

《逃犯(馬來西亞)令》
(第 503 章, 附屬法例 D)

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FUGITIVE OFFENDERS (MALAYSIA) ORDER
(Cap. 503 sub. leg. D)

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《逃犯(馬來西亞)令》

(第 503 章第 3 條)

FUGITIVE OFFENDERS (MALAYSIA) ORDER

(Cap. 503, section 3)

[2001 年 6 月 16 日] 2001 年第 136 號法律公告

[16 June 2001] L.N. 136 of 2001

1. (已失時效而略去)
2. **本條例中的程序在香港與馬來西亞之間適用**
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馬來西亞之間適用，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 82 號法律公告)

1. (Omitted as spent)
2. **Procedures in Ordinance to apply between Hong Kong and Malaysia**
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 Malaysia subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.
(L.N. 82 of 2007)

《逃犯(指定英聯邦國家)令》

Fugitive Offenders (Designated Commonwealth Countries) Order

3. **相應修訂**
 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“Malaysia”。

3. **Consequential Amendments**
 3. Schedule amended
The Schedule to the Fugitive Offenders (Designated Commonwealth Countries) Order (App. I, p. Z1) is amended by repealing “Malaysia”.

附表 1

[第 2 條]
(2007 年第 82 號法律公告)

香港政府和馬來西亞政府的 移交逃犯協定

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，
與馬來西亞政府，為訂立相互移交逃犯規定，協議如下：——

第一條

移交逃犯的義務

締約雙方同意，在本協定的規限下，把任何被指控或裁定在締約
一方的管轄區內犯第二條所載罪行而在締約另一方的管轄區內被發現
的人移交給對方。

第二條

罪行的性質

- (1) 凡觸犯屬下列所描述的任何罪行的逃犯，其罪行根據締約雙
方的法律規定屬可判處監禁不少於一年或更嚴厲刑罰者，均
得准予移交：
- (i) 謀殺；
 - (ii) 誤殺或不構成謀殺的其他殺人罪；
 - (iii) 協助、教唆、慫使或促致他人自殺；

Schedule 1

[s. 2]
(L.N. 82 of 2007)

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

The Government 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 Malaysia;

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

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, being accused or convicted of an
offence under Article 2 committed within the jurisdiction of the one Party,
is found within the jurisdiction of the other Party.

ARTICLE 2

- (iv) 傷人、嚴重傷害他人身體、侵犯他人致造成身體傷害；
- (v) 強姦；
- (vi) 猥褻侵犯或使用刑事暴力意圖施暴；
- (vii) 根據與婦女和少女有關的法律可予判刑的罪行；
- (viii) 對兒童作嚴重猥褻行為；
- (ix) 拐帶及綁架；
- (x) 非法拘禁；
- (xi) 奴隸或其他販賣人口；
- (xii) 犯有關危險藥物包括毒品和精神藥物的法律的罪行；
- (xiii) 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；
- (xiv) 詐騙、刑事違反信託或藉欺騙取得財物或金錢利益；
- (xv) 入屋犯法，盜竊及處理或接收贓物；
- (xvi) 搶劫；
- (xvii) 敲詐或勒索；
- (xviii) 盜用公款或刑事盜用款項；
- (xix) 刑事違反信託；
- (xx) 欺詐、串謀欺詐或欺騙；
- (xxi) 犯刑事串謀罪行；
- (xxii) 犯破產法律的罪行；
- (xxiii) 犯有關公司和證券的法律的罪行；
- (xxiv) 犯與財政事項、稅項或關稅有關的罪行，儘管被要求並沒有徵收同樣的稅項或關稅或沒有如要求方法律訂定同樣的稅項、關稅或海關規例；
- (xxv) 犯贗製、偽造及有關罪行；
- (xxvi) 犯有關賄賂和貪污的法律的罪行；
- (xxvii) 偽證；企圖妨礙司法公正；

NATURE OF OFFENCES

- (1) Surrender of fugitive offenders 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 for not less than one year or by a more severe penalty;
- (i) murder;
 - (ii) manslaughter or culpable homicide not amounting to murder;
 - (iii) aiding, abetting, counselling or procuring suicide;
 - (iv) wounding, inflicting grievous bodily harm; assault occasioning actual bodily harm;
 - (v) rape;
 - (vi) indecent assault or use of criminal force with intent to outrage modesty;
 - (vii) an offence punishable under the laws relating to women and girls;
 - (viii) gross indecency with a child;
 - (ix) abduction and kidnapping;
 - (x) false imprisonment;
 - (xi) dealing in slaves or other persons;
 - (xii) an offence against the law relating to dangerous drugs including narcotics and psycho-tropic substances;
 - (xiii) an offence relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted;
 - (xiv) cheating, criminal breach of trust or obtaining property or pecuniary advantage by deception;

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附表 1

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- (xxviii) 刑事損壞，包括縱火或放火為害；
- (xxix) 犯有關槍械或彈藥的法律的罪行；
- (xxx) 犯有關爆炸品的法律的法律的罪行；
- (xxxix) 弄沉或毀壞海上船隻；在公海船舶上意圖害命或意圖嚴重傷害他人身體而侵犯他人；兩名或以上人在公海船舶上反抗或串謀反抗船長的權力；
- (xxxixii) 非法侵佔或控制航空器；
- (xxxixiii) 妨礙逮捕或檢控已犯或相信已犯根據本協定屬可准予移交的罪行的人士，而根據締約雙方的法律，該罪行屬可判處監禁五年或以上者；
- (xxxixiv) 走私；
- (xxxixv) 海盜行為；
- (xxxixvi) 企圖或串謀或教唆或慫使犯或參與任何根據本協定可准予移交的罪行；
- (xxxixvii) 根據對締約雙方有約束力的任何國際公約可將逃犯移交的罪行。
- (2) 倘若要求移交逃犯的目的是為了執行一項判刑，而該項判刑是監禁，則亦須符合另一項規定，即餘下未服滿的監禁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根據締約雙方的法律屬可判罰的罪行時，須把被要求移交的人被指稱的作為或不作為全部一起考慮，而無須就要求方法律所規定的有關的罪行構成因素來衡量。
- (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。

- (xv) housebreaking or burglary, theft and handling or receiving stolen property;
- (xvi) robbery;
- (xvii) extortion or blackmail;
- (xviii) embezzlement or criminal misappropriation;
- (xix) criminal breach of trust;
- (xx) fraud, conspiracy to commit fraud or to defraud;
- (xxi) an offence of criminal conspiracy;
- (xxii) an offence against bankruptcy laws;
- (xxiii) an offence against the laws relating to companies and securities;
- (xxiv) an offence relating to fiscal matter, 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;
- (xxv) counterfeiting, forgery and related offences;
- (xxvi) an offence against the laws relating to bribery and corruption;
- (xxvii) perjury; attempting to pervert the course of justice;
- (xxviii) criminal damage, including arson or mischief by fire;
- (xxix) an offence against the law relating to firearms or ammunition;
- (xxx) an offence against the law relating to explosives;
- (xxxix) sinking or destroying a vessel at sea; assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm; revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master;
- (xxxixii) unlawful seizure or exercise of control of an aircraft;

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附表 1

Schedule 1—ARTICLE 2

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Cap. 503D第三條國民的移交

- (1) 馬來西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，以考慮對該人進行檢控。

第四條審判權

- (1) 倘被要求方認為其本身對逃犯所犯的罪行具有審判權，可拒絕移交逃犯。
- (2) 倘被要求方按本條第(1)款所述情況拒絕移交逃犯，則須將該個案呈交己方主管當局以便根據當地法律對該逃犯提起訴訟。

第五條暫時及延遲移交逃犯

- (1) 倘被要求移交者正按照被要求方的法律服刑，被要求方可暫時把該人移交予要求方進行檢控。
- (2) 倘若被要求移交的人正在被要求方接受檢控，——
 - (a) 一旦該人在審訊之後被判無罪釋放，被要求方須隨即進行把他移交的程序；

- (xxxiii) 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 and which is punishable according to the laws of both Parties by imprisonment for a period of five years or more;
- (xxxiv) smuggling;
- (xxxv) piracy;
- (xxxvi) an attempt or conspiracy or instigation or incitement to commit, or participation in, any offence for which surrender may be granted under this Agreement;
- (xxxvii) an offence for which fugitive offenders may be surrendered under any International Convention binding on both Parties.

- (2) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment at least six months remains 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 purpose 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 time it was committed and an offence against the law of the requested Party at the time the request for surrender is received.

