

Singapore's Mutual Assistance in Criminal Matters Act (Chapter 190A) and its Application to Thailand

*George Baylon Radics**

บทคัดย่อ

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Abstract

This article discusses Singapore's implementation of the ASEAN Mutual Legal Assistance Treaty (MLAT), locally entitled the Mutual Assistance in Criminal Matters Act (MACMA). It recommends that Thai legislation make note that many of the revisions to Singapore's MACMA are a product of local conditions. These include a rise in money laundering and financial crimes, a large cadre of foreign workers, sex trafficking, and a strong central government with high deference to the attorney general's office. Thai law therefore should be crafted to address pressing legal issues in Thailand that may draw upon their MLAT. It should also make note of the strengths and weaknesses of Thailand's existing legal framework regarding extradition and evidence.

The ASEAN Mutual Legal Assistance Treaty (MLAT) was adopted and signed in Kuala Lumpur on November 29, 2004 by eight of the ASEAN Member Countries, with Myanmar and Thailand signing as original parties on January 17, 2006.¹ The treaty was subsequently ratified in the ten member states between 2004 and 2013.² In April 2005, Singapore was the first nation to ratify the treaty.³ The ASEAN MLAT was already incorporated in Singapore through its adoption into Chapter 190A of Singapore's Statutes, entitled the "Mutual Assistance in Criminal Matters Act" (MACMA). This article will briefly discuss: (1) the text of the MACMA, (2) the history of the MACMA starting with its origins, (3) cases that have arisen through the MACMA, (4)

¹ 2004 Treaty on Mutual Legal Assistance in Criminal Matters, Adopted by the Ministers of Justice/Law, Attorney-General in Kuala Lumpur Malaysia, on 29 November 2004, available at: <http://cil.nus.edu.sg/rp/pdf/2004%20Treaty%20on%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters-pdf.pdf>; P.U.(A)73/2006, Mutual Assistance In Criminal Matters (Treaty On Mutual Legal Assistance In Criminal Matters) (Amendment) Order 2006, available at: https://www.unodc.org/tldb/pdf/Malaysia_Mutual_Assistance_in_Criminal_Matters_Treaty_on_MLA_in_Criminal_Matters_Amendment_Order_2006.pdf.

² The ten member states of ASEAN ratified the treaty in the following order: Singapore, April 2005; Malaysia, June 2005; Vietnam, October 2005; Brunei, February 2006; Laos, June 2007; Indonesia, June 2008; Philippines, December 2008; Myanmar, January 2009; Cambodia, April 2010, Thailand, 2013. See Takashi Yamane, Promoting Regional Cooperation without Local Capability: Combating Trafficking in Persons in Southeast Asia, Paper presented at the annual meeting of the International Studies Association Annual Conference "Global Governance: Political Authority in Transition", Le Centre Sheraton Montreal Hotel, Montreal, Canada (Mar. 16, 2011), at 14; United Nations Office on Drugs and Crime, (July 30, 2013) available at: <https://www.unodc.org/southeastasiaandpacific/en/2013/07/mla-workshop/story.html>.

³ Yamane, *supra* note 2.

examples of Singaporean mutual assistance in criminal matters, and (5) recommendations on how to adopt the MACMA in Thailand.

1. Singapore's Mutual Assistance in Criminal Matters Act

The MACMA took effect on April 1, 2000.⁴ It consists of four parts. These four parts are entitled: (1) Preliminary, (2) Requests by Singapore, (3) Requests to Singapore, and (4) Miscellaneous Provisions. Part I briefly describes the object and scope of the act, and definitions of terms found within the act. Part II concerns how, pursuant to the act, Singapore requests a foreign government for assistance, obtains evidence abroad, arranges attendance of foreign witnesses, enforces a Singaporean confiscation order abroad, locates people abroad, and serves process abroad. Part III discusses how foreign countries can request assistance in obtaining evidence and arrange the attendance of a foreign person, how the foreign person will be held in custody, how to enforce foreign confiscation orders, how to seek assistance in search and seizure and in locating or identifying people, and how to serve a defendant in Singapore. Lastly, Part IV incorporates certain rules of court and procedures that must be observed when this act is drawn upon.

