

Agreement on Extradition (Saint Lucia and the French Republic) Act

SAINT LUCIA

No. 6 of 2018

ARRANGEMENT OF SECTIONS

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SCHEDULE

Agreement on Extradition (Saint Lucia and the French Republic) Act

I ASSENT

[L.S.]

NEVILLE CENAC,
Governor-General.

December 11, 2018.

SAINT LUCIA

No. 6 of 2018

AN ACT to give legal effect to and provide for the implementation of the Agreement on Extradition between the Government of Saint Lucia and the Government of the French Republic and for related matters.

[12th December, 2018]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

Agreement on Extradition (Saint Lucia and the French Republic) Act

Short title

1. This Act may be cited as the Agreement on Extradition (Saint Lucia and the French Republic) Act, 2018.

Interpretation

2. In this Act, “Agreement” means the Agreement on Extradition between the Government of Saint Lucia and the Government of the French Republic, signed in Castries, Saint Lucia on the 30th day of September, 2016, the text of which is set out in the Schedule.

Force of law

3. The Agreement has the force of law in Saint Lucia.

Regulations

4. The Minister responsible for foreign affairs may make Regulations for giving effect to this Act.

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SCHEDULE

(Sections 2 and 3)

AGREEMENT ON EXTRADITION

BETWEEN

THE GOVERNMENT OF SAINT LUCIA

AND

THE GOVERNMENT OF THE FRENCH REPUBLIC

The Government of Saint Lucia and the Government of the French Republic, hereinafter referred to as the “Parties”,

Desiring to provide for effective cooperation between the two States in the suppression of crime and in order to facilitate their relations in the field of extradition by concluding an Agreement on extradition.

Wishing to that end to settle by mutual agreement their relations in the field of extradition, in compliance with their respective constitutional principles,

Have agreed as follows:

Article 1

Obligation to extradite

The Parties undertake to surrender to each other, subject to the provisions of this Agreement, any person in the territory of one of the Parties who is the subject of prosecution for a criminal offence or who is sought for the enforcement of a sentence of deprivation of liberty awarded by the judicial authorities of the other Party as the result of a criminal offence.

Article 2
Communication channels

For the purpose of this Agreement, except where otherwise provided in this Agreement, the Parties shall communicate with each other through diplomatic channels.

Article 3
Extraditable offences

1. Extradition shall be granted in respect of offences punishable under the laws of both Parties by deprivation of liberty for a maximum period of at least two years or by a more severe penalty.

2. In addition, where extradition is requested for the enforcement of a sentence awarded by the competent judicial authority of the requesting Party, the duration of the penalty remaining to be served must amount to at least six months.

3. If the request for extradition includes several separate offences, each of which is punishable under the laws of both parties but some of which do not fulfil the conditions provided for in paragraphs 1 and 2, the Requested Party may also grant extradition for those offences.

Article 4
Mandatory grounds for refusing extradition

1. Extradition shall not be granted:
 - a) for offences the Requested Party considers a political offence or an offence connected with a political offence;
 - b) if the Requested Party has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons;
 - c) if the person sought would be tried in the Requesting Party by a tribunal which does not provide fundamental

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procedural guarantees and protection for the rights of the defence, or if extradition is requested for the enforcement of a sentence ordered by such a tribunal;

- d) if a final judgment of conviction, acquittal or discharge has been rendered or an amnesty or pardon has been granted in the requested Party in respect of the person sought for the offence or offences for which extradition is requested;
- e) if the prosecution or sentence is time-barred under the law of the Requested Party. To the extent permitted under its law, the Requested Party shall take account of acts in the Requesting Party that would interrupt or suspend the lapse of time;
- f) if the Requested Party considers the offence for which extradition is requested to be an exclusively military offence.

2. For the application of this Agreement the following shall not be considered as political offences:

- a) the taking or attempted taking of the life of the Head of State of a Party or a member of his family;
- b) offences for which both parties are obliged pursuant to a multilateral agreement to extradite the requested person or to submit the case to the competent authorities for decision as to prosecution.