(b) 一旦該人被定罪和被判入獄，被要求方可隨即進行把他移交的程序，並於該人被監禁期間，暫時把他移交要求方，以便進行檢控。

(3) 當某人被暫時移交時，須按照經雙方同意而決定的條件，由要求方把他拘留，並在對他進行的訴訟完成後交回被要求方。

第六條

移交逃犯的限制

(1) 如被要求方有充分理由相信下述事項，則不得移交逃犯：

- (a) 該逃犯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該逃犯的種族、宗教、國籍或政治意見而檢控或懲罰該逃犯；或
- (c) 該逃犯一經交回，可能因其種族、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) 就本協定而言，下列罪行不會被視為屬於政治性質：

- (a) 謀殺馬來西亞元首或其他蓄意針對馬來西亞元首的罪行，或就香港而言，謀殺負責香港外交事務的政府的元首，或其他蓄意針對他的罪行，或無論是就馬來西亞或負責香港外交事務的國家而言，謀殺國家元首的直系親屬或其他蓄意針對他們的罪行；

ARTICLE 3

SURRENDER OF NATIONALS

- (1) The Government of Malaysia 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

JURISDICTION

- (1) Surrender may be refused for an offence which is regarded as one over which the requested Party has jurisdiction.
- (2) If surrender is refused pursuant to paragraph (1), the requested Party shall submit the case to its competent authorities with a view to causing the fugitive offender to be proceeded against under its laws.

ARTICLE 5

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- (b) 任何根據對締約雙方都有約束力的國際協定是不得被視為屬於政治性質的罪行；
- (c) 企圖或串謀觸犯或參與任何上述罪行。
- (3) 如根據任何一方的法律，被要求移交者不能因有關罪行被起訴或懲罰，就該罪行而提出移交逃犯的要求亦須被拒絕。

第七條

移交逃犯的程序及提供文件

- (1) 在香港有關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) 提出要求時，須一併提供下列資料：
 - (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的身分和國籍的資料，如有可能，亦須提供其所在地點；
 - (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，和法律規定就該項罪行提起訴訟或執行所判處的任何懲罰的時限的詳細說明。
- (3) 如逃犯被控犯罪而未被定罪，要求方須隨同移交要求提交由要求方的法官、裁判官或其他主管當局發出的逮捕令，以及任何證據，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。

TEMPORARY AND DEFERRED SURRENDER

- (1) If the request for surrender is made in respect of a person who is serving a sentence in accordance with the laws of the requested Party, that Party may temporarily surrender such person to the requesting Party for the purpose of prosecution.
- (2) If the request for surrender is made in respect of a person who is being proceeded against by the requested Party, the requested Party—
 - (a) shall proceed with the proceedings for surrender after the prosecution against such person has been concluded and he is acquitted; or
 - (b) may, if such person is convicted and sentenced to imprisonment proceed with the proceedings for surrender and upon his committal, temporarily surrender that person to the requesting Party for the purpose of prosecution.
- (3) Where a person is temporarily surrendered, he shall be kept in custody by the requesting Party and be returned to the requested Party after the conclusion of the proceedings against him, in accordance with conditions to be determined by agreement of the Parties.

ARTICLE 6

RESTRICTIONS ON SURRENDER

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附表 1

- (4) 如該項移交要求涉及已被定罪和判刑的人或已被定罪但尚未判刑的人，則須一併提交下列文件：
- (a) 如涉及已被定罪和判刑的人，須提交定罪和判刑證明書及顯示判刑尚有多少部分仍未執行的聲明書；及
- (b) 如涉及已被定罪但尚未判刑的人，須提交由有關的法院發出的證明該人已被定罪但尚未判刑的聲明書，及有關的逮捕令。

第八條

暫時逮捕

- (1) 在緊急情況下，經要求方的主管當局提出申請，被要求方可以根據本身的法律，暫時逮捕被要求移交者。要求方要求暫時逮捕的申請書，必須表明要求移交該逃犯的意圖，並須聲明該方已發出拘捕該人的令狀，或聲明法庭已判定該人有罪。如有其他有關資料，亦須一併提出（有關資料是指假如有關的罪行是在被要求方境內發生，或假如逃犯是在被要求方境內判定有罪，被要求方須用以支持發出拘捕令的資料）。
- (2) 要求暫時逮捕的申請，可通過提出要求移交逃犯的相同途徑提出，或通過國際刑警組織提出。
- (3) 如被要求移交者被暫時逮捕滿四十五天，而被要求方仍未接獲把他移交的要求，暫時逮捕期便須停止。但如其後接獲把他移交的要求，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。

第九條

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- (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 his return (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 or political opinions; or
- (c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
- (2) For the purposes of this Agreement, the following offences shall not be considered to be of a political character:
- (a) murder or other wilful crime against the person of the Head of State of Malaysia, or, in the case of Hong Kong, the Head of State whose government is responsible for its foreign affairs, or in either case of a member of the Head of States's immediate family;
- (b) any offence which is not to be regarded as an offence of a political character by virtue of an international agreement binding on both Parties;
- (c) an attempt or conspiracy to commit or participate in, any such offences.
- (3) Surrender for an offence shall also be refused if the person whose surrender is sought cannot under the laws of either Party be prosecuted or punished for that offence.

補充證明文件

- (1) 如被要求方認為要求方所提供的證明文件不足，未能符合本協定的規定，被要求須要求對方提交所需的補充證明文件。被要求方可規定提交該等文件的期限，並可在要求方提出理由申請延期時給予合理的延期。
- (2) 如被要求移交者已被拘留，而所提供的補充資料並不足夠，或沒有在被要求方指定期限內取得，該人可被釋放。在這種情況下釋放並不妨礙在其後收到補充證明文件時重新逮捕及移交該人。

第十條同時要求

如締約一方與其他一個或多個與締約另一方有移交逃犯安排的國家同時向該另一方提出移交逃犯的要求，被要求方須考慮所有有關情況，並在其法律容許的範圍內作出決定。被要求方須考慮的情況包括：被要求方與各要求方之間所存在的協議就這方面的規定、收獲各移交要求的先後次序、涉及的罪行的相對嚴重性。被要求方如決定把逃犯移交其他國家，須向締約另一方說明其作出決定的理由。

第十一條文件的可接受性及確認

被要求方當局，在任何移交逃犯程序中，對任何在要求方的管轄區內所作出的宣誓筆錄供詞或確認書、令狀、任何上述筆錄供詞、確認書或令狀的副本和任何定罪或判刑證明書，如經下列方式確認，得接受作為證據，即：

ARTICLE 7PROCEDURES AND DOCUMENTATION FOR SURRENDER

- (1) The request for surrender of a fugitive offender shall be made to 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 his identity and nationality including, if known, his location;
 - (b) a statement and particulars of the offence for which surrender is requested;
 - (c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and a specification of any time limit that is imposed on the institution of proceedings, or on the execution of any punishment imposed, for that offence.
- (3) If the request relates to an accused person, it shall also be accompanied by a 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 his committal for trial if the offence had been committed within the jurisdiction of the requested Party.

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第 503D 章

附表 1

Schedule 1—ARTICLE 8

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Cap. 503D

- (a) 就令狀而言，經法官、裁判官或其他主管機關簽署；就其他正本文件而言，經法官、裁判官或其他主管機關證明為正本文件；就副本而言，經法官、裁判官或其他主管機關核證為正本文件的真確副本；和
- (b) 經證人宣誓證明或經要求方主管當局蓋上官方印章；
- 或經被要求方法律認可的任何其他方式確認。

第十二條

翻譯本

如果被要求方提出要求，要求方須為移交逃犯要求所附所有文件提供經適當確認而所用語言可被被要求方接受的譯本。本條文並不影響要求方所提交未經翻譯文件的可接受性。

第十三條

代表及開支

- (1) (a) 如果要求方提出要求，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協助作出必要的安排。
- (b) 如果要求方自行安排法律代表和協助，要求方須承擔一切所引致的訟費。
- (c) 如開支龐大或屬特別性質，締約雙方須進行磋商，以決定如何支付該項開支。

- (4) If the request relates to a person already convicted and sentenced, or convicted but not yet sentenced, it shall also be accompanied by:
- (a) in respect of a person convicted and sentenced, a certificate of the conviction and sentence and a statement showing how much of the sentence has not been carried out; and
- (b) in respect of a person convicted but not yet sentenced, a statement to that effect by the appropriate court and the warrant of arrest.

ARTICLE 8

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 competent authorities of the requesting Party. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, 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 been 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).

