

《逃犯(德國)令》
(第 503 章, 附屬法例 X)

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德國之間適用	1
附表	《中華人民共和國香港特別行政區政府與德意志聯邦共和國政府關於移交逃犯的協定》#	S-1

FUGITIVE OFFENDERS (GERMANY) ORDER
(Cap. 503 sub. leg. X)

Contents

Section		Page
1.	(Omitted as spent)	2
2.	Procedures in Ordinance to apply between Hong Kong and Germany	2
SCHEDULE	AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY FOR THE SURRENDER OF FUGITIVE OFFENDERS#	S-2

《逃犯(德國)令》

(第 503 章第 3 條)

FUGITIVE OFFENDERS (GERMANY) ORDER

(Cap. 503, section 3)

[2009 年 4 月 11 日] 2009 年第 61 號法律公告

[11 April 2009] L.N. 61 of 2009

1. (已失時效而略去)

1. (Omitted as spent)

2. 本條例中的程序在香港與德國之間適用

2. **Procedures in Ordinance to apply between Hong Kong and Germany**

現就條款於附表中敘述的移交逃犯安排，指示本條例中的程序在香港與德意志聯邦共和國之間適用，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。

In relation to the arrangements for the surrender of fugitive offenders the terms of which are recited in the Schedule, it is directed that the procedures in the Ordinance shall apply as between Hong Kong and the Federal Republic of Germany subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.

附表

[第 2 條]

《中華人民共和國香港特別行政區政府與
德意志聯邦共和國政府關於
移交逃犯的協定》#

中華人民共和國香港特別行政區政府經中華人民共和國中央人民
政府正式授權，與德意志聯邦共和國政府，

為訂立相互移交逃犯的規定——
協議如下：

第一條

移交的義務

- (1) 締約雙方同意，按照本協定的各項規定，相互移交在被要求方司法管轄區發現並遭要求方追緝的人，以便就第二條所指的罪行對他作出檢控、判刑或強制執行判刑。
- (2) 就本協定而言，“判刑”包括刑事法庭在定罪後，除判處監禁刑罰之外作出的或代替判處監禁刑罰而作出的涉及剝奪自由的拘留令。

SCHEDULE

[s. 2]

AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG
KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S
REPUBLIC OF CHINA AND THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF GERMANY FOR THE SURRENDER OF
FUGITIVE OFFENDERS#

The Government of the Hong Kong Special Administrative Region of the
People's Republic of China,
having been duly authorised by the Central People's Government of the
People's Republic of China and
the Government of the Federal Republic of Germany,

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

Have agreed as follows:

Article 1

Obligation to Surrender

- (1) 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 under Article 2.

第二條

Article 2

罪行

Offences

- (1) 如根據締約雙方的法律均可就某些罪行判處最長刑期不少於一年的監禁或其他形式的拘留，或更嚴厲的刑罰，而該等罪行屬本協定的附錄所描述的罪行，則須就該等罪行准予移交逃犯。該附錄須構成本協定的一部分。
- (2) 凡要求移交逃犯是為執行判刑，須符合進一步規定，即未服的刑期不得少於六個月。
- (3) 在確定某罪行是否屬於根據締約雙方的法律均可判罰的罪行時，不論在締約雙方的法律下該罪行的構成因素是否有區別，均無關重要，因明白到須考慮要求方所陳述的作為或不作為的全部。
- (4) 凡要求移交某逃犯是為執行判刑，而所據理由為該名被尋求的人已就根據本協定可准予移交的某罪行被定罪，則如看來該人是在缺席的情況下被定罪，被要求方可拒絕為該目的而將該人交回或羈押。

(2) For the purposes of this Agreement, “sentence” includes a detention order involving deprivation of liberty made following conviction by a criminal court in addition to or instead of a prison sentence.

(1) Surrender of fugitive offenders shall be granted for offences which are, according to the laws of both Parties, punishable by imprisonment or other form of detention for a maximum period of at least one year, or by a more severe penalty, and which come within any of the descriptions in the Appendix to this Agreement. The Appendix shall form part of 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 at least six months of the sentence remain to be served.

(3) In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether, under the laws of the Parties, the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the Requesting Party shall be taken into account.

(4) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence on the grounds that the person sought has been convicted of an offence for which surrender may be granted under this Agreement, the Requested Party may refuse to return or to keep such person in custody for such a purpose if it appears that the conviction was obtained in his absence.

第三條

Article 3

國民的移交

Surrender of Nationals

- (1) 香港特別行政區政府保留拒絕移交中華人民共和國的國民的權利，而德意志聯邦共和國政府保留拒絕移交其國民的權利。
- (2) 被要求方行使此項權利時，在要求方的要求下，被要求方須根據其本身的法律採取一切能夠採取的措施檢控有關的人。要求方須獲通知其要求的結果。

(1) The Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of nationals of the People's Republic of China and the Government of the Federal Republic of Germany reserves the right to refuse the surrender of its nationals.

