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Statutory Rules 1990 No. 1

470/

Extradition (Republic of the Philippines) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Extradition Act 1988*.

Dated 17 December 1990.

BILL HAYDEN

Governor-General

By His Excellency's Command.

Michael Duffy
Attorney-General

Citation

1. These Regulations may be cited as the Extradition (Republic of the Philippines) Regulations.

Commencement

2. These Regulations commence on 18 January 1991.

Interpretation

3. In these Regulations, unless the contrary intention appears: "the Act" means the *Extradition Act 1988*.

Declaration of Republic of the Philippines as extradition country

4. The Republic of the Philippines is declared to be an extradition country.

Application of the Act

5. The Act applies in relation to the Republic of the Philippines subject to the Treaty on Extradition Between Australia and the Republic of the Philippines done at Manila on 7 March 1988 (being the treaty a copy of which is set out in the Schedule).

SCHEDULE

Regulation 5

**TREATY ON EXTRADITION BETWEEN
AUSTRALIA AND THE REPUBLIC OF THE PHILIPPINES**

Australia and the Republic of the Philippines

DESIRING to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty on extradition,

HAVE AGREED as follows:

ARTICLE 1**OBLIGATION TO EXTRADITE**

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, persons who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

ARTICLE 2**EXTRADITABLE OFFENCES**

1. For the purposes of this Treaty, extraditable offences are offences which are punishable under the laws of both Contracting States by imprisonment for a period of at least one (1) year, or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six (6) months imprisonment remains to be served.

2. For the purpose of this Article:

- (a) an offence shall be an extraditable offence whether or not the laws of the Contracting States place the offence within the same category or denominate the offence by different terminology;
- (b) the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account in determining the constituent elements of the offence.

3. Where the offence has been committed outside the territory of the Requesting State, extradition shall be granted where the laws of the Requested State provide for the punishment of an offence committed outside its territory in similar circumstances. Where the laws of the Requested State do not so provide, the Requested State may, in its discretion, refuse extradition.

4. Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which extradition is requested was committed, provided that:

- (a) it was an offence in the Requesting State at the time of the acts or omissions constituting the offence; and
- (b) the acts or omissions alleged would, if they had taken place in the territory of the Requested State at the time of the making of the request for extradition, have constituted an offence against the laws in force in that State.

SCHEDULE—continued

ARTICLE 3

TERRITORIAL APPLICATION

A reference in this Treaty to the Territory of a Contracting State is a reference to all the territory of that Contracting State.

ARTICLE 4

EXCEPTIONS TO EXTRADITION

1. Extradition shall not be granted in any of the following circumstances:
 - (a) if the offence for which extradition is requested is regarded by the Requested State as a political offence. If any question arises as to whether a case is a political offence, the decision of the Requested State shall be final. The taking or attempted taking of the life of any Head of State or Head of Government or a member of his or her family or an offence against the law relating to genocide shall be deemed not to be a political offence;
 - (b) if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political belief or that that person's position may be prejudiced for any of those reasons;
 - (c) if the offence for which extradition is requested constitutes an offence against military law or regulations which is not an offence under ordinary criminal law;
 - (d) if final judgement has been passed in the Requested State or in a third state in respect of the offence for which the person's extradition is requested;
 - (e) if the person whose extradition is requested cannot, according to the laws of either Contracting State, be prosecuted or punished by reason of lapse of time; or
 - (f) if the person, has been, or on being extradited to the Requesting State would be liable to be, tried or sentenced in that State, by a court or tribunal that has been specially established directly or indirectly for the purpose of trying the person's case.
2. Extradition may be refused in any of the following circumstances:
 - (a) if the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other State so requests and the laws of the Requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been requested may be taken if that is considered appropriate. Nationality shall be determined at the time of the commission of the offence for which extradition is requested;
 - (b) if the courts of the Requested State are competent, and the Requested State will prosecute the person for the offence for which extradition is requested;
 - (c) if the offence for which the extradition is requested or any other offence for which the person may be detained or tried in accordance with this Treaty, is punishable by death under the laws of the Requesting State, unless that State undertakes that the death penalty will not be carried out;
 - (d) if the offence for which extradition is requested is an offence which carries a punishment of the kind referred to in Article 7 of the International Covenant on Civil and Political Rights; or
 - (e) if the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment.