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附表 1

Schedule 1—ARTICLE 9

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- (2) 除本條第 (1)(b) 及 (1)(c) 款另有規定外，在被要求方的管轄區內為移交而引致的開支，均由被要求方負擔。
- (3) 把逃犯送往要求方管轄區內的開支須由要求方承擔。

- (3) The provisional arrest of the person sought shall be terminated upon the expiration of forty- five days from the date of his arrest if the request for his surrender shall not have been received. This provision shall not prevent the re-arrest or surrender of the person sought if the request for his surrender is received subsequently.

第十四條

表面證據規則及移交條件

- (1) 只有在根據被要求方的法律證實有足夠證據證明，假如有關罪行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同一人，始須把有關逃犯移交。
- (2) 如果決定移交逃犯，被要求方當局須把被要求移交者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按被要求方法律指定期限屆滿時獲得釋放，此後被要求方可拒絕因同一罪行把他移交。
- (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。

第十五條

同意移交

ARTICLE 9

ADDITIONAL DOCUMENTATION

- (1) If the requested Party considers that the documents furnished in support of the request for the surrender of a person sought are not sufficient to fulfill the requirements of this Agreement, that Party shall request the submission of necessary additional documents. The requested Party may set a time limit for the submission of such documents, and may grant a reasonable extension of the time limit upon application of the requesting Party setting forth reasons therefor.
- (2) If the person sought is in custody and the additional documents submitted are not sufficient, or if such documents are not received within the period specified by the requested Party, that person may be discharged from custody. Such discharge shall not prejudice the rearrest and the surrender of the person if the additional documents are subsequently received.

ARTICLE 10

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附表 1

Schedule 1—ARTICLE 11

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- (1) 如被要求移交者同意返回要求方的管轄區，而在他表示同意之前，已直接獲得司法主管當局通知根據被要求方的法律表示同意的後果，則被要求方可不循正式移交程序把他移交。
- (2) 根據本條把逃犯移交，須受第十七條規限。

第十六條移交財產

- (1) 在被要求方法律容許的情況下，如逃犯在被逮捕時所擁有的財物，可作為獲准移交所涉及罪行的證據，被要求方可檢取並向要求方移交所有這些財物。
- (2) 如有關財物可在被要求方的管轄區內遭檢取或充公，被要求方可為未決的訴訟暫時保留該等財物或在會獲歸還的條件下把該等財物交給要求方。
- (3) 此等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，要求方須於訴訟程序結束後盡快歸還該等財物，不收取任何費用。

第十七條指定罪行規則

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，但因下列罪行除外：

- (a) 下令移交該逃犯所根據的罪行；

CONCURRENT REQUESTS

If the surrender of a fugitive offender is requested concurrently by one of the Parties and a State or States with which Malaysia 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 order of the receipt of the requests, the relative seriousness and place of commission of the offences, the nationality of the person sought and the possibility of subsequent surrender to another State, and shall furnish the other Party with information justifying its decision in the event of surrender of the fugitive to another jurisdiction.

ARTICLE 11ADMISSIBILITY AND AUTHENTICATION

The authorities of the requested Party shall admit as evidence, in any proceedings for the surrender of a fugitive offender, a sworn deposition or affirmation taken in the jurisdiction of the requesting Party, any warrant, any copy of any such deposition, affirmation or warrant, and any certificate of a conviction or sentence if it is authenticated:

- (a) in the case of a warrant by being signed, or in the case of any other original document by being certified, by a judge, magistrate or other competent authority of the requesting Party, or in the case of a copy by being so certified to be a true copy of the original; and
- (b) either by the oath of some witness or by being sealed with the official seal of the competent authority of the requesting Party;

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第 503D 章

附表 1

Schedule 1—ARTICLE 12

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Cap. 503D

- (b) 該項移交的有關資料所顯示的，與要求移交所根據的罪行同類但性質較為輕微的罪行，該較輕微的罪行可用任何方式形容，但必須是依照本協定可據以把逃犯移交的罪行；
- (c) 該逃犯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逃犯接受處置；

但如逃犯曾有機會離開他被移交往的一方而在他可自由離開該方後四十天內沒有離開，或他在離開該方後重返該方，則不在此限。

第十八條

轉移交

已被移交的逃犯，不得因在他返回香港或馬來西亞(視乎情況而定)之前所犯的罪行而遭轉移交給另一管轄區接受審訊或懲罰。除非：

- (a) 在轉移交前已獲得被要求方有關當局的同意；或
- (b) 該逃犯曾有機會離開其已被移交往的一方的管轄區，但在獲得自由離開該管轄區後二十一天內仍未離開，或在離開該管轄區後重返該地。

第十九條

拒絕移交的其他理由

or in any such other manner as may be permitted by the law of the requested Party.

ARTICLE 12

TRANSLATION

The requesting Party shall on request provide an authenticated translation of all documents relating to the request into a language acceptable to the requested Party. This provision shall not affect the admissibility of an untranslated document furnished by the requesting Party.

ARTICLE 13

REPRESENTATION AND COSTS

- (1) (a) The requested Party shall, if asked by the requesting Party, make the necessary arrangements for that Party's legal representation and assistance in any proceedings arising out of a request for the surrender of a fugitive offender.
- (b) In the event that the requesting Party arranges its own legal representation and assistance, it shall bear any costs incurred.
- (c) Where expenses are of a substantial or extraordinary nature, the Parties shall consult to determine the manner in which the costs shall be borne.

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附表 1

Schedule 1—ARTICLE 14

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- (1) 在按照本協定的條款要求移交任何人士時，如被要求方的有關當局認為基於下列原因，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：
- (a) 該人被控告或判定的罪行性質輕微；或
- (b) 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
- (c) 對該人的控告並非真誠地為司法公正而作出；或
- (d) 基於合理人道理由。
- (2) 被要求方也可在下列情況拒絕移交逃犯：
- (a) 如被要求方為馬來西亞政府，而該項移交會嚴重影響馬來西亞政府在防務或外交事務方面的利益；
- (b) 如被要求方為香港政府，而該項移交會嚴重影響負責香港外交事務的政府在防務或外交事務方面的利益。

第二十條

過境

- (1) 並非本協定締約方的國家在把一名人士移交給其中一締約方時，如須經過締約另一方的領土，該締約方可批准該人過境。過境要求須通過有關當局提出，締約一方會不時知會締約另一方何謂有關當局。在傳達這項要求時，可利用國際刑警組織的設施。這項要求須包括被運送的人的描述，以及案件實情的簡述。過境的人在過境期間可被羈留。

- (2) Subject to the provisions of paragraphs (1)(b) and (1)(c) of this Article, expenses incurred in the jurisdiction of the requested Party by reason of surrender shall be borne by that Party.
- (3) The cost of sending a fugitive offender to the jurisdiction of the requesting Party shall be borne by that Party.

ARTICLE 14

PRIMA FACIE RULE AND TERMS OF SURRENDER

- (1) 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 offence of which he is accused had been committed in the territory of the requested Party or to prove that he is the identical person convicted by the courts of the requesting Party.
- (2) If a fugitive offender is to be surrendered, the person sought 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, if the requesting Party does not take custody of the person sought on the date agreed by the two Parties, he shall be released on the expiry of such period as is specified under the law of the requested Party, and the requested party may subsequently refuse to surrender him for the same offence.

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Schedule 1—ARTICLE 15

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- (2) 如以飛機運送，並且沒有預定在締約一方的領土著陸，便毋須得到該締約方的批准。如未經預定而要在締約一方的領土著陸，該締約方可要求締約另一方按第(1)款的規定提出過境要求。該締約方須扣押將被運送的人士，直至收到另一方的過境要求和實行過境為止，但該項過境要求須在非預定著陸後 96 小時內收到。

第二十一條

生效及終止

- (1) 本協定將於締約雙方以書面通知對方已各自作妥為使本協定生效的安排之日後三十天開始生效。
- (2) 締約一方可隨時通過提出移交逃犯要求的相同途徑，通知締約另一方終止本協定。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，經其各自政府正式授權，已在本協定上簽字為證。

本協定於一九九五年一月十一日在香港簽訂，每份均用馬來西亞文、中文及英文寫成，各文本均為具有同等效力的真確本。

- (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 to a new date for surrendered and the provisions of paragraph (3) of this Article shall apply.

ARTICLE 15

SURRENDER BY CONSENT

- (1) If the person sought consents to return to the jurisdiction of the requesting Party after personally being advised by a competent judicial authority of the effect of such consent under the law of the requested Party, the requested Party may surrender him without formal surrender proceedings.
- (2) The surrender of a person pursuant to this Article shall be subject to Article 17.