(2) Where the Requested Party exercises this right, it shall, if asked to do so by the Requesting Party, take all possible measures in accordance with its own law to prosecute the person. The Requesting Party shall be informed of the result of its request.

第四條

Article 4

死刑

Death Penalty

如根據本協定要求移交逃犯的罪行是根據要求方的法律可判處死刑的，但就該罪行而言，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，則除非要求方提供被要求方認為充分的保證，即保證不會判處死刑或即使判處死刑亦不會執行，否則被要求方可拒絕移交。

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 this penalty will not be imposed or if imposed will not be carried out.

第五條

Article 5

強制拒絕移交

Mandatory Refusal to Surrender

- (1) 如被要求方認為某逃犯被控或被定罪的罪行是政治罪行或屬政治性質的罪行，則不得移交該人。
- (2) 如被要求方有充分理由相信以下事項屬實，則不得移交有關逃犯：

(1) A fugitive offender shall not be surrendered if the Requested Party considers that the offence of which that person is accused or was convicted is a political offence or an offence of a political character.

(2) A fugitive offender shall not be surrendered if the Requested Party has substantial grounds for believing:

S-7

附表

第 503X 章

1. 移交該人的要求雖然看來是因為一項可准予移交的罪行而提出的，但實際上提出要求的目的是因為該人的種族、宗教、國籍、性別、族裔或政治意見而檢控或懲罰該人；或
2. 該人如被移交，便可能因其種族、宗教、國籍、性別、族裔或政治意見，而在審訊時蒙受不利或被懲罰、拘留或其人身自由受到限制。

第六條

同一罪行不受兩次審判

如被要求移交的人，就要求移交所根據的罪行已最後被締約任何一方裁定無罪或定罪或赦免，則不得批准移交。

第七條

酌情拒絕移交

- (1) 如根據被要求方的法律，某逃犯所犯罪行被視為是在被要求方的法院的司法管轄權範圍之內犯的，被要求方可拒絕就該罪行移交該人。如被要求方如此作出拒絕，則在要求方的要求下，被要求方須根據其本身的法律採取一切能夠採取的措施檢控該人。
- (2) 被要求方如認為有以下情況，亦可拒絕移交逃犯：
 1. 在個別情況下，鑑於年齡、健康或其他個人狀況，把有關逃犯移交不符合人道精神；或
 2. 移交會損害被要求方的基要利益；或

SCHEDULE

S-8

Cap. 503X

1. that the request for his 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 prosecuting or punishing him on account of his race, religion, nationality, sex, ethnic origin or political opinions; or
2. that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, sex, ethnic origin or political opinions.

Article 6

Non bis in idem

Surrender shall not be granted if the person whose surrender is requested has been finally acquitted or convicted, or has been pardoned, by either Party for the offence for which surrender is requested.

Article 7

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, it shall if asked to do so by the Requesting Party, take all possible measures in accordance with its own law to prosecute the person.
- (2) The surrender of a fugitive offender may also be refused if the Requested Party considers that:
 1. in the circumstances of the case, the surrender of the fugitive offender would be incompatible with humanitarian considerations in view of age, health or other personal circumstances; or

S-9

附表

第 503X 章

SCHEDULE

S-10

Cap. 503X

3. 移交該逃犯可引致被要求方違反其根據國際條約須履行的義務。

(3) 在根據本條拒絕移交要求前，被要求方須考慮可否在某些條件的規限下批准移交。如要求方接受在該等條件的規限下移交，則該方須遵守該等條件。

2. the surrender would prejudice essential interests of the Requested Party; or

3. the surrender of the fugitive offender may place that Party in breach of its obligations under international treaties.

(3) Before refusing a request for surrender under this Article the Requested Party shall consider whether surrender may be granted subject to conditions. If the Requesting Party accepts surrender subject to those conditions, it shall comply with them.

第八條

Article 8

要求及支持文件

The Request and Supporting Documents

(1) 根據本協定提出的要求以及就該等要求作出的回應，須經由中華人民共和國香港特別行政區的律政司及德意志聯邦共和國的聯邦司法部傳達。

(2) 要求須連同：

1. 對逃犯盡量準確的描述，以及任何其他可助確定他的身分、國籍及(如知道的話)所在的資料；
2. 要求移交所根據的罪行的陳述及詳情(但如案件事實在逮捕手令或定罪判決書中明顯可見，則屬例外)；
3. 訂立有關罪行的法律條文、可就該罪行判處的懲罰的陳述，以及(如適用的話)對於就該罪行提出檢控或強制執行判刑所施加的時限的說明。

(3) 為進行檢控而提出的移交某人的要求，除第(2)款所規定的文件外，亦須連同由要求方的法官或其他主管機關發出的逮捕手令副本；以及根據被要求方的法律，假若有關罪行是在被要求方的司法管轄權範圍之內犯的，足以把該人交付審判的證據。

(4) 如要求與已被定罪或被判刑的人有關，則除第(2)款所規定的文件外，要求亦須連同：

(1) Requests under this Agreement and responses thereto shall be transmitted through the Department of Justice of the Hong Kong Special Administrative Region of the People's Republic of China and the Federal Ministry of Justice of the Federal Republic of Germany.

