

《逃犯(加拿大)令》
(第 503 章, 附屬法例 B)

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FUGITIVE OFFENDERS (CANADA) ORDER
(Cap. 503 sub. leg. B)

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《逃犯(加拿大)令》

(第 503 章第 3 條)

FUGITIVE OFFENDERS (CANADA) ORDER

(Cap. 503 section 3)

[1997 年 6 月 13 日] 1997 年第 326 號法律公告

[13 June 1997] L.N. 326 of 1997

1. (已失時效而略去)
2. 條例中的程序適用於香港及加拿大
關於——
 - (a) 適用於香港政府及加拿大政府的；及
 - (b) 在附表中敘述的，移交逃犯安排，現特指示，本條例中的程序須在如此敘述的該等安排所載的限制、約束、例外規定及約制的規限下，適用於香港及加拿大。
3. (已失時效而略去)

1. (Omitted as spent)
2. **Procedures in Ordinance to apply between Hong Kong and Canada**
In relation to the arrangements for the surrender of fugitive offenders which are—
 - (a) applicable to the Government of Hong Kong and the Government of Canada; and
 - (b) recited in the Schedule,it is hereby directed that the procedures in the Ordinance shall apply as between Hong Kong and Canada subject to the limitations, restrictions, exceptions and qualifications contained in those arrangements as so recited.
3. (Omitted as spent)

附表

[第 2 條]

香港政府和加拿大政府的 移交逃犯協定

經負責其外交事務的主權國政府正式授權締結本協定的香港政府與加拿大政府(下文稱「締約雙方」)；

為訂立相互移交逃犯的規定；

並確認尊重對方的法律制度和司法體制；

協議如下：

第一條 移交逃犯的義務

締約雙方同意按照本協定所訂定的條文，把任何在被要求方管轄區內找到的並遭要求方通緝以便就本協定第二條所列的罪行提出檢控、判刑或執行判刑的人移交給對方。

第二條 罪行

- (1) 凡犯以下所描述的任何罪行，而該罪行根據締約雙方的法律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) 謀殺或誤殺，包括導致死亡的刑事疏忽；
 - (ii) 協助、教唆、慫使或促致他人自殺；
 - (iii) 惡意傷人；嚴重侵犯；造成他人身體嚴重傷害；侵犯他人致造成身體傷害；
 - (iv) 犯有關性侵犯的法律的罪行，包括強姦和猥褻侵犯；

SCHEDULE

[s. 2]

AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF CANADA FOR THE SURRENDER OF FUGITIVE OFFENDERS

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 Canada (hereinafter called 'the Parties');

Desiring to make provision for the reciprocal surrender of fugitive offenders;

Affirming their respect for each other's legal system and judicial institutions;

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

- (v) 對兒童作出嚴重猥褻行為；
- (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) 犯有關危險藥物，包括毒品及精神藥物的法律的罪行；
- (viii) 盜竊；搶劫；入屋犯法，包括破門入屋；勒索；敲詐；處理或收受竊取的財物；
- (ix) 犯有關欺詐的法律的罪行，包括串謀行騙；偽造帳目；以虛假理由取得財物或金錢利益；
- (x) 犯破產法律的罪行；
- (xi) 公司董事及其他人員作出虛假陳述；
- (xii) 犯有關贗製的法律的罪行；
- (xiii) 犯有關偽造的法律的罪行或使用偽造或虛假的文件；
- (xiv) 犯有關貪污的法律的罪行，包括賄賂、秘密回扣及違背信託；
- (xv) 偽證及唆使他人作偽證；企圖妨礙司法公正；
- (xvi) 縱火；刑事毀壞或損害，包括與電腦數據有關的損害；
- (xvii) 犯有關火器、彈藥或爆炸品的法律的罪行；
- (xviii) 犯有關保障公眾衛生及環境的法律的罪行；
- (xix) 海盜行為；
- (xx) 非法扣押、劫持或其他有關非法控制航空器的罪行；
- (xxi) 犯有關非法從羈留中逃走的罪行；
- (xxii) 走私，包括犯有關適用於進出口歷史文物及考古文物的法律的罪行；
- (xxiii) 為利益促成他人非法入境；
- (xxiv) 犯根據對締約雙方有約束力的國際公約可移交逃犯的罪行；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；
- (xxv) 犯涉及與財政事項或任何稅務事項有關的欺詐的罪行；

or for the imposition or enforcement of a sentence in respect of an offence under Article 2 of this Agreement.