ARTICLE 16

SURRENDER OF PROPERTY

- (1) To the extent permitted under its law, the requested Party may seize and surrender to the requesting Party all property (including sums of money) found in the possession of the fugitive offender at the time of his arrest which may serve as proof of the offence in respect of which surrender is granted.

- (2) If the property in question is liable to seizure or confiscation within the jurisdiction of the requested Party the latter may, in connection with pending proceedings, temporarily retain it or hand it over on condition it is 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 property shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

ARTICLE 17

RULE OF SPECIALITY

A fugitive offender who has been surrendered shall not be proceeded against, sentenced or kept in custody with a view to the carrying out of a sentence for any offence committed prior to his surrender other than:

- (a) the offence in respect of which his return is ordered;
- (b) any lesser offence, however described, disclosed by the facts in respect of which his return was ordered provided such an offence is an offence for which he 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 may consent to his being dealt with;

unless he has first had an opportunity to leave the jurisdiction of the Party to which he has been surrendered and he had not done so within forty days

of his having been free to leave the jurisdiction or has returned to that jurisdiction having left it.

ARTICLE 18

RESURRENDER

A fugitive offender who has been surrendered shall not be resurrendered to another jurisdiction for trial or punishment for any offence that is committed before his return to Hong Kong or Malaysia as the case may be, unless

- (a) the consent of the appropriate authority of the requested Party has been obtained; or
- (b) he has first had an opportunity to leave the jurisdiction of the Party to which he has been surrendered and he had not done so within twenty one days of his having been free to leave the jurisdiction or has returned to that jurisdiction having left it.

ARTICLE 19

ADDITIONAL GROUNDS OF REFUSAL

- (1) The surrender of any person sought under the terms of this Agreement may be refused if it appears to the appropriate authority of the requested Party that:
 - (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or

- (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large as the case may be; or
 - (c) because the accusation against him 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 him.
- (2) The requested Party may also refuse to surrender a fugitive offender:
- (a) where the Government of Malaysia is the requested Party, where the surrender would significantly affect the interests of the Government of Malaysia in matters of defence or foreign affairs;
 - (b) where the Government of Hong Kong is the requested Party, where the surrender would significantly affect the interests of Government responsible for Hong Kong's foreign affairs in matters of defence or foreign affairs.

ARTICLE 20

TRANSIT

- (1) Either Party may authorise transit through its area of a person surrendered to the other Party by a State not party to this Agreement. A request for transit shall be made through an authority to be notified from time to time by one Party to the other. The facilities of the International Criminal Police Organisation

(INTERPOL) may be used to transmit such a request. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be kept in custody during the period transit.

- (2) No authorisation is required where air transportation is used and no landing is scheduled in the area of a Party. If an unscheduled landing occurs in the area of a Party, that Party may require the other Party to make a request for transit as provided in paragraph (1). That Party shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

ARTICLE 21

ENTRY INTO FORCE 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) Each of the Parties may terminate the Agreement at any time by giving notice to the other through the same channels as a request for the surrender of a fugitive offender. In that event the Agreement shall cease to have effect six months after the receipt of notice.

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

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附表 1

Schedule 1—ARTICLE 21

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Done at Hong Kong this eleventh day of January One thousand nine hundred and ninety five in Bahasa Malaysia, in the Chinese and English languages, each text being equally authentic.

附表 2

[第 2 條]

作為 1995 年 1 月 11 日在香港簽訂的 《香港政府和馬來西亞政府的 移交逃犯協定》的補充 的議定書

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訂立本議定書，與馬來西亞政府（以下提述為“本議定書締約雙方”），

謹記於 1995 年 1 月 11 日在香港簽訂的《香港政府和馬來西亞政府的移交逃犯協定》；

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上述協定繼續適用於香港特別行政區，並已確定承認該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馬來西亞政府訂立的協定；

為通過上述協定的條文的補充條文，以促使更有效地施行該協定，

協議如下：

第 I 條

Schedule 2

[s. 2]

PROTOCOL SUPPLEMENTARY TO THE AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF MALAYSIA FOR THE SURRENDER OF FUGITIVE OFFENDERS, DONE AT HONG KONG ON 11 JANUARY 1995

The Government of the Hong Kong Special Administrative Region of the People's Republic of China, having been duly authorised to conclude this Protocol by the Central People's Government of the People's Republic of China and the Government of Malaysia (hereinafter referred to as "the Parties to this Protocol"),

Recalling the Agreement between the Government of Hong Kong and the Government of Malaysia for the surrender of fugitive offenders, done at Hong Kong on 11 January 1995;

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;

Noting that the Government of the People's Republic of China has confirmed the continued application of the said Agreement to the Hong Kong Special Administrative Region and its recognition as an

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第 503D 章

附表 2

Schedule 2—Article 1

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Cap. 503D

本議定書是作為 1995 年 1 月 11 日在香港簽訂的《香港政府和馬來西亞政府的移交逃犯協定》(以下提述為“《協定》”)的補充，而《協定》及本議定書須作為單一份文書一併閱讀和解釋。

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 Malaysia;

第 II 條

《協定》第二條第 (1) 款須予修訂 ——

- (a) 在段首中，刪除“不少於一年”而代以“多於 12 個月”；
- (b) 在第 (viii) 項中，刪除“兒童作”而代以“兒童、有精神缺陷或不省人事的人作出”；
- (c) 在第 (xi) 項中，刪除所有字句而代以“買賣或販運奴隸或其他人；”；
- (d) 在第 (xi) 項之後加入：
 - “(xia) 劫持人質；
 - (xib) 刑事恐嚇；”；
- (e) 在第 (xii) 項中，刪除“包括毒品和精神藥物”而代以“(包括麻醉藥及精神病科藥品以及在非法製造麻醉藥及精神病科藥品時所用的先質及必需的化學品)”；
- (f) 在第 (xxii) 項中，刪除“律”而代以“或破產清盤法”；
- (g) 在第 (xxiii) 項中，刪除“和證券”而代以“、證券及期貨交易”；
- (h) 在第 (xxiii) 項之後加入：
 - “(xxiiiia) 犯涉及非法使用電腦的罪行；”；
- (i) 在第 (xxv) 項之後加入：
 - “(xxva) 犯與保護知識產權、版權、專利權或商標有關的法律所訂的罪行；
 - (xxvb) 犯與出入境事宜有關的法律所訂的罪行(包括與護照及簽證有關的罪行)；
 - (xxvc) 為了經濟收益而安排或方便任何人非法進入某司法管轄區；

Desiring to adopt provisions supplementary to those of the said Agreement to promote more effective implementation of the said Agreement,

Have agreed as follows:

Article I

This Protocol supplements the Agreement between the Government of Hong Kong and the Government of Malaysia for the surrender of fugitive offenders, done at Hong Kong on 11 January 1995 (hereinafter referred to as “the Agreement”) and the Agreement and this Protocol shall be read and interpreted together as one single instrument.

Article II

Article 2(1) of the Agreement shall be amended—

- (a) in the chapeau, by replacing the words “not less than one year” by the words “more than 12 months”;
- (b) in item (viii), by adding after the word “child” the words “, a mental defective or an unconscious person”;
- (c) in item (xi), by inserting after the word “dealing” the words “or trafficking”;
- (d) by inserting after item (xi) the following items:
 - “(xia) taking a hostage;

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附表 2

Schedule 2—Article II

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- (xxvd) 犯與賭博、投注或獎券活動有關的法律所訂的罪行；”；
- (j) 在第 (xxviii) 項中，刪除“為害”而代以“造成損害或與電腦數據有關的損害”；
- (k) 在第 (xxxii) 項中，刪除在“非法”之後的所有字句，而代以“扣押或控制飛機或其他運輸工具；”；
- (l) 在第 (xxxv) 項中，在“海盜”之前加入“牽涉船舶、飛機或其他運輸工具的”；
- (m) 刪除第 (xxxvi) 項而代以：
“(xxxvi) 企圖、串謀、煽動或煽惑犯任何根據本協定可准予移交的罪行，或協助、教唆、慫恿、導致或促致他人犯該等罪行，或參與該等罪行，或作為犯任何該等罪行的事實之前或之後的從犯；”；
- (n) 在第 (xxxvii) 項中，刪除末處的句號而代以分號；及
- (o) 在第 (xxxvii) 項之後加入：
“(xxxviii) 按照被要求方的法律可准予移交的任何其他罪行。”。