SCHEDULE—continued

3. This Article shall not affect any obligations which have been or shall in the future be assumed by the Contracting States under any multilateral Convention.

ARTICLE 5**POSTPONEMENT OF EXTRADITION**

The Requested State may postpone the surrender of a person in order to proceed against that person, or so that that person may serve a sentence for an offence other than an offence constituted by an act or omission for which extradition is requested. In such case the Requested State shall advise the Requesting State accordingly.

ARTICLE 6**EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS**

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be duly authenticated in accordance with Article 7.
2. The request for extradition shall be accompanied:
 - (a) if the person is accused of an offence—by a warrant for the arrest or a copy of the warrant for the arrest of the person, or where appropriate, a copy of the relevant charge, a statement of each offence for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offence;
 - (b) if the person has been convicted in that person's absence of an offence—by a judicial or other document, or a copy thereof, authorising the apprehension of the person, a statement of each offence for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offence;
 - (c) if the person has been convicted of an offence otherwise than in that person's absence—by documents evidencing the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;
 - (d) if the person has been convicted of an offence otherwise than in that person's absence but no sentence has been imposed—by documents evidencing the conviction and a statement affirming that it is intended to impose a sentence;
 - (e) in all cases—by a statement of the relevant law creating the offence, including any provision relating to the limitation of proceedings and a statement of the penalty that can be imposed for the offence; and
 - (f) in all cases—by a description as accurate as possible of the person sought together with any other information which may help to establish the person's identity, nationality and whereabouts.
3. To the extent permitted by the laws of the Requested State, extradition may be granted of a person pursuant to the provisions of this Treaty notwithstanding that the requirements of paragraph 1 and paragraph 2 of this Article have not been complied with, provided that the person sought consents to an order for extradition being made.
4. The documents submitted in support of a request for extradition shall be accompanied, if necessary, by a translation into the language of the Requested State.

ARTICLE 7**AUTHENTICATION OF SUPPORTING DOCUMENTS**

Documents shall be admitted in extradition proceedings if duly authenticated. A document is duly authenticated for the purpose of this Treaty if it purports to be:

- (a) signed or certified by a Judge, Magistrate or other officer in or of the Requesting State; and
- (b) verified by oath or affirmation or sealed with an official or public seal of the Requesting State or of a Minister of State, or of a Department or officer of the Government, of the Requesting State; and

SCHEDULE—continued

- (c) certified by a diplomatic or consular officer of the Requested State accredited to the Requesting State.

ARTICLE 8

ADDITIONAL INFORMATION

1. If the Requested State considers that the documentation furnished in support of a request for extradition is not sufficient in accordance with this Treaty and the laws of the Requested State to enable extradition to be granted, that State may request that additional information be furnished within such time as it specifies.
2. If the person whose extradition is requested is under arrest in relation to extradition and the additional information furnished is not sufficient in accordance with this Treaty and the laws of the Requested State or is not received within the time specified, the person may be released from custody. Such release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.
3. Where the person is released from custody in accordance with paragraph 2 of this Article, the Requested State shall notify the Requesting State as soon as practicable.

ARTICLE 9

PROVISIONAL ARREST

1. Where the laws of the Requested State so allow, in case of urgency, a Contracting State may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or by other means for the provisional arrest of the person sought. The application may be transmitted by post or telegraph or by any other means affording a record in writing.
2. The application for provisional arrest shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 6 authorising the apprehension of the person, a statement of the punishment that can be, or has been, imposed for the offence and, if requested by the Requested State, a concise statement of the acts or omissions alleged to constitute the offence.
3. On receipt of an application for provisional arrest the Requested State shall, subject to its laws, take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its request.
4. A person arrested upon application for provisional arrest may be set at liberty upon the expiration of forty-five (45) days from the date of that person's arrest if a request for extradition has not been received.
5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

ARTICLE 10

CONFLICTING REQUESTS

1. Where requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting States of its decision.
2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:
 - (a) if the requests related to different offences—the relative seriousness of the offences;
 - (b) the time and place of commission of each offence;
 - (c) the respective dates of the requests;
 - (d) the nationality of the person; and
 - (e) the habitual place of residence of the person.