ARTICLE 2

Offences

- (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) murder or manslaughter, including criminal negligence causing death;
 - (ii) aiding, abetting, counselling or procuring suicide;
 - (iii) maliciously wounding; aggravated assault; inflicting grievous bodily harm; assault occasioning bodily harm;
 - (iv) offences against the laws relating to sexual assault, including rape and indecent assault;
 - (v) gross indecency with a child;
 - (vi) kidnapping; abduction; false imprisonment; unlawful confinement; dealing in slaves or other persons; taking a hostage;
 - (vii) offences against the law relating to dangerous drugs, including narcotics and psychoactive/psychotropic substances;
 - (viii) theft; robbery; burglary, including breaking and entering; blackmail; extortion; handling or receiving stolen property;

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附表

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- (xxvi) 犯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；
- (xxvii) 企圖、煽惑或串謀犯任何根據本協定可准予移交的罪行，或協助或以任何其他方式參與該等罪行。
- (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六個月。
- (3) 就本條而言，在確定一項罪行是否違反被要求方的法律時，審查該人的行為須以該人被指稱的作為或不作為的全部為準，而不須顧及要求方的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在要求方屬罪行，而在接獲移交要求時在被要求方亦屬罪行，則該項罪行根據締約雙方的法律均屬罪行。

第三條 國民的移交

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。香港政府行使此項權利時，加拿大政府可要求把案件提交香港主管當局以便考慮對該人進行檢控。

第四條 死刑

倘某項根據本協定提出移交逃犯要求的罪行，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。

第五條

- (ix) offences against the laws relating to fraud, including conspiracy to defraud; false accounting; obtaining property or pecuniary advantage by false pretences;
- (x) offences against bankruptcy law;
- (xi) false statements by company directors and other officers;
- (xii) offences against the laws relating to counterfeiting;
- (xiii) offences against the laws relating to forgery or uttering a forged or false document;
- (xiv) offences against the laws relating to corruption, including bribery, secret commissions and breach of trust;
- (xv) perjury and subornation of perjury; attempting to pervert the course of justice;
- (xvi) arson; criminal damage or mischief, including mischief in relation to computer data;
- (xvii) offences against the laws relating to firearms, ammunition or explosives;
- (xviii) offences against the laws relating to protection of public health and the environment;
- (xix) piracy;
- (xx) unlawful seizure, hijacking or other offences relating to the unlawful control of aircraft;
- (xxi) offences relating to unlawful escape from custody;
- (xxii) smuggling, including offences against the laws applying to the import and export of historical and archaeological items;
- (xxiii) facilitating, for gain, the illegal immigration of persons;
- (xxiv) offences for which fugitive offenders may be surrendered under international conventions binding on the Parties; offences created as a result of decisions of international organisations which are binding on the Parties;

強制拒絕移交

- (1) 如被要求方有充分理由相信下述事項，則不得移交逃犯：
- 該逃犯被控或被裁定所犯罪行屬政治性質；
 - 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逃犯；或
 - 該逃犯一經交回，可能因種族、宗教、國籍或政治意見而在審判時受到不公平的待遇，或被懲罰、被拘留或其個人自由受限制。
- (2) 如根據要求方或被要求方的法律就移交要求內所列出的任何罪行，逃犯已最終獲開釋、被定罪或獲赦免或禁止對其檢控或已撤銷對其定罪，則不得就該項罪行移交該逃犯。

第六條
酌情拒絕移交

- (1) 如根據被要求方的法律，逃犯所犯罪行被視為是在被要求方的法院的管轄範圍內犯的，被要求方可拒絕移交該逃犯。如被要求方據此拒絕移交，要求方可要求把該案提交其主管當局以便考慮進行檢控。
- (2) 在按照本協定的條款要求移交任何人士時，如被要求方認為基於下列原因，在考慮到所有情況後，把該人交回是不公平或壓迫性的，則可拒絕移交：
- 該人被控告或判定的罪行性質輕微；或
 - 該人被指稱觸犯罪行已有相當時間，或該人已逍遙法外相當時間；或
 - 對該人的控告並非真誠地為司法公正而作出；或
 - 基於合理人道理由。

- offences involving fraud relating to fiscal matters, taxes or duties;
 - offences related to possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement;
 - an attempt, incitement or conspiracy to commit, or any assistance or other participation in, any offence for which surrender may be granted under this Agreement.
- (2) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence, a further requirement shall be that a period of imprisonment or detention of at least six months remains to be served.
- (3) For the purpose of this Article, in determining whether an offence is an offence against the law of the requested Party, the conduct of the person shall be examined by reference to the totality of the acts or omissions alleged against the person 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 in the requesting Party at the time it was committed and an offence in the requested Party at the time the request for surrender is received.

