

《逃犯(新西蘭)令》
(第 503 章, 附屬法例 S)

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FUGITIVE OFFENDERS (NEW ZEALAND) ORDER
(Cap. 503 sub. leg. S)

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《逃犯(新西蘭)令》

(第 503 章第 3 條)

FUGITIVE OFFENDERS (NEW ZEALAND) ORDER

(Cap. 503, section 3)

[1998 年 10 月 23 日] 1998 年第 339 號法律公告

[23 October 1998] L.N. 339 of 1998

1. (已失時效而略去)
2. 條例中的程序在香港和新西蘭之間適用
就——
 - (a) 適用於中華人民共和國香港特別行政區政府和新西蘭政府，並且
 - (b) 在附表中敘述，的移交逃犯安排，現指示本條例中的程序在該等安排所載的限制、約束、例外規定及約制的規限下，在香港和新西蘭之間適用。

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

附表

[第 2 條]

中華人民共和國香港特別行政區政府和新西蘭政府
的移交被控告及被定罪人士協定

中華人民共和國香港特別行政區(“香港特別行政區”)政府經中華人民共和國中央人民政府正式授權締結本協定，與新西蘭政府，

願訂立相互移交因刑事罪行而被控告及被定罪人士的規定，

協議如下：——

第一條

移交的義務

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

第二條

罪行

- (1) 凡觸犯以下所述任何類別的罪行，而該罪行依照締約雙方的法律屬可判處監禁或以其他形式拘留兩年或以上或可判處更嚴厲刑罰者，又該罪行按照被要求方的法律屬可准予移交的罪行，則須准予移交：
- (a) 謀殺或誤殺；

SCHEDULE

[s. 2]

AGREEMENT FOR
THE SURRENDER OF ACCUSED AND CONVICTED
PERSONS BETWEEN
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE
REGION OF THE PEOPLE'S REPUBLIC OF CHINA
AND
THE GOVERNMENT OF NEW ZEALAND

The Government of the Hong Kong Special Administrative Region of the People's Republic of China (“Hong Kong Special Administrative Region”), having been duly authorised to conclude this agreement by the Central People's Government of the People's Republic of China, and the Government of New Zealand

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

Have agreed as follows:

ARTICLE 1

- (b) 協助、教唆、慫使或促致他人自殺；
- (c) 犯有關傷人、侵害、嚴重傷害他人身體的罪行；危及他人生命或安全；威脅殺人或引致他人身體重傷；
- (d) 犯與性有關的罪行包括污辱；強姦；性侵犯；猥褻侵犯；對兒童犯性罪行；
- (e) 綁架；拐帶；非法拘禁；扣押人質；買賣或販運奴隸或其他人；
- (f) 犯有關藥物包括毒品和精神藥物的法律的罪行；
- (g) 犯有關盜竊；搶劫；入屋犯法；勒索和敲詐；處理或收受財物的法律的罪行；
- (h) 犯有關欺詐或其他形式的不忠實行為的法律的罪行；以虛假理由騙取得財物、金錢、有價值證券或金錢利益；串謀行騙；
- (i) 犯有關贗製，偽造或使用贗製和偽造物品的法律的罪行；
- (j) 犯與公司有關的罪行，包括由高級人員、董事或創辦人所犯的罪行；
- (k) 犯有關賄賂和貪污的法律的罪行；
- (l) 犯偽證及有關妨礙司法公正或使司法執行無效的罪行；
- (m) 縱火；刑事毀壞財物；
- (n) 海盜行為；
- (o) 殺死未出生的胎兒；犯有關非法終止懷孕的罪行；
- (p) 偷取或遺棄兒童；
- (q) 誘使他人性交；
- (r) 重婚；
- (s) 與管有或清洗從犯罪所得收益有關的罪行；
- (t) 犯根據對締約雙方有約束力的國際公約可准予移交的罪行；犯由於對締約雙方有約束力的國際組織決定而訂定的罪行；

OBLIGATION TO SURRENDER

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

ARTICLE 2

OFFENCES

- (1) Surrender shall be granted for an offence coming within any of the following categories of offences insofar as it is according to the law of both Parties punishable by imprisonment or other form of detention for two years or more, or by a more severe penalty and insofar as such offence is one for which surrender may be granted under the law of the Requested Party:
 - (a) Murder or manslaughter;
 - (b) Aiding, abetting, counselling or procuring suicide;
 - (c) Offences involving wounding, injuring, causing grievous bodily harm; endangering the life or safety of any person; threatening to kill or cause grievous bodily harm;
 - (d) Offences of a sexual nature including sexual violation; rape; sexual assault; indecent assault; sexual offences against children;
 - (e) Kidnapping; abduction; false imprisonment; taking a hostage; dealing or trafficking in slaves or other persons;