Article 5
Extradition of nationals

1. Extradition may be refused if the person sought is a national of the Requested Party. Nationality is determined at the date of commission of the offence for which extradition is requested.

2. If the extradition request is refused on the sole ground of the nationality of the person sought, the Requesting Party may request that the case be submitted to the authorities of the Requested Party in order that proceedings may be taken if they are considered appropriate. To that end, the files, reports and evidence relating to the offence shall be transmitted in accordance with Article 2. The Requested Party shall promptly inform the Requesting Party of the result of its request.

Article 6
Optional grounds for refusing extradition

Extradition may be refused:

- a) if the person is sought for an offence which is regarded by the law of the Requested Party as having been committed in whole or in part in its territory or in a place treated as its territory;
- b) where the offence for which extradition is requested has been committed outside the territory of the Requesting Party and the law of the Requested Party does not allow prosecution for the same offence committed outside its territory;
- c) if the person sought is being prosecuted by the Requested Party for the offence or offences for which extradition is requested, or if the judicial authorities of the Requested Party have decided not to prosecute the same offence or offences or to discontinue criminal proceedings in respect thereof;
- d) if a final judgment of conviction or acquittal has been rendered in respect of the person sought in a third State for the offence or offences for which extradition is requested;
- e) if, under the law of the Requested Party, the judicial authorities of that Party have jurisdiction to try the offence for which extradition has been requested;
- f) on humanitarian grounds, if surrender is likely to have exceptionally serious consequences for the person sought, in particular on account of his age or state of health.

Article 7
Capital punishment

If the punishment of the law of the Requesting Party for the acts for which extradition is requested is the capital punishment, that punishment is automatically replaced, under the present Agreement, by the punishment provided for the same facts in the law of the Requested Party.

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**Article 8
Procedure**

Except where otherwise provided in this Agreement, the law of the Requested Party shall be applicable to proceedings relating to provisional arrest, extradition and transit.

**Article 9
Extradition requests and supporting documents**

1. The extradition request shall be made in writing and accompanied:

- a) in all cases by:
 - (i) a statement of offences for which extradition is requested, stating the date and place of commission, their legal description and the applicable legal provisions, including those pertaining to the statutes of limitation, together with the text of the legal provisions applicable to the offence or offences for which extradition is requested, the corresponding penalties, the time limits for immunity from prosecution and, where the offence has been committed outside the territory of the Requesting Party, the text of the legal or treaty provisions giving jurisdiction to that Party;
 - (ii) as accurate a description as possible of the person sought, together with all other information that may help to establish his identity, his nationality and, if possible, his location;
- b) in the case of an extradition request for prosecution purposes, by the original or a certified copy of the arrest warrant or by any other instrument having the same effect under the law of the Requesting Party;
- c) in the case of an extradition request for the enforcement of a sentence:
 - (i) by the original or a certified copy of the enforceable judgment of conviction;

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- (ii) by a duly authenticated statement relating to the length of the sentence ordered and the remainder of the term to be served.

2. Extradition requests and supporting documents must bear the signature and stamp of the requesting authority. Where relevant, documents accompanying the extradition request shall be legalized, authenticated or verified according to the law of the Requesting Party.

Article 10
Supplementary information

If the information communicated by the Requesting Party is found to be insufficient to allow the Requested Party to make a decision under this Agreement, or if it contains infringements, the Requested Party shall request the necessary supplementary information or bring the omissions or irregularities to be rectified to the Requesting Party's attention. The Requested Party may fix a time limit for the receipt of supplementary information or the rectification of infringements.

Article 11
Language to be used

Extradition requests and supporting documents shall be in an official language of the Requesting Party and accompanied by a certified translation into an official language of the Requested Party.

Article 12
Rule of specialty

1. A person who has been extradited under this Agreement shall not be prosecuted, sentenced or detained in the Requesting Party with a view to the enforcement of a sentence or detention order or restricted in his personal freedom for any offence committed prior to his surrender other than that for which he was extradited, except in the following cases:

- a) where the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents specified in Article 9 and a legal record of any statement made by the extradited person, in particular

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if he agrees to extension of the extradition or opposes it. Consent shall be given only when the offence for which it is requested is itself subject to extradition under the terms of this Agreement.