ARTICLE 3Surrender of 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

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- (3) 如逃犯已因被要求移交的同一罪行在第三方管轄範圍內最終獲開釋或被定罪，而如被定罪，判刑已完全執行或不再能夠執行，則被要求方可拒絕移交。

第七條
延遲移交

倘被要求移交者因被要求移交的罪行以外的任何其他罪行而正在被要求方的管轄區內被起訴或受懲罰，可准予移交或推遲至訴訟程序結束及任何所判處的懲罰執行後才移交。

第八條
移交要求及附文件

- (1) 移交逃犯的要求須向有關當局提出。締約一方會不時知會締約另一方何謂有關當局。
- (2) 所有移交要求均須附有下列資料：
- (a) 有關被要求移交者盡可能準確的描述，和其他可助確定該人身分、國籍及所在地的資料；
- (b) 被要求移交者的罪行說明和有關詳情；
- (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程序或執行所判處的任何懲罰的時限。
- (3) 如移交要求涉及一名被告人，該項要求須附有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副本及其他證據，而該等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，該等證據可包括宣稱是在宣誓或確認下作出的陳述或供詞的正本或副本，亦包括在該陳述或供詞內提及的任何呈堂證物，不論該陳述或供詞是否在要求方的管轄區內錄取。

affairs. Where the Government of Hong Kong exercises this right, the Government of Canada may request that the case be submitted to the competent authorities of Hong Kong in order that proceedings for prosecution of the person may be considered.

ARTICLE 4

Death Penalty

If the offence for which surrender of a fugitive offender 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 a sentence of death will not be imposed or, if imposed, will not be carried out.

ARTICLE 5

Mandatory Refusal to Surrender

- (1) A fugitive offender 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)

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附表

- (4) 如移交要求涉及一名已被定罪的人，該項要求須附有一份定罪證明書，而倘若該人：
- (a) 未被判刑，則另須附有一份逮捕令副本及一份由有關法庭就未判刑一事而發出的證明書或說明；或
 - (b) 已被判刑，則另須附一份證明或說明該項判刑可強制執行，並顯示未服刑期尚有多少的證明書或說明。
- (5) 移交要求所附文件如經正式確認，須被接受為證據，作為文內所載事實的證明。看來是經以下方式處理的文件為經正式確認的文件：
- (a) 經要求方的法官、裁判官或政府官員簽署或證明；和
 - (b) 經要求方主管當局蓋上公印。
- (6) 要求方所提供用於移交要求的文件的任何譯文在移交程序中均須予以接受。

第九條 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。

第十條 補充文件

如要求方提交的文件不足，以致被要求方不能依據本協定作出決定，被要求方須要求所需的補充文件並可規定取得文件的期限。

第十一條 暫時逮捕

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- 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 that person's trial or punished, detained or restricted in his or her personal liberty by reason of race, religion, nationality or political opinions.
- (2) A fugitive offender who has been finally acquitted, convicted or pardoned or whose prosecution is barred or whose conviction has been set aside under the law of the requesting or requested Party for any offence set out in the request shall not be surrendered for that offence.

ARTICLE 6

Discretionary Refusal to Surrender

- (1) The requested Party may refuse to surrender a fugitive offender for an offence which is regarded by its law as having been committed within the jurisdiction of its courts. If the requested Party so refuses, the requesting Party may request that the case be submitted to its competent authorities in order that proceedings for prosecution may be considered.
- (2) The surrender of any person sought under the terms of this Agreement may be refused if it appears to the requested Party that:
- (a) by reason of the trivial nature of the offence of which the person is accused or was convicted; or
 - (b) by reason of the passage of time since the person is alleged to have committed it or has become unlawfully at large as the case may be; or