2. History of MACMA - Parliamentary Debates

⁴ Mutual Assistance of Criminal Matters Act, Sing. Stat., Chapter 190A, Apr. 1, 2000.

While the ASEAN MLAT was adopted and signed by ASEAN member states in November 2004, the Singapore MACMA has been in existence since April 1, 2000. The first reading of the MACMA took place in the Singapore House of Parliament on January 17, 2000, and was entitled Bill No. 3/2000. The bill was published the next day on January 18, 2000. The bill was read again in the Parliament on February 22, 2000, was voted on and passed, with the commencement date of April 1, 2000.

At the time of its second reading, a short discussion took place concerning the rationale behind the bill.⁵ The Minister of Law, Professor S. Jayakumar, started off by stating that with globalization, serious crimes were not confined within national boundaries. The rationale behind the law, therefore, was to signal Singapore's commitment to be part of the wider international network of cooperation in combatting crime. The law was to be considered in conjunction with existing laws, such as the "Corruption, Drug Trafficking and Other Serious Crimes Act."⁶ The bill also facilitates the work of enforcement agencies by allowing Singaporean prosecutors to seek help from prosecutors in other countries to collect evidence.

Associate Professor Chin Tet Yun, a Member of Parliament from Sembawang constituency,⁷ rose to support the bill. He sought clarification, however, on four

⁵ 71 Sing. Parl. Deb. Off. Rep. 980-995 (2000).

⁶ Currently found in Chapter 65A of the Singapore Statutes.

⁷ Sembawang is an area in the northernmost portion of Singapore, encompassing the largest landmass within the Sembawang Group Representation Constituency (GRC). The Sembawang GRC is the electoral division in Singapore with the largest number of voters. Sembawang's jurisdiction extends into the Woodlands New Town, bordering the Woodlands, Marsiling and Admiralty constituency. It is the closest point to Malaysia.

major issues. After first echoing his anxiety over transnational crime in a globalized world, and how this bill could address it, the first main concern he noted was about extradition.⁸ He sought clarification over whether the bill would provide a “back door” means of extradition where Singaporean witnesses could be sent to testify in another country, but then charged with a crime upon arrival.⁹ Chin’s second concern was over evidentiary issues. In particular, he noted that the bill did not contain a provision on how to authenticate or evaluate evidence coming from abroad, beyond the fact that the evidence would be subject to the Evidence Act and the Criminal Procedure Code.¹⁰ Third, Chin stated that he was worried that the bill went too far in certain respects, and not far enough in certain respects when it came to privileges and immunities.¹¹ He wanted to know, if a witness came to Singapore to give testimony under the bill, whether the witness would be immune from being prosecuted if he also participated in the crime. Additionally, he sought clarification on when immunity ended.¹² If, for example, a witness came to Singapore to give testimony, would immunity from prosecution end as soon as the testimony was given?¹³ Lastly, Chin asked the Law Minister about the discretion of prosecutors. He wanted to know whether prosecutors would use their broad discretion to call upon witnesses for both prosecution and in procuring alibis.¹⁴ Furthermore, he

⁸ *Supra* note 5 at 987.

⁹ *Id.*

¹⁰ *Id.* at 988.

¹¹ *Id.*

¹² *Id.* at 988-989.