(2) The request shall be accompanied by:

1. as accurate a description as possible of the fugitive offender, together with any other information which would help to establish his identity, nationality and, if known, his whereabouts;
2. a statement and particulars of the offence for which the surrender is requested unless the facts of the case are apparent from the warrant of arrest or the judgment of conviction;
3. the legal provisions creating the offence, a statement of the punishment which can be imposed therefore and, where applicable, a specification of the time bar that is imposed on the prosecution or on the enforcement of any sentence in respect of that offence.

(3) A request for the surrender of a person for the purpose of prosecution shall be accompanied, in addition to the documents provided for in

S-11
第 503X 章

附表

SCHEDULE

S-12
Cap. 503X

1. 定罪或判刑證明書副本；及
 2. 如該人已被定罪但未被判刑，有關法院就此發出的陳述及逮捕手令副本；或
 3. 如該人已被判刑，指明該項判刑屬可強制執行和顯示未服的刑期的陳述。
- (5) 如要求方提供的資料不足，以致被要求方未能根據本協定作出決定，被要求方可要求必需的補充資料，並可定出收取該等資料的期限。
- (6) 要求須翻譯成被要求方的法定語文。為支持要求而提交的所有文件，在被要求方的要求下，亦須翻譯成被要求方的法定語文。

第九條

認證

連同移交要求一併提供的文件如經認證，則須接納為證據。如文件經以下方式處理，即屬已經認證：

1. 由要求方的法官、裁判官或官員簽署或核證；及
2. 蓋上要求方的主管機關的正式印鑑。

paragraph (2), by a copy of the warrant of arrest issued by a judge or other competent authority of the Requesting Party, and by such evidence as, according to the law of the Requested Party, would justify his 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, in addition to the documents provided for in paragraph (2), it shall also be accompanied by:

1. a copy of the certificate of the conviction or sentence; and
2. 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
3. if the person was sentenced, a statement that the sentence is enforceable and indicating how much of the sentence has still to be served.

(5) 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.

(6) The request and, if so required by the Requested Party, all documents submitted in support of the request shall be translated into an official language of the Requested Party.

Article 9

Authentication

Documents accompanying a request for surrender shall be admitted in evidence if authenticated. A document is authenticated if it has been:

1. signed or certified by a judge, magistrate or an official of the Requesting Party; and

第十條

臨時逮捕

- (1) 在緊急情況下，經要求方的主管機關提出申請，被要求方可根據本身的法律臨時逮捕被尋求的人。
- (2) 申請須載有對被尋求的人的描述、要求移交該人的意向、針對該人的逮捕手令或定罪判決書經已存在的陳述及有關該手令或判決書的條款的陳述、就有關罪行可判處的最高懲罰或已作的判刑的陳述，以及指稱構成該罪行的作為或不作為的陳述(包括時間和地點)。
- (3) 臨時逮捕的申請須以書面提出，並可透過要求移交逃犯的相同途徑提出，或透過國際刑警組織提出。
- (4) 在被尋求的人被臨時逮捕起計 60 日屆滿時，如被要求方仍未接獲移交該人的要求及支持該要求的本協定第八條第(2)至(4)款所提及的文件，臨時逮捕便須終止。本條文並不妨礙在其後接獲移交該人的要求時，重新逮捕該人或將該人移交。

第十一條

有衝突的要求

締約一方如接獲有衝突的要求，關乎就相同罪行或不同罪行而要求移交同一人或(就德意志聯邦共和國政府而言)要求引渡同一人，

Article 10

Provisional Arrest

2. sealed with the official seal of the competent authority of the Requesting Party.
- (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 competent authorities of the Requesting Party.
 - (2) The application shall contain a description of the person sought, an indication of intention to request his surrender, a statement of the existence and terms of a warrant of arrest or a judgment of conviction against the person, a statement of the maximum punishment that can be imposed or the sentence that has been imposed for the offence, and a statement of the acts or omissions (including time and place) alleged to constitute the offence.
 - (3) The application for provisional arrest shall be in writing and may be forwarded through the same channels as a request for surrender 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 his arrest if the request for his surrender, supported by the documents referred to in paragraphs (2) to (4) of Article 8 of this Agreement, has not been received. This provision shall not prevent his re-arrest or surrender if the request for his surrender is received subsequently.

