

《逃犯 (澳大利亞) 令》
(第 503 章，附屬法例 C)

目錄

| 條次 | | 頁次 |
|------|---|------|
| 1. | (已失時效而略去) | 1 |
| 2. | 本條例中的程序在香港與澳大利亞之間適用 | 1 |
| 3. | 修訂附表 | 1 |
| 附表 1 | 香港政府和澳大利亞政府關於移交被控告及被定罪的人的協定 | S1-1 |
| 附表 2 | 中華人民共和國香港特別行政區政府和澳大利亞政府為修訂於 1993 年 11 月 15 日在香港簽訂的《關於移交被控告及被定罪的人的協定》而訂立的議定書 | S2-1 |

FUGITIVE OFFENDERS (AUSTRALIA) ORDER
(Cap. 503 sub. leg. C)

Contents

| Section | | Page |
|------------|---|------|
| 1. | (Omitted as spent) | 2 |
| 2. | Procedures in Ordinance to apply between Hong Kong and Australia | 2 |
| 3. | Schedule amended | 2 |
| SCHEDULE 1 | AGREEMENT FOR THE SURRENDER OF ACCUSED AND CONVICTED PERSONS BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF AUSTRALIA | S1-2 |
| SCHEDULE 2 | PROTOCOL BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF AUSTRALIA AMENDING THE AGREEMENT FOR THE SURRENDER OF ACCUSED AND CONVICTED PERSONS, DONE AT HONG KONG ON 15 NOVEMBER 1993 | S2-2 |

《逃犯 (澳大利亞) 令》

(第 503 章第 3 條)

[1997 年 6 月 29 日] 1997 年第 372 號法律公告

1. (已失時效而略去)
2. **本條例中的程序在香港與澳大利亞之間適用**
現就條款於附表 1 及 2 中敘述的移交逃犯安排，指示本條例中的程序在香港與澳大利亞之間適用，但須受該等安排的條款所載的限制、約束、例外規定及約制所規限。
(2007 年第 212 號法律公告)

相應修訂

《逃犯 (指定英聯邦國家) 令》

3. **修訂附表**
《逃犯 (指定英聯邦國家) 令》(附錄 I Z1 頁) 的附表現予修訂，廢除 ——
“Australia, and the following territories, namely the territory of Ashmore and Cartier Islands, the Australian Antarctic territory, the territory of Christmas Island, the territory of Cocos (Keeling)

FUGITIVE OFFENDERS (AUSTRALIA) ORDER

(Cap. 503, section 3)

[29 June 1997] L.N. 372 of 1997

1. (Omitted as spent)
2. **Procedures in Ordinance to apply between Hong Kong and Australia**
In relation to the arrangements for the surrender of fugitive offenders the terms of which are recited in Schedules 1 and 2, it is directed that the procedures in the Ordinance shall apply as between Hong Kong and Australia subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.

(L.N. 212 of 2007)

Consequential Amendments

Fugitive Offenders (Designated Commonwealth Countries) Order

3. **Schedule amended**
The Schedule to the Fugitive Offenders (Designated Commonwealth Countries) Order (App. I, p. Z1) is amended by repealing—
“Australia, and the following territories, namely the territory of Ashmore and Cartier Islands, the Australian Antarctic territory,

Islands, the territory of the Coral Sea Islands, the territory of Heard and McDonald Islands and the territory of Norfolk Island which are treated as part of Australia”。

the territory of Christmas Island, the territory of Cocos (Keeling) Islands, the territory of the Coral Sea Islands, the territory of Heard and McDonald Islands and the territory of Norfolk Island which are treated as part of Australia”.

S1-1
第 503C 章

附表 1

SCHEDULE 1

S1-2
Cap. 503C

附表 1

[第 2 條]
(2007 年第 212 號法律公告)

香港政府和澳大利亞政府關於移交被控告及被定罪的人的協定

香港政府經負責其外交事務的主權國政府正式授權締結本協定，
與澳大利亞政府，

願意就移交因刑事罪行而被控告及被定罪人士的規定；

協議如下：

第一條

移交的義務

締約雙方同意，按照本協定所訂立的條文，把任何在被要求方管轄區內發現的並遭要求方通緝以便就第二條所描述的罪行提出檢控、判刑或執行判刑的人移交給對方。

SCHEDULE 1

[s. 2]
(L.N. 212 of 2007)

AGREEMENT FOR THE SURRENDER OF ACCUSED AND CONVICTED PERSONS BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF AUSTRALIA

The Government of Hong Kong, having been duly authorised to conclude this Agreement by the sovereign government which is responsible for its foreign affairs, and the Government of Australia

Desiring to make provision for the surrender of persons accused or convicted of a criminal offence;

Have agreed as follows:

ARTICLE 1

OBLIGATION TO SURRENDER

The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement, any person who is found in the jurisdiction of the requested Party and who is wanted by the requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence described in Article 2.