SCHEDULE—continued**ARTICLE 11****SURRENDER**

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State through the diplomatic channel.
2. Where extradition is granted, the Requested State shall surrender the person from a point of departure in its territory convenient to the Requesting State.
3. The Requesting State shall remove the person from the Requested State within such reasonable period as the Requested State specifies and, if the person is not removed within that period, the Requested State may refuse to extradite that person for the same offence.
4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited it shall notify the other Contracting State. The two Contracting States shall mutually decide upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

ARTICLE 12**SURRENDER OF PROPERTY**

1. To the extent permitted under the laws of the Requested State and subject to the rights of third parties, which shall be duly respected, all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.
2. The property mentioned in paragraph 1 of this Article shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition having been consented to cannot be carried out.
3. Where the laws of the Requested State or the rights of third parties so require, any property so surrendered shall be returned to the Requested State free of charge if that State so requests.

ARTICLE 13**RULE OF SPECIALITY**

A person who has been extradited shall not be prosecuted, sentenced or detained for any offence committed prior to surrender other than that for which the person was extradited except in the following cases:

- (a) when the Requested State consents. For the purposes of this sub-paragraph the Requested State may require the submission of the documents referred to in Article 6 and a copy of any statement made by the extradited person in respect of the offence for which consent is requested; or
- (b) when the person has had an opportunity to leave the Requesting State and has not done so within forty-five (45) days of the final discharge in respect of the offence for which the person was extradited or has returned to the Requesting State after leaving it.

ARTICLE 14**RE-EXTRADITION TO A THIRD STATE**

1. Where a person has been surrendered to the Requesting State by the Requested State, the first-mentioned State shall not extradite the person to any third state for an offence committed before that person's surrender unless:
 - (a) the Requested State consents to that extradition; or
 - (b) the person has had an opportunity to leave the Requesting State and has not done so within forty-five (45) days of final discharge in respect of the offence for which that person was surrendered by the Requested State or has returned to the Requesting State after leaving it.

SCHEDULE—continued

2. The Requested State may request the production of the documents mentioned in Article 6 in relation to any consent pursuant to sub-paragraph 1 (a) of this Article.

ARTICLE 15

TRANSIT

1. Where a person is to be extradited to a Contracting State from a third state through the territory of the other Contracting State, the Contracting State to which the person is to be extradited shall request the other Contracting State to permit the transit of that person through its territory.
2. Upon receipt of such request the Requested Contracting State shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so.
3. Permission for the transit of a person shall, subject to the laws of the Requested Contracting State, include permission for the person to be held in custody during transit.
4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting State in whose territory the person is being held may direct that the person be released if that person's transportation is not continued within a reasonable time.
5. The Contracting State to which the person is being extradited shall reimburse the other Contracting State for any expense incurred by that other Contracting State in connection with the transit.

ARTICLE 16

EXPENSES

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interest of the Requesting State.
2. The Requested State shall bear the expenses incurred in its territory in the arrest and detention of the person whose extradition is requested until the person is surrendered to a person nominated by the Requesting State.
3. The Requesting State shall bear the expenses incurred in conveying the person from the territory of the Requested State.

ARTICLE 17

SETTLEMENT OF DISPUTES

Any dispute between the Contracting States arising out of the interpretation or implementation of this Treaty shall be settled by consultations or negotiations.

ARTICLE 18

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty (30) days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Government, have signed this Treaty.

DONE at Manila on the seventh day of March One Thousand nine hundred and eighty eight in two originals in English.

MICHAEL TATE
FOR AUSTRALIA

SEDFREY ORDONEZ
FOR THE REPUBLIC OF THE
PHILIPPINES

8 *Extradition (Republic of the Philippines)* 1990 No. *h*

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NOTE

1. Notified in the *Commonwealth of Australia Gazette* on *h* 199*0*.

9 January/1/