concluded by final judgment.

iii.Procedure

- **Provisional Arrest:** Under **Art. 581** “pre-trial” (or provisional) arrest may be made in cases of emergency, prior to the receipt of the formal request.

- **Form and Contents:** The requirements for form and contents are contained in **Art. 579.**

- **Language:** Under **Art. 579** the request and supporting documents must be in Khmer, English or French, or a translation in one of these languages must be provided.

- **Transmission:** The request is to be transmitted through diplomatic channels to the Minister of Foreign Affairs, who shall refer to the request to the Minister of Justice under **Art. 580**. However, Cambodia requires all requests to be sent to the Central Authority, which is the Minister of Justice.

- **Consent:** The person may agree to be extradited under **Art. 588**.

- **Time Limits:** A person who is arrested under **Art. 581** may be released under **Art. 582** if the extradition request is not received within 2 months.

Indonesia

A. LEGAL RESPONSE TO TRAFFICKING IN PERSONS

a) UN Protocols: Indonesia is a party to the UN Trafficking in Persons Protocol and the Migrant Smuggling Protocol.

b) Regional Convention: Indonesia ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in November 2017.

c) Domestic Legislation: Trafficking in persons is criminalized in the *Law on the Eradication of the Criminal Act of Human Trafficking* (Law No. 21/2007) as well as the Law on the Ratification of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (law No. 12/2017).

Besides that, inside the Indonesia Law No. 06 Year 2011 concerning Immigration, there are also some articles that regulates to the Handling of Victims of Human Trafficking and People Smuggling. It's in part four, under **Article 86 – Article 90**.

B. UTUAL LEGAL ASSISTANCE

a) Mutual Legal Assistance Treaties

i. Multilateral: Indonesia is a party to UNTOC, UNCAC and to the ASEAN MLAT.

ii. Bilateral: Indonesia has concluded bilateral mutual legal assistance treaties with 10 (ten) states: Australia, China, Hong Kong India, Iran, Malaysia, Papua New Guinea, Philippines, the Republic of Korea, the Russian Federation, the United Arab Emirates, Singapore, Thailand and Viet Nam.

b) National Law on Mutual Legal Assistance

Law on Mutual Assistance in Criminal Matters (Law No. 1 of 2006) is the national law on mutual legal assistance in Indonesia. Under this law, assistance may be provided in relation to “criminal matters”, including investigations and prosecutions for offences of trafficking in persons as well as assistance for following up court decision.

Regulation of the Minister of Law of the Republic of Indonesia No. 12 of 2022 on the Handling of Mutual Legal Assistance in Criminal Matters

i. Requirements

- **Evidentiary Test:** There is no evidentiary test.
- **Dual Criminality:** Under **Art. 7(a)**, a request may be refused if the offence committed is not a crime in Indonesia.
- **Reciprocity:** There is no reciprocity requirement.
- Assistance may be provided based on a Treaty. Under **Art. 5 (1)**.

- Under **Art. 5 (2)** In the absence of treaty, the assistance may be provided based on good relationship under the reciprocity principles.

- **Specialty:** Under **Art. 6(f)** a request shall be refused if the foreign state does not assure that the items requested will not be used for a matter other than the criminal matter in respect to which the request was made.

ii. Restrictions and Exceptions

- **Double Jeopardy/Ongoing Proceedings:** Under **Art. 6(b)** a request shall be refused if the person has already been acquitted, awarded clemency, or served the penalty. Under **Art. 7(d)** a request may be refused if it would be harmful for an investigation, prosecution and examination before the court in Indonesia.

- **Human Rights:** Under **Art. 6(d)** a request shall be refused if the prosecution is based on a person's race, gender, religion, nationality, or political belief.

- **Death Penalty:** Under **Art. 7(c)** a request may be refused if the relevant offence is subject to capital punishment.

- **Political/Military Offence:** Under **Art.6(a)** a request shall be refused if it relates to a political offence or a military offence.

- **National/Public Interest:** Under **Art. 6(e)** a request shall be refused if its approval would be harmful to the sovereignty, security, interests, and national law of Indonesia.

- **Bank Secrecy/Fiscal Measures:** There are no bank secrecy or fiscal measures exceptions.

iii. Procedure

- **Form:** The form and content requirements for requests are set out in **Art. 28**.

- **Language:** Under **Art. 28**, the request may be in English or in the language of the Requesting State, but a translation into Indonesian shall be made.

- **Urgent Procedures:** There are no urgent procedures provisions.

- **Attendance of Officials: Art. 34** regulates that officials from the Requesting State may attend the witness testimony taking process.

c) Transmission of Requests

i. ***Under ASEAN MLAT:*** The Central Authority under the ASEAN MLAT is the Minister of Law of the Republic of Indonesia. Contact details are as follows:

Minister of Law of Republic of Indonesia
Department of Law and Human Rights
JI. H.R. Rasuna Said Kav. 6-7 Jakarta 12940
REPUBLIC OF INDONESIA
Attn: Director General for Legal Administrative Affairs
Telephone No: +62 21 520 2391
Facsimile No: +62 21 526 1082

ii. ***Under UNCAC:*** Information not available, but subject to *Law on Mutual Assistance in Criminal Matters* (Law No. 1 of 2006), The Central Authority is the Minister of Law of the Republic of Indonesia.

iii. ***Under UNTOC****:* Information not available, but subject to *Law on Mutual Assistance in Criminal Matters* (Law No. 1 of 2006), The Central Authority is the Minister of Law of the Republic of Indonesia.

iv. ***Under National Law****:* Under **Art. 27** of *Law on Mutual Assistance in Criminal Matters* a request may be sent directly to the Government (through the Minister of Law of the Republic of Indonesia) or through diplomatic channels.

C. MUTUAL LEGAL ASSISTANCE TO RECOVER PROCEEDS OF CRIME

a) Treaties

i. ***Multilateral****:* Indonesia is a party to UNTOC, UNCAC and the ASEAN MLAT, which provide for mutual legal assistance to identify and recover proceeds of crime.

ii. ***Bilateral:*** Indonesia has signed Mutual Legal Assistance in criminal matters Treaty specifically addresses the provision of mutual legal assistance in the identification and recovery of proceeds of crime with Australia in **Art. 18.** Swiss Confederation in **Art. 15 & 33,** Republic of Korea in **Art. 16,** China in **Art. 18,** India in **Art. 15,** Iran in **Art. 15,** the Government of the Hong Kong Special Administrative Region of the People's Republic of China **Art. 17,** Viet Nam in **Art. 15,** United Arab Emirates in **Art. 20**, and the Russian Federation in **Art. 20.**

b) National Law

Mutual legal assistance in the identification and recovery of proceeds of crime is specifically provided for in both the *Law on Mutual Assistance in Criminal Matters* and *the Law concerning Countermeasure and Eradication of Money Laundering* (Law No.8 Year 2010).

- **Definition of Proceeds of Crime:** "Proceeds of crime" is defined in **Art. 1(7)** of the *Law on Mutual Assistance in Criminal* Matters as: "any property derived directly or indirectly from a crime, including the property into which any property derived or realized directly from the crime was later successively converted, transformed or intermingled, including income, capital or other economic gains derived from such property at any time since the crime."

- **Freezing and Seizure:** Under **Art. 42** of the *Law on Mutual Assistance in Criminal Matters*, a warrant may be issued for the search and seizure of articles and assets allegedly obtained from or proceeds of crime under the law of the Requesting State.

- **Confiscation:** Under **Art. 51** of the *Law on Mutual Legal Assistance in Criminal Matters* the Requesting State may request assistance in the confiscation and forfeiture of assets, imposition of a penalty, or payment of compensation.

- **Repatriation of Funds:** Under **Art. 53** of the above law, the Minister of Law shall negotiate with the Requesting State and arrange the delivery of the result of the seizure under **Arts. 51-52**.

D. EXTRADITION

a) Extradition Treaties

i. ***Multilateral****:* Indonesia is a party to UNTOC and UNCAC.

ii. ***Bilateral:*** Indonesia has concluded bilateral extradition treaties with Australia, China, Hong, India, Iran, Malaysia, Papua New Guinea, Philippines, Republic of Korea, the Russian Federation (has been signed but not yet ratified), Singapore, Thailand, United Arab Emirates, Nam.

b) National Law on Extradition

Extradition to and from Indonesia is governed by the *Law on Extradition (Law No. 1 of 1979)*. Under this law, a person may be extradited for an offence of trafficking in persons.

i) Requirements

- **Evidentiary Test:** There is no evidentiary test.

- Extradition shall be granted on the basis of a treaty.

- In the absence of a treaty, extradition may be granted on the basis of good relationship and if the interest of the State of the Republic of Indonesia so requires

- **Dual Criminality: Art. 3** and **Art. 4** of *Law No.1 year 1979 on Extradition* confirms that dual criminality is required for extradition.

- **Specialty:** Under **Art. 15** an extradition request shall be refused if the person requested for extradition will be prosecuted, sentenced, or detained for a crime other than the crime for which he/she is extradited, unless upon the approval of the President.

ii) Restrictions and Exceptions

- **Double Jeopardy/Ongoing Proceedings:** An extradition request shall be refused under **Art. 11** if the person has already been sentenced and acquitted or has completed serving the sentence for the relevant offence. An extradition request may also be refused under **Art. 9** if the person is already being prosecuted for the same offence in Indonesia.

- **Citizen:** Extradition of an Indonesian citizen will not be permitted under **Art. 7** unless it is determined that the citizen should be tried in the Requesting State having regard for the interests of the State, law and justice.

- **Political/Military Offence:** Extradition for a political offence (**Art. 5**) or a military offence (**Art. 6**) is not permissible, unless otherwise stated in an agreement between Indonesia and the Requesting State.

- **Human Rights:** Under **Art. 14** an extradition request shall be refused if there is a strong indication that the person will be prosecuted or punished by reason of his/her religion, political views, or-nationality, or for being the member of certain race or group.

- **Death Penalty:** Under **Art. 13** an extradition request shall be refused if the offence is subject to capital punishment in the Requesting State but not in Indonesia, unless the Requesting State has given an assurance that the death penalty will not be imposed.

- **Jurisdiction:** An extradition request may be refused under **Art. 8** if the offence was committed wholly or partly within the jurisdiction of Indonesia.

- **Lapse of Time**: Pursuant to **Article 12**, a request for extradition to Indonesia shall be denied if, under the laws of the Republic of Indonesia, the right to prosecute or the right to enforce a penal sentence has lapsed due to the passage of time.

- **Surrender to a third state:** Under **Art. 16**, a request for extradition shall be refused if the individual sought for extradition is to be surrendered to a third state for offenses committed prior to the submission of the extradition request.

iii) Procedure

- **Provisional Arrest:** Available under **Articles 18-21** of *Law No.1 Year 1979 on Extradition*.

- **Form and Contents:** The form and document requirements are listed in **Art. 22**.

- **Language:** There are no provisions which prescribe the language of the request; however, it is preferred that the request for extradition be submitted in Bahasa Indonesia and/or, at a minimum, in English or in another language agreed upon by treaty.

- **Transmission:** Under **Art. 22(2)** the formal extradition request must be submitted in writing through diplomatic channels to the Ministry of Law-of the Republic of Indonesia to be forwarded to the President. Following recent ministry reorganisation, the responsible authority is now the Minister of Law of the Republic of Indonesia the Central Authority responsible for extradition in criminal matters. All such requests, consequently, should be addressed to the Ministry of Law.

- **Consent:** There are no provisions for consent to surrender.