S1-3
第 503C 章

附表 1

SCHEDULE 1

S1-4
Cap. 503C

第二條

ARTICLE 2

罪行

OFFENCES

(1) 凡犯下列所描述的任何罪行，而該罪行根據締約雙方的法律規定屬可判處監禁或以其他形式拘留超過一年或可判處更嚴厲刑罰者，均得准予移交：

- (i) 犯有關非法奪取人命的罪行；
- (ii) 種族滅絕；
- (iii) 犯有關非法傷人或造成人身傷害的罪行；侵犯他人包括造成他人身體傷害及威脅殺人；蓄意或魯莽危及人命；
- (iv) 協助、教唆、慫使或促致他人自殺；
- (v) 犯有關非法終止懷孕的罪行；
- (vi) 綁架；拐帶；非法拘禁；非法拘留；買賣奴隸或其他人；扣押人質；
- (vii) 偷取、拋棄、遺棄或非法扣押兒童；涉及剝削兒童的任何其他罪行；
- (viii) 犯與性有關的罪行，包括強姦、性侵犯、猥褻侵犯和非法對兒童作性行為；法定的性罪行；
- (ix) 犯有關賣淫和供賣淫用途場所的法律的罪行；
- (x) 犯有關藥物包括毒品和精神藥物的法律的法律的罪行；
- (xi) 盜竊、搶劫、入屋犯法(包括破門入屋)；勒索和敲詐；處理或收受竊取的財物；犯有關非法剝奪財產的法律的罪行；
- (xii) 刑事毀壞財物；縱火；
- (xiii) 犯非法使用電腦的罪行；

(1) Surrender shall be granted for an offence coming within any of the following descriptions of offences in so far as it is according to the laws of both Parties punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty:

- (i) offences relating to the unlawful taking of human life;
- (ii) genocide;
- (iii) offences relating to unlawful wounding or injuring; assault including assault occasioning bodily harm and threats to kill; intentional or reckless endangering of life;
- (iv) aiding, abetting, counselling or procuring suicide;
- (v) offences relating to the unlawful termination of pregnancy;
- (vi) kidnapping; abduction; false imprisonment; unlawful confinement; dealing in slaves or other persons; taking a hostage;
- (vii) stealing, abandoning, exposing or unlawfully detaining a child; any other offences involving the exploitation of children;
- (viii) offences of a sexual nature including rape, sexual assault, indecent assault and unlawful sexual acts upon children; statutory sexual offences;
- (ix) offences against laws relating to prostitution and premises kept for the purposes of prostitution;
- (x) offences against laws relating to drugs, including narcotics and psychotropic substances;

S1-5
第 503C 章

附表 1

SCHEDULE 1

S1-6
Cap. 503C

- (xiv) 犯有關欺詐行為；以虛假理由或藉欺騙取得財物、金錢、有價證券或金錢利益；盜用公款；串謀行騙；偽造帳目的法律的罪行；
- (xv) 犯與財政事項、稅項或關稅有關的罪行，盡管被要求方並沒有徵收同樣的稅項或關稅或沒有如要求方法律般訂定同樣的稅項、關稅或海關規例；
- (xvi) 犯有關贗製；偽造；使用偽造或虛假文件的法律的罪行；
- (xvii) 犯有關破產或無力償債的法律的罪行；
- (xviii) 犯有關公司和證券的法律的罪行；
- (xix) 犯有關貪污的法律的罪行，包括賄賂、秘密回扣，及違反信託；
- (xx) 犯有關司法；偽證；唆使他人作偽證；企圖妨礙司法公正的法律的罪行；
- (xxi) 犯有關非法從羈留中逃走；在監獄中叛亂的罪行；
- (xxii) 犯有關火器、彈藥或爆炸品的法律的罪行；
- (xxiii) 非法使用、管有、控制、扣押或劫持航空器、船舶或其他交通工具；
- (xxiv) 海盜行為；
- (xxv) 犯有關保障公眾衛生和環境的法律的罪行；
- (xxvi) 走私；犯有關進出口違禁品包括歷史文物和考古文物的法律的罪行；
- (xxvii) 為利益促成他人非法入境；
- (xxviii) 犯根據對締約雙方有約束力的國際公約可准予移交的罪行；犯由於對締約雙方有約束力的國際組織決定而訂定的罪行；
- (xxix) 與管有或清洗從犯任何根據本協定可准予移交的罪行所得收益有關的罪行；