Article 11

Conflicting Requests

A Party which has received conflicting requests for the surrender or, in the case of the Government of the Federal Republic of Germany, extradition

S-15
第 503X 章

附表

SCHEDULE

S-16
Cap. 503X

則須在考慮所有情況後才作出決定，須考慮的情況包括所犯罪行的相對嚴重性及犯罪地點、各要求提出的日期、被尋求的人的國籍、任何適用的國際義務以及(尤其是)其後將該人轉移交的可能性或(就德意志聯邦共和國政府而言)將該人轉引渡的可能性。

of the same person, either in respect of the same offence or of different offences, shall make its decision having regard to all the circumstances, including the relative seriousness and place of commission of the offence, the respective dates of the requests, the nationality of the person sought and any applicable international obligations as well as, in particular, the possibility of subsequent re-surrender or, in the case of the Government of the Federal Republic of Germany, re-extradition of that person.

第十二條

Article 12

代表及費用

Representation and Costs

- (1) 被要求方須在其權力範圍內，盡一切合法方法在被要求方的司法機關及其他主管機關席前協助要求方。
- (2) 被要求方須負擔逮捕被要求移交的人的開支、羈留該人直至把他交予要求方任命的人的開支，以及因移交要求而須在被要求方的司法機關席前進行的任何法律程序所需的開支。
- (3) 要求方須負擔把該人由被要求方的司法管轄區解返所引致的開支。

- (1) The Requested Party shall, by all legal means within its power, assist the Requesting Party before the judicial and other competent authorities of the Requested Party.
- (2) The Requested Party shall bear the expenses of the arrest of the person whose surrender is requested, of the maintenance in custody of the person until he is handed over to a person nominated by the Requesting Party and in relation to any legal proceedings before the judicial authorities of the Requested Party arising out of the request for surrender.
- (3) The Requesting Party shall bear the expenses incurred in conveying the person from the jurisdiction of the Requested Party.

第十三條

Article 13

移送安排

Arrangements for Handover

- (1) 被要求方須將其就移交要求所作出的決定迅速通知要求方。被要求方如完全或部分拒絕要求，則須說明理由。
- (2) 如逃犯的移交已獲批准，被要求方的有關機關須於與要求方議定的日期，把該逃犯送往被要求方的司法管轄區之內一處對雙方都方便

- (1) The Requested Party shall promptly communicate its decision on the request for surrender to the Requesting Party. Reasons shall be given for any complete or partial refusal of the request.
- (2) If the surrender of the fugitive offender has been granted, he shall be taken by the authorities of the Requested Party on a date agreed with the

的離境地點。被要求方須通知要求方，該逃犯因移交要求而被拘留了多久。

(3) 除本條第(4)款另有規定外，如要求方並無在經締約雙方議定的日期接管有關的人，該人須在該日期後 30 日屆滿時，或在被要求方的法律所規定的較短期間屆滿時獲得釋放。此後，被要求方可拒絕就同一罪行移交該人。

(4) 締約一方如因非其所能控制的情況以致不能按協議移送或接收有關的人，即須通知締約另一方。在此情況下，締約雙方須另議新的移送日期，而本條第(3)款的規定將適用。

第十四條

暫緩或暫時移交

(1) 有關逃犯如因移交要求以外的罪行而正在被要求方的司法管轄區被起訴或受懲罰，其移交可予暫緩至法律程序結束及對其所判處的懲罰執行為止。

(2) 被要求方亦可暫時把被尋求的人移交予要求方以進行檢控。被如此移交的人須根據經締約雙方互相同意而決定的條件，由要求方羈押及在對他進行的法律程序結束後被交回被要求方。

第十五條

Requesting Party to a mutually convenient place of departure within the jurisdiction of the Requested Party. The Requested Party shall inform the Requesting Party of the length of time for which the fugitive offender was detained in connection with the request for his surrender.

(3) Subject to the provisions of paragraph (4) of this Article, if the Requesting Party does not take custody of the person on the date agreed by the two Parties, he shall be released on the expiry of thirty days thereafter or such lesser period as is provided by the law of the Requested Party. The Requested Party may subsequently refuse to surrender him for the same offence.

(4) If circumstances beyond its control prevent a Party from handing over or taking over the person as agreed, it shall notify the other Party. In that case, the two Parties shall agree on a new date for the handover, and the provisions of paragraph (3) of this Article shall apply.

Article 14

Deferred or Temporary Surrender

(1) If the fugitive offender is being proceeded against or is under punishment in the jurisdiction of the Requested Party for any offence other than the offence for which surrender is requested, his surrender may be deferred until the conclusion of the proceedings and the execution of any punishment awarded to him.