- **Time limits:** Detention may be imposed for an initial period of 30 days and, under **Article 35**, may be extended each time in increments of 30 days under specific circumstances, until the individual sought is surrendered to the requesting party.

Lao PDR

A. LEGAL RESPONSE TO TRAFFICKING IN PERSONS

a) **UN Protocols:** Lao PDR is a party to the UN Trafficking Protocol and the Migrant Smuggling Protocol and Optional Protocol for CRC.

b) **Regional Convention:** Lao PDR ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in May 2017.

c) **Domestic Legislation:** Trafficking in persons is criminalised in **Article 215** of the *Penal Code 2017*, and *Law on Anti-Trafficking in Persons 2015* (**Article 2**).

B. MUTUAL LEGAL ASSISTANCE

a) Mutual Legal Assistance Treaties

i. ***Multilateral**:* Lao PDR is a party to UNTOC, UNCAC and to the ASEAN MLAT.

ii. ***Bilateral**:* Lao PDR has concluded a bilateral mutual legal assistance treaty with Viet Nam 2020 and PR China 1999.

b) National Law on Mutual Legal Assistance

The Law on Mutual Legal Assistance in Criminal Matter (2020) defines the principles, regulations and measures the management, monitoring and inspection of the work of mutual legal assistance in criminal matters.

Also, the practical implementation of this law shall refer to the *Law on Criminal Procedure* (2017), the *Penal Code* (2017) and international treaties to which the Lao PDR is a party.

i. Requirements

- **Evidentiary Test:** There is an evidentiary test (**Article 22** of *Law on Mutual Legal Assistance in Criminal Matter (2020)* and **Articles 44** of *Law on Criminal Procedure (2017)*).

- **Dual Criminality:** The acts associated with the request must be a criminal offence as determined in the penal code (2017) (Article 9) or other laws of Lao PDR and laws of Requesting State (Article 8 of *Law on Mutual Legal Assistance in Criminal Matter (2020)*).

- **Reciprocity:** There is no reciprocity requirement; however, the Requesting States is expected to commit to a similar manner when requested by the Lao PDR on the basis of international cooperation. (See **Article 6** of *Law on Mutual Legal Assistance in Criminal Matters (2020)*).

- **Specialty:** Unless the treaty that Lao PDR is a party to defines otherwise, this Law is not used for matters related to extradition, transfer of prisoners, transfer of criminal case files (Article 5 of *Law on Mutual Legal Assistance in Criminal Matters (2020)*).

ii. Restrictions and Exceptions

- **Double Jeopardy/Ongoing Proceedings:** There are no double jeopardy/ongoing proceedings provisions.

- **Human Rights:** It will be rejected if the request was made for the purpose of investigation, prosecution, punishment or otherwise causing prejudice to person on account of person's race, religion, sex, ethnic origin, nationality or political opinion (Non-Discrimination Principle); and provision of assistance would or would be likely to cause damage to or prejudice the safety of any person, whether that person is within or outside territory of the Lao PDR (**Article 8** of *Law on Mutual Legal Assistance in Criminal Matter (2020)*).

- **Death Penalty:** There are death penalty provisions in Chapter 5, **Articles 255 – 256** of the *Law on Criminal Procedure (2017)*.

- **Political/Military Offence:** It will be rejected if the request associated with investigation, prosecution or punishment of a person for an offence of military or political nature (**Article 8** of *Law on Mutual Legal Assistance in Criminal Matter (2020)*).

- **National/Public Interest:** It will be rejected if the request for assistance affecting sovereignty, security, stability, or general interest of the country (**Article 8** of *Law on Mutual Legal Assistance in Criminal Matter (2020)*).

- **Others:**

  Mutual legal assistance requests falling into following categories would also be rejected (**Article 8** of the *Law on Mutual Legal Assistance in Criminal Matter (2020)*):

  - Request that is not compliance with the treaties that Lao PDR is a party and the laws.

  - Requesting state does not clearly define details and objectives of using the information or the assistance in its request.

  - Assistance may cause a damage to the concerned case or steps of the criminal proceedings which is in process in the Lao PDR or in contrast with the law on criminal procedure of Lao PDR.

  - Provision of the assistance would impose an excessive burden on the resources of the Lao PDR.

iii. Procedure

- **Form:** Under the **Article 10** of the *Law on Mutual Legal Assistance in Criminal Matters (2020),* a request for mutual legal assistance in criminal matters shall consist of the following contents:

  1. Name and location of the competent organization of the Requesting State;
  2. Purpose and reasons of the request and types or categories of the required assistance;
  3. Requesting issue or any specific request;

4. Explanation about the characteristics of criminal matters, the situation and statement or a summary of the case related to the request, such as the case content, offence and relevant laws of the Requesting State including the maximum penalty;
5. The time limit for implementation of the request;
6. Address of the person required for taking testimony and the issues that requires the testimony for;
7. Place for keeping the exhibit or evidence.

- **Language:** Under the **Article 10** of the *Law on Mutual Legal Assistance in Criminal Matters (2020)*, the request and enclosed documents shall be dated, signed and sealed by the authorized organization of the Requesting State, and shall be translated into Lao or other languages as determined by applicable treaties.

- **Attendance of Officials:** There is no provision for attendance of officials from the Requesting State.

c) Transmission of Requests

i. ***Under ASEAN MLAT:*** The Central Authority is the Office of the Supreme People's Prosecutor (OSPP). Contact details are as follows:

Office of the Supreme People's Prosecutor of the Lao PDR
Address: Km3, Thaduea Road, Beungkayong Village, Sisattanak District, Vientiane Capital, Lao PDR, P.O. Box 3841.
Tel/Fax: (+856) 21 316590
Website: /http://ospp.gov.la/
Facebook: The Office of the Supreme People's Prosecutor
https://www.facebook.com/ospp.gov.la

ii. ***Under UNCAC:*** Information not available
iii. **Under UNTOC**: Information not available
iv. ***Under National Law****:* Under the **Article 9** of *Law on Mutual Legal Assistance in Criminal Matters (2020)*, to make a request for legal assistance in criminal matters from the Requesting State to Lao PDR, the request shall be submitted to the Central Authority via the diplomatic channel. For submission of requests for legal assistance in criminal matters in accordance with the treaties to which Lao PDR is a party, shall be made in accordance with the mechanism described in the relevant treaty.

C. MUTUAL LEGAL ASSISTANCE TO RECOVER PROCEEDS OF CRIME

a) Treaties

i. ***Multilateral*****:** Lao PDR a party to UNTOC, UNCAC and the ASEAN MLAT, which provide for mutual legal assistance to identify and recover proceeds of crime.

ii. ***Bilateral****:* Lao PDR has concluded a bilateral legal assistance treaty with Viet Nam in 2020 and PR China in 1999.

b) National Law

The *Law on Mutual Legal Assistance in Criminal Matter (2020)* and *Law on Anti-Money Laundering and Counter-Financing of Terrorism (2024)* contain provisions on recovering proceeds of crime.

- **Definition of Proceeds of Crime:** contained in **Article 11** of the *Law on Anti-Money Laundering and Counter-Financing of Terrorism (2024),* which is defined as proceeds of predicate offences for the purpose of this act are funds which are derived directly or indirectly from predicate offences, including properties transformed or changed, wholly or partially to other forms of properties, including returns of investment.

- **Identification and Tracing:** there are no provisions regarding identification and tracing; however, this may be undertaken upon an informal request from a foreign authority.

- **Freezing and Seizure: Article 36** of the *Law on Anti-Money Laundering and Counter-Financing of Terrorism (2024)* provides for the relevant investigative officers are eligible to apply measures to seize or freeze proceeds or assets of equivalent value in case they detected, found or suspected that such fund relates to money laundering.

- **Confiscation: Article 26** of the *Law on Mutual Legal Assistance in Criminal Matter (2020)* contains a request for mutual legal assistance in criminal matters on confiscation of assets and objects in accordance with the court decisions of the foreign country.

- **Repatriation of Funds: Article 30** of the *Law on Mutual Legal Assistance in Criminal Matter (2020)* contains provision of handing over the confiscated assets or objects to the Requesting State, the Central Authority shall ask the Ministry of Foreign Affairs to coordinate with the Requesting State for preparation and organizing the handover of assets or objects within thirty days or within the time defined in the relevant treaties, starting from the date of making the decision.

D. EXTRADITION

a) Extradition Treaties

i) ***Multilateral**:* Lao PDR is a party to UNTOC and UNCAC. However, Lao PDR has lodged a declaration under UNCAC to the effect that it does not consider UNCAC to be a legal basis for extradition. Instead, it declares that bilateral agreements will be the basis for extradition between Lao PDR and other States Parties in respect of any offences under that treaty.

ii) ***Bilateral**:* Lao PDR has concluded bilateral extradition treaties with Cambodia in 1999, Thailand in 1999, Vietnam in 2024, PR China in 2002, and Russia in 2015.

b) National Law on Extradition

Law on Extradition (2012) defines principles, rules, and measures for the management and monitoring of extradition.

The practical implementation of this law shall also refer to the *Penal Code (2017), Criminal Procedure Law (2017), Manual on Extradition*, and international treaties to which the Lao PDR is a party.

i. *Requirements:* Under the **Article 7** of *Law on Extradition (2012)*, extraditable offences shall be considered as followings:

- Dual Criminality (Requesting and Requested Party).
- The offence must be punishable by imprisonment or another form of detention for a period of more than 12 months.
- It shall not matter whether the penal law of the Lao PDR or the Requesting State classifies the conduct constituting the offence under the same category.
- The person must have been sentenced to at least six months, with the sentence remaining to be served.
- If concerns two or more acts, at least one of which fulfills the condition of period of penalty provided, the Lao PDR may grant extradition for all of those acts.

ii. *Restrictions and Exceptions:* Under the **Articles 8, 10, 11** of *Law on Extradition (2012),* extradition shall be refused if it is deemed as followings:

- Political offence;
- Military offence;
- The court decision was made in a trial in absentia;
- The court of the Lao PDR has passed judgement upon the person sought in respect of the same offence before extradition request was made;
- The judgement of the Requesting State was made in a trial in absentia;
- The Lao PDR refuses to extradite its citizen;
- The Lao PDR has jurisdiction, according to the law, over the offence for which the request for extradition is made and shall institute proceedings against the person sought;
- The Lao PDR has well-founded reasons to suppose that the request for extradition is not compatible with humanitarian considerations on account of race, nationality, religion, ethnicity, gender, social status, or economic status of the person sought, which may be subject to torture or inhumane treatment.

iii. *Procedure*

- **Form and Contents:** Under the **Article 14** of *Law on Extradition (2012)*, it shall consist of the followings:
  - A copy of the final judgment or sentence of the Requesting State;

- Evidence showing that the person sought for extradition is the person to whom the judgment or sentence refers;
- A statement showing to what extent the judgment or sentence has been carried out;
- In the case of a trial in absentia, it shall be clearly ensured that the person sought can defend themselves, or that the case will be retried or reopened with their presence.

- **Language:** All documents submitted by the Requesting Party according to this **Article 14** of the *Law on Extradition (2012)* or the treaties on extradition to which the Lao PDR is a party shall be officially signed and sealed and shall be accompanied by a translation in the Lao language or other languages as described in the treaties.

- **Transmission:** Requests are to be transmitted through diplomatic channels to the Ministry of Foreign Affairs or other focal point department identified in the extradition convention (**Article 17** of *the Law on Extradition (2012)*).