- (xi) theft, robbery, burglary (including breaking and entering); blackmail and extortion; handling or receiving stolen property; any offence against the law relating to unlawful deprivation of property;
- (xii) criminal damage to property; arson;
- (xiii) offences involving the unlawful use of computers;
- (xiv) offences against the laws relating to fraudulent activities; obtaining property, money, valuable securities or pecuniary advantage by false pretences or deception; embezzlement; conspiracy to defraud; false accounting;
- (xv) offences relating to fiscal matters, taxes or duties, notwithstanding that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, or customs regulation of the same kind as the law of the requesting Party;
- (xvi) offences against the laws relating to counterfeiting; forgery; uttering a forged or false document;
- (xvii) offences against the laws relating to bankruptcy or insolvency;
- (xviii) offences against the laws relating to companies and securities;
- (xix) offences against the laws relating to corruption, including bribery, secret commissions, and breach of trust;
- (xx) offences against the laws relating to the administration of justice; perjury; subornation of perjury; attempting to pervert the course of justice;
- (xxi) offences relating to unlawful escape from custody; mutiny in prison;
- (xxii) offences against the laws relating to firearms, ammunition or explosives;
- (xxiii) unlawful use, possession, control, seizure or hijacking of aircraft, vessels or other means of transportation;

S1-7
第 503C 章

附表 1

(xxx) 協助、教唆、慫恿或促使他人犯任何根據本協定可准予移交的罪行，煽惑、企圖或串謀犯該等罪行，或在犯該等罪行前或後是從犯；

(xxxi) 根據締約雙方的法律可准予移交的任何其他罪行。

(2) 倘若要求移交逃犯的目的是為了執行一項判刑，則亦須符合另一項規定，即餘下未服滿的監禁或拘留期必須最少還有 6 個月。

(3) 就本條而言，在確定一項罪行是否根據締約雙方的法律屬可判罰的罪行時，須考慮被要求移交的人被指稱的作為或不作為的全部，而不須顧及要求方法律所規定的罪行構成因素。

(4) 就本條第(1)款而言，如構成罪行的行為在犯罪時候觸犯要求方的法律，而在接獲移交要求時在被要求方亦屬觸犯法律的罪行，則該項罪行根據締約雙方的法律均屬罪行。

SCHEDULE 1

S1-8
Cap. 503C

(xxiv) piracy;

(xxv) offences against the laws relating to the protection of public health and the environment;

(xxvi) smuggling; offences against law relating to the import and export of prohibited items, including historical and archaeological items;

(xxvii) facilitating for gain the illegal immigration of persons;

(xxviii) offences for which surrender may be granted under international conventions binding on the Parties; offences created as a result of decisions of international organisations which are binding on the Parties;

(xxix) offences relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement;

(xxx) aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting or conspiring to commit any offence for which surrender may be granted under this Agreement;

(xxxi) any other offences for which surrender may be granted in accordance with the laws of both Parties.

(2) Where surrender is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment or detention at least six months remain to be served.

(3) For the purposes of this Article, in determining whether an offence is an offence punishable under the laws of both Parties the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account without reference to the elements of the offence prescribed by the law of the requesting Party.

(4) For the purposes of paragraph (1) of this Article, an offence shall be an offence according to the laws of both Parties if the conduct constituting the offence was an offence against the law of the requesting Party at the

S1-9
第 503C 章

附表 1

SCHEDULE 1

S1-10
Cap. 503C

第三條

國民的移交

- (1) 澳大利亞政府保留拒絕移交其國民的權利。香港政府保留拒絕移交負責其外交事務的政府所屬國家的國民的權利。
- (2) 被要求方行使此項權利時，要求方可要求把案件提交被要求方主管當局，以便可考慮對該人進行檢控。

第四條

死刑

倘某項根據本協定提出要求移交的罪行，按照要求方的法律可判處死刑，但按照被要求方的法律並無判處死刑的規定或通常不會執行死刑，則除非要求方作出被要求方認為充分的保證，即被移交者將不會被判死刑或即使被判死刑亦不會執行，否則被要求方可拒絕移交。

ARTICLE 3

SURRENDER OF NATIONALS

- (1) The Government of Australia reserves the right to refuse the surrender of its nationals. The Government of Hong Kong reserves the right to refuse the surrender of nationals of the state whose Government is responsible for its foreign affairs.
- (2) Where the requested Party exercises this right, the requesting Party may request that the case be submitted to the competent authorities of the requested Party in order that proceedings for prosecution of the person may be considered.

ARTICLE 4

DEATH PENALTY

If the offence for which surrender is requested under this Agreement is punishable according to the law of the requesting Party with the death penalty, and if in respect of such an offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, surrender may be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that this penalty will not be imposed or if imposed will not be carried out.

S1-11
第 503C 章

附表 1

SCHEDULE 1

S1-12
Cap. 503C

第五條

ARTICLE 5

移交根據

BASIS FOR SURRENDER

祇有在根據被要求方的法律證實有足夠證據證明，假如被要求移交者被控告所犯罪行在被要求方的管轄區內觸犯，被要求方亦有理由把被要求移交者交付審判，或證明被要求移交者即是遭要求方法院定罪的人，始須把有關人士移交。

A person shall be surrendered only if the evidence be found sufficient according to the law of the requested Party either to justify the committal for trial of the person sought if the offence of which that person is accused had been committed in the territory of the requested Party or to prove that the person sought is the person convicted by the courts of the requesting Party.