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- (u) 協助、教唆、慫使或促致他人犯任何根據本協定可准予移交的罪行，煽惑、企圖或串謀犯該等罪行，或在犯該等罪行前或後是從犯；
- (v) 根據締約雙方的法律可准予移交的任何其他罪行。
- (2) 凡要求移交是為了執行一項判刑，該項要求亦須符合另一項規定，即餘下的監禁或拘留期須不得少於六個月。
- (3) 就本條而言，在確定一項罪行在被要求方的法律下是否屬可判處懲罰的罪行時，該人的行為根據其被指稱的作為或不作為的全部予以審查後，如在被要求方的法律下構成罪行即已足夠，儘管要求方法律對構成罪行的有關因素所作的規定與被要求方法律對有關因素所作的規定並不相同。
- (4) 就第二條第(1)款而言，如構成罪行的行為在犯罪時屬觸犯要求方法律的罪行，而在被要求方接獲移交要求時亦屬觸犯被要求方法律的罪行，則該項罪行根據締約雙方的法律均屬罪行。

第三條

國民的移交

- (1) 新西蘭政府保留拒絕移交其國民的權利。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。
- (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，以考慮對該人進行起訴。

第四條

死刑

如某項根據本協定要求移交的罪行依照要求方的法律可判處死刑，但就該項罪行而言，被要求方的法律並無判處死刑的規定或通常不會執

SCHEDULE—ARTICLE 2

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- (f) Offences against the laws relating to drugs including narcotics and psychotropic substances;
- (g) Offences against the laws relating to theft; robbery; burglary; blackmail and extortion; handling or receiving property;
- (h) Offences against the laws relating to fraud or other forms of dishonesty; obtaining property, money, valuable securities or pecuniary advantage by false pretences; conspiracy to defraud;
- (i) Offences relating to counterfeiting, forgery or uttering;
- (j) Offences relating to companies including offences committed by officers, directors, and promoters;
- (k) Offences against the laws relating to bribery and corruption;
- (l) Perjury and offences relating to obstructing or defeating the course of justice;
- (m) Arson; criminal damage to property;
- (n) Piracy;
- (o) Killing an unborn child; offences relating to the unlawful termination of pregnancy;
- (p) Stealing or abandoning a child;
- (q) Procuring sexual intercourse;
- (r) Bigamy;
- (s) Offences relating to the possession or laundering of the proceeds of crime;
- (t) Offences for which surrender may be granted under international conventions binding on the Parties; offences created as a result of decisions of international organisations which are binding on the Parties;
- (u) Aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or

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行死刑，則除非要求方提出被要求方認為充分的保證，即被移交者將不會被判處死刑或即使被判處死刑亦不會執行，被要求方可拒絕移交。

第五條

移交根據

只有在下述情況下，始須把要求方所要求移交的人移交：

- (a) 如該人被控觸犯刑事罪行，則根據被要求方的法律，有足夠證據證明有理由把該人交付審判；或
- (b) 如該人已被定罪，有足夠證據證明該人即是遭要求方法院定罪的人。

第六條

強制拒絕移交

- (1) 如被要求方有充分理由相信以下事項屬實，則不得移交一名人士：
 - (a) 該人被控告或被定罪的罪行屬政治性質，或提出移交要求的目的，實際上是就一項屬於政治性質的罪行審理或懲罰該人；
 - (b) 提出移交要求(該項要求雖然看來是因為一項可准予移交的罪行而提出)實際上是因為該人的種族、膚色、所屬民族、性別、宗教、國籍或政見而檢控或懲罰該人；或
 - (c) 該人一經交回，可因其種族、膚色、所屬民族、性別、宗教、國籍或政見而——
 - (i) 在審判中受到不公平對待；或
 - (ii) 被懲罰、被拘留或使其人身自由受限制。

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attempting or conspiring to commit any offence for which surrender may be granted under this Agreement;

- (v) Any other offence for which surrender may be granted in accordance with the law of both Parties.
- (2) Where surrender is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment or detention at least six months remain to be served.
 - (3) For the purposes of this Article, in determining whether an offence is an offence punishable under the law of Requested Party it shall be sufficient if the conduct of the person, examined by reference to the totality of the acts or omissions alleged against the person, would constitute an offence against that law, notwithstanding that the elements of the offence prescribed by the law of the Requesting Party are not identical with the elements prescribed by the law of the Requested Party.
 - (4) For the purposes of Article 2(1), 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.