- **Time limits:** After receiving the request and all document and support document are approved as well as the sentence is done, the process of extradition will be done within 30 days or as mentioned in the extradition convention (**Article 22** of the *Law on Extradition (2012)*).

c) **Transmission of Requests**

Under ASEAN MLAT: The Central Authority is the Office of the Supreme People's Prosecutor (OSPP). Contact details are as follows:

Office of the Supreme People's Prosecutor of the Lao PDR
Address: Km3, Thaduea Road, Beungkayong Village, Sisattanak District, Vientiane Capital, Lao PDR, P.O. Box 3841.
Tel/Fax: (+856) 21 316590
Website: /http://ospp.gov.la/
Facebook: The Office of the Supreme People's Prosecutor https://www.facebook.com/ospp.gov.la

Malaysia

A. LEGAL RESPONSE TO TRAFFICKING IN PERSONS

a) UN Protocols: Malaysia is a party to the UN Trafficking Protocol but is not a party to the Migrant Smuggling Protocol.

b) Regional Convention: Malaysia ratified the ASEAN Convention against Trafficking in Persons, Especially Women and Children on 7 September 2017.

c) Domestic Legislation: Trafficking in persons, together with a range of trafficking-related offences, is criminalised in the *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act* 2007 (Act 670).

B. MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

a) Mutual Legal Assistance in Criminal Matters Treaties (MLAT)

i. ***Multilateral:*** Malaysia is a party to UNTOC, UNCAC and to the ASEAN MLAT.

ii. ***Bilateral:*** As of July 2024, Malaysia has concluded MLATs with Australia, China, Hong Kong, India, Romania, Republic of Korea, Ukraine, the United Kingdom and Northen Ireland, and the United States of America.

b) National Law on Mutual Legal Assistance in Criminal Matters

Malaysia's domestic law on mutual legal assistance in criminal matters is the *Mutual Assistance in Criminal Matters Act* 2002 [Act 621] (MACMA 2002). Under this Act, Malaysia does not require the existence of a treaty in considering and executing mutual legal assistance in criminal matters' requests. Under **Section 18** of MACMA 2002, Malaysia may provide mutual assistance in criminal matters to a non-treaty partner provided that a Special Direction is issued by the Minister responsible for legal affairs, if the Minister, on the recommendation of the Attorney General, agrees to accede to the request.

Assistance may be provided under MACMA 2002 in relation to an offence of trafficking in persons, as this is a "serious offence" with a maximum punishment of a term not exceeding twenty years under Act 670.

i. Requirements

- **Evidentiary test:** There is no general evidentiary test but where a production order under **Section 23** of MACMA 2002 or a search warrant under **Section 36** of MACMA 2002 is required, the court must be satisfied that there are reasonable grounds to suspect that a person has committed or benefitted from a serious foreign offence, and that the thing sought is likely to be of substantial value to the criminal matter.

- **Dual criminality:** A request shall be refused under **Section 20(1)(f)** of MACMA 2002 if the relevant act or omission, if it had occurred in Malaysia, would not have constituted an offence against the laws of Malaysia.

- **Reciprocity:** Under **Section 20(3)(d)** of MACMA 2002 a request may be refused if a foreign State is not a prescribed foreign State and the appropriate authority of that foreign State fails to give an undertaking to the Attorney General that the foreign State will, subject to its laws, comply with a future request by Malaysia to that foreign State for assistance in a criminal matter.

- **Specialty:** A request shall be refused under **Section 20(1)(j)** of MACMA 2002 if the Requesting State fails to undertake that the thing requested will not be used for a matter other than the criminal matter in respect of which the request was made, unless the Attorney General of Malaysia consents under Section 20(2) of MACMA 2002.

ii. *Restrictions and Exceptions*

- **Double Jeopardy:** A request shall be refused under **Section 20(1)(e)** of MACMA 2002 if the person has already been convicted, acquitted or pardoned, or has undergone punishment in the foreign state, for the same offence.

- **Ongoing Proceedings:** A request shall be refused under **Section 20(1)(l)** of MACMA 2002 if the provision of the assistance could prejudice a criminal matter in Malaysia.

- **Prejudice to a Person's Race, Religion, Sex, Ethnic, Origin, Nationality or Political Opinions**: A request shall be refused under **Section 20(1)(d)** of MACMA 2002 if there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on the grounds of a person's race, religion, sex, ethnic origin, nationality or political opinions.

- **Death Penalty:** There is no provision for a death penalty exception.

- **Political/Military Offence:** A request shall be refused under **Section 20(1)(b)** of MACMA 2002 if it relates to an offence of a political nature, and under **Section 20(1)(c)** of MACMA 2002 if it relates to a military offence. **Section 21** of MACMA 2002 further lists a number of offences which will not be regarded as political offences.

- **National/Public Interest:** A request shall be refused under **Section 20(1)(i)** of MACMA 2002 if its provision would affect the sovereignty, security, public order, or other essential public interest of Malaysia.

- **Bank Secrecy/Fiscal Measures:** Pursuant to **Section 24(4)(b)** of MACMA 2002, a production order under **Section 23** of MACMA 2002 shall have effect notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by statute or otherwise.

iii. *Procedure*

- **Form:** The contents requirements for requests are contained in **Section 19(3)** of MACMA 2002.

- **Language:** There is no statutory provision which prescribes the language of the request. Nonetheless, the request should be in English or a translation into English should be attached with the request.

- **Urgent Procedures:** There are no urgent procedure provisions but an advance copy of the request may be sent directly to the Attorney General's Chambers (AGC) for preliminary consideration.

- **Attendance of Officials:** There are no provisions for attendance of officials from the Requesting State.

c) Transmission of Requests

i. ***Under ASEAN MLAT**:* The Central Authority for MLA requests under the ASEAN MLAT is the Attorney General. Contact details are as follows:

Attorney General of Malaysia c/o
Transnational Crimes Unit, Prosecution Division,
Attorney General's Chambers Malaysia,
No 45, Persiaran Perdana,
Precinct 4, 62100, Putrajaya
MALAYSIA.
Telephone No: +60 38 872 2592
General E-mail: icu@agc.gov.my

ii. ***Under UNCAC**:* The Attorney General is the Central Authority for Mutual Legal Assistance in Criminal Matters while the Minister of Home Affairs is the Central Authority for extradition matters.

iii. ***Under UNTOC**:* The Attorney General is the Central Authority for Mutual Legal Assistance in Criminal Matters while the Minister of Home Affairs is the Central Authority for extradition matters.

iv. ***Under Malaysia's Domestic Law**:* Under **Section 19** of MACMA 2002, a request for assistance shall be made to the Attorney General through diplomatic channels.

C. MUTUAL LEGAL ASSISTANCE TO RECOVER PROCEEDS OF CRIME

a) Treaties

i) *Multilateral:* Malaysia is a party to UNTOC, UNCAC and the ASEAN MLAT, which provide for mutual legal assistance to identify and recover proceeds of crime.

ii) *Bilateral:* As of July 2024, Malaysia has concluded MLATs with Australia, the United States of America, Hong Kong SAR, United Kingdom of Great Britain and Northern Ireland, Republic of Korea, Republic of India, People's Republic of China, Romania and Ukraine. Assistance to be rendered under these treaties may include identifying and recovering proceeds of crime.

b) Domestic Law

MACMA 2002 contains a number of provisions specifically relating to the identification and recovery of proceeds of crime.

- **Definition of Proceeds of Crime:** "Proceeds of crime" is defined in **Section 2** of MACMA 2002 as: "...any property suspected, or found by a court, to be property directly or indirectly derived or realised as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence."

- **Identification and Tracing: Section 3(h)** of MACMA 2002 states that the object of the Act is for Malaysia to provide and obtain international assistance in criminal matters, including in the identification and tracing of proceeds of crime.

- **Freezing and Seizure:** Under **Section 31(1)(b)** of MACMA 2002, a foreign State may request assistance in the restraining of property which may become the subject of a foreign forfeiture order. Under **Section 35** of MACMA 2002, assistance may also be provided to conduct search and seizure.

- **Confiscation:** Requests for enforcement of a foreign forfeiture order may be made under **Section 31(1)(a)** of MACMA 2002. A foreign forfeiture order must be registered by application to the High Court in accordance with **Section 32** of MACMA 2002.

- **Repatriation of Funds:** There are no provisions regarding the repatriation of funds.

D. EXTRADITION

a) Extradition Treaties

i. ***Multilateral:*** Malaysia is a party to UNTOC and UNCAC.

ii. ***Bilateral:*** As of July 2024, Malaysia has concluded bilateral extradition treaties with Kingdom of Thailand, Republic of Indonesia, United States of America, Hong Kong SAR, Australia, Republic of India, Republic of Korea and Pakistan.

iii. The Central Authority for Extradition is the Minister of Home Affairs

Contact details are as follows:

Minister of Home Affairs
Setia Perkasa 1, 2, 7 & 9,
Kompleks Setia Perkasa Pentadbiran,
Federal Government,
62546 Putrajaya,
Malaysia

b) Domestic Law on Extradition

The law governing extradition to and from Malaysia is contained within the *Extradition Act* 1992 [*Act 479*]. Part V of Act 479 also specifically provides for the endorsement of warrants issued in Brunei Darussalam and the Republic of Singapore as if they were warrants issued in Malaysia, and the transfer of the person in custody to the relevant court in Brunei Darussalam or Republic of Singapore.

Under Act 479, extradition offence is an offence which is punishable with imprisonment for not less than one year or with death. Under Act 670, the offence of trafficking in persons would be considered an extraditable offence as the punishment is for a term not exceeding twenty years which is more than one-year imprisonment.

i. Requirements

- **Evidentiary test:** Under **Section 19(4)** of Act 479 a *prima facie* case must be established, unless dispensed with in an agreement between Malaysia and the Requesting State (see **Section 4** of Act 479).

- **Dual criminality:** Under **Section 6(2)** of Act 479 an extradition offence must be punishable in both the Requesting State and in Malaysia.

- **Specialty:** Under **Section 8(e)** of Act 479 a person will not be surrendered unless provision is made in the law of the Requesting State or in the extradition arrangement, which prevents the person being prosecuted for any offence committed prior to his return, other than the extradition offence. Under **Section 10** of Act 479, consent must be sought from the Minister of Home Affairs where a person has been returned to the requesting country and that country intends to prosecute him/her for an offence other than the offence for which the person was extradited.

ii. Restrictions and Exceptions

- **Double jeopardy/ongoing proceedings:** Under **Section 19(1(h)** and **20(1)(d)(iv)** of Act 479 a person shall not be surrendered if he has been previously convicted or acquitted or pardoned by a competent tribunal or authority in the country which seeks his return or in Malaysia in respect of the alleged act or omission.

- **National:** Under **Section 49(1)(a)** of Act 479 the Minister of Home Affairs has a discretion to refuse surrender if the person is a Malaysian citizen.

- **Political/military offence:** Under **Section 8(a)** a person shall not be surrendered if the relevant offence is a political offence. **Section 9** of Act 479 lists offences which are not to be regarded as political offences.

- **Prejudice to a Person's Race, Religion, Sex, Ethnic, Origin, Nationality or Political Opinions:** Under **Section 8(b) and (c)** of Act 479 a person shall not be surrendered if the request is made for the purpose of prosecuting or punishing the person on account of his/her race, religion, nationality or political opinions, or if the person would be prejudiced in his/her trial for these reasons.

- **Death penalty:** There is no provision for a death penalty exception.

- **Jurisdiction:** Under **Section 49(1)(b)** of Act 479 the Minister of Home Affairs has a discretion to refuse surrender if Malaysian courts have jurisdiction to prosecute the extradition offence.

iii. Procedure

- **Provisional arrest:** A provisional arrest warrant may be issued under **Section 13(b)** of Act 479 if the Magistrate considers that it is warranted.