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附表

- (1) 在緊急情況下，經要求方提出申請，被要求方可酌情決定，並根據本身的法律，暫時逮捕被要求移交的人。
- (2) 暫時逮捕申請書內須顯示有提出要求移交該人的意向、並載有已發出逮捕令的說明或該人被定罪的判決書、有關該人的身分、國籍和可能身處地點的資料、該人的描述、所犯罪行的簡單描述及案件的事實、該項罪行可能或已經作出的判刑的說明，以及如適用，須說明該人仍須服的刑期。
- (3) 要求暫時逮捕的申請可通過根據第八條第(1)款所通知的途徑或通過國際刑警組織，以任何可以提供書面紀錄的方式提出。
- (4) 如被要求方沒有收到移交要求及有關證明文件，則該人的暫時逮捕由逮捕日期起計滿 60 天便告終止。根據本款釋放被捕人士並不阻止在其後收到移交要求及有關證明文件時提起或繼續進行移交訴訟程序。

第十二條 同時要求

如締約一方和一個或多個與加拿大或香港有移交逃犯安排的國家同時要求移交一名逃犯，被要求方經考慮所有情況，包括被要求方和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和犯罪地點、各移交要求的提出日期、被要求移交者的國籍和其隨後被移交往另一個國家的可能性後，須在被要求方的法律容許範圍內作出決定。被要求方如果決定把該逃犯移交另一管轄區，須將該決定通知另一方。

第十三條 代表及開支

- (1) 被要求方須為要求方在因移交逃犯要求而引起的任何訴訟中所需法律代表和援助作出必要的安排。如移交要求由香港提出，須由加拿大的檢察總長負責進行訴訟；如移交要求由加

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- (c) because the accusation against the person is not made in good faith in the interests of justice; or
- (d) because there exist valid humanitarian grounds, it would, having regard to all the circumstances, be unjust or oppressive to return the person.
- (3) The requested Party may refuse surrender where the person sought has been finally acquitted or convicted in a third jurisdiction for the same offence for which surrender is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

ARTICLE 7

Postponed Surrender

If the person sought is being proceeded against or is under punishment in the jurisdiction of the requested Party for any offence other than that for which surrender is requested, surrender may be granted or deferred until the conclusion of the proceedings and the execution of any punishment imposed.

ARTICLE 8

The Request and Supporting Documents

拿大提出，則須由主管律政當局根據香港的法律和慣例進行訴訟。

- (2) 因移交要求或為移交而在被要求方的管轄區內引致的開支，均由被要求方負擔。如果明顯地會引起特別性質的開支，則締約雙方須進行磋商，以決定如何支付該等開支。

第十四條 移交根據

只有在根據被要求方的法律證實有足夠證據證明，假如構成被要求移交者被控告所犯罪行的行為在被要求方的管轄區內發生，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，始須把有關逃犯移交。

第十五條 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。拒絕全部或部分移交要求，須給予理由。
- (2) 被要求方須在其管轄區內一個雙方均認為方便的地點把被要求移交者移交給要求方有關當局。
- (3) 除本條第(4)款另有規定外，要求方如在經雙方議定的日期並無接收其要求移交者，該被要求移交者須在該日期後三十天屆滿時獲得釋放，此後被要求方可拒絕因同一罪行把該人移交。
- (4) 若締約一方因不受其控制的情況以致不能移交或接收將被移交者，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。

第十六條

- (1) Requests for the surrender of a fugitive offender shall be made to such appropriate authority as may be notified from time to time by one Party to the other.
- (2) All requests shall be supported by:
- as accurate a description as possible of the person sought, together with any other information which would help to establish the person's identity, nationality and location;
 - a statement and particulars of the offence for which surrender is requested;
 - the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and any 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 be supported 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. Such evidence may include originals or copies of statements or depositions, whether taken in the jurisdiction of the requesting Party or elsewhere, purporting to have been taken on oath or affirmation together with any exhibits referred to therein.
- (4) If the request relates to a person already convicted, it shall be supported by a certificate of conviction and:
- if the person has not been sentenced, a certificate or statement to that effect by the appropriate court and a copy of the warrant of arrest; or
 - if the person has been sentenced, a certificate or statement that the sentence is enforceable and indicating how much of the sentence has still to be served.