第 III 條

《協定》第五條須予修訂，在第 (1) 款中——

- (a) 刪除在第 (1) 款末處的句號而代以冒號；及
- (b) 在第 (1) 款之後加入以下但書：
“但被要求方可拒絕移交該人，直至該人服刑期滿為止。”。

第 IV 條

《協定》第八條須予修訂，在第 (2) 款之後加入：

“(2A) 被要求方接獲有關申請後，須採取適當步驟以逮捕有關被要求移交者。要求方須獲通知該申請的處理情況以及任何拒絕的理由，不得延誤。”。

- (xib) criminal intimidation;”;
- (e) in item (xii), by adding after the word “substances” the words “, precursors and essential chemicals used in the illegal manufacture of narcotics and psychotropic substances”;
- (f) in item (xxii), by inserting after the word “bankruptcy” the words “or insolvency”;
- (g) in item (xxiii), by replacing the words “and securities” by the words “, securities and futures trading”;
- (h) by inserting after item (xxiii) the following item:
“(xxiiia) an offence involving the unlawful use of computers;”;
- (i) by inserting after item (xxv) the following items:
“(xxva) an offence against the laws relating to the protection of intellectual property, copyrights, patents or trademarks;
(xxvb) an offence against the laws relating to immigration including offences relating to passports and visas;
(xxvc) arranging or facilitating for financial gain, the illegal entry of persons into a jurisdiction;
(xxvd) an offence against the laws relating to gambling, betting or lotteries;”;
- (j) in item (xxviii), by adding after the word “fire” the words “or mischief in relation to computer data”;
- (k) in item (xxxii), by adding after the word “aircraft” the words “or other means of transportation”;
- (l) in item (xxxv), by adding after the word “piracy” the words “involving ships or aircraft or other means of transportation”;
- (m) by replacing item (xxxvi) by the following item:
“(xxxvi) an attempt or conspiracy or instigation or incitement to commit, aiding or abetting, counselling, causing or procuring the commission of, or participation in or being accessory

第 V 條

《協定》第十六條須予修訂，在第 (3) 款之後加入：

“(4) 如要求方提出要求，則即使由於有關逃犯死亡或逃脫，以致移交未能執行，被要求方仍須將有關財物移交要求方。”。

第 VI 條

《協定》第十七條須予修訂——

- (a) 將現有條文重編為第 (1) 款；及
- (b) 在第 (1) 款之後加入：

“(2) 就本條第 (1)(c) 款而言，被要求同意的一方，可要求提交第七條所述的任何文件或說明或聲明書，以及被移交的人就該事所作的任何陳述，以供該方考慮。”。

第 VII 條

《協定》須予修訂，第十八條由以下條文取代：

“(1) 已根據本協定被移交的逃犯，不得因他在被移交要求方之前所犯的罪行，而被該方轉移交往第三國家或按照適用於該方的某多邊國際公約而設立的國際審裁處，以接受審訊或懲罰，但如有以下情況，則不在此限——

- (a) 被要求方同意；及
- (b) 如根據該公約須得到另一國家的同意，而該國家亦同意。

(2) 如有以下情況，則本條第 (1) 款並不妨礙將被移交的逃犯轉移交往第三國家或按照適用於要求方的多邊國際公約而設立的有關國際審裁處——

before or after the fact to, any offence for which surrender may be granted under this Agreement;”;

- (n) by replacing the full stop at the end of item (xxxvii) by a semicolon; and
- (o) by adding after item (xxxvii) the following item:
“(xxxviii) any other offence for which surrender may be granted in accordance with the law of the requested Party.”.

Article III

Article 5 of the Agreement shall be amended in paragraph (1):

- (a) by replacing the full stop at the end of paragraph (1) by a colon; and
- (b) by inserting after paragraph (1) the following proviso:
“Provided that the requested Party may refuse the surrender of such person until such person has served that sentence.”.

Article IV

Article 8 of the Agreement shall be amended by inserting after paragraph (2) the following paragraph:

- “(2A) On receipt of the application, the requested Party shall take appropriate steps to secure the arrest of the person sought. The requesting Party shall be notified without delay of the disposition of the application and the reasons for any denial.”.

Article V

(a) 該逃犯在被移交後曾離開要求方的管轄區，並自願返回該管轄區；或

(b) 該逃犯在可自由離開要求方的管轄區之日起計四十天內沒有離開該管轄區。

(3) 就本條第(1)(a)款而言，被要求同意的一方，可要求提交第七條所述的任何文件或說明或聲明書，以及被移交的人就該事所作的任何陳述，以供該方考慮。”。

第 VIII 條

《協定》第十九條第(2)(a)款須予修訂，刪除“防務或外交事務”而代以“國家安全或公共秩序”。

第 IX 條

本議定書將於本議定書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 30 天後生效。

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、英文及馬來文寫成，一式兩份，並於二零零六年十月十七日在香港簽訂，各文本均具同等效力。

(附表 2 由 2007 年第 82 號法律公告增補)

Article 16 of the Agreement shall be amended by adding after paragraph (3) the following paragraph:

“(4) The property 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 fugitive offender.”.

Article VI

Article 17 of the Agreement shall be amended—

(a) by renumbering the existing paragraph as paragraph (1); and

(b) by adding after paragraph (1) the following paragraph:

“(2) For the purpose of paragraph (1)(c) of this Article, a Party whose consent is required may require the submission of any document or statement referred to in Article 7, and any statement made by the surrendered person on the matter for its consideration.”.

Article VII

The Agreement shall be amended by replacing Article 18 by the following Article:

“(1) A fugitive offender who has been surrendered under this Agreement shall not be resurrendered by the requesting Party to a third State or an international tribunal established in accordance with a multilateral international convention that applies to the requesting Party for trial or punishment for any offence that is committed before his surrender to the requesting Party unless—

(a) the requested Party consents; and

(b) if under the convention the consent of another State is required, that State consents.

(2) Paragraph (1) of this Article shall not prevent the resurrender of a surrendered fugitive offender to a third State or the relevant international tribunal established in accordance with a multilateral international convention that applies to the requesting Party if—

- (a) that fugitive offender leaves the territory of the requesting Party after the surrender and voluntarily returns to it; or
- (b) that fugitive offender does not leave the territory of the requesting Party within forty days of the day on which the person is free to leave.

(3) For the purpose of paragraph (1)(a) of this Article, a Party whose consent is requested may require the submission of any document or statement referred to in Article 7, and any statement made by the surrendered person on the matter for its consideration.”.

Article VIII

Article 19(2)(a) of the Agreement shall be amended by replacing the words “defence or foreign affairs” by the words “national security or public order”.

Article IX

This Protocol shall enter into force 30 days after the date on which the Parties to this Protocol have notified each other in writing that their respective requirements for the entry into force of the Protocol have been complied with.

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附表 2

Schedule 2—Article IX

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

Done in duplicate at Hong Kong this 17th day of October Two thousand and six, in the Chinese, English and Malay languages, each text being equally authentic.

(Schedule 2 added L.N. 82 of 2007)

附表

[第 2 條]

香港政府和馬來西亞政府的 移交逃犯協定

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，與馬來西亞政府，為訂立相互移交逃犯規定，協議如下：——

第一條

移交逃犯的義務

締約雙方同意，在本協定的規限下，把任何被指控或裁定在締約一方的管轄區內犯第二條所載罪行而在締約另一方的管轄區內被發現的人移交給對方。

第二條

罪行的性質

- (1) 凡觸犯屬下列所描述的任何罪行的逃犯，其罪行根據締約雙方的法律規定屬可判處監禁不少於一年或更嚴厲刑罰者，均得准予移交：
- (i) 謀殺；
 - (ii) 誤殺或不構成謀殺的其他殺人罪；
 - (iii) 協助、教唆、慫使或促致他人自殺；

SCHEDULE

[s. 2]

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

The Government 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 Malaysia;

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

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, being accused or convicted of an offence under Article 2 committed within the jurisdiction of the one Party, is found within the jurisdiction of the other Party.