(2) Alternatively, the Requested Party may temporarily surrender the person sought to the Requesting Party for the purpose of prosecution. The person so surrendered shall be kept in custody by the Requesting Party and shall be returned to the Requested Party after conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Parties.

Article 15

移送財產

Handing Over of Property

(1) 在批准移交逃犯要求後，被要求方須應要求方的要求及在被要求方的法律許可的範圍內，把在其司法管轄區內找到的下列所有物品(包括金錢)移送要求方：

1. 可作為有關罪行的證據的物品；或
2. 有關逃犯因該罪行而取得並由他管有或在其後被發現的物品。

(2) 如有關物品可能會在被要求方的司法管轄區被檢取或沒收，被要求方可在與待決的刑事法律程序有關連的情況下暫時保留該物品，或在要求方保證歸還的條件下把該物品移送要求方。

(3) 此等規定不損害被要求方的權利，亦不損害被尋求的人以外的其他人的權利。如該等權利存在，要求方須應要求在有關法律程序結束後盡快把有關物品免費歸還被要求方。

(1) When a request for surrender of a fugitive offender is granted the Requested Party shall, at the request of the Requesting Party and in so far as its law allows, hand over to the Requesting Party all articles, including sums of money, found within its jurisdiction:

1. which may serve as proof of the offence; or
2. which have been acquired by the fugitive offender as a result of the offence and are in his possession or discovered subsequently.

(2) If the articles in question are liable to seizure or confiscation within the jurisdiction 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.

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

第十六條

Article 16

特定罪行的規定

Rule of Specialty

(1) 已被移交的逃犯，除因以下罪行外，不得因其在被移送前所犯的任何罪行而遭要求方起訴、判刑、拘留或以任何其他形式限制其人身自由：

1. 准予移交所根據的罪行；
2. 根據實質上與准予移交所按照的相同事實所定的罪行(不論如何描述)，但該罪行須是根據本協定可准予移交的罪行，並且該罪行可判處的刑罰不可重於就移交該人所根據的罪行可判處的刑罰；

(1) A fugitive offender who has been surrendered shall not be proceeded against, sentenced, detained or subjected to any other restriction of personal liberty by the Requesting Party for any offence committed prior to his handover other than:

1. the offence or offences in respect of which his surrender was granted;
2. an offence, however described, based on substantially the same facts as that in respect of which his surrender was granted,

S-21
第 503X 章

附表

SCHEDULE

S-22
Cap. 503X

3. 任何其他屬本協定可准予移交的罪行，而被要求方亦同意就該等罪行對該人作出處理，

但如該逃犯曾有機會行使權利離開其已被移交往的一方的司法管轄區，但在 40 日內沒有離開，或在離開後自願返回該司法管轄區，則屬例外。

- (2) 根據本條第(1)款第3項被要求同意的一方，可要求提交本協定第八條所述的任何文件或陳述，以及被移交的人就該事所作的陳述。

第十七條

轉移交或轉引渡

- (1) 已被移交的逃犯不得因其在被移交前所犯的罪行而被轉移交另一司法管轄區或(就德意志聯邦共和國政府而言)被轉引渡往另一司法管轄區，但以下情況除外：

1. 被要求方同意該項轉移交或轉引渡；或
2. 該逃犯曾有機會行使權利離開其已被移交往的一方的司法管轄區，但在 40 日內沒有離開，或在離開後自願返回該司法管轄區。

- (2) 根據本條第(1)款第1項被要求同意的一方，可要求提交本協定第八條所述的任何文件或陳述，以及被移交的人就該事所作的陳述。

provided such offence is one for which he could be surrendered under this Agreement, and provided further such offence is punishable by a penalty no more severe than the penalty for the offence for which he was surrendered;

3. any other offence for which surrender may be granted under this Agreement and in respect of which the Requested Party consents to his being dealt with;

unless he has first had an opportunity to exercise his right to leave the jurisdiction of the Party to which he has been surrendered and he has not done so within forty days or has voluntarily returned to that jurisdiction having left it.

- (2) A Party whose consent is requested under paragraph (1) number 3 of this Article may require the submission of any document or statement referred to in Article 8 of this Agreement, and a statement made by the surrendered person on the matter.

Article 17

Re-Surrender or Re-Extradition

- (1) A fugitive offender who has been surrendered shall not be re-surrendered or, in the case of the Government of the Federal Republic of Germany, re-extradited to another jurisdiction for an offence committed prior to his handover unless:

1. the Requested Party consents to such re-surrender or re-extradition; or
2. he has first had an opportunity to exercise his right to leave the jurisdiction of the Party to which he has been surrendered and has not done so within forty days or has voluntarily returned to that jurisdiction having left it.