- **Form and Contents:** The documentary requirements for an extradition request are contained in **Section 12(2)** of Act 479.

- **Language:** There is no statutory provision prescribing the language of the request. Nonetheless, the request should be in English or a translation into English should be attached with the request.

- **Transmission:** Under **Section 12(1)** of Act 479 a request for extradition is to be made to the Minister of Home Affairs by a diplomatic representative of the Requesting State.

- **Consent:** A person may consent to a waiver of extradition proceedings under **Section 22** of Act 479.

- **Time limits:** No time limit is specified. However, under **Section 16(1)** of Act 479, the Magistrate must fix a “reasonable” period of remand in custody for a fugitive criminal who is apprehended on a provisional warrant pending receipt of the order of the Minister of Home Affairs signifying that a requisition has been made for the return of the fugitive criminal.

Myanmar

A. LEGAL RESPONSE TO TRAFFICKING IN PERSONS

a) **UN Protocols:** Myanmar is a party to both the UN Trafficking Protocol and the Migrant Smuggling Protocol.

b) **Regional Convention:** Myanmar ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in January 2017.

c) **Domestic Legislation:** Trafficking in persons is criminalised in the Prevention and Suppression of Trafficking in Persons Law (State Administration Council Law No. 41/2022).

B. MUTUAL LEGAL ASSISTANCE

a) Mutual Legal Assistance Treaties

i. *Multilateral:* Myanmar is a party to UNTOC and to the ASEAN MLAT and Myanmar ratified UNCAC on 20 December 2012.

ii. *Bilateral:* Myanmar concluded the treaty on Mutual Assistance in Criminal Matters with India in 2010. Myanmar is planning to enter the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) *Convention on Mutual Legal Assistance in Criminal Matters* and to conclude bilateral treaties on MLA with the Russian Federation, Viet Nam and Belarus.

b) National Law on Mutual Legal Assistance

The national law on the provision of mutual legal assistance in Myanmar is the *Mutual Assistance in Criminal Matters Law* (Law No. 4/2004). Under this law, assistance may be provided in relation to an offence of trafficking in persons, as it is an offence punishable by more than one-year imprisonment.

i. Requirements for Mutual Legal Assistance

- **Evidentiary test:** There is an evidentiary test provision (Under **Section 12** of the *Mutual Assistance in Criminal Matters Law (2004)*)

- **Dual criminality:** Dual criminality is required under **Section 3(a)** of the *Mutual Assistance in Criminal Matters Law (2004)*.

- **Reciprocity:** Under **Section 16** of the *Mutual Assistance in Criminal Matters Law (2004)* a reciprocity undertaking may be required if the Requesting State is not a party to a treaty with Myanmar.

- **Specialty:** There is a provision requiring specialty (Under **Section 9 and Section 24** of *Mutual Assistance in Criminal Matters Law (2004)).* According to **Section 24** of the *Mutual Assistance in Criminal Matters Law (2004)*, the Central Authority[2] and relevant government departments shall not handover or expose information,

[2] According to Chapter I Sec. 3 sub-sec (i) and Chapter III of Law No. 4/2004, Central Authority is formed by the government to provide mutual assistance in criminal matters among States.

testimony, document, records and supporting evidence in relation to matters not mentioned in the request without the agreement between the two states. However, **Section 9** of the *Mutual Assistance in Criminal Matters Law (2004)* states that government may amend, alter, suspend, or cancel any performance made by the Central Authority in respect of the assistance requested.

ii. *Restrictions and Exceptions*

- **Double Jeopardy/Ongoing Proceedings:** If the Central Authority is of the opinion that a request would interfere with an ongoing investigation, prosecution or proceeding in Myanmar, it may postpone the request in whole or in part under **Section 17** of the *Mutual Assistance in Criminal Matters Law* (2004)**.**

- **Human Rights:** A request may be refused under **Section 18(c)** of the *Mutual Assistance in Criminal Matters Law (2004)* if there is cause to believe that the race, sex, religion, nationality, ethnic origin, political opinion or personal standing of any individual "is being encroached".

- **Death Penalty:** There is no provision for a death penalty exception.

- **Political/Military Offence:** A request may be refused under **Section 18(e)** of the *Mutual Assistance in Criminal Matters Law* (2004) if it is a military offence.

- **National/Public Interest:** A request may be refused under **Section 18(b)** of the Mutual Assistance in Criminal Matters Law (2004) if it encroaches on the sovereignty, security, law and order or public interests of Myanmar.

- **Bank Secrecy/Fiscal Measures:** The Act specifically states in **Section 18** of the *Mutual Assistance in Criminal Matters Law* (2004) that requests shall not be refused on the ground of bank and financial institutions secrecy.

iii. *Procedure*

- **Form:** The form and contents requirements for a request are contained in **Section 12** of the *Mutual Assistance in Criminal Matters Law* (2004)**.**

- **Language:** Under **Section 12** of the *Mutual Assistance in Criminal Matters Law* (2004), the request must be in either the English or Myanmar language.

- **Urgent Procedures:** Under **Section 13** of the Mutual Assistance in Criminal Matters Law (2004) the Requesting State may, in urgent circumstances, make the request orally by telephone, facsimile, electronic mail or other electronic means including computer network. A formal letter of request must follow "without delay" to the Central Authority.

- **Attendance of Officials:** There are no provisions regarding attendance of officials.

c) Transmission of Requests

- ***Under the Myanmar MLA Law***, the Central Authority is the Ministry of Home Affairs. Contact details are as follows:

  Ministry of Home Affairs

The Republic of the Union of Myanmar
Building No. 10, Administrative Zone, Naypyitaw Telephone No: +95 673 412135, 412536
Facsimile No: +95 67 412015
Email address: ccmc2020office@gmail.com

- ***Under UNCAC:*** [Information not available]

- ***Under UNTOC:*** The Competent National Authority under UNTOC is the Ministry of Home Affairs. Contact details are as follows:

  Ministry of Home Affairs

  Building No 10, Administrative Zone, Naypyitaw

  THE REPUBLIC OF THE UNION OF MYANMAR

  Telephone No: +95 67 412 135

  Facsimile No: +95 67 412 015

  Email address: ccmc2020office@gmail.com

- ***Under National Law:*** The Central Authority is established under Chapter III of the *Mutual Assistance in Criminal Matters Law* and is chaired by the Minister for Home Affairs. Under **Section 10** of the *Mutual Assistance in Criminal Matters Law (2004)*, States which are parties to multilateral or bilateral treaties with Myanmar may send their requests directly to the Central Authority. States which do not have a treaty with Myanmar must send their requests to the Central Authority through diplomatic channels.

C. MUTUAL LEGAL ASSISTANCE TO RECOVER PROCEEDS OF CRIME

a) Treaties

- *Multilateral:* Myanmar is a party to both UNTOC and the ASEAN MLAT, which provide for mutual legal assistance to identify and recover proceeds of crime.

- *Bilateral:* Myanmar has not entered into any bilateral treaties on mutual legal assistance to *recover* proceeds of crime.

b) National Law

Under **Section 25** of the *Mutual Assistance in Criminal Matters Law (2004)*, assistance may be provided to search, seize, control, issue a restraining order or confiscate material in conformity with the existing laws.

One of the objectives of the Anti-Money Laundering Law (2014) is to co-operate with international organizations, regional organizations, and neighbouring States for combating money laundering, financing of terrorism and original offences. (**Section 4[d]**). This Law provides for the foundation of an Investigation Body to conduct investigations into money laundering. International cooperation, including related to mutual legal assistance is specifically regulated under **Section 53** of the *Anti-Money Laundering Law (2014)*.

D. EXTRADITION

a) **Extradition Treaties**

i. ***Multilateral:*** Myanmar is a party to UNTOC. Myanmar ratified UNCAC on 20th December 2012.
ii. ***Bilateral:*** Myanmar has not entered into any bilateral extradition treaties.

b) **National Law on Extradition**

Myanmar enacted the *Extradition Law* on July 21, 2017. Under the *Extradition Law* 2017, Extraditable offences means an offence that is punishable with imprisonment for a period of two years and above; under any existing laws of the State or any existing laws of the Requesting State when the extradition request is made (**Section 3 (d)**).

Under **Section 6** of the *Extradition Law (2017)*, the State may refuse the request for extradition in any of the following circumstances:

- the person sought is a national under the existing law of the State;
- the offence for which extradition is requested is an offence to be taken action under any military law;
- any court of either State has rendered a final judgment against the person sought for an offence for which extradition is requested, and enforced the sentence upon him or he has been granted a pardon for such offence;
- there are substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on account of his race, religion, nationality, or political opinions;
- there are substantial grounds to believe that the person sought would be liable to be sentenced in the Requesting State by unfair hearing;
- the offences have a political nature; provided that the offences under schedule (a) shall not be deemed offences of political nature;

- the offence for which the request is made has been committed in whole or in part within the territory of the State;
- there are substantial grounds to believe that the request is made for the purpose of transferring the person sough to the third state in respect of committing offences before the offence for which extradition is requested;
- there are substantial grounds to believe that the person sought would be subjected in the Requesting State to torture or cruel, inhuman or degrading treatment.

Under **Section 7** of the *Extradition Law (2017)*, the Requesting State shall make a request for extradition to the Ministry of Foreign Affairs through the diplomatic channel. The following information shall be stated in writing in Myanmar or English in a request for extradition:

- the biography of the person sought, including the name, figure, nationality, address, photo, deoxyribonucleic acid (DNA) and fingerprints, etc.;
- the number of the First Information Report or case number of the court and the summary of the case;
- the necessary documentary evidence, an origin or a certified copy of warrant for investigation and prosecution;
- the provision of the relevant legislation for the jurisdiction of the Requesting State with regard to the offence;
- substantial grounds and evidence for the Requesting State to believe that the person sought has been in the State;
- The contact department, name and address of the contact person of the Requesting State; and
- The information prescribed in Form 1 and Form 2 annexed to this Law.

Philippines

A. LEGAL RESPONSE TO TRAFFICKING IN PERSONS

a) UN Protocols: The Philippines is a party to the UN Trafficking Protocol and the Migrant Smuggling Protocol.

b) Regional Convention: The Philippines ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in March 2017.

c) Domestic Legislation: Trafficking in Persons is criminalised under the *Anti-Trafficking in Persons Act of 2003* (Republic Act (RA) No. 9208), as amended by the *Expanded Anti-Trafficking Act of 2012* (RA No. 10364) and further amended by *Expanded Anti-Trafficking Act of 2022* (RA No. 11862).