第六條

ARTICLE 6

拒絕移交

REFUSAL OF SURRENDER

- (1) 如被要求方有充分理由相信下述事項，則不得移交一名人士：
- (a) 該人被控或被裁定所犯罪行屬政治性質；
 - (b) 提出移交要求（雖然聲稱是因為一項可移交罪行）的目的實際上是因為種族、宗教、國籍或政治意見而檢控或懲罰該人；或
 - (c) 該人一經交回，可因種族、宗教、國籍或政治意見而在審判時受到不公平的待遇，被懲罰、被拘留或使個人自由受限制。
- (2) 就第(1)款而言，屬政治性質的罪行，並不包括雙方根據多邊協定有義務把被要求移交者移交，或把案件提交本身的主管當局以決定是否進行檢控的任何罪行。
- (3) 如根據任何一方的法律，被要求移交者均不能因要求移交所根據的罪行而被檢控或懲罰，則被要求方須拒絕移交該人。

- (1) A person shall not be surrendered if the requested Party has substantial grounds for believing:
- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
 - (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, religion, nationality or political opinions; or
 - (c) that the person might, if returned, be prejudiced at trial or punished, detained or restricted in his or her personal liberty by reason of race, religion, nationality or political opinions.

S1-13
第 503C 章

附表 1

SCHEDULE 1

S1-14
Cap. 503C

第七條

ARTICLE 7

酌情拒絕移交

DISCRETIONARY REFUSAL OF SURRENDER

被要求方如認為有以下情況出現，可拒絕移交：

Surrender may be refused if the requested Party considers that:

- (a) 在考慮所有情況後，有關罪行的嚴重性不足以支持該項移交；
- (b) 由於有不能歸咎於被要求移交者的理由，以致在提出起訴，或把案件提交審判或使被要求移交者服刑或服剩餘刑期有過分延誤；
- (c) 要求移交所根據的罪行，是在被要求方的法院管轄範圍內犯的；
- (d) 該項移交可使被要求方不履行根據國際條約須履行的義務；或
- (e) 在該案的情況下，鑑於被要求移交者的年齡、健康或其他個人狀況，該項移交不合人道。

- (a) the offence is, having regard to all the circumstances, not sufficiently serious to warrant the surrender;
- (b) there has been excessive delay, for reasons which cannot be imputed to the person sought, in bringing charges, in bringing the case to trial or in making the person serve his or her sentence or the remainder thereof;
- (c) the offence for which surrender is sought was committed within the jurisdiction of its courts;
- (d) the surrender might place that Party in breach of its obligations under international treaties; or
- (e) in the circumstances of the case, the surrender would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought.

第八條

ARTICLE 8

延遲移交

POSTPONEMENT OF SURRENDER

被要求移交者如因任何其他罪行正在被要求方的管轄區內被起訴或受懲罰，須推遲至訴訟結束及任何所判處的懲罰執行後才移交。

If the person sought is being proceeded against or is under punishment in the jurisdiction of the requested Party for any other offence, surrender shall be deferred until the conclusion of the proceedings and the execution of any punishment awarded.

第九條

ARTICLE 9

移交要求及證明文件

THE REQUEST AND SUPPORTING DOCUMENTS

- (1) 移交要求和有關文件須通過有關當局提出。締約一方會不時知會締約另一方有關當局。
- (2) 提出要求時，須一併提供下列資料：
 - (a) 有關被要求移交者的盡可能準確的描述，和其他可助確定該人的身分、國籍和所在地的資料；
 - (b) 被要求移交者的各項罪行說明，以及就每項罪行該人被指稱的作為或不作為的說明；及
 - (c) 如有訂定該項罪行的法律條文，須提供該條文內容，以及就該項罪行可判處的懲罰說明，和就該項罪行提起訴訟或執行所判處的任何懲罰的時限。
- (3) 如該項移交要求涉及一名被告人，要求方須隨同移交要求提交一份由要求方的法官、裁判官或其他主管當局發出的逮捕令的副本，

- (1) Requests for surrender and related documents shall be conveyed through the appropriate authority as may be notified from time to time by one Party to the other.
- (2) The request shall be accompanied by:
 - (a) as accurate a description as possible of the person sought, together with any other information which would help to establish that person's identity, nationality and location;
 - (b) a statement of each offence for which surrender is sought and a statement of the acts and omissions which are alleged against the person in respect of each offence; and
 - (c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and any

S1-17
第 503C 章

附表 1

及任何證據，而該證據根據被要求方的法律，足以證明假如該罪行發生在被要求方的管轄區內，該被告人亦會被交付審判。

- (4) 如該項移交要求涉及已被定罪或被判刑的人，則須一併提交：
- (a) 定罪或判刑證明書副本；及
 - (b) 倘該人被定罪但未被判刑，由有關法院就此發出的說明及逮捕令副本；或
 - (c) 如該人已被判刑，一份顯示該項判刑屬可強制執行和顯示尚有多少未服刑期的說明。

第十條

確認

- (1) 依照第九條隨移交要求一併提供的任何文件如經確認，須在被要求方的管轄區內任何訴訟中被接受為證據。
- (2) 就本協定而言，經以下方式處理的文件為經確認文件：
- (a) 看來是經要求方的法官、裁判官或其他獲要求方授權的政府官員簽署或證明；及
- (b) 看來是經要求方或要求方的政府官員蓋上官方印章或公印。

SCHEDULE 1

S1-18
Cap. 503C

time limit on the institution of proceedings, or on the execution of any punishment for that offence.