第十八條

過境

締約一方可應書面要求而在其法律許可範圍內批准在其司法管轄區過境。批准在其司法管轄區過境的一方，可要求取得本協定第十條第(2)款所述的資料。要求過境的一方須負擔過境的有關開支。

第十九條

刑事法律程序的結果

要求方須應要求將針對已被移交的人提出的刑事法律程序的結果通知被要求方，並須將一份最後及有約束力的決定的副本送交被要求方。

第二十條

同意移交

- (1) 如有關的人經書面自願同意被移交予要求方，則被要求方可在其法律的規限下，無須經過進一步的正式程序而盡快移交該人。
- (2) 第十六及十七條的規定適用於根據本條被移交的人。

Article 18

Transit

(2) A Party whose consent is requested under paragraph (1) number 1 of this Article may require the submission of any document or statement referred to in Article 8 of this Agreement, and a statement made by the surrendered person on the matter.

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 10 of this Agreement. The Party requesting transit shall bear the expenses thereof.

Article 19

Result of Criminal Proceedings

The Requesting Party shall, upon request, inform the Requested Party of the result of the criminal proceedings against the person surrendered and shall send a copy of the final and binding decision to that Party.

Article 20

Surrender by Consent

- (1) If the person consents voluntarily and in writing to surrender to the Requesting Party, the Requested Party may, subject to its law, surrender the person as expeditiously as possible without further formal proceedings.
- (2) The provisions of Articles 16 and 17 shall apply to a person surrendered pursuant to this Article.

第二十一條

個人資料

Article 21

Personal Data

- (1) 在本條中，“個人資料”指關於某身分經確認或身分可確認的自然人的資料。
- (2) 基於本協定而傳送的個人資料，須為傳送該等資料的目的而使用，並須受傳送該等資料的一方所決定的條件所規限。此外，該等資料可由接收的一方為預防對其安全造成重大危險的目的而使用。如為其他目的而使用該等資料，則須得到傳送該等資料的一方事先同意。
- (3) 在締約雙方各自的法律的規限下，以下條文適用於傳送和使用為根據本協定提出的移交要求而傳送的個人資料——
1. 只傳送與要求有關的資料；
 2. 接收該等資料的一方須應要求而確認所接獲的資料及將使用該等資料的情況以及從中達成的結果，知會傳送該等資料的一方；
 3. 如傳送資料的一方覺得曾將不正確的資料傳送，或曾將不應傳送的資料傳送，則該方須通知已接收該等資料的一方，不得延擱，而已接收該等資料的一方須更正任何錯誤或將該等資料銷毀，不得延擱；
 4. 締約雙方須就資料的傳送及接收以可隨時檢索的形式備存紀錄；
 5. 締約雙方須保護個人資料，以防止未經授權的查閱、未經授權的更改及未經授權的發表。

- (1) In this Article “personal data” means any information about an identified or identifiable natural person.
- (2) Personal data transmitted on the basis of this Agreement shall be used for the purposes for which the data were transmitted and subject to such conditions as the transmitting Party determines. In addition such data may be used by the Party which has received it for the purpose of warding off substantial dangers to its security. Use of the data for other purposes requires the prior consent of the Party transmitting the data.
- (3) Subject to the respective law of each Party, the following provisions shall apply to the transmission and use of personal data transmitted for the purpose of a request for surrender under this Agreement:
1. only data that relates to the request shall be transmitted;
 2. upon request, the Party which has received the data shall identify the data received and inform the transmitting Party of the use made of the data and the results achieved therefrom;
 3. if it appears to the transmitting Party that incorrect data have been transmitted or that data have been transmitted that should not have been, the transmitting Party shall notify without delay the Party that has received the data; the Party that has received the data shall without delay rectify any errors or destroy the data;
 4. the Parties shall keep records in a readily retrievable form concerning the transmission and receipt of data;
 5. the Parties shall protect personal data against unauthorised access, unauthorised alteration and unauthorised publication.

第二十二條

解決爭議

任何因本協定的解釋、適用或履行而產生的爭議，如締約雙方無法自行達成協議，須通過外交途徑解決。

第二十三條

生效、中止及終止

- (1) 本協定將於締約雙方通知對方已各自履行為使本協定生效的規定的日期起計三十日後生效。較後發出的通知的接獲日期具決定性。
- (2) 本協定的條文適用於在本協定生效後提出的要求，而不論要求所述罪行的犯罪日期。
- (3) 本協定並無設定終止日期。締約一方可隨時通知締約另一方中止或終止本協定。在接獲有關的中止通知時，本協定即告中止。就終止而言，在接獲終止通知起計六個月後，本協定即告失效。

本協定于二零零六年五月二十六日在香港簽訂，原文一式兩份，每份均用中文、英文及德文寫成。各文本均具同等效力。

Article 22

Settlement of Disputes

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Parties are themselves unable to reach agreement.