B. MUTUAL LEGAL ASSISTANCE

a) Mutual Legal Assistance Treaties

i) ***Multilateral****:* The Philippines is a party to UNTOC, UNCAC and to the ASEAN MLAT.

ii) ***Bilateral:*** The Philippines has concluded bilateral treaties on mutual legal assistance with Australia, China, Hong Kong, the Republic of Korea (South Korea), Qatar, the Russian Federation, Spain, Switzerland, the United Arab Emirates, the United Kingdom and the United States of America.

b) National Law on Mutual Legal Assistance

There is no dedicated national law on mutual legal assistance in the Philippines. There are some provisions relating to mutual legal assistance in detecting and combating money laundering contained within the RA No. 9160, otherwise known as the *Anti-Money Laundering Act of 2001* as amended by RA No. 10365. Trafficking in Persons is now among the predicate offences of money laundering under this Act. With the amendment, bank inquiry, freeze order, and civil forfeiture of assets belonging to human traffickers is now a remedy available to the State.

c) Transmission of Requests

i. ***Under ASEAN MLAT****:* The Central Authority is the Secretary of Justice. Contact details are as follows:

THE SECRETARY OF JUSTICE
Attention: The Chief State Counsel
Department of Justice
Padre Faura Street Ermita, Manila 1000
PHILIPPINES
Tel. Nos.: +632 8523-8481 to 98
Fax No: +632 8525-2218
E-mail: DOJLegalStaff@doj.gov.ph; ocsc@doj.gov.ph

ii. ***Under UNCAC**:* The declared Central Authority under UNCAC is the DOJ (contact details above).

iii. ***Under UNTOC**:* The Central Authority under UNTOC is the Office of the Chief State Counsel in the DOJ (contact details above).

iv. ***Under National Law**:* Requests for assistance under the *Anti-Money Laundering Act* of 2001, as amended by R.A. No. 10365, are made to the AMLC, through the DOJ with contact details as stated above. The contact details of the AMLC are as follows:

The Anti-Money Laundering Council
Attention: Counselling, Adjudication and Mutual Legal Assistance Group
Room 507, 5/F EDPC Building Bangko Sentral ng Pilipinas Complex
A. Mabini Street, Malate Manila, Philippines
Tel. No.: +632 8708-7701 local 3153; +632 8708-7921
E-mail: secretariat@amlc.gov.ph

C. MUTUAL LEGAL ASSISTANCE TO RECOVER PROCEEDS OF CRIME

a) Treaties

i. ***Multilateral:*** The Philippines is a party to UNTOC, UNCAC and the ASEAN MLAT, which provide for mutual legal assistance to identify and recover proceeds of crime.

ii. ***Bilateral:*** The Philippines has concluded bilateral treaties on mutual legal assistance with Australia, PR China, Hong Kong, the Republic of Korea the Russian Federation, Spain, Switzerland, the United States of America and the United Kingdom.

b) National Law

The Philippines has no specific law on mutual legal assistance. In 2013, the *Anti-Money Laundering Act* was amended to include trafficking in persons as one of the predicate offenses of money laundering.

While the Philippines has no specific law on mutual legal assistance, the A*nti-Money Laundering Act* (2001) has a provision – **Sec. 13** (Mutual Assistance among States) – that relates to mutual legal assistance. This section provides for the making of mutual assistance requests both by the Philippines and to the Philippines, in the investigation or prosecution of money laundering offenses. Under this section, a request may be refused where the action sought contravenes any provision of the Constitution of the Republic of the Philippines, or the execution of a request is likely to prejudice the national interest of the Philippines. The form and content requirements of a request are listed in **Sec. 13(e)(2)**.

- **Definition of Proceeds of Crime:** Under **Sec. 3(f)**, “Proceeds” refers to an amount derived or realized from an unlawful activity.

- **Identification and Tracing/Freezing and Seizure:** Under **Sec. 13(b)(1)**, the Anti - Money Laundering Council (AMLC) may execute a request for assistance by tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity.

- **Confiscation:** Under **Sec. 13 (b)(3)**, the AMLC may execute a request for assistance by applying for an order of forfeiture of any monetary instrument or property in the court. The court, however, shall not issue such an order unless the application is accompanied by an authenticated copy of the order of a court in the Requesting State ordering the forfeiture of said monetary instrument or properly of a person who has been convicted of a money laundering offense in the Requesting State, and a certification of an affidavit of a competent officer of the Requesting State stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect or either.

- **Repatriation of Funds:** There are no provisions regarding the repatriation of funds to the Requesting State. However, the Requesting Party may specify in the MLA the request for repatriation of funds.

D. EXTRADITION

a) Extradition Treaties

i. ***Multilateral:*** The Philippines is a party to UNTOC and UNCAC; however, it has lodged a declaration under UNCAC to the effect that it does not consider UNCAC to be a legal basis for extradition. As to UNTOC, it has not made a declaration that it takes the Convention as a basis for extradition.

ii. ***Bilateral:*** The Philippines has extradition treaties with the following countries: Australia, Canada, China, Hong Kong, India, Indonesia, the Republic of Korea (South Korea), Micronesia, the Russian Federation, Spain, Switzerland, Thailand, the United Arab Emirates, the United Kingdom and the United States of America.

b) National Law on Extradition

The national law on extradition is the *Philippine Extradition Law* (Presidential Decree (PD) No. 1069). This law provides for extradition only where there is an applicable treaty or convention. Under this law, trafficking in persons (TIP) will be an extraditable offence if it is punishable by imprisonment under the laws of the Requesting State, as it is punishable by imprisonment in the Philippines, and if it is an extraditable offence in accordance with the applicable treaty.

i. *Requirements*

- **Evidentiary Test:** Under **Sec. 10**, a *prima facie* case must be shown.

- **Dual criminality:** Under **Sec. 3(a)**, the extradition offence must be punishable by imprisonment under the laws both of the Requesting State and the Philippines.

- **Speciality:** There is no provision requiring specialty. However, the rule of speciality can be found in the Philippine's bilateral treaties. Under this principle, the person being extradited will only be tried or punished by the Requesting State for offenses in respect of which extradition has been granted unless the Requested State consents thereto.

- **Restrictions and Exceptions:** There are no restrictions or exceptions under the Philippine Extradition Law; however, the restrictions and exceptions under the relevant treaty will apply.

ii. Procedure

- **Provisional arrest:** Under **Sec. 20** a provisional arrest of the accused pending receipt of the request may be made in cases of urgency. A request for provisional arrest shall be sent to the Director of the National Bureau of Investigation, Manila, either directly or through diplomatic channels. The Department of Justice may also directly receive requests for provisional arrest, and will accordingly process the same, pursuant to Sec. 20 and/or the applicable extradition treaty.

- **Form and Contents:** The form and content requirements are set out in **Sec 4(2).**

- **Language:** There is no provision prescribing the language of the request.

- **Transmission:** Under **Sec. 4(2)** the request is to be transmitted through diplomatic channels to the Secretary of Foreign Affairs.

- **Consent:** There are no provisions for consent to extradition.

- **Time limits:** If the request is not received within 20 days of the provisional arrest of the accused, the accused may be released under **Sec. 20(d)**. **Sec. 20(e)** however provides that release from provisional arrest shall not prejudice re-arrest and extradition of the accused if a request for extradition is received subsequently in accordance with the relevant treaty of convention.

Singapore

A. LEGAL RESPONSE TO TRAFFICKING IN PERSONS

a) UN Protocols: Singapore is a party to the UN Trafficking Protocol, but is not party to the Migrant Smuggling Protocol.

b) Regional Convention: Singapore ratified the ASEAN Convention against Trafficking in Persons, Especially Women and Children on 25 January 2016.

c) Domestic Legislation: Human trafficking is criminalised under the *Prevention of Human Trafficking Act 2014* which came into effect from 1 March 2015. Trafficking of women and girls as well as other vice-related offences are criminalised under the *Women's Charter 1961*. The trafficking of children is criminalised under the *Children and Young Persons Act 1993*. The use of slaves, forced labour, and other trafficking-related offences (such as the giving and receipt of sexual services from trafficked victims as corrupt gratification and laundering the proceeds of trafficking) are criminalised under the *Penal Code 1871*, the *Prevention of Corruption Act 1960* and the *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992*.

B. MUTUAL LEGAL ASSISTANCE

a) Mutual Legal Assistance Treaties

i. ***Multilateral****:* Singapore is a party to UNTOC, UNCAC and to the ASEAN MLAT.

ii. ***Bilateral****:* Singapore has bilateral mutual legal assistance treaties with France, Hong Kong SAR, India, and the United States of America (in relation to drug offences).

b) Domestic Law on Mutual Legal Assistance

The *Mutual Assistance in Criminal Matters Act 2000* ("**MACMA**") governs the provision of mutual legal assistance in Singapore. Assistance under the MACMA may be provided in relation to foreign offences where the relevant conduct, if it had occurred in Singapore, would constitute a "Singapore offence", which includes a "serious offence" listed in the Second Schedule to the MACMA.[3] Trafficking of persons under the *Prevention of Human Trafficking Act 2014*, trafficking in women and girls, as well as other vice-related offences under the *Women's Charter 1961*, trafficking of children under the *Children and Young Persons Act 1993*, and a number of trafficking-related offences under the *Penal Code 1871*, are listed as "serious offences" in the Second Schedule and therefore may be the subject of a mutual legal assistance request.

i. Requirements

- **Evidentiary test:** A request shall be refused under **Section 20(1)(g)** of the MACMA if the thing requested for is of insufficient importance to the investigation. Where production orders (**Section 22**) or a search warrant (**Section 34**) are requested, the

[3] A "serious offence" is also defined in section 2 of the MACMA as, *inter alia*, an offence that is punishable with imprisonment for a term which may extend to 4 years or more (*i.e.* an offence may be a "serious offence" even if it is not listed in the Second Schedule to the MACMA).

court must be satisfied that there are reasonable grounds to suspect that a person has carried on or benefited from a "foreign offence", and that the material sought is likely to be of substantial value to the criminal matter in the requesting State.

- **Dual criminality:** There is no dual criminality requirement for a request for the following forms of non-coercive assistance: (a) Arranging the attendance of persons in the requesting State; (b) Facilitating the custody of persons in transit through Singapore; (c) Locating or identifying persons; (d) Effecting the service of process.

  The dual criminality requirement applies to coercive forms of assistance: (a) Obtaining evidence; (b) Enforcing foreign confiscation orders; and (c) Search and seizure.

- **Reciprocity:** Under **Section 16(2)** of the MACMA, a requesting State that does not have a mutual legal assistance treaty with Singapore may be provided with the forms of assistance available under the MACMA as long as appropriate authority of the requesting State gives an undertaking to the Attorney-General of Singapore that the requesting State will comply with a future request by Singapore for similar assistance in a criminal matter involving a similar offence.

- **Specialty:** A request involving production orders (**Section 22**) or search warrants (Section 34) shall be refused under **Section 20(2A)** of the MACMA if the appropriate authority from the requesting State fails to undertake that the thing requested will not be used for a matter other than the criminal matter in respect of which the request was made, except with the consent of the Attorney-General of Singapore.

ii. *Restrictions and Exceptions*

- **Double Jeopardy/Ongoing Proceedings:** A request shall be refused under **Section 20(1)(e)** of the MACMA if the person has already been convicted, acquitted, pardoned or undergone punishment in the requesting State for the relevant offence or of another offence constituted by the same act or omission as the relevant offence.

- **Prejudice on account of race, religion, etc:** A request shall be refused under **Section 20(1)(d)** of the MACMA if there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions.

- **Political/Military Offence:** A request shall be refused under **Section 20(1)(b)** of the MACMA if the relevant offence is of a political character, and under **Section 20(1)(c)** of the MACMA if the relevant conduct would have constituted an offence under the military law applicable in Singapore but not also under the ordinary criminal law of Singapore.

- **Public Interest:** A request shall be refused under **Section 20(1)(h)** of the MACMA if it is contrary to public interest to provide the requested assistance.

iii. Procedure

- **Form:** The requirements for requests made to Singapore are contained in **Section 19(2**) of the MACMA. Template forms are available at https://www.agc.gov.sg/our-roles/public-prosecutor/mutual-legal-assistance

- **Language:** The request and its enclosures should be in English. Alternatively, the request and its enclosures should be accompanied by accurate English translations of the same.