¹³ *Id.*

¹⁴ *Id.*

expressed concern that the discretion given to prosecutors was too high, and asked whether the bill could limit the discretion only to people who were in a senior position in the legal service.¹⁵

Next, Thomas Thomas, a nominated member of parliament,¹⁶ rose to support the bill, but also to seek clarification.¹⁷ He asked about how the bill would deal with the trafficking of people, and secondly, if the bill would be used in the case where unscrupulous employment agents bring workers illegally into Singapore.¹⁸ He wanted to also know if these would be classified as serious crimes.¹⁹

In response, the Minister of Law first addressed the issue of extradition.²⁰ He emphasized that the law does not compel extradition of Singaporean witnesses to other countries to give testimony, and that the bill only deals with consenting witnesses.²¹ On the topic of immunity, the Minister of Law stated that Singaporeans who go abroad to serve as witnesses cannot be prosecuted for a crime that took place before they left Singapore to give the testimony.²² Responding to the query regarding when immunity ended, the Minister of Law answered that the bill relies on a reasonable and common sense application of the law, and if Singapore chooses to unreasonably terminate immunity while a foreign witness is in Singapore, then it may expose its own witnesses to the

¹⁵ *Id.*

¹⁶ In the Singapore, the president appoints a nominated member.

¹⁷ *Id.* at 990.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 991.

same treatment abroad in the future.²³ Concerning reliability of evidence, the Minister of Law responded that all evidence obtained abroad would be subject to rules of evidence similar to those applicable to evidence obtained locally and that the courts would ultimately have the discretion to admit the evidence or not.²⁴ With regards to Chin's last question, regarding whether too much discretion was given to the prosecutor, the Minister of Law responded that the MACMA would only be used very sparingly due to cost.²⁵ He stated that to place authority in any other person but those who are working on the case may complicate matters, and make the process of gathering evidence less efficient.²⁶

In response to Thomas' questions, the Minister of Law reviewed the list of serious offences in the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) to confirm whether or not sex trafficking crimes would be covered under this bill.²⁷ Upon review of the serious crimes covered in the CDSA, he confirmed that sex trafficking is a crime that is covered by the MACMA.²⁸ He stated that prosecution against unscrupulous foreign agents who recruit workers to go to Singapore illegally is not covered, however.²⁹ He explained that this is probably because, although Singapore may consider this an important issue, other countries may not consider this a serious offense, and therefore, the case may not be extraditable.³⁰ He added

²³ *Id.*

²⁴ *Id.* at 992.

²⁵ *Id.* at 993.

²⁶ *Id.* at 994.

²⁷ *Id.* at 995.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

that as countries face the same issues as Singapore, illegal recruitment may in the future become an extraditable offense.

Since the implementation of the bill in 2000, there have been a number of minor amendments to it. The most substantial amendments since its inception were made in 2006, when four major amendments were made to the bill. Before these amendments took place, the Minister of Law gave a presentation to the Parliament to justify the changes. He stated that because the law was enacted before the events of September 11, 2001, it had become increasingly urgent to cooperate closely in combatting terrorism.³¹ The changes proposed were therefore meant to address this concern.³²

The four amendments to the bill were made to sections 2, 16, 20 and 34.³³ Section 2 concerned definitions. In this section, all clauses that used the term “prescribed foreign country,” were replaced with the term, “foreign country” to broaden the scope of nations the MACMA can apply to.³⁴ Sections 16 and 20 provide the basis upon which countries that *do not have* an MLAT with Singapore may request Singapore’s assistance in criminal matters.³⁵ Section 34 made it compulsory that the court consider whether cooperation is in the public interest, whereas before this consideration was discretionary.³⁶

³¹ 80 Sing. Parl. Deb. Off. Rep. 2311-2313 (2006)

³² *Id.*

³³ Government Gazette Acts Supplement, Mutual Assistance In Criminal Matters (Amendment) Act 2006 (No. 8 of 2006)

³⁴ *Id.*

³⁵ *Id.*; *See Mutual Assistance in Criminal Matters Should Be Provided in More Instances*, RAJAH&TANN ADVOCATES AND SOLICITORS CLIENT UPDATE, January 2006.