- b) when that person, having had an opportunity to leave the territory of the Party to which he has surrendered, has not done so within thirty (30) days of his final discharge, or has returned voluntarily to that territory after leaving it.

2. The Requesting Party may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.

3. When the description of the offence for which a person has been extradited is altered in the course of proceedings, the extradited person shall be prosecuted or sentenced only insofar as the offence under its new description:

- a) is extraditable under the terms of this Agreement;
- b) concerns the same acts as the offence for which extradition was granted; and
- c) is punished by a maximum sentence identical to or less than the sentence for the offence for which extradition was granted.

Article 13

Re-extradition to a third State

Except as provided for in Article 12, paragraph 1.b), re-extradition to a third State may not be granted without the consent of the Party that granted extradition. That Party may request the documents specified in Article 9 and a record of the hearing at which the person sought states whether he agrees to re-extradition or opposes it.

Article 14

Provisional arrest

1. In case of urgency the competent authorities of the Requesting Party may request the provisional arrest of the person sought. The

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request for provisional arrest shall be made in writing. It shall mention the existence of one of the documents specified in Article 9 and the intention to send a request for extradition. It shall also state the offence for which extradition is requested, the time, place and circumstances of its commission and all available information to help establish the identity, nationality and location of the person sought.

2. A request for provisional arrest shall be sent to the competent authorities of the Requested Party either through diplomatic channels or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing. The Parties may, through an exchange of notes, modify the procedure for provisional arrest, in the compliance with their law, in order to improve speed and efficiency.

3. Upon receiving the request referred to in paragraph 1, the competent authorities of the Requested Party shall deal with the request in accordance with its law. The Requesting Party shall be informed of the results of its request.

4. Provisional arrest shall terminate if the Requested Party has not received the request for extradition and the documents specified in Article 9 within sixty (60) days of the person's arrest. However, the person sought may be provisionally released at any time, but the Requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

5. Release pursuant to paragraph 4 shall not prejudice re-arrest and extradition of the person sought in the official extradition request and the documents specified in Article 9 are received subsequently.

Article 15
Concurrent requests

If extradition is requested concurrently by one of the Parties or other States, either for the same offence or for different offences, the Requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person sought and the possibility and subsequent extradition to another State.

Article 16
Decision and surrender

1. The Requested Party shall promptly communicate to the Requesting Party through diplomatic channels its decision with regard to the extradition.

2. Reasons shall be given for any complete or partial rejection.

3. If the request is agreed to, the Parties shall agree on the date and place of surrender of the person sought. The Requested Party shall inform the Requesting Party of the length of time for which the person sought was detained with a view to extradition.

4. If the person sought has not been taken over within forty-five (45) days of the date set for his surrender, he shall be released and the Requested Party may subsequently refuse to extradite him for the same offence.

5. If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party; the Parties shall agree a new date for surrender and the provisions of paragraph 4 of this Article shall apply.

Article 17
Postponed or conditional surrender

1. The Requested Party may, after agreeing to the request for extradition, postpone the surrender of the person, where proceedings are already pending against him or where he is serving a sentence for another offence in the territory of the Requested Party, until the proceedings have concluded or until the sentence has been served.

2. Instead of postponing surrender, the Requested Party may, where particular circumstances so require, temporarily surrender the person whose extradition has been granted to the Requesting Party in accordance with conditions to be determined by mutual agreement between the Parties and, in all cases, under the express condition that he shall be kept in custody and returned.

3. Surrender may also be postponed where the health of the person sought is such that transfer might endanger his life or aggravate his condition.

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4. If the Requested Party decides to postpone surrender, it shall notify the Requesting Party and take all necessary steps to ensure that postponement does not prevent surrender of the person sought to the Requesting Party.

Article 18**Notification of the outcomes of criminal proceedings**

At the request of the Requested Party, the Requesting Party shall notify it of the outcomes of criminal proceedings against the extradited person and shall send it a copy of the final judgment.