- **Urgent Procedures:** In case of urgent requests, the requesting State can send the request *via* email to AGC_CentralAuthority@agc.gov.sg, stating the reasons for the urgency. However, the original request should still be sent to the address below.

c) Transmission of Requests

i. The Singapore Central Authority is the Attorney-General's Chambers. Requests should be sent to:

Chief Prosecutor
Crime Division
Attorney-General's Chambers
1 Upper Pickering Street
Singapore 058288
REPUBLIC OF SINGAPORE

For further information on mutual legal assistance in Singapore, please refer to the following website: https://www.agc.gov.sg/our-roles/public-prosecutor/mutual-legal-assistance

ii. *Under domestic law:* Under **Section 19(1)** of the MACMA, all requests for assistance under Part 3 of the MACMA must be made to the Attorney-General.

C. MUTUAL LEGAL ASSISTANCE TO RECOVER PROCEEDS OF CRIME

a) Treaties

i. ***Multilateral:*** Singapore is a party to UNTOC, UNCAC and the ASEAN MLAT, which provide for mutual legal assistance to identify and recover proceeds of crime.

ii. ***Bilateral:*** Singapore has bilateral mutual legal assistance agreements with France, Hong Kong SAR, India, Republic of Korea (ROK) and the United States of America (in relation to drug offences). These treaties state that assistance shall include restraint and forfeiture of proceeds and instrumentalities of criminal activities.

b) **Domestic Law**

Sections 29, 30 and the **Third Schedule** to the MACMA permit Singapore to give effect to a confiscation order issued by a court or competent authority of the requesting State ("foreign confiscation order").

Specifically, **Section 29(1)(a)** of the MACMA provides that the requesting State may request the Attorney-General to assist in the enforcement and satisfaction of a foreign confiscation order, made in any judicial proceedings or proceedings before a competent authority instituted in that State, against property that is reasonably believed to be located in Singapore.

Section 30 of the MACMA provides that the Attorney-General or a person authorised by him may apply to the High Court for the registration of a foreign confiscation order. The High Court may register the foreign confiscation order if it is satisfied - (i) that the order is in force and not subject to further appeal in the requesting State; (ii) where a person affected by the order did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable him to defend them; and (iii) that enforcing the order in Singapore would not be contrary to the interests of justice.

Further, under **Section 35(1)** of the Criminal Procedure Code 2010 ("**CPC**"), the Singapore authorities can seize property (a) in respect of which an offence is suspected to have committed, (b) which is suspected to have been used or intended to be used to commit an offence, or (c) which is suspected to constitute evidence of an offence. If the property in question is within Singapore's jurisdiction and the information provided by the requesting State can link the property to an offence within Singapore's jurisdiction the Singapore authorities can seize the property under **Section 35(1)** of the CPC.

Singapore has also published a *Practitioner's Guide for Asset Recovery in Singapore*, accessible at https://www.agc.gov.sg/our-roles/public-prosecutor/mutual-legal-assistance

D. EXTRADITION

a) Extradition Treaties

i. ***Multilateral:*** In general, Singapore does not extradite fugitives on the basis of multilateral conventions. However, for certain conventions (such as the International Convention for the Suppression of the Financing of Terrorism, and International Convention against Taking of Hostages), a Ministerial notification can be made under the Extradition Act 1968 to apply the Extradition Act as if there were an extradition treaty between Singapore and the Convention country, in respect of specific offences under the relevant convention.

ii. ***Bilateral:*** Singapore has extradition agreements with Germany, Hong Kong SAR, Indonesia, Republic of Korea, and the United States of America. It also has extradition arrangements with 40 declared Commonwealth territories under the London Scheme. In addition, Singapore has reciprocal arrangements with Malaysia and Brunei based on the endorsement of warrants issued in the respective countries.

b) Domestic Law on Extradition

The *Extradition Act 1968* ("**EA**") governs the extradition framework in Singapore. Under this Act, extradition is only available to "foreign States" with which Singapore has an extradition treaty, and to "declared Commonwealth territories". Part 6 of the EA also specifically provides for extradition to Malaysia through the execution of arrest warrants issued in Malaysia and endorsed by a Magistrate in Singapore.

Extradition is permitted for offences with a maximum punishment of 2 years' imprisonment or more, which are not on the list of excluded offences listed in the First Schedule to the EA. These include "serious offences" under the MACMA, including trafficking of persons under the *Prevention of Human Trafficking Act 2014*, trafficking in women and girls, as well as other vice-related offences under the *Women's Charter 1961*, trafficking of children under the *Children and Young Persons Act 1993*, and a number of trafficking-related offences under the *Penal Code 1871*, as listed in the Second Schedule to the MACMA.[4]

i. Requirements

- **Evidentiary threshold:** Under **Section 16** of the EA, there must be a *prima facie* case that would justify a trial in Singapore if the act or omission constituting the extradition offence had taken place in, or within the jurisdiction of Singapore, in order for the Singapore Magistrate to commit the fugitive to prison to await the warrant of the Minister for the fugitive's surrender to the requesting State. In the case of a fugitive who is alleged to have been convicted of an extradition offence, there must be sufficient evidence that the fugitive has been convicted of that offence.

- **Dual criminality:** Under **Section 2** of the EA, an "extradition offence" must be an offence under the law of the requesting State that carries a maximum punishment for not less than 2 years or any more severe punishment, and the relevant conduct must also, firstly, if it had taken place in Singapore or within the jurisdiction of Singapore, constitute an offence under the law of Singapore that carries a maximum punishment of imprisonment for not less than 2 years or any more severe punishment, and secondly, not be an excluded offence under the EA. [5]

- **Specialty:** Under **Section 8** (for foreign States) and **Section 9** (for declared Commonwealth territories) of the EA, a person shall not be surrendered unless there is provision in the law of the requesting State or in the relevant extradition treaty, or the requesting State has entered into an agreement with or given an undertaking to Singapore (only applicable to declared Commonwealth territories), to ensure that the person is not detained and tried in the requesting State for an offence other than the extradition offence and is not extradited to a third country.

ii. Restrictions and Exceptions

- **Double jeopardy/ongoing proceedings:** Under **Section 8(3)** (for foreign States) and **Section 9(3)** (for declared Commonwealth territories) of the EA, a person who is

[4] Note that the application of Part 3 (Extradition from Singapore) of the EA to the requesting State is subject to any limitations, conditions, exceptions or qualifications contained in the applicable extradition treaty.
[5] Please see footnote above.

held in custody, or has been released on bail, or is undergoing a sentence for a conviction in Singapore, shall not be surrendered to the requesting State, until he/she has been discharged from custody, or the bonds upon which he/she was released on bail have been discharged. Further, under **Section 8(4)** (for foreign States) and **Section 9(4)** (for declared Commonwealth territories) of the EA, a person shall not be surrendered if he/she has been acquitted, pardoned, or has undergone the punishment for the extradition offence or another offence constituted by the same conduct.

- **Political offence:** Under **Section 8(1)** (for foreign States) and **Section 9(1)** (for declared Commonwealth territories) of the EA, a person shall not be surrendered if the extradition offence is of a political character.

- **Prejudice on account of race, religion, etc:** Under **Section 10(1)** of the EA, a request shall be refused if there are substantial grounds for believing that it was made for the purpose of prosecuting or punishing the person on account of his/her race, religion, sex, ethnic origin, nationality or political opinions, or if he/she may be prejudiced at his/her trial, or punished, detained or restricted in his/her personal liberty, for these reasons.

iii. Procedure

- **Provisional arrest:** Under **Section 12(1)**, a provisional arrest warrant may be issued by the Singapore court upon application by the State.

- **Form and Contents:** A request for extradition must be sent *via* diplomatic channels. In cases of urgent requests, a copy of the request may be sent *via* email. The request should contain supporting documents, including a duly authenticated warrant of arrest, documents confirming the identity of the fugitive, documents setting out the facts of the case and alleged offences, applicable penal provisions, sworn affidavits of the prosecutor, investigator, and witnesses proving the facts of the case, etc.[6]

- **Language:** The request and its enclosures should be in English. Alternatively, the request and its enclosures should be accompanied by accurate English translations of the same.

- **Time limits:** Under **Section 15A(2)** of the EA, a Magistrate may remand a person brought before him/her, either in custody or on bail, for a period or periods not exceeding 7 days at any one time. In the case of a provisional arrest, if the Singapore Magistrate does not receive the Minister’s notice (that the extradition request has been made) within “reasonable” time, the fugitive may be released: **Section 15A(6)** of the EA. The applicable extradition treaty may also set out timelines for the submission of an extradition request from the date of provisional arrest.

  Under **Section 22(1)** of the EA, a person who is in custody in Singapore at the expiry of 2 months after the latest of the following dates: (i) the date of the committal or

[6] The EA provides a mechanism for a record of the case, to simplify the process for admitting evidence in an extradition hearing, reducing the need for voluminous affidavits. This is allowed if there is a treaty or arrangement in place that provides for the use of such a mechanism.

order; (ii) if an application for review of the order is brought, the date that the proceedings are finally determined by the High Court; (iii) if a reference is made to the Court of Appeal under section 18 of the EA, the date that the proceedings are finally determined by the Court of Appeal, may apply to the High Court to be released. The High Court, upon proof that reasonable notice of the intention to make the application has been given to the Minister, shall, unless reasonable cause is shown for the delay, order that the person be released.

Thailand

A. LEGAL RESPONSE TO TRAFFICKING IN PERSONS

a) UN Protocols: Thailand has ratified the UN Trafficking in Persons Protocol and has signed but not yet ratified the Migrant Smuggling Protocol.

b) Regional Convention: Thailand ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in July 2016.

c) Domestic Legislation: Trafficking in persons is criminalised in the *Anti-Trafficking in Persons Act* B.E. 2551 (2008), amended by the *Anti-Trafficking Act (No. 2)* B.E. 2558 (2015), the *Anti-Trafficking Act (No. 3)* B.E. 2560 (2017) and the Emergency Decree Amending the Anti-Human Trafficking Act B.E. 2551, B.E. 2562 (2019).

B. MUTUAL LEGAL ASSISTANCE

a) Mutual Legal Assistance Treaties

i. ***Multilateral****:* Thailand has ratified UNTOC, UNCAC and the ASEAN MLAT.

ii. ***Bilateral:*** Thailand has concluded bilateral mutual legal assistance treaties with the following countries: Australia, Belgium, Canada, China, France, India, the Republic of Korea, Norway, Peru, Poland, Sri Lanka, Ukraine, the United Kingdom, and the United States of America.

* Kindly note that UNTOC and UNCAC shall not be relied upon as the sole legal basis for requests for MLA. For States that are not parties to a bilateral treaty or the ASEAN MLAT, requests must be transmitted through diplomatic channels and accompanied by an assurance of reciprocity, in accordance with **Sec. 9(1).**

b) National Law on Mutual Legal Assistance

In Thailand, the national law on mutual legal assistance is the *Act on Mutual Assistance in Criminal Matters* B.E. 2535 (1992), amended by the *Act on Mutual Assistance in Criminal Matters* (No. 2) B.E. 2559 (2016). Assistance under this Act may be provided in relation to an offence of trafficking in persons, as this is an offence punishable under the laws of Thailand.

i. Requirements

- **Evidentiary Test:** There is no general evidentiary test; however, under **Sections 23,32,33, and 34** there must be “reasonable grounds” for search and seizure, freezing and forfeiture.

- **Dual criminality:** Under **Sec. 9(2)** the act which is the cause of a request must be an offence punishable under Thai laws, unless otherwise provided in the applicable mutual legal assistance treaty.