ARTICLE 2

- (iv) 傷人、嚴重傷害他人身體、侵犯他人致造成身體傷害；
- (v) 強姦；
- (vi) 猥褻侵犯或使用刑事暴力意圖施暴；
- (vii) 根據與婦女和少女有關的法律可予判刑的罪行；
- (viii) 對兒童作嚴重猥褻行為；
- (ix) 拐帶及綁架；
- (x) 非法拘禁；
- (xi) 奴隸或其他販賣人口；
- (xii) 犯有關危險藥物包括毒品和精神藥物的法律的罪行；
- (xiii) 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；
- (xiv) 詐騙、刑事違反信託或藉欺騙取得財物或金錢利益；
- (xv) 入屋犯法，盜竊及處理或接收贓物；
- (xvi) 搶劫；
- (xvii) 敲詐或勒索；
- (xviii) 盜用公款或刑事盜用款項；
- (xix) 刑事違反信託；
- (xx) 欺詐、串謀欺詐或欺騙；
- (xxi) 犯刑事串謀罪行；
- (xxii) 犯破產法律的罪行；
- (xxiii) 犯有關公司和證券的法律的罪行；
- (xxiv) 犯與財政事項、稅項或關稅有關的罪行，儘管被要求並沒有徵收同樣的稅項或關稅或沒有如要求方法律訂定同樣的稅項、關稅或海關規例；
- (xxv) 犯贗製、偽造及有關罪行；
- (xxvi) 犯有關賄賂和貪污的法律的罪行；
- (xxvii) 偽證；企圖妨礙司法公正；

NATURE OF OFFENCES

- (1) Surrender of fugitive offenders 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 for not less than one year or by a more severe penalty;
- (i) murder;
 - (ii) manslaughter or culpable homicide not amounting to murder;
 - (iii) aiding, abetting, counselling or procuring suicide;
 - (iv) wounding, inflicting grievous bodily harm; assault occasioning actual bodily harm;
 - (v) rape;
 - (vi) indecent assault or use of criminal force with intent to outrage modesty;
 - (vii) an offence punishable under the laws relating to women and girls;
 - (viii) gross indecency with a child;
 - (ix) abduction and kidnapping;
 - (x) false imprisonment;
 - (xi) dealing in slaves or other persons;
 - (xii) an offence against the law relating to dangerous drugs including narcotics and psycho-tropic substances;
 - (xiii) an offence relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted;
 - (xiv) cheating, criminal breach of trust or obtaining property or pecuniary advantage by deception;

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- (xxviii) 刑事損壞，包括縱火或放火為害；
- (xxix) 犯有關槍械或彈藥的法律的罪行；
- (xxx) 犯有關爆炸品的法律的法律的罪行；
- (xxxi) 弄沉或毀壞海上船隻；在公海船舶上意圖害命或意圖嚴重傷害他人身體而侵犯他人；兩名或以上人在公海船舶上反抗或串謀反抗船長的權力；
- (xxxii) 非法侵佔或控制航空器；
- (xxxiii) 妨礙逮捕或檢控已犯或相信已犯根據本協定屬可准予移交的罪行的人士，而根據締約雙方的法律，該罪行屬可判處監禁五年或以上者；
- (xxxiv) 走私；
- (xxxv) 海盜行為；
- (xxxvi) 企圖或串謀或教唆或慫使犯或參與任何根據本協定可准予移交的罪行；
- (xxxvii) 根據對締約雙方有約束力的任何國際公約可將逃犯移交的罪行。
- (2) 倘若要求移交逃犯的目的是為了執行一項判刑，而該項判刑是監禁，則亦須符合另一項規定，即餘下未服滿的監禁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根據締約雙方的法律屬可判罰的罪行時，須把被要求移交的人被指稱的作為或不作為全部一起考慮，而無須就要求方法律所規定的有關的罪行構成因素來衡量。
- (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—ARTICLE 2

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- (xv) housebreaking or burglary, theft and handling or receiving stolen property;
- (xvi) robbery;
- (xvii) extortion or blackmail;
- (xviii) embezzlement or criminal misappropriation;
- (xix) criminal breach of trust;
- (xx) fraud, conspiracy to commit fraud or to defraud;
- (xxi) an offence of criminal conspiracy;
- (xxii) an offence against bankruptcy laws;
- (xxiii) an offence against the laws relating to companies and securities;
- (xxiv) an offence relating to fiscal matter, 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;
- (xxv) counterfeiting, forgery and related offences;
- (xxvi) an offence against the laws relating to bribery and corruption;
- (xxvii) perjury; attempting to pervert the course of justice;
- (xxviii) criminal damage, including arson or mischief by fire;
- (xxix) an offence against the law relating to firearms or ammunition;
- (xxx) an offence against the law relating to explosives;
- (xxxi) sinking or destroying a vessel at sea; assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm; revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master;
- (xxxii) unlawful seizure or exercise of control of an aircraft;

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附表

SCHEDULE—ARTICLE 2

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Cap. 503D第三條國民的移交

- (1) 馬來西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，以考慮對該人進行檢控。

第四條審判權

- (1) 倘被要求方認為其本身對逃犯所犯的罪行具有審判權，可拒絕移交逃犯。
- (2) 倘被要求方按本條第(1)款所述情況拒絕移交逃犯，則須將該個案呈交己方主管當局以便根據當地法律對該逃犯提起訴訟。

第五條暫時及延遲移交逃犯

- (1) 倘被要求移交者正按照被要求方的法律服刑，被要求方可暫時把該人移交予要求方進行檢控。
- (2) 倘若被要求移交的人正在被要求方接受檢控，——
 - (a) 一旦該人在審訊之後被判無罪釋放，被要求方須隨即進行把他移交的程序；

- (xxxiii) 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 and which is punishable according to the laws of both Parties by imprisonment for a period of five years or more;
- (xxxiv) smuggling;
- (xxxv) piracy;
- (xxxvi) an attempt or conspiracy or instigation or incitement to commit, or participation in, any offence for which surrender may be granted under this Agreement;
- (xxxvii) an offence for which fugitive offenders may be surrendered under any International Convention binding on both Parties.

- (2) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment at least six months remains 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 purpose 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 time it was committed and an offence against the law of the requested Party at the time the request for surrender is received.

(b) 一旦該人被定罪和被判入獄，被要求方可隨即進行把他移交的程序，並於該人被監禁期間，暫時把他移交要求方，以便進行檢控。

(3) 當某人被暫時移交時，須按照經雙方同意而決定的條件，由要求方把他拘留，並在對他進行的訴訟完成後交回被要求方。

第六條

移交逃犯的限制

- (1) 如被要求方有充分理由相信下述事項，則不得移交逃犯：
- (a) 該逃犯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該逃犯的種族、宗教、國籍或政治意見而檢控或懲罰該逃犯；或
 - (c) 該逃犯一經交回，可能因其種族、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) 就本協定而言，下列罪行不會被視為屬於政治性質：
- (a) 謀殺馬來西亞元首或其他蓄意針對馬來西亞元首的罪行，或就香港而言，謀殺負責香港外交事務的政府的元首，或其他蓄意針對他的罪行，或無論是就馬來西亞或負責香港外交事務的國家而言，謀殺國家元首的直系親屬或其他蓄意針對他們的罪行；

ARTICLE 3

SURRENDER OF NATIONALS

- (1) The Government of Malaysia 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

JURISDICTION

- (1) Surrender may be refused for an offence which is regarded as one over which the requested Party has jurisdiction.
- (2) If surrender is refused pursuant to paragraph (1), the requested Party shall submit the case to its competent authorities with a view to causing the fugitive offender to be proceeded against under its laws.

ARTICLE 5

- (b) 任何根據對締約雙方都有約束力的國際協定是不得被視為屬於政治性質的罪行；
- (c) 企圖或串謀觸犯或參與任何上述罪行。
- (3) 如根據任何一方的法律，被要求移交者不能因有關罪行被起訴或懲罰，就該罪行而提出移交逃犯的要求亦須被拒絕。

第七條

移交逃犯的程序及提供文件

- (1) 在香港有關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) 提出要求時，須一併提供下列資料：
 - (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的身分和國籍的資料，如有可能，亦須提供其所在地點；
 - (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，和法律規定就該項罪行提起訴訟或執行所判處的任何懲罰的時限的詳細說明。
- (3) 如逃犯被控犯罪而未被定罪，要求方須隨同移交要求提交由要求方的法官、裁判官或其他主管當局發出的逮捕令，以及任何證據，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。

TEMPORARY AND DEFERRED SURRENDER

- (1) If the request for surrender is made in respect of a person who is serving a sentence in accordance with the laws of the requested Party, that Party may temporarily surrender such person to the requesting Party for the purpose of prosecution.
- (2) If the request for surrender is made in respect of a person who is being proceeded against by the requested Party, the requested Party—
 - (a) shall proceed with the proceedings for surrender after the prosecution against such person has been concluded and he is acquitted; or
 - (b) may, if such person is convicted and sentenced to imprisonment proceed with the proceedings for surrender and upon his committal, temporarily surrender that person to the requesting Party for the purpose of prosecution.
- (3) Where a person is temporarily surrendered, he shall be kept in custody by the requesting Party and be returned to the requested Party after the conclusion of the proceedings against him, in accordance with conditions to be determined by agreement of the Parties.