移交財產

- (1) 在被要求方的法律許可範圍內，移交逃犯的要求獲准後，
- (a) 被要求方須把所有屬下述性質的有關物件，包括金錢，交予要求方，
- (i) 可作為有關罪行的證據；或
- (ii) 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；
- (b) 如有關物件可在被要求方的管轄區內因訴訟未決而遭檢取或充公，被要求方可暫時保留該等物件或在會獲歸還的條件下把該等物件交給要求方。
- (2) 第(1)款的規定不得損害被要求方的權利或除被要求移交者以外其他人士的權利。如該等權利存在，要求方須應被要求方的要求於訴訟程序結束後在切實可行範圍內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。
- (3) 如要求方提出要求，則即使由於被要求移交的逃犯死亡或逃脫以致未能進行移交，有關物件仍須移交給要求方。

第十七條
特定罪行規則

- (1) 除非已被移交的逃犯曾有機會離開要求方的管轄區，且在可自由離開的四十天內仍未離開，或在離開該管轄區後自願重返該地，否則不得為了執行其在被移交前所犯罪行的判刑而將該逃犯起訴、判刑或拘留，但因下列罪行者除外：
- (a) 准予移交該逃犯所根據的罪行；
- (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，及經被要求方同意；
- (c) 根據本協定可准予移交的任何其他罪行及經被要求方同意。

- (5) Documents supporting a request for surrender shall be admitted in evidence as proof of the facts contained therein if duly authenticated. Documents are duly authenticated if they purport to be:
- (a) signed or certified by a judge, magistrate or an official of the requesting Party; and
- (b) sealed with the official seal of a competent authority of the requesting Party.
- (6) Any translation of documents submitted in support of a request for surrender provided by the requesting Party shall be admitted for all purposes in proceedings for surrender.

ARTICLE 9Language 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 10Additional Documentation

If the documentation submitted by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of

- (2) 根據本條第(1)(c)款被要求表示同意的一方可要求取得第八條所指的任何文件及被移交者就該事所作的任何陳述書。

第十八條 轉移交

- (1) 已被移交給要求方的逃犯不得由於其在被移交前所犯罪行而遭要求方轉移交給任何其他管轄區，除非有以下情況，則屬例外：
- (a) 經被要求方同意；或
- (b) 該逃犯曾有機會離開要求方的管轄區，但在可自由離開的40天內仍未離開，或在離開該管轄區後自願重返該地。
- (2) 根據本條第(1)款(a)項的規定被要求表示同意的一方可要求該其他管轄區提交有關文件以支持其移交要求。

第十九條 過境

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。過境在其管轄區進行的一方可要求取得第十一條第(2)款所指的資料。

第二十條 生效、中止及終止

- (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由第八條第(1)款規定的途徑，通知締約另一方中止或終止本協定。協定的中止於締約另一方接獲中

this Agreement, the latter Party shall request the necessary supplementary documentation and may fix a time limit for receipt thereof.

ARTICLE 11

Provisional Arrest

- (1) In urgent cases the person sought may, at the discretion of the requested Party and in accordance with its law, be provisionally arrested on the application of the requesting Party.
- (2) The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought, a statement of the existence of a warrant of arrest or a judgment of conviction against that person, information concerning identity, nationality and probable location, a description of the person, a brief description of the offence and the facts of the case and a statement of the sentence that can be or has been imposed for the offence and, where applicable, how much of that sentence remains to be served.
- (3) An application for provisional arrest may be transmitted by any means affording a record in writing through the channel notified under paragraph (1) of Article 8 or through the International Criminal Police Organisation (Interpol).
- (4) The provisional arrest of the person sought shall be terminated upon the expiration of sixty days from the date of arrest if the request for surrender and supporting documents have not been received. The release of a person pursuant to this paragraph shall not prevent the institution or continuation of surrender proceedings if the request and the supporting documents are received subsequently.

止通知後即生效。在終止協定方面，本協定於締約另一方接獲終止通知的六個月後失效。

下列簽署人，經其各自政府正式授權，已在本協定上簽字為證。

本協定以中文、英文及法文寫成，並於一九九三年九月七日在香港簽訂，各文本均為具有同等效力的真確本。

ARTICLE 12

Concurrent Requests

If the surrender of a fugitive offender is requested concurrently by one of the Parties and a State or States with whom Canada or Hong Kong, whichever is being requested, has arrangements for the surrender of fugitive offenders, the requested Party shall make its decision in so far as its law allows having regard to all the circumstances including the provisions in this regard in 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 of the person sought and the possibility of subsequent surrender to another State, and notify the other Party of its decision in the event of surrender of the fugitive to another jurisdiction.