- (3) If the request relates to an accused person it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the requesting Party and by such evidence as, according to the law of the requested Party, would justify committal for trial if the offence had been committed within the jurisdiction of the requested Party.
- (4) If the request relates to a person already convicted or sentenced, it shall also be accompanied by:
 - (a) a copy of the certificate of the conviction or sentence; and
 - (b) if the person was convicted but not sentenced, a statement to that effect by the appropriate court and a copy of the warrant of arrest; or
 - (c) if the person was sentenced, a statement indicating that the sentence is enforceable and how much of the sentence has still to be served.

ARTICLE 10

AUTHENTICATION

- (1) Any document that, in accordance with Article 9, accompanies a request for surrender shall be admitted in evidence, if authenticated, in any proceedings in the jurisdiction of the requested Party.
- (2) A document is authenticated for the purposes of this Agreement if:
 - (a) it purports to be signed or certified by a Judge, Magistrate or other officer authorised by the requesting Party; and

第十一條

文件的語文

按照本協定提交的所有文件，須按被要求方每次所指定，以被要求方使用的一種法定語文寫成，或翻譯成該種法定語文。

第十二條

暫時逮捕

(1) 在緊急情況下，經要求方提出申請，被要求方可根據本身的法律，暫時逮捕被要求移交者。提出暫時逮捕申請書內須載明有意要求移交該人的意向及逮捕令文本或該人被定罪的判決書、該項罪行懲罰的說明、以及假如被要求移交者在被要求方的管轄區內犯該項罪行或被定罪，為發出逮捕令而需要的其他資料。

(2) 要求暫時逮捕的申請，可通過提出移交要求的相同途徑提出或通過國際刑警組織提出。

(3) 如由被要求移交者的暫時逮捕的日期起計滿四十五天而被要求方仍未接獲把他移交的要求，該暫時逮捕期便告終止，除非要求方可以提出要繼續暫時逮捕被要求移交者的足夠理由，而在這情況下，暫時逮捕在延長不超過十五天的合理期限屆滿時須告終止。但如其後接獲把被要求移交者移交的要求，上述規定並不阻止被要求方再逮捕或移交該被要求移交者。

- (b) it purports to be sealed with an official or public seal of the requesting Party or of an officer of the requesting Party.

ARTICLE 11

LANGUAGE OF DOCUMENTATION

All documents submitted in accordance with this Agreement shall be in, or translated into, an official language of the requested Party, to be specified by the requested Party in each case.

ARTICLE 12

PROVISIONAL ARREST

(1) In urgent cases the person sought may, in accordance with the law of the requested Party, be provisionally arrested on the application of the requesting Party. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and the text of a warrant of arrest or a judgment of conviction against that person, a statement of the penalty for that offence, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought convicted, within the jurisdiction of the requested Party.

(2) An application for provisional arrest may be forwarded through the same channels as a request for surrender or through the International Criminal Police Organisation (Interpol).

(3) The provisional arrest of the person sought shall be terminated upon the expiration of forty-five days from the date of arrest if the request for surrender has not been received, unless the requesting Party can justify

S1-21
第 503C 章

附表 1

SCHEDULE 1

S1-22
Cap. 503C

第十三條

補充資料

- (1) 如要求方提供的資料不足，以致被要求方不能根據本協定作出決定，被要求方須要求所需的補充資料並可規定取得資料的期限。
- (2) 如被要求移交者已被逮捕，而所提供的資料根據本協定並不足夠或沒有在指定時間內取得，該人可被釋放。上述釋放並不阻止要求方重新提出把該人移交的要求。

第十四條

同時要求

如締約一方和一個與澳大利亞或香港有移交被控告及被定罪人士的協定或安排的國家同時要求移交一名人士，被要求方須考慮所有情況後才作出決定，須考慮的情況包括被要求方與各要求方之間所有現行協定中的有關係文規定、所涉及罪行的相對嚴重性及犯罪地點、各移交要求的提出日期、被要求移交者的國籍和通常居住的地方、以

ARTICLE 13

ADDITIONAL INFORMATION

- (1) If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Agreement, the latter Party shall request the necessary supplementary information and may fix a time-limit for receipt thereof.
- (2) If the person whose surrender is sought is under arrest and the additional information furnished is not sufficient in accordance with this Agreement or is not received within the time specified, the person may be discharged. Such discharge shall not preclude the requesting Party from making a fresh request for the surrender of the person.