- **Reciprocity:** Under **Sec. 9(1)** reciprocity is required if the Requesting State does not have a mutual assistance treaty with Thailand.

- **Speciality:** There are no provisions requiring specialty.

ii. Restrictions and Exceptions

- **Double Jeopardy/Ongoing Proceedings:** Under **Sec. 11**, the execution of a request may be postponed if it would interfere with an ongoing investigation, inquiry, prosecution or other criminal proceedings in Thailand. Alternatively, the execution may proceed under certain conditions, in which case the Requesting State shall be notified accordingly. Alternatively, the execution may proceed under certain conditions, in which case the Requesting State shall be notified accordingly.

- **Human Rights:** There are no human rights exceptions.

- **Death Penalty:** If necessary, the Thai Government shall proceed in accordance with the provision of law to execute the judgment by means of life imprisonment in lieu of death sentence (**Sec. 36/1**).

- **Political/Military Offence:** A request may be refused under Sec. **9(3)** if it relates to a political offence. Under **Sec. 9(4)**, assistance will not be provided in relation to a military offence.

- **National/Public Interest:** A request may be refused under **Sec. 9(3)** if it would affect national sovereignty or security, or other crucial public interests of Thailand.

- **Bank Secrecy/Fiscal Measures:** Under Thai domestic laws, bank secrecy cannot be raised in criminal case.

iii. Procedure

- **Form:** Where a foreign state seeks assistance from Thailand, **Sec. 10** requires that the request must be in line with the forms, rules, means, and conditions defined by the Central Authority (the Attorney General). Part 1 (Art. 5 – 13) of the *Regulations of the Central Authority on Providing and Seeking Assistance Under the Act on Mutual Assistance in Criminal Matters* B.E. 2537 (1994) sets out the requirements for a request from a foreign state.

- **Language:** Under **Art. 5** of the *Regulation of the Central Authority on Providing and Seeking Assistance Under the Act on Mutual Legal Assistance in Criminal Matters B.E. 2537 (1994)*, the request *and all supporting documents* must be translated into the Thai or English language. If the request is made in a language other than Thai or English, it must be accompanied by the authenticated Thai or English translation. If the request is made in a language other than Thai or English, it must be accompanied by the authenticated Thai or English translation.

- **Urgent Procedures:** Under **Sec. 14/1**, in case of necessity, urgency with reasonable grounds, Thailand may provide data relating to the commission of an offence or data relating to any property for the purpose of investigation, inquiry, prosecution or judicial proceedings in accordance with the criteria, methods and conditions as prescribed by the Central Authority, provided that such foreign state shows that the assistance will be provided in a similar manner.

- **Attendance of Officials:** There is no provision for the attendance of officials from the Requesting State, but in practice officials from the Requesting State may be allowed to attend in the procedure as observers where appropriate. However, any request for such attendance must be expressly stated in the mutual legal assistance request. However, any request for such attendance must be expressly stated in the mutual legal assistance request.

c) Transmission of Requests

i. ***Under ASEAN MLAT****:* Thailand has ratified the ASEAN MLAT and the Attorney General is the Central Authority for all requests for mutual legal assistance in criminal matters. The other ASEAN countries shall directly send their requests for assistance to the Thai Central Authority, or may send them through the diplomatic channel if they choose to do so.

ii. ***Under UNCAC and UNTOC****:* Thailand has ratified UNCAC and UNTOC. Kindly note that UNTOC and UNCAC shall not be relied upon as the sole legal basis for requests for MLA. For States that are not parties to a bilateral treaty or the ASEAN MLAT, requests must be transmitted through diplomatic channels and accompanied by an assurance of reciprocity, in accordance with Sec. 9(1).

iii. ***Under National Law****:* **Sec. 10** of the *Act on Mutual Assistance in Criminal Matters* provides that the state having a mutual assistance treaty with Thailand shall submit its request for assistance directly to the Central Authority. The state having no such treaty shall submit its request through the diplomatic channel. The contact details for the Office of the Attorney General are as follows:

The Attorney General
Central Authority, Office of the Attorney General
Ratchaburi Direkriddhi Building, Government Complex
Tel. +66 0 2142 1637
Fax: +66 2143 9791, 0 2143 9792
e-mail : inter@ago.mail.go.th
Chaeng Watthana Rd.
Khet Laksi
Bangkok 10210
THAILAND

C. MUTUAL LEGAL ASSISTANCE TO RECOVER PROCEEDS OF CRIME

a) Treaties

i) ***Multilateral****:* Thailand has ratified UNTOC, UNCAC and the ASEAN MLAT, and is therefore bound by the provisions of those treaties regarding mutual legal assistance to identify and recover proceeds of crime.

ii) ***Bilateral****:* Thailand has bilateral mutual legal assistance treaties with the following countries: Australia, Belgium, Canada, PR China, France, India, Korea, Norway, Peru, Poland, Sri Lanka, Ukraine, United Kingdom, and the United States of America.

b) National Law

Parts 5 and **9** of the *Act on Mutual Assistance in Criminal Matters* B.E 2535 (1992), amended in 2016, provide provisions regarding mutual assistance in the forfeiture or seizure of properties in Thailand.

- **Definition of Proceeds of Crime:** There is a definition of proceeds of crime in the *Anti-Money Laundering Act* B.E. 2542 (1999) as follows: "Assets connected with the commission of an offense" means (1) money or asset obtained from the commission of a predicate offense or money laundering offense or from aiding and abetting or rendering assistance in the commission of an act constituting a predicate offense or money laundering offense and shall include money or asset that was used or possessed to be used in, or for aiding or abetting the commission of a predicate offense or the offense of the financing of terrorism under the suppression of the financing of terrorism law; (2) money or asset obtained from the distribution, disposal or transfer in any manner of the money or asset under (1); or (3) fruits of the money or asset under (1) or (2); Notwithstanding the number of times the asset under (1), (2), or (3) is distributed, disposed of, transferred or converted and notwithstanding the fact that the same is in possession of any person or transferred to any person or evidently registered as belonging to any person. The offence, under the *Anti-Trafficking in Persons Act* B.E. 2551 (2008), is a predicated offence under the Anti-Money Laundering Act B.E. 2542 (1999).

- **Identification and Tracing:** A request for search and seizure for the benefit of gathering evidence in accordance with **Sec. 23** of the *Act on Mutual Assistance in Criminal Matters* B.E. 2535 (1992), amended in 2016. In this regard, the relevant authorities can petition the court for a warrant to search and seize any article that has been unlawfully obtained.

- **Freezing and Seizure:** A foreign state may seek assistance from Thailand in freezing or seizing any property as per an order of freezing or seizing of property issued by the competent authority of the Requesting State for the benefit of forfeiture of such property, or as per an order prior to an issuance of a judgment of the court of the Requesting State under **Sec. 32, 33** of the *Act on Mutual Assistance in Criminal Matters* B.E. 2535 (1992), amended in 2016.

- **Repatriation of Funds:** Under **Sec. 35/2** the property which is to be forfeited and money which to be paid in lieu of forfeiture of the property upon the court's judgment under Part 9 of the *Act on Mutual Assistance in Criminal Matters* B.E. 2535 (1992), amended in 2016, shall be vested in Thailand except when it is otherwise prescribed by the bilateral treaty between Thailand and the Requesting State.

D. EXTRADITION

a) Extradition Treaties

i. ***Multilateral:*** Thailand has ratified UNTOC and UNCAC.

ii. ***Bilateral:*** Thailand has concluded bilateral extradition treaties with the following countries: Bangladesh, Belgium, Cambodia, China, Hungary, India, Indonesia, the

Republic of Korea, Lao PDR, Philippines, Russian Federation, United Kingdom, and the United States of America. Thailand also has treaty relations with a number of Commonwealth countries as a result of the Extradition Treaty Between Great Britain and Siam 1911 (e.g. Australia, Canada, Fiji, Malaysia)

b) National Law on Extradition

The Thai national law on extradition is the *Extradition Act* B.E. 2551 (2008). Trafficking in persons is an extraditable offence under this Act.

i. Requirements

- **Evidentiary test:** Under **Sec. 19(2)** there must be reasonable grounds to establish that the offence sought for extradition shall be considered as being committed inside the Kingdom of Thailand or deemed to be committed inside the Kingdom of Thailand.

- **Dual criminality:** Under **Sec. 7** the extradition offence must be a criminal offence in both the Requesting State and in Thailand, and shall have punishment by death or imprisonment or deprivation of liberty in other forms from 1 year upward.

- **Reciprocity:** Under **Sec. 9(2)**, if there is no treaty between Thailand and the Requesting State, a reciprocity undertaking must be given.

- **Speciality:** Under **Sec. 11** the person extradited cannot be prosecuted in the Requesting State for any offence other than the extradition offence, except in specified circumstances.

ii. Restrictions and Exceptions

- **Double Jeopardy/Ongoing Proceedings:** Under **Sec. 10** a person will not be extradited if he has already been tried by Thai Court or the court of the Requesting State and has been acquitted or convicted and served the penalty or pardoned. Under **Sec. 24** the surrender of a person may be postponed if he has been charged or is serving a sentence for an offence in Thailand.

- **National:** Under **Sec. 12** extradition of a Thai citizen may occur: (1) where there is an extradition treaty with the Requesting State; (2) if the person consents to the extradition; and (3) if the extradition is pursuant to a reciprocal condition between Thailand and the Requesting State.

- **Political/Military Offence:** Extradition for political or military offences is not permitted under **Sec. 9(1)**.

- **Human rights:** There is no provision for a human rights exception.

- **Death penalty:** Under **Sec. 29** where an extradition request is made by Thailand for an offence punishable by the death penalty in Thailand but not in the Requested State, the Thai Government can provide assurance that if the offender is convicted with the death penalty, it shall proceed in accordance with the provisions of law to execute the judgment by means of life imprisonment in lieu of death sentence.

- **Jurisdiction:** There is no exception to extradition in cases where Thailand has jurisdiction to prosecute.

iii. Procedure

- **Provisional arrest:** In urgent cases, provisional arrest may be sought under **Sec. 15** pending the delivery of the extradition request.

- **Form and Contents:** Under **Sec. 8**, the request for extradition must conform to the requirements prescribed in the *Extradition Act* B.E. 2551 (2008) and the *Ministerial Regulation on Requirements of the Request, Surrendering Process, and Expenses of Extradition Proceedings* B.E. 2553 (2010)

- **Language:** Under **Sec. 8** a request for extradition and supporting documents must be translated into the Thai language and certified to be true

- **Transmission:** Under **Sec. 8**, States which have an extradition treaty with Thailand may submit requests directly to the Central Authority (the Attorney General). States who do not have a treaty with Thailand must submit the request through diplomatic channels.

- **Consent:** Under **Sec. 28** a person may consent to their extradition before the Court. Consent given before the Court may not revoked.

- **Time limits:** In case of the arrest of the person as per the request for provisional arrest, if the Central Authority does not receive the request for extradition and the Court does not receive the accusation for extradition proceedings within 60 days as from the day which the person sought was arrested or within the period of time set by the Court but not exceeding 90 days as from the day such person was arrested, they shall be released under **Sec. 16**.

Viet Nam

A. LEGAL RESPONSE TO TRAFFICKING IN PERSONS

a) UN Protocols: Viet Nam is a party to the UN Trafficking Protocol but not the Migrant Smuggling Protocol.

b) Regional Convention: Viet Nam ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in January 2017.

c) Domestic Legislation: Trafficking in persons is criminalised in Art. 119 of the *Penal Code (No. 15/1999/QH10).* In 2015, the new *Penal Code* was passed by the National Assembly in which trafficking in persons offence was provided under **Art. 150** and the offence of trafficking in persons aged under 16 was provided in **Art. 151**. It came into force on January 1st, 2018.