³⁶ *Id.*

The Minister of Law stated that these changes were meant to address the rigidity of the MACMA.³⁷ The amendments allow the court to approach each request on a case-by-case basis as opposed to immediately ruling out cooperation when no MLAT was in place.³⁸ The Minister added, however, that cooperation would take place only if the requesting country agreed to cooperate with Singapore if Singapore requested its help in a future case. Furthermore, the Minister added that this would not prevent the signing of MLATs with other nations in the future.³⁹ In addressing some of the safeguards built into the amendments, the Minister highlighted the fact that the court must now consider public interest before granting such requests, whereas before this was discretionary.⁴⁰

Moreover, assistance would be declined if the foreign authority were merely fishing for information that could be used against a person or corporation.⁴¹ Additionally, assistance would also be declined if there were substantial grounds to believe that the accused was being targeted by the foreign country because of his race, religion, sex, ethnic origin, nationality, or political opinions.⁴²

3. Cases That Have Arisen Through the MACMA

As predicted in 2000, requests under MACMA have been rare. Currently, only a few cases concerning the

³⁷ 80 Sing. Parl. Deb. Off. Rep. at 2311.

³⁸ *Id.*

³⁹ *Id.* at 2312.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 2313.

law can be found in Singaporean legal databases. In fact, to date, only one case that dealt with the provisions of the MACMA has reached the courts. The case took place in 2008 and did not concern an ASEAN nation request but rather a request from the Indian government.⁴³

In June 2008, Singapore's Attorney General applied to the High Court of Singapore to order a Singaporean bank to produce material related to the account of one of the bank's clients.⁴⁴ The Attorney General submitted the application upon a request from the Indian government.⁴⁵ After discussing the process of making a request, the court then discussed the manner in which the Attorney General's office made their request.⁴⁶ Ultimately, the court denied the application. In its opinion, the court expressed concern that the request from the foreign country was not included in the affidavit.⁴⁷ Referencing the statement made by the Minister of Law regarding the Mutual Assistance in Criminal Matters (Amendment) Bill on February 13, 2006, the court stated that it was in doubt whether granting assistance would facilitate the "fishing" for information by a foreign government to use against a person or corporation.⁴⁸ On this basis, the High Court denied the request stating that it was not proper to grant the order since the court did not have the specifics

⁴³Chong Chee Kin, *Bank Ordered to Open Client's Books in Fraud Probe*, STRAITS TIMES, Sept. 10, 2008.

⁴⁴*Re* Section 22 of the Mutual Assistance in Criminal Matters Act, [2008] SGHC 96, ¶ 1.

⁴⁵*Supra* note 19. It should be noted that the High Court did not know what country had made the request. This information was only available through the press after the case was decided.

⁴⁶*Re* Section 22, [2008] SGHC ¶¶ 2-12.

⁴⁷*Id.* at ¶ 10.

⁴⁸*Id.* at ¶ 11.

necessary to rule on the application, and that to grant such a request would not conform to the “letter and spirit of MACMA.”⁴⁹

On appeal, the Court of Appeal stated that the MACMA provided for a comprehensive set of requirements for foreign governments submitting requests to the Attorney General.⁵⁰ Furthermore, the Court of Appeal found that the Minister of Law’s statement in Parliament that assistance should be declined if a foreign authority is merely fishing for information was directed primarily to the Attorney General’s Office and not the courts.⁵¹ As a result, the Court of Appeal reversed the High Court’s decision. In its reasoning, the Court of Appeal stated that,

So long as there is placed before the court an application by the Attorney-General for a production order, which satisfies the requirements of s 22 of MACMA and O 89B of the Rules of Court, the court should proceed on the basis (unless there is *prima facie* evidence to the contrary) that there exists a request from a foreign country that complies with the MACMA and the relevant treaty.⁵²

The Court of Appeal then added that there was no reason to doubt that the Attorney General’s application had met all the conditions set out in Section 22(4) of the MACMA. The Court of Appeal then went on to emphasize that it is not outside of the scope of examination for a court to request a copy of the request from the requesting country, but that this case did not

⁴⁹ *Id.* at 17-22.

⁵⁰ *Re* Section 22 of the Mutual Assistance in Criminal Matters Act, [2009] 1 SLR(R) 283 ¶15.

⁵¹ *Id.* at ¶ 16.