ARTICLE 14

CONCURRENT REQUESTS

If the surrender of a person is requested concurrently by one of the Parties and a state with whom Australia or Hong Kong, whichever is being requested, has agreements or arrangements for the surrender of accused and convicted persons, the requested Party shall make its decision having regard to all the circumstances including the provisions in this regard in

S1-23
第 503C 章

附表 1

及其後被移交往另一個國家的可能性。被要求方如果決定把該人移交另一管轄區，須向另一締約方說明其作出決定的理由。

第十五條

代表和開支

- (1) 被要求方須為因移交要求而引起的任何訴訟程序作出一切必要的安排和負擔開支，並須在其他方面代表要求方的利益。
- (2) 如因移交要求而明顯地會引起特別性質的開支，締約雙方須進行磋商，以決定如何支付該項開支。
- (3) 被要求方須負擔因逮捕和拘留被要求移交者所引致的開支直至該人被移交為止。要求方須負擔其後的一切開支。

第十六條

移交安排

- (1) 被要求方須在就移交要求作出決定後立即知會要求方其決定。

SCHEDULE 1

S1-24
Cap. 503C

any agreements in force between the requested Party and the requesting Parties, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality and ordinary place of residence of the person sought and the possibility of subsequent surrender to another state, and furnish the other Party with information justifying its decision in the event of surrender of the person to another jurisdiction.

ARTICLE 15

REPRESENTATION AND COSTS

- (1) The requested Party shall make all necessary arrangements for and meet the costs of any proceedings arising out of a request for surrender and shall otherwise represent the interests of the requesting Party.
- (2) If it becomes apparent that exceptional expenses may be incurred as a result of a request for surrender the Parties shall consult with a view to deciding how these expenses will be met.
- (3) The requested Party shall bear the expenses arising out of the arrest and detention of the person whose surrender is sought until that person is surrendered. The requesting Party shall bear all subsequent expenses.

ARTICLE 16

ARRANGEMENTS FOR SURRENDER

- (1) The requested Party shall, as soon as a decision on the request for surrender has been made, communicate that decision to the requesting Party.

S1-25
第 503C 章

附表 1

- (2) 如果決定移交一個人，被要求方當局須把該人送往其管轄區內由要求方選定的方便離境地點。
- (3) 除本條第(4)款另有規定外，要求方須在被要求方指定的期間內把該人帶走，如果在該期間內未把該人帶走，被要求方可拒絕因同一罪行把該人移交。
- (4) 締約一方因不受其控制的情況以致不能移交或接收被移交者，須知會締約另一方。在此情況下，雙方須另行商定移交的新日期，而本條第(3)款的規定將適用。

第十七條

移交財產

- (1) 移交要求獲准後，被要求方須在應要求下，在其法律許可範圍內把以下所有物件，包括金錢，交予要求方：
- (a) 可作為有關罪行的證據；或
- (b) 該被要求移交者因其所犯罪行而取得並由其管有或其後被發現的物件。
- (2) 第(1)款所述的任何財產，如屬在被要求方管轄區內進行的訴訟程序標的物或必要物件，被要求方可暫時保留或在會獲免費歸還的條件下把財產暫時移交給要求方。
- (3) 此等規定不得損害被要求方的權利或被要求移交者以外的其他人士的權利。如該等權利存在，要求方須應被要求方的要求在訴訟程序結束後盡快把有關物件歸還被要求方，被要求方無須支付任何費用。

SCHEDULE 1

S1-26
Cap. 503C

- (2) When a person is to be surrendered, that person shall be sent by the authorities of the requested Party to such convenient place of departure within that Party's jurisdiction as the requesting Party shall indicate.
- (3) Subject to the provisions of paragraph (4) of this Article, the requesting Party shall remove the person within the period specified by the requested Party and if the person is not removed within that period the requested Party may refuse to surrender that person for the same offence.
- (4) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be surrendered, it shall notify the other Party. In that case, the two Parties shall agree a new date for surrender and the provisions of paragraph (3) of this Article shall apply.

ARTICLE 17

SURRENDER OF PROPERTY

- (1) When a request for surrender is granted the requested Party shall, so far as its law allows hand over, upon request, to the requesting Party all articles, including sums of money:
- (a) which may serve as proof of the offence; or
- (b) which have been acquired by the person sought as a result of the offence and are in that person's possession or discovered subsequently.
- (2) The requested Party may temporarily retain any property mentioned in paragraph (1) if it is the subject of, or is required for, proceedings in that jurisdiction, or it may temporarily surrender it on condition that it be returned free of charge.
- (3) These provisions shall not prejudice the rights of the requested Party or of any person other than the person sought. When such rights exist the