Article 23

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 that their respective requirements for the entry into force of this Agreement have been complied with. The date of receipt of the second notification shall be decisive.
- (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) This Agreement shall be of unlimited duration. Each of the Parties may suspend or terminate this Agreement at any time by giving notification to the other. Suspension shall take effect on receipt of the relevant notification. In the event of termination the Agreement shall cease to have effect six months after the receipt of the relevant notification.

Done at Hong Kong, this 26th day of May 2006 in two originals in the Chinese, English and German languages, each text being equally authentic.

中華人民共和國香港特別行政區政府與德意志聯邦共和國政府
關於移交逃犯的協定的附錄

Appendix to the Agreement between the Government
of the Hong Kong Special Administrative Region
of the People's Republic of China and the
Government of the Federal Republic of
Germany for the Surrender of
Fugitive Offenders

第二條第(1)款所述罪行的描述

1. 謀殺或誤殺(包括刑事疏忽導致死亡);構成罪行的殺人;意圖謀殺而襲擊;
2. 惡意傷人;殘害他人;使人受到嚴重或實際身體傷害;襲擊致造成實際身體傷害;威脅殺人;不論是以武器、危險物質或其他方式蓄意或罔顧後果地危及生命;與不法傷害或損害有關的罪行;
3. 性罪行(包括強姦);性侵犯;猥褻侵犯;對兒童作出不法的性方面的作為;法定的性罪行;
4. 對兒童、有精神缺陷或不省人事的人作出嚴重猥褻行為;
5. 綁架;拐帶;非法禁錮;非法關禁;買賣或販運奴隸或其他人;劫持人質;
6. 刑事恐嚇;
7. 與危險藥物(包括麻醉藥、精神病科藥品、以及在非法製造麻醉藥及精神病科藥物時所用的先質及必需的化學品)有關的法律所訂的罪行;與販毒得益有關的罪行;
8. 以欺騙手段取得財產或金錢利益;盜竊;搶劫;入屋犯法(包括破啟及進入);盜用公款;勒索;敲詐;非法處理或收受財產;偽造帳目;與涉及欺詐的財產或財務事宜有關的任何其他罪行;與非法剝奪財產有關的法律所訂的任何罪行;
9. 破產法或破產清盤法所訂的罪行;

Description of offences referred to in Article 2 paragraph (1)

1. murder or manslaughter, including criminal negligence causing death, culpable homicide, assault with intent to commit murder
2. malicious wounding, maiming, inflicting grievous or actual bodily harm, assault occasioning actual bodily harm, threats to kill, intentional or reckless endangering of life whether by means of a weapon, a dangerous substance or otherwise, offences relating to unlawful wounding or injuring
3. offences of a sexual nature including rape, sexual assault, indecent assault, unlawful sexual acts on children, statutory sexual offences
4. gross indecency with a child, a mental defective or an unconscious person
5. kidnapping, abduction, false imprisonment, unlawful confinement, dealing or trafficking in slaves or other persons, taking a hostage
6. criminal intimidation
7. offences against the law relating to dangerous drugs including narcotics, psychotropic substances, precursors and essential chemicals used in the illegal manufacture of narcotics and psychotropic substances, offences relating to the proceeds of drug trafficking

S-31
第 503X 章

附表

SCHEDULE

S-32
Cap. 503X

10. 與公司有關的法律所訂的罪行(包括由高級人員、董事及發起人所犯的罪行)；
11. 與證券及期貨交易有關的罪行；
12. 與偽製有關的罪行；與偽造或使用偽造物件有關的法律所訂的罪行；
13. 與保護知識產權、版權、專利權或商標有關的法律所訂的罪行；
14. 與賄賂、貪污、秘密佣金及違反信託義務有關的法律所訂的罪行；
15. 偽證及唆使他人作偽證；
16. 與妨礙或阻礙司法公正有關的罪行；
17. 縱火；刑事損壞或損害(包括與電腦數據有關的損害)；
18. 與火器有關的法律所訂的罪行；
19. 與爆炸品有關的法律所訂的罪行；
20. 與環境污染或保障公眾衛生有關的法律所訂的罪行；
21. 叛變或於海上的船隻上所犯的任何叛變性的作為；
22. 牽涉船舶或飛機的海盜行為；
23. 非法扣押或控制飛機或其他運輸工具；
24. 危害種族或直接和公開煽惑他人進行危害種族；
25. 方便或容許任何人從羈押中逃走；
26. 與控制任何種類貨物的進出口或國際性資金移轉有關的法律所訂的罪行；
27. 走私；與違禁品(包括歷史及考古文物)的進出口有關的法律所訂的罪行；
28. 關乎出入境事宜的罪行(包括以欺詐方式取得或使用護照或簽證)；
29. 為了經濟收益而安排或方便任何人非法進入要求方的司法管轄區；