Article 19**Seizure and handing over of property**

1. The Requested Party may, in so far as its law permits and at the request of the Requesting Party, seize and hand over objects, valuables or documents:

- a) which may serve as evidence; or
- b) which have been acquired as a result of the offence and which, at the time of the arrest, are found in the possession of the person sought or are discovered subsequently.

2. The property mentioned in paragraph 1 may be handed over even if extradition, having been agreed to, cannot be carried out owing to the death, disappearance or escape of the person sought.

3. When the said property may be subject to seizure or confiscation in the territory of the Requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain them or hand them over on condition that they are returned.

4. The provisions of this Article shall not prejudice the rights of the Requested Party or third parties to that property. Where these rights exist, the Requesting Party shall promptly return that property free of charge to the Requested Party after the completion of proceedings.

*Agreement on Extradition (Saint Lucia and the French Republic) Act***Article 20**
Transit

1. Transit through the territory of one of the Parties of a person who is not a national of that Party, surrendered to the other Party by a third State, shall be granted on presentation through diplomatic channels of any one of the documents specified in Article 9 of this Agreement, provided that there is no objection on the grounds of public order or that the offence in question is not one for which extradition is not granted pursuant to Article 4.

2. Transit may be refused in all other cases in which extradition may be refused as well.

3. The authorities of the Party of transit shall be responsible for custody of the person concerned for as long as he remains in its territory.

4. Where air transport is used, the following provisions shall apply:

- a) where no landing is scheduled, the Requesting Party shall advise the Party whose territory is to be overflown and shall certify the existence of one of the documents specified in Article 9. In the event of an unscheduled landing, such notification shall have the effect of a request for provisional arrest pursuant to Article 14 and the Requesting Party shall send a formal transit request;
- b) where a landing is scheduled, the Requesting Party shall send a formal transit request

Article 21
Expenses

1. Any expenses incurred by the extradition in the territory of the Requested Party shall be borne by that Party until the surrender, and any expenses for the transportation of the extradited person after such surrender shall be borne by the Requesting Party.

2. Expenses incurred by transit in the territory of the Party requested to grant transit shall be borne by the Requesting Party.

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3. If, during execution of an extradition request, it becomes apparent that extraordinary expenses are required to fulfil the request, the Parties shall consult each other to decide the terms and conditions on which execution of the request can proceed.

Article 22**Relations with other agreements**

This Agreement shall not prejudice any rights and obligations arising from multilateral agreements to which either or both Parties are party.

Article 23**Dispute settlement**

Any dispute arising from the implementation or interpretation of this Agreement shall be settled by consultations through diplomatic channels.

Article 24**Application in time**

This Agreement shall apply to any extradition request presented after its entry into force, even if the offences to which it relates were committed beforehand.

Article 25**Ratification and entry into force**

1. Each Party shall notify the other Party of the completion of the procedures it requires under its domestic law for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the date of receipt of the latter of these notifications.

2. Upon entry into force, this Agreement shall replace and repeal in relations between the Parties, the provisions of the Extradition Treaty between France and the United Kingdom, signed at Paris, August 14, 1876, as amended by the conventions of February 13, 1896 and October 17, 1908 and by the exchange of letters between

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France and the United Kingdom of February 16, 1978. Extradition requests received before the entry into force of this Agreement shall nevertheless be processed in accordance with the terms of the above mentioned Treaty.

3. Either Party may terminate this Agreement at any time by sending the other Party written notice through diplomatic channels. In such case, termination shall take effect on the first day of the third month following the date of receipt of such notice. Extradition requests received before the effective date of termination of this Agreement shall nevertheless be processed in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE at Castries on the 30th day of September, 2016, in duplicate, in the English and French languages, all texts being equally authentic.

For the Government
of Saint Lucia

For the Government
of the French Republic

Passed in the House of Assembly this 20th day of November, 2018.

ANDY G. DANIEL,
Speaker of the House of Assembly.

Passed in the Senate this 22nd day of November, 2018.

JEANNINE GIRAUDY-MCINTYRE,
President of the Senate.