S1-27
第 503C 章

附表 1

(4) 如要求方提出要求，則即使由於被要求移交者死亡、失蹤或逃脫以致未能進行移交，則仍須移交第 (1) 款所提述的財產。

第十八條

特定罪行規則

(1) 已被移交的逃犯，不得為了執行其在被移交前所犯罪行的判刑而被起訴、判刑或拘留，但因下列罪行者除外：

- (a) 下令移交該人所根據的罪行；
- (b) 任何由該項移交的有關資料所揭露的，不論如何描述，也不論類別而性質較輕微的罪行，但該項罪行須是根據本協定能把該被要求移交者移交的罪行；
- (c) 該人所犯的任何其他在本協定下可獲准移交的罪行，而被要求方亦同意該人接受處置；

但如該人曾有機會離開澳大利亞或香港，及在獲得可自由離開的 40 天內仍未離開，或在離開後重返該地，則屬例外。

(2) 根據第 (1) 款 (c) 段被要求表示同意的一方可要求對方提交第九條所指的任何文件或說明。

SCHEDULE 1

S1-28
Cap. 503C

articles shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

(4) The property mentioned in paragraph (1) shall, if the requesting Party so requests, be surrendered even though the person cannot be surrendered owing to death, disappearance or escape.

ARTICLE 18

RULE OF SPECIALITY

(1) A person who has been surrendered shall not be proceeded against, sentenced or detained with a view to the carrying out of any sentence for any offence committed prior to surrender other than:

- (a) the offence in respect of which return is ordered;
- (b) any lesser offence, however described, disclosed by the facts in respect of which return was ordered provided such an offence is an offence for which the person sought can be returned under this Agreement;
- (c) any other offence being an offence for which surrender may be granted under this Agreement in respect of which the requested Party consents to the person being dealt with;

unless that person has first had an opportunity to leave Australia or Hong Kong, as the case may be, and has not done so within forty days of having been free to leave or has returned after having left.

(2) A Party whose consent is requested under paragraph (1)(c) may require the submission of any document or statement mentioned in Article 9.

S1-29
第 503C 章

附表 1

SCHEDULE 1

S1-30
Cap. 503C

第十九條

ARTICLE 19

轉移交

RESURRENDER

(1) 已被要求方移交給要求方的一個人不得由於其在被移交前所犯罪行而遭移交或歸還給任何其他國家或管轄區，除非有以下情況，則屬例外：

(1) Where a person has been surrendered to the requesting Party by the requested Party, that person is not liable to surrender or rendition to any other state or jurisdiction for an offence committed before that person's surrender unless:

- (a) 經被要求方同意該項移交或歸還；或
- (b) 該人曾有機會離開澳大利亞或香港，但在可自由離開的 40 天內仍未離開，或在離開後重返該地。

- (a) the requested Party consents to that surrender or rendition; or
- (b) the person has first had an opportunity to leave Australia or Hong Kong, as the case may be, and has not done so within forty days of having been free to leave or has returned after having left.

(2) 根據第 (1) 款 (a) 段被要求表示同意的一方可要求對方提交第九條所指的任何文件或說明。

(2) A Party whose consent is requested under paragraph (1)(a) may require the submission of any document or statement mentioned in Article 9.

第二十條

ARTICLE 20

過境

TRANSIT

(1) 締約一方接獲書面要求時，可在其法律許可的情況下批准在其管轄區過境。在其管轄區過境的一方可要求取得第九條第 (2) 款 (b) 段所指的資料。

(1) To the extent permitted by its law, transit through the jurisdiction of a Party may be granted on a request in writing. The Party through whose jurisdiction transit will occur may request the information referred to in paragraph (2)(b) of Article 9.

(2) 如准許某人過境，該項許可須包括准許該人在過境時被羈留。

(2) Permission, if given, for the transit of a person shall include permission for the person to be held in custody during transit.

S1-31
第 503C 章

附表 1

SCHEDULE 1

S1-32
Cap. 503C

第二十一條

ARTICLE 21

生效及終止

ENTRY INTO FORCE AND TERMINATION

- (1) 本協定將於締約雙方以書面通知對方已各自履行為使本協定生效的規定之日期後三十天開始生效。
- (2) 本協定的條文將適用於在本協定生效後提出的要求，不論在要求中所列罪行的犯罪日期。
- (3) 締約一方可隨時通過與提出移交要求相同的途徑，以書面通知締約另一方以終止本協定。在此情況下，本協定於締約另一方接獲通知後六個月失效。

下列簽署人經各自政府正式授權已在本協定上簽字為證。

本協定於一九九三年十一月十五日在香港簽訂，每份均以中文及英文寫成，各文本均為具有同等效力的真確本。

- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.
- (2) The provisions of this Agreement shall apply to requests made after its entry into force regardless of the date of commission of the offence or offences set out in the request.
- (3) Each of the Parties may terminate this Agreement at any time by giving notice in writing to the other through the same channels as a request for surrender. In that event the Agreement shall cease to have effect six months after the receipt of notice.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at Hong Kong, this fifteenth day of November one thousand nine hundred and ninety three, in the Chinese and English languages, each text being equally authentic.