8. obtaining property or pecuniary advantage by deception, theft, robbery, burglary (including breaking and entering), embezzlement, blackmail, extortion, unlawful handling or receiving of property, false accounting, any other offence in respect of property or fiscal matters involving fraud, any offence against the law relating to unlawful deprivation of property
9. offences against bankruptcy law or insolvency law
10. offences against the law relating to companies including offences committed by officers, directors and promoters
11. offences relating to securities and futures trading
12. offences relating to counterfeiting, offences against the law relating to forgery or uttering what is forged
13. offences against the law relating to protection of intellectual property, copyrights, patents or trademarks
14. offences against the law relating to bribery, corruption, secret commissions and breach of trust
15. perjury and subornation of perjury
16. offence relating to the perversion or obstruction of the course of justice
17. arson, criminal damage or mischief including mischief in relation to computer data
18. offences against the law relating to firearms
19. offences against the law relating to explosives
20. offences against the law relating to environmental pollution or protection of public health
21. mutiny or any mutinous act committed on board a vessel at sea
22. piracy involving ships or aircraft
23. unlawful seizure or exercise of control of an aircraft or other means of transportation

S-33
第 503X 章

附表

SCHEDULE

S-34
Cap. 503X

30. 與賭博或獎券活動有關的罪行；
31. 與非法終止懷孕有關的罪行；
32. 拐帶、遺棄、扔棄或非法羈留兒童；涉及利用兒童的任何其他罪行；
33. 與賣淫及供賣淫用的處所有關的法律所訂的罪行；
34. 涉及非法使用電腦的罪行；
35. 與財政事宜、課稅或關稅有關的罪行，儘管被要求方的法律並沒有徵收與要求方同類的課稅或關稅，或沒有訂有與要求方同類的課稅、關稅或海關規例；
36. 與從羈押中非法逃走有關的罪行；監獄叛亂；
37. 重婚；
38. 與婦女及女童有關的罪行；
39. 與虛假或有誤導成分的商品說明有關的法律所訂的罪行；
40. 與管有或清洗從觸犯任何根據本協定可准予移交的罪行所獲的得益有關的罪行；
41. 阻止逮捕或檢控曾犯或相信曾犯根據本協定可准予移交的罪行的人；
42. 根據對締約雙方有約束力的多邊國際公約可准予移交有關的人的罪行；由對締約雙方有約束力的國際組織的決定所訂定的罪行；
43. 串謀犯欺詐罪或串謀詐騙；
44. 串謀犯或以任何種類的組織犯任何根據本協定可准予移交的罪行；
45. 協助、教唆、慫恿或促致他人犯任何根據本協定可准予移交的罪行，或(作為犯任何該等罪行的事實之前或之後的從犯)煽惑他人犯任何該等罪行，或企圖犯任何該等罪行；
46. 根據締約雙方的法律可准予移交的任何其他罪行。

24. genocide or direct and public incitement to commit genocide
25. facilitating or permitting the escape of a person from custody
26. offences against the law relating to the control of exportation or importation of goods of any type, or the international transfer of funds
27. smuggling, offences against the law relating to import and export of prohibited items, including historical and archaeological items
28. immigration offences including fraudulent acquisition or use of a passport or visa
29. arranging or facilitating for financial gain, the illegal entry of persons into the jurisdiction of the Requesting Party
30. offences relating to gambling or lotteries
31. offences relating to the unlawful termination of pregnancy
32. stealing, abandoning, exposing or unlawfully detaining a child, any other offences involving the exploitation of children
33. offences against the law relating to prostitution and premises kept for the purposes of prostitution
34. offences involving the unlawful use of computers
35. 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 that of the Requesting Party
36. offences relating to unlawful escape from custody, mutiny in prison
37. bigamy
38. offences relating to women and girls
39. offences against the law relating to false or misleading trade descriptions

註：#《中華人民共和國香港特別行政區政府與德意志聯邦共和國政府關於移交逃犯的協定》以中文、英文及德文簽訂，各文本均具同等真確性。特區政府保安局備有該協定的德文文本供參閱。

40. 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
41. impeding the arrest or prosecution of a person who has or is believed to have committed an offence for which surrender may be granted under this Agreement
42. offences for which persons may be surrendered under multilateral international conventions binding on the Parties, offences created as a result of decisions of international organizations which are binding on the Parties
43. conspiracy to commit fraud or to defraud
44. conspiracy to commit, or any type of association to commit, any offence for which surrender may be granted under this Agreement
45. aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit any offence for which surrender may be granted under this Agreement
46. any other offence for which surrender may be granted in accordance with the laws of both Parties

Note: # The Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Federal Republic of Germany for the Surrender of Fugitive Offenders was done in the Chinese, English and German languages, each text being equally authentic. The German text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.