ARTICLE 6

RESTRICTIONS ON SURRENDER

- (4) 如該項移交要求涉及已被定罪和判刑的人或已被定罪但尚未判刑的人，則須一併提交下列文件：
- (a) 如涉及已被定罪和判刑的人，須提交定罪和判刑證明書及顯示判刑尚有多少部分仍未執行的聲明書；及
- (b) 如涉及已被定罪但尚未判刑的人，須提交由有關的法院發出的證明該人已被定罪但尚未判刑的聲明書，及有關的逮捕令。

第八條

暫時逮捕

- (1) 在緊急情況下，經要求方的主管當局提出申請，被要求方可以根據本身的法律，暫時逮捕被要求移交者。要求方要求暫時逮捕的申請書，必須表明要求移交該逃犯的意圖，並須聲明該方已發出拘捕該人的令狀，或聲明法庭已判定該人有罪。如有其他有關資料，亦須一併提出（有關資料是指假如有關的罪行是在被要求方境內發生，或假如逃犯是在被要求方境內判定有罪，被要求方須用以支持發出拘捕令的資料）。
- (2) 要求暫時逮捕的申請，可通過提出要求移交逃犯的相同途徑提出，或通過國際刑警組織提出。
- (3) 如被要求移交者被暫時逮捕滿四十五天，而被要求方仍未接獲把他移交的要求，暫時逮捕期便須停止。但如其後接獲把他移交的要求，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。

第九條

- (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 his return (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 or political opinions; or
- (c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
- (2) For the purposes of this Agreement, the following offences shall not be considered to be of a political character:
- (a) murder or other wilful crime against the person of the Head of State of Malaysia, or, in the case of Hong Kong, the Head of State whose government is responsible for its foreign affairs, or in either case of a member of the Head of States's immediate family;
- (b) any offence which is not to be regarded as an offence of a political character by virtue of an international agreement binding on both Parties;
- (c) an attempt or conspiracy to commit or participate in, any such offences.
- (3) Surrender for an offence shall also be refused if the person whose surrender is sought cannot under the laws of either Party be prosecuted or punished for that offence.

補充證明文件

- (1) 如被要求方認為要求方所提供的證明文件不足，未能符合本協定的規定，被要求須要求對方提交所需的補充證明文件。被要求方可規定提交該等文件的期限，並可在要求方提出理由申請延期時給予合理的延期。
- (2) 如被要求移交者已被拘留，而所提供的補充資料並不足夠，或沒有在被要求方指定期限內取得，該人可被釋放。在這種情況下釋放並不妨礙在其後收到補充證明文件時重新逮捕及移交該人。

第十條同時要求

如締約一方與其他一個或多個與締約另一方有移交逃犯安排的國家同時向該另一方提出移交逃犯的要求，被要求方須考慮所有有關情況，並在其法律容許的範圍內作出決定。被要求方須考慮的情況包括：被要求方與各要求方之間所存在的協議就這方面的規定、收獲各移交要求的先後次序、涉及的罪行的相對嚴重性。被要求方如決定把逃犯移交其他國家，須向締約另一方說明其作出決定的理由。

第十一條文件的可接受性及確認

被要求方當局，在任何移交逃犯程序中，對任何在要求方的管轄區內所作出的宣誓筆錄供詞或確認書、令狀、任何上述筆錄供詞、確認書或令狀的副本和任何定罪或判刑證明書，如經下列方式確認，得接受作為證據，即：

ARTICLE 7PROCEDURES AND DOCUMENTATION FOR SURRENDER

- (1) The request for surrender of a fugitive offender shall be made to 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 his identity and nationality including, if known, his location;
 - (b) a statement and particulars of the offence for which surrender is requested;
 - (c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and a specification of any time limit that is imposed on the institution of proceedings, or on the execution of any punishment imposed, for that offence.
- (3) If the request relates to an accused person, it shall also be accompanied by a 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 his committal for trial if the offence had been committed within the jurisdiction of the requested Party.

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附表

SCHEDULE—ARTICLE 8

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- (a) 就令狀而言，經法官、裁判官或其他主管機關簽署；就其他正本文件而言，經法官、裁判官或其他主管機關證明為正本文件；就副本而言，經法官、裁判官或其他主管機關核證為正本文件的真確副本；和
- (b) 經證人宣誓證明或經要求方主管當局蓋上官方印章；
- 或經被要求方法律認可的任何其他方式確認。

第十二條

翻譯本

如果被要求方提出要求，要求方須為移交逃犯要求所附所有文件提供經適當確認而所用語言可被被要求方接受的譯本。本條文並不影響要求方所提交未經翻譯文件的可接受性。

第十三條

代表及開支

- (1) (a) 如果要求方提出要求，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協助作出必要的安排。
- (b) 如果要求方自行安排法律代表和協助，要求方須承擔一切所引致的訟費。
- (c) 如開支龐大或屬特別性質，締約雙方須進行磋商，以決定如何支付該項開支。

- (4) If the request relates to a person already convicted and sentenced, or convicted but not yet sentenced, it shall also be accompanied by:
- (a) in respect of a person convicted and sentenced, a certificate of the conviction and sentence and a statement showing how much of the sentence has not been carried out; and
- (b) in respect of a person convicted but not yet sentenced, a statement to that effect by the appropriate court and the warrant of arrest.

ARTICLE 8

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 competent authorities of the requesting Party. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, 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 been 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).

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SCHEDULE—ARTICLE 9

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- (2) 除本條第 (1)(b) 及 (1)(c) 款另有規定外，在被要求方的管轄區內為移交而引致的開支，均由被要求方負擔。
- (3) 把逃犯送往要求方管轄區內的開支須由要求方承擔。

- (3) The provisional arrest of the person sought shall be terminated upon the expiration of forty- five days from the date of his arrest if the request for his surrender shall not have been received. This provision shall not prevent the re-arrest or surrender of the person sought if the request for his surrender is received subsequently.

第十四條

表面證據規則及移交條件

- (1) 只有在根據被要求方的法律證實有足夠證據證明，假如有關罪行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同一人，始須把有關逃犯移交。
- (2) 如果決定移交逃犯，被要求方當局須把被要求移交者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按被要求方法律指定期限屆滿時獲得釋放，此後被要求方可拒絕因同一罪行把他移交。
- (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。

第十五條

同意移交

ARTICLE 9

ADDITIONAL DOCUMENTATION

- (1) If the requested Party considers that the documents furnished in support of the request for the surrender of a person sought are not sufficient to fulfill the requirements of this Agreement, that Party shall request the submission of necessary additional documents. The requested Party may set a time limit for the submission of such documents, and may grant a reasonable extension of the time limit upon application of the requesting Party setting forth reasons therefor.
- (2) If the person sought is in custody and the additional documents submitted are not sufficient, or if such documents are not received within the period specified by the requested Party, that person may be discharged from custody. Such discharge shall not prejudice the rearrest and the surrender of the person if the additional documents are subsequently received.

ARTICLE 10

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SCHEDULE—ARTICLE 11

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- (1) 如被要求移交者同意返回要求方的管轄區，而在他表示同意之前，已直接獲得司法主管當局通知根據被要求方的法律表示同意的後果，則被要求方可不循正式移交程序把他移交。
- (2) 根據本條把逃犯移交，須受第十七條規限。

第十六條

移交財產

- (1) 在被要求方法律容許的情況下，如逃犯在被逮捕時所擁有的財物，可作為獲准移交所涉及罪行的證據，被要求方可檢取並向要求方移交所有這些財物。
- (2) 如有關財物可在被要求方的管轄區內遭檢取或充公，被要求方可為未決的訴訟暫時保留該等財物或在會獲歸還的條件下把該等財物交給要求方。
- (3) 此等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，要求方須於訴訟程序結束後盡快歸還該等財物，不收取任何費用。

第十七條

指定罪行規則

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，但因下列罪行除外：

- (a) 下令移交該逃犯所根據的罪行；

CONCURRENT REQUESTS

If the surrender of a fugitive offender is requested concurrently by one of the Parties and a State or States with which Malaysia 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 order of the receipt of the requests, the relative seriousness and place of commission of the offences, the nationality of the person sought and the possibility of subsequent surrender to another State, and shall furnish the other Party with information justifying its decision in the event of surrender of the fugitive to another jurisdiction.