ARTICLE 13

Representation and Costs

- (1) The requested Party shall make the necessary arrangements for legal representation and assistance in any proceedings arising out of requests for the surrender of a fugitive offender. In the case of requests made by Hong Kong, the Attorney-General of Canada shall conduct the proceedings. In the case of requests made by Canada, the proceedings shall be conducted by the competent legal authorities in accordance with the law and practice of Hong Kong.
- (2) Expenses incurred in the jurisdiction of the requested Party arising from the request or by reason of surrender shall be borne by that

Party. If it becomes apparent that expenses of an extraordinary nature are likely to be incurred, the Parties shall consult to determine how these expenses shall be met.

ARTICLE 14

Basis for Surrender

A fugitive offender 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 conduct constituting the offence of which that person is accused had occurred 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.

ARTICLE 15

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. Reasons shall be given for any complete or partial refusal of a request for surrender.
- (2) The requested Party shall surrender the person sought to the appropriate authorities of the requesting Party at a mutually convenient location in the jurisdiction of the requested Party.
- (3) Subject to the provisions of paragraph (4) of this Article, if the requesting Party does not take custody of the person claimed on

the date agreed by the Parties, the person shall be released on the expiry of thirty days thereafter and the requested Party may subsequently 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 Parties shall agree a new date for surrender and the provisions of paragraph (3) of this Article shall apply.

ARTICLE 16

Surrender of Property

- (1) To the extent permitted under the law of the requested Party, when a request for surrender of a fugitive offender is granted, the requested Party:
- (a) shall hand over to the requesting Party all articles, including sums of money,
 - (i) which may serve as proof of the offence; or
 - (ii) which have been acquired by the person sought as a result of the offence and are in that person's possession or are discovered subsequently.
 - (b) may, if the articles in question are liable to seizure or confiscation within the jurisdiction of the requested Party in connection with pending proceedings, temporarily retain them or hand them over on condition they are returned.
- (2) The provisions of paragraph (1) shall not prejudice the rights of the requested Party or of any person other than the person sought. When such rights exist the articles shall on request be returned to

the requested Party without charge as soon as practicable after the end of the proceedings.

- (3) The articles in question shall, if the requesting Party so requests, be surrendered to that Party even if the surrender cannot be carried out due to the death or escape of the person sought.

ARTICLE 17

Rule of Specialty

- (1) A fugitive offender who has been surrendered shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence for any offence committed prior to surrender other than:
- (a) the offence in respect of which surrender is granted;
 - (b) any lesser offence, however described, disclosed by the facts in respect of which surrender was granted provided such an offence is an offence for which the person sought can be surrendered under this Agreement and the requested Party consents;
 - (c) any other offence being an offence for which surrender may be granted under this Agreement and the requested Party consents;
- unless that person has first had an opportunity to leave the jurisdiction of the requesting Party and has not done so within forty days of having been free to do so or has returned voluntarily to that jurisdiction having left it.
- (2) A Party whose consent is requested under paragraph (1)(c) of this Article may require the submission of any document referred to in

Article 8 and any statement made by the surrendered person on the matter.

ARTICLE 18

Re-surrender

- (1) Where a person has been surrendered to the requesting Party, that Party shall not surrender the person to any other jurisdiction for an offence committed before that person's surrender unless:
 - (a) the requested Party consents; or
 - (b) the person has first had an opportunity to leave the jurisdiction of the requesting Party and has not done so within forty days of having been free to do so or has returned voluntarily to that jurisdiction having left it.
- (2) A party whose consent is requested under sub-paragraph (a) of paragraph (1) of this Article may require the production of the documents submitted by the other jurisdiction in support of its request for surrender.

ARTICLE 19

Transit

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) of Article 11.

ARTICLE 20

Entry into Force, Suspension and Termination

- (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 the commission of the offence or offences set out in the request.
- (3) Each of the Parties may suspend or terminate this Agreement at any time by giving notice to the other through the channel notified under paragraph (1) of Article 8. Suspension shall take effect on receipt of the relevant notice. In the case of termination the Agreement shall cease to have effect six months after the receipt of notice to terminate.

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

Done at Hong Kong this 7th day of September One thousand nine hundred and ninety three in the Chinese, English and French languages, each text being equally authentic.