⁵² *Id.* at ¶19.

seem to warrant the production of a copy of the requirements.⁵³ It added that a court is not to “rubber stamp” all requests, but that its task is to determine due compliance with the law by the applicant.⁵⁴ It also cited to Hong Kong’s Mutual Assistance in Criminal Matters Ordinance (Cap 525) (HKSAR) which did not require disclosure of the foreign request, and the Canadian case of *In the Matter of an Application Pursuant to s 17(2) of the Mutual Legal Assistance in Criminal Matters Act and Rafal Kurek*, 2005 BCSC 516, in which the Canadian court also stated that pursuant to its laws, a copy of the request need not be furnished to the court.⁵⁵ Finally, the court added that in the treaty between the India and Singapore, if the requesting state petitions for the case to remain confidential, the treaty states that the Attorney General’s office does not have to consent to release of the information, even if the court demands it.⁵⁶ On these grounds, the Court of Appeal reversed the High Court and granted the application of the Attorney General.⁵⁷

4. Examples of Singaporean Mutual Assistance in Criminal Matters

Although there has been only one case that has exclusively dealt with the provisions of MACMA, this does not mean that there have not been instances of mutual assistance in criminal matters in Singapore. For instance, the Singaporean government worked in

⁵³ *Id.* at ¶21.

⁵⁴ *Id.*

⁵⁵ *Id.* at ¶25.

⁵⁶ *Id.* at ¶26.

⁵⁷ *Id.* at ¶27.

collaboration with the Royal Malaysian Police to penetrate a human smuggling syndicate and arrest the syndicate's leader and his two henchmen in October 2004. Using the existing legal framework, the defendants were extradited to Singapore and eventually convicted.⁵⁸ The police force has also completed successful multilateral and multinational operations. In 2005, it was reported that through an FBI-led investigation involving 13 other countries, a worldwide simultaneous raid was conducted against members of an international internet piracy organization called "Fairlight."⁵⁹ Four people were arrested in Singapore, and software worth SG\$10,000 was seized.⁶⁰ In fact, out of this operation, Singapore was the first country to successfully convict syndicate members.⁶¹

More recently, in 2008, the United States sought help in a case in which a Malaysian student in the United States allegedly defrauded users of US\$5.3 million through a popular textbook selling website.⁶² The Malaysian student defrauded the other students by promising to send them textbooks after they wired money to bank accounts in Singapore and Malaysia.⁶³ On the heels of the Indian bank case, the High Court in a closed-door hearing granted the Attorney General's application to the High Court for a warrant to search the Malaysian student's bank account in Singapore.⁶⁴ In 2013, it is reported that the Commercial Affairs Department

⁵⁸ 79 Sing. Parl. Deb. Off. Rep. 1347-1406 at 1372 (2005).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² K.C. Vijayan, *US Seeks Singapore's Help in Fraud Case*, STRAITS TIMES, Nov. 1, 2008.

⁶³ *Id.*

⁶⁴ *Id.*

experienced a surge of financial investigations to tackle a growing trend of money laundering and related financial crimes.⁶⁵ In the past four years, Singapore has witnessed a growth of over 70% in suspicious transaction reports, and a threefold increase in convictions related to money laundering.⁶⁶ A spokesperson for the Commercial Affairs Department added that law enforcers “actively cooperate” with international counterparts through the MACMA.⁶⁷

5. Recommendation

It is recommended that Thai legislation make note that many of the revisions to Singapore’s MACMA are a product of local conditions. These include a rise in money laundering and financial crimes, a large cadre of foreign workers, sex trafficking, and a strong central government with high deference to the attorney general’s office. Thai law therefore should be crafted to address pressing legal issues in Thailand that may draw upon their MLAT. It should also make note of the strengths and weaknesses of Thailand’s existing legal framework regarding extradition and evidence.

⁶⁵Christopher Tan, *CAD Beefs Up Team To Fight Money Laundering*, STRAITS TIMES, Aug. 29, 2013.

⁶⁶*Id.*

⁶⁷*Id.*