S2-1
第 503C 章

附表 2

SCHEDULE 2

S2-2
Cap. 503C

附表 2

[第 2 條]

中華人民共和國香港特別行政區政府和澳大利亞政府
為修訂於 1993 年 11 月 15 日在香港簽訂的《關於移交
被控告及被定罪的人的協定》而訂立的議定書

中華人民共和國香港特別行政區(“香港特別行政區”)政府經中
華人民共和國中央人民政府授權與澳大利亞政府訂立本議定書，與澳
大利亞政府(以下簡稱為“締約雙方”)，

謹記於 1993 年 11 月 15 日在香港簽訂的香港政府和澳大利亞政
府關於移交被控告及被定罪的人的協定(以下簡稱“《協定》”)，

確認中華人民共和國於 1997 年 7 月 1 日恢復對香港行使主權，
並根據中華人民共和國憲法，於該日設立中華人民共和國香港特別行
政區，

表明中華人民共和國政府已確定《協定》繼續適用於香港特別行
政區，並已確定承認《協定》為香港特別行政區政府經中華人民共和
國政府授權而與澳大利亞政府訂立的協定，

為修訂《協定》，

SCHEDULE 2

[s. 2]

**PROTOCOL BETWEEN THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE
REGION OF THE PEOPLE’S REPUBLIC OF
CHINA AND THE GOVERNMENT OF AUSTRALIA
AMENDING THE AGREEMENT FOR THE
SURRENDER OF ACCUSED AND CONVICTED
PERSONS, DONE AT HONG KONG ON 15
NOVEMBER 1993**

The Government of the Hong Kong Special Administrative
Region of the People’s Republic of China (“Hong Kong Special
Administrative Region”) having been authorised by the Central People’s
Government of the People’s Republic of China to conclude this Protocol
with the Government of Australia, and the Government of Australia
(hereinafter referred to as “the Parties”).

Recalling the Agreement between the Government of Hong
Kong and the Government of Australia for the surrender of accused and
convicted persons, done at Hong Kong on 15 November 1993 (hereinafter
referred to as “the Agreement”),

Recognizing that the People’s Republic of China resumed the
exercise of sovereignty over Hong Kong with effect from 1 July 1997 and
in accordance with its constitution has on that date established the Hong
Kong Special Administrative Region of the People’s Republic of China,

S2-3
第 503C 章

附表 2

SCHEDULE 2

S2-4
Cap. 503C

協議如下：

第一條

本議定書修訂《協定》，而《協定》及本議定書須作為單一份文書一併閱讀和解釋。

第二條

《協定》第五條須予刪除。

第三條

《協定》第九條第 (3) 款的文本須予刪除而代以下列條文：

“如該項移交要求涉及一名被控告人，要求方須隨同移交要求提交一份由要求方的法官、裁判官或其他主管當局發出的逮捕令的副本。如移交要求是向香港提出的，則須連同下述證據：根據香港的法律，足以證明假如該罪行發生在香港的管轄區內，該被告人亦會被交付審判的證據。”

Noting that the Government of the People's Republic of China has confirmed the continued application of the Agreement to the Hong Kong Special Administrative Region and its recognition as an agreement entered into between the Government of the Hong Kong Special Administrative Region under the authorisation of the Government of the People's Republic of China and the Government of Australia,

Desiring to amend the Agreement,

Have agreed as follows:

Article 1

This Protocol amends the Agreement and the Agreement and this Protocol shall be read and interpreted together as one single instrument.

Article 2

Article 5 of the Agreement shall be removed.

Article 3

The text of Article 9(3) of the Agreement shall be replaced by the following:

“If the request relates to an accused person it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the requesting Party. In the case of requests to Hong Kong, the request shall also be accompanied by such evidence as,

S2-5
第 503C 章

附表 2

SCHEDULE 2

S2-6
Cap. 503C

第四條

《協定》第十六條第(1)款的文本須予刪除而代以下列條文：

“被要求方就移交要求作出決定後，須立即將其決定通知要求方。拒絕全部或部分移交要求，須給予理由。”

第五條

(1) 本議定書將於締約雙方以書面通知對方已各自履行為使本議定書生效的規定的日期起計三十天後生效。

(2) 本議定書在《協定》維持有效期間維持有效。

下列簽署人，經其各自政府正式授權，已在本議定書上簽字為證。

本議定書以中文及英文寫成，一式兩份，並於二零零七年三月十九日在香港簽訂，各文本均為具有同等效力的真確本。

(附表 2 由 2007 年第 212 號法律公告增補)

Article 4

The text of Article 16(1) of the Agreement shall be replaced by the following:

“The requested Party shall, as soon as a decision on the request for surrender has been made, communicate that decision to the requesting Party. Reasons shall be given for any complete or partial refusal of the request.”

Article 5

(1) This Protocol shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Protocol have been complied with.

(2) This Protocol shall remain in force so long as the Agreement remains in force.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments have signed this Protocol.

DONE in duplicate at Hong Kong this nineteenth day of March, two thousand and seven in the Chinese and English languages, each text being equally authentic.

(Schedule 2 added L.N. 212 of 2007)