ARTICLE 11

ADMISSIBILITY AND AUTHENTICATION

The authorities of the requested Party shall admit as evidence, in any proceedings for the surrender of a fugitive offender, a sworn deposition or affirmation taken in the jurisdiction of the requesting Party, any warrant, any copy of any such deposition, affirmation or warrant, and any certificate of a conviction or sentence if it is authenticated:

- (a) in the case of a warrant by being signed, or in the case of any other original document by being certified, by a judge, magistrate or other competent authority of the requesting Party, or in the case of a copy by being so certified to be a true copy of the original; and
- (b) either by the oath of some witness or by being sealed with the official seal of the competent authority of the requesting Party;

- (b) 該項移交的有關資料所顯示的，與要求移交所根據的罪行同類但性質較為輕微的罪行，該較輕微的罪行可用任何方式形容，但必須是依照本協定可據以把逃犯移交的罪行；
- (c) 該逃犯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逃犯接受處置；

但如逃犯曾有機會離開他被移交往的一方而在他可自由離開該方後四十天內沒有離開，或他在離開該方後重返該方，則不在此限。

第十八條

轉移交

已被移交的逃犯，不得因在他返回香港或馬來西亞(視乎情況而定)之前所犯的罪行而遭轉移交給另一管轄區接受審訊或懲罰。除非：

- (a) 在轉移交前已獲得被要求方有關當局的同意；或
- (b) 該逃犯曾有機會離開其已被移交往的一方的管轄區，但在獲得自由離開該管轄區後二十一天內仍未離開，或在離開該管轄區後重返該地。

第十九條

拒絕移交的其他理由

or in any such other manner as may be permitted by the law of the requested Party.

ARTICLE 12

TRANSLATION

The requesting Party shall on request provide an authenticated translation of all documents relating to the request into a language acceptable to the requested Party. This provision shall not affect the admissibility of an untranslated document furnished by the requesting Party.

ARTICLE 13

REPRESENTATION AND COSTS

- (1) (a) The requested Party shall, if asked by the requesting Party, make the necessary arrangements for that Party's legal representation and assistance in any proceedings arising out of a request for the surrender of a fugitive offender.
- (b) In the event that the requesting Party arranges its own legal representation and assistance, it shall bear any costs incurred.
- (c) Where expenses are of a substantial or extraordinary nature, the Parties shall consult to determine the manner in which the costs shall be borne.

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附表

SCHEDULE—ARTICLE 14

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- (1) 在按照本協定的條款要求移交任何人士時，如被要求方的有關當局認為基於下列原因，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：
- (a) 該人被控告或判定的罪行性質輕微；或
- (b) 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
- (c) 對該人的控告並非真誠地為司法公正而作出；或
- (d) 基於合理人道理由。
- (2) 被要求方也可在下列情況拒絕移交逃犯：
- (a) 如被要求方為馬來西亞政府，而該項移交會嚴重影響馬來西亞政府在防務或外交事務方面的利益；
- (b) 如被要求方為香港政府，而該項移交會嚴重影響負責香港外交事務的政府在防務或外交事務方面的利益。

第二十條過境

- (1) 並非本協定締約方的國家在把一名人士移交給其中一締約方時，如須經過締約另一方的領土，該締約方可批准該人過境。過境要求須通過有關當局提出，締約一方會不時知會締約另一方何謂有關當局。在傳達這項要求時，可利用國際刑警組織的設施。這項要求須包括被運送的人的描述，以及案件實情的簡述。過境的人在過境期間可被羈留。

- (2) Subject to the provisions of paragraphs (1)(b) and (1)(c) of this Article, expenses incurred in the jurisdiction of the requested Party by reason of surrender shall be borne by that Party.
- (3) The cost of sending a fugitive offender to the jurisdiction of the requesting Party shall be borne by that Party.

ARTICLE 14PRIMA FACIE RULE AND TERMS OF SURRENDER

- (1) 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 offence of which he is accused had been committed in the territory of the requested Party or to prove that he is the identical person convicted by the courts of the requesting Party.
- (2) If a fugitive offender is to be surrendered, the person sought 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, if the requesting Party does not take custody of the person sought on the date agreed by the two Parties, he shall be released on the expiry of such period as is specified under the law of the requested Party, and the requested party may subsequently refuse to surrender him for the same offence.

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附表

SCHEDULE—ARTICLE 15

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- (2) 如以飛機運送，並且沒有預定在締約一方的領土著陸，便毋須得到該締約方的批准。如未經預定而要在締約一方的領土著陸，該締約方可要求締約另一方按第(1)款的規定提出過境要求。該締約方須扣押將被運送的人士，直至收到另一方的過境要求和實行過境為止，但該項過境要求須在非預定著陸後 96 小時內收到。

第二十一條

生效及終止

- (1) 本協定將於締約雙方以書面通知對方已各自作妥為使本協定生效的安排之日後三十天開始生效。
- (2) 締約一方可隨時通過提出移交逃犯要求的相同途徑，通知締約另一方終止本協定。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，經其各自政府正式授權，已在本協定上簽字為證。

本協定於一九九五年一月十一日在香港簽訂，每份均用馬來西亞文、中文及英文寫成，各文本均為具有同等效力的真確本。

- (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 to a new date for surrendered and the provisions of paragraph (3) of this Article shall apply.

ARTICLE 15

SURRENDER BY CONSENT

- (1) If the person sought consents to return to the jurisdiction of the requesting Party after personally being advised by a competent judicial authority of the effect of such consent under the law of the requested Party, the requested Party may surrender him without formal surrender proceedings.
- (2) The surrender of a person pursuant to this Article shall be subject to Article 17.

ARTICLE 16

SURRENDER OF PROPERTY

- (1) To the extent permitted under its law, the requested Party may seize and surrender to the requesting Party all property (including sums of money) found in the possession of the fugitive offender at the time of his arrest which may serve as proof of the offence in respect of which surrender is granted.

- (2) If the property in question is liable to seizure or confiscation within the jurisdiction of the requested Party the latter may, in connection with pending proceedings, temporarily retain it or hand it over on condition it is 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 property shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

ARTICLE 17

RULE OF SPECIALITY

A fugitive offender who has been surrendered shall not be proceeded against, sentenced or kept in custody with a view to the carrying out of a sentence for any offence committed prior to his surrender other than:

- (a) the offence in respect of which his return is ordered;
- (b) any lesser offence, however described, disclosed by the facts in respect of which his return was ordered provided such an offence is an offence for which he 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 may consent to his being dealt with;

unless he has first had an opportunity to leave the jurisdiction of the Party to which he has been surrendered and he had not done so within forty days

of his having been free to leave the jurisdiction or has returned to that jurisdiction having left it.

ARTICLE 18

RESURRENDER

A fugitive offender who has been surrendered shall not be resurrendered to another jurisdiction for trial or punishment for any offence that is committed before his return to Hong Kong or Malaysia as the case may be, unless

- (a) the consent of the appropriate authority of the requested Party has been obtained; or
- (b) he has first had an opportunity to leave the jurisdiction of the Party to which he has been surrendered and he had not done so within twenty one days of his having been free to leave the jurisdiction or has returned to that jurisdiction having left it.

ARTICLE 19

ADDITIONAL GROUNDS OF REFUSAL

- (1) The surrender of any person sought under the terms of this Agreement may be refused if it appears to the appropriate authority of the requested Party that:
 - (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or

- (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large as the case may be; or
 - (c) because the accusation against him 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 him.
- (2) The requested Party may also refuse to surrender a fugitive offender:
- (a) where the Government of Malaysia is the requested Party, where the surrender would significantly affect the interests of the Government of Malaysia in matters of defence or foreign affairs;
 - (b) where the Government of Hong Kong is the requested Party, where the surrender would significantly affect the interests of Government responsible for Hong Kong's foreign affairs in matters of defence or foreign affairs.

ARTICLE 20

TRANSIT

- (1) Either Party may authorise transit through its area of a person surrendered to the other Party by a State not party to this Agreement. A request for transit shall be made through an authority to be notified from time to time by one Party to the other. The facilities of the International Criminal Police Organisation

(INTERPOL) may be used to transmit such a request. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be kept in custody during the period transit.

- (2) No authorisation is required where air transportation is used and no landing is scheduled in the area of a Party. If an unscheduled landing occurs in the area of a Party, that Party may require the other Party to make a request for transit as provided in paragraph (1). That Party shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

ARTICLE 21

ENTRY INTO FORCE 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) Each of the Parties may terminate the Agreement at any time by giving notice to the other through the same channels as a request for the surrender of a fugitive offender. In that event the Agreement shall cease to have effect six months after the receipt of notice.

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

Done at Hong Kong this eleventh day of January One thousand nine hundred and ninety five in Bahasa Malaysia, in the Chinese and English languages, each text being equally authentic.