B. MUTUAL LEGAL ASSISTANCE

a) Mutual Legal Assistance Treaties

i. ***Multilateral:*** Viet Nam is a party to the UNCAC and ASEAN MLAT and has signed. Viet Nam ratified UNTOC and Palermo Protocol on 8 June 2012.

ii. ***Bilateral:*** Viet Nam has concluded bilateral treaties on mutual legal assistance with Algeria, Australia, Belarus, Bulgaria, China, Cuba, Czech Republic, Democratic People's Republic of Korea, Lao People's Democratic Republic, India, Indonesia, Mongolia, Poland, the Republic of Korea, Russian Federation, Taiwan Province of China, Slovakia (continued obligation from the precedent MLA treaty with Czechoslovakia signed on 14 Feb 1980), Cuba, Hungary, Bulgaria, Poland, Russia, Ukraine, and the United Kingdom.

b) **National Law on Mutual Legal Assistance**

The *Law on Mutual Legal Assistance* (Law No. 08/2007/QH12) provides for the mutual legal assistance in both civil and criminal matters. Assistance under this law may be given in relation to an offence of trafficking in persons, as this is an offence under the *Penal Code*.

i. Requirements

- **Evidentiary test:** There is no general evidentiary test; however, in a request for search and seizure the Requesting State must provide grounds for believing that the material sought is in Viet Nam.
- **Dual criminality:** A request will be refused under **Art. 21(1)(e)** if the relevant conduct does not constitute a criminal offence under the *Penal Code* of Viet Nam.
- **Reciprocity: Art. 4(2)** - Where there exist no treaties on legal assistance between Viet Nam and foreign countries, legal assistance activities follow the principle of reciprocity which, however, do not contravene Vietnamese law and conform to international law and customs.

- **Speciality: Art. 27(1)** requires information or evidence provided by agencies in Viet Nam to be used only for the purposes specified in the request.

ii. Restrictions and Exceptions

- **Double Jeopardy/Ongoing Proceedings:** A request will be refused under **Art. 21(1)(c)** if it is for prosecution of a person for criminal conduct for which that person has been convicted, acquitted or granted a general or special reprieve in Viet Nam. Execution of a request may also be postponed under **Art. 21(2)** if it would cause obstacles to an investigation, prosecution, trial, or the enforcement of a judgment in Viet Nam.

- **Human Rights:** There is no provision for a human rights exception under the national law. In the bilateral treaty on MLA on criminal matters between Viet Nam and Australia, **Art. 4(g)** says assistance shall be refused if the Requested Party considers that there are substantial grounds for believing that the request for assistance has been made for the purpose of investigating, prosecuting or punishing a person on account of that person's race, sex, sexual orientation, religion, nationality or political opinions or that that person's position may be prejudiced for any of these reasons.

- **Death Penalty:** There is no provision for a death penalty exception under the national law, however, the matter is regulated in some bilateral treaties, e.g. between Viet Nam and Australia, or Spain; assistance may be refused if the request relates to the investigation, prosecution or punishment of a person for an offence in respect of which the death penalty may be imposed or executed unless the Requesting Party undertakes that the death penalty will not be imposed or, if imposed, will not be carried out. Under the *Criminal Procedure Code* and the Report No. 1967/VKSTC-HTQT, once receiving a request for a death penalty exception, the Supreme People's Procuracy shall consider and propose to the President of Viet Nam to decide. In principle, Viet Nam undertakes that the death penalty will not be carried out.

- **Political/Military Offence:** No provision under the national law, but in bilateral treaties on MLA on criminal matters, e.g. between Viet Nam and the United Kingdom, Algeria, Australia, assistance shall be refused if the Requested Party considers that the request relates to the investigation, prosecution or punishment of a person for an offence of a political character or the confiscation or restraining of proceeds and/or an instrument of such an offense.

- **National/Public Interest:** Under **Art. 21(1)(b)** a request will be refused if it may jeopardize the sovereignty or national security of Viet Nam.

- **Bank Secrecy/Fiscal Measures:** There are no bank secrecy/fiscal measures provisions.

iii. *Procedure*

- **Form:** Under **Art. 7** the request must be in writing. The form and content requirements for a request are set out in **Art. 17 and 18**.

- **Language:** Under **Art. 5**, the request is to be in the language specified in the applicable treaty, or if no treaty exists, is to be translated into the language of the Requested State (i.e. Viet Nam).

- **Urgent Procedures:** There are no urgent procedure provisions.

- **Attendance of Officials:** There are no provisions for the attendance of officials from the Requesting State. Thus, a request for attendance of officials shall be considered in the same procedure with other requests. The Supreme People's Procuracy of Viet Nam shall consult with the competent investigation agency to decide on the matter.

c) Transmission of Requests

i. ***Under ASEAN MLAT****:* The Central Authority under the ASEAN MLAT is the Supreme People’s Procuracy

ii. ***Under UNCAC****:* Viet Nam has designated the Ministry of Justice, Ministry of Public Security and the Supreme People’s Procuracy as the national authorities which may receive requests for mutual legal assistance.

iii. ***Under UNTOC****:* The Competent National Authority under UNTOC is the Ministry of Public Security (contact details above).

iv. ***Under National Law****:* The Central Authority under national law is the Supreme People’s Procuracy. Contact details are as follows:

Supreme People’s Procuracy
44 Ly Thuong Kiet Street
Hoan Kiem district
Hanoi,
VIET NAM
Telephone No: (+84) - 43825 5058
Facsimile No: (+84) - 43825 5400

C. MUTUAL LEGAL ASSISTANCE TO RECOVER PROCEEDS OF CRIME

a) Treaties

i. ***Multilateral:*** Viet Nam is a party to UNCAC and the ASEAN MLAT, which provide for mutual legal assistance to identify and recover proceeds of crime.

ii. ***Bilateral:*** Viet Nam has concluded bilateral treaties on mutual legal assistance with Algeria, Australia, Belarus, Bulgaria, China, Cuba, Czech Republic, Democratic People’s Republic of Korea, Lao People’s Democratic Republic, India, Indonesia, Mongolia, Poland, the Republic of Korea, Russian Federation, Slovakia (continued obligation from the precedent MLA treaty with Czechoslovakia signed on 14 Feb 1980), Spain, Taiwan Province of China, Ukraine, and the United Kingdom.

b) National Law

There is no national law which specifically concerns the provision of mutual legal assistance to identify or recover proceeds of crime. However, there are provisions in the *Criminal Procedure Code* (No. 101/2015/QH13) and *Penal Code* concerning the restraining and confiscation of proceeds of crime, which may be applicable to a request for assistance.

- **Definition of Proceeds of Crime: Art. 47** of the 2015 *Penal Code* identifies the property to which confiscation procedures apply as including: "Objects or money acquired through the commission of crime or the trading or exchange of such things, illicit earnings from the commission of crime".

- **Identification and tracing: Art. 507** of the 2015 *Criminal Procedure Code* provides that the identification and tracing, seizure, distrainment, freezing, confiscation of proceeds of crime shall be implemented in accordance with the *Criminal Procedure Code* and other relevant legal documents of Viet Nam. The handling of proceeds of crime shall be implemented in accordance with multilateral/bilateral treaties which Viet Nam is a member of.

- **Freezing and Seizure: Art. 129 and 438** of the 2015 *Criminal Procedure Code* provide the grounds and procedure for freezing proceeds of crime of individuals and organizations. Freezing shall be applied to the assets of the accused or other person if there are grounds to believe that proceeds are related to the offense. The seizure is provisioned under Chapter XII of the 2015 *Criminal Procedure Code*.

- **Confiscation:** Under **Arts. 45** of the 2015 *Penal Code*, property confiscation will apply to persons sentenced for offences with a penalty of more than three years imprisonment.

- **Repatriation of Funds:** There are no provisions for the repatriation of funds to the Requesting State.

D. EXTRADITION

a) Extradition Treaties

i. ***Multilateral:*** Viet Nam is a party to UNCAC but has declared that it does not consider UNCAC to be a legal basis for extradition. Instead, Viet Nam has declared that extradition shall be conducted in accordance with Vietnamese law, on the basis of treaties on extradition and the principle of reciprocity. Viet Nam ratified UNTOC on 8 June 2012.

ii. ***Bilateral:*** Viet Nam has concluded extradition treaties with China, Algeria, Australia, Cambodia, China, Hungary, India, Indonesia, Kazakhstan, South Africa, Spain, Sri Lanka, of which the treaties with Algeria, Australia, Cambodia and Indonesia have come into force. The mutual legal assistance treaties with, Belarus, Bulgaria, Cuba, Czech Republic, Lao People's Democratic Republic, Mongolia, Poland, the Republic of Korea, Russian Federation, Slovakia, Ukraine and the Democratic People's Republic of Korea also contain provisions on extradition.

b) National Law on Extradition

The national law on extradition is contained within Chapter IV of the *Law on Mutual Legal Assistance* (Law No. 08/2007/QH12). Trafficking in persons may be an extraditable offence, as it is punishable in Viet Nam by imprisonment for more than one year.

i. Requirements

- **Evidentiary test:** There is no evidentiary test provision.
- **Dual criminality:** Under **Art. 33** extraditable offences must be punishable under the criminal laws of both Viet Nam and the Requesting State.
- **Speciality:** Under **Art. 34** extradition shall be granted only if the Requesting State assures that it shall not prosecute the person sought or extradite that person to a third country for any other offence committed before surrender.

ii. Restrictions and Exceptions

- **Double Jeopardy/Ongoing Proceedings:** Under **Sec. 35(1)(c)** a request will be refused if the person whose extradition is sought has already been convicted by a Vietnamese court for the conduct to which the request relates, or the case has been suspended. A request may also be refused under **Sec. 35(2)(b)** if the person whose extradition is sought is being prosecuted in Viet Nam for the offence for which extradition is requested.
- **National:** A Vietnamese citizen cannot be extradited (**Sec. 35(1)(a)**).
- **Political/Military Offence:** There is no exception for political or military offences.
- **Human rights:** Under **Sec. 35(1)(d)** a request will be refused if there are reasonable grounds to believe that it has been made with a view to prosecuting or punishing the person sought by reason of race, religion, sex, nationality, social status, or political opinion.
- **Death penalty:** There is no provision for a death penalty exception. The Supreme People's Procuracy shall consider and propose to the President of Viet Nam to decide on the death penalty exception. In principle, Viet Nam undertakes that the death penalty will not be carried out.
- **Jurisdiction:** There is no exception where Viet Nam has jurisdiction to prosecute the relevant offence.

iii. Procedure

- **Provisional arrest: Art. 41** of the law on MLA provides that "Upon receipt of official extradition requests of foreign countries, competent bodies of Viet Nam may apply precautionary measures under Vietnamese law and treaties to which Viet Nam is a contracting party in order to ensure consideration of extradition requests". The precautionary measures are regulated under Section I, Chapter VII of the 2015 *Criminal Procedure Code* including detention and arrest.

- **Form and Contents:** The form and content requirements for a request are contained within **Arts. 36 and 37**.

- **Language:** Under **Art. 5**, the request is to be in the language specified in the applicable treaty, or if no treaty exists, is to be translated into the language of the Requested State (i.e. Viet Nam).

- **Consent:** There is no provision for the person to consent to extradition.

- **Time limits:** Under **Art. 40** the Provisional People's Court must consider the request for extradition within 10 days of receipt.