ARTICLE 3

SURRENDER OF NATIONALS

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- (2) 犯移交要求中所述的任何罪行，但根據要求方或被要求方的法律最後獲釋、被定罪或獲赦的人，不得就該罪行被移交。
- (3) 如要求移交所根據的罪行是軍事法下的罪行，但並非同時是普通刑事法下的罪行，則不得准予移交。

第七條

酌情拒絕移交

- (1) 被要求方如認為有以下情況出現，可拒絕移交：
 - (a) 在考慮所有情況後，有關罪行的嚴重性不足以支持移交該名被要求移交的人士；
 - (b) 由於不能歸咎於被要求移交的人的理由，以致提出起訴，把案件提交審判或使被要求移交的人服刑或使他或她服餘下的刑期有過分延誤；
 - (c) 移交該人可使被要求方違反根據國際條約須履行的義務；
 - (d) 在該案的情況下，鑑於被要求移交的人的年齡、健康或其他個人狀況，把該人移交不合人道；或
 - (e) 被要求移交人在要求方的管轄範圍內由一個特別或專門法庭或審裁處已經判刑或將被審理或判刑。
- (2) 如根據被要求方的法律，該名人士所犯罪行被視為是在被要求方的法院的管轄範圍內犯的，被要求方可拒絕因該罪行移交該名人士。被要求方如作出拒絕，要求方可要求將該案件呈交其主管當局以便考慮訴訟程序。
- (3) 如被要求移交的人已在第三司法管轄區內因其被要求移交所根據的同一罪行最終獲釋、被定罪或獲赦，及如已被定罪的話，判處的刑期已完全執行或不再須予執行，則被要求方可拒絕移交。
- (4) 凡要求移交一名人士是為了執行一項判刑，該人看似是在缺席的情況下被定罪，被要求方可拒絕把他移交，除非他有機

- (1) The Government of New Zealand reserves the right to refuse the surrender of its nationals. 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.
- (2) Where the Requested Party exercises this right the Requesting Party may request that the case be submitted to the competent authorities of the Requested Party in order that proceedings for prosecution of the person may be considered.

ARTICLE 4

DEATH PENALTY

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

ARTICLE 5

BASIS FOR SURRENDER

會在他出席的情況下獲得重審，則屬例外，在此情況下，他須被視為本協定範圍內的被告。

- (5) 如移交的要求關乎一名因其所犯一項罪行而被檢控或判處懲罰的人士，而假如他是在被要求方的管轄範圍內觸犯該罪行時可以只是因為時效消失而不再被檢控，則被要求方可拒絕把他移交。

第八條

延遲移交

- (1) 被要求移交者如因與要求移交所根據的罪行以外的任何其他罪行有關而正在被要求方的管轄範圍內被起訴或受懲罰或被拘留，可推遲至訴訟結束或任何所判處的懲罰執行後或從拘留中釋放後（視屬何情況而定）才移交。
- (2) 如被要求移交人士以前曾被第三司法管轄區移交以便進行檢控或執行刑期，則在與該第三個司法管轄區簽訂的任何協定所規定的該等時效消失之前，或在該人有機會離開被要求方的管轄範圍之前，不得依據該要求採取任何行動。

第九條

移交要求及證明文件

- (1) 移交要求和有關文件須通過有關當局提出。締約一方會不時知會締約另一方向有關當局。
- (2) 提出要求時，須一併提供下列資料：
- (a) 該被要求移交的人的盡量準確的描述，和其他可助確定該人的身分、國籍和所在地的資料；
- (b) 被要求移交的人的各項罪行說明，以及就每項罪行的有關作為或不作為的說明；及

A person sought by the Requesting Party shall be surrendered only if:

- (a) in the case of a person accused of a criminal offence the evidence is sufficient according to the law of the Requested Party to justify the committal for trial of that person; or
- (b) in the case of a convicted person there is sufficient evidence to establish that that person is the person convicted by the court of the Requesting Party.

ARTICLE 6

MANDATORY REFUSAL OF SURRENDER

- (1) A person shall not be surrendered if the Requested Party has substantial grounds for believing:
- (a) that the offence of which that person is accused or was convicted is an offence of a political character or that the request for surrender has in fact been made with a view to trying or punishing him or her for an offence of a political character;
- (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, colour, ethnic origin, sex, religion, nationality, or political opinions; or
- (c) that the person might, if returned—
- (i) be prejudiced at that person's trial; or
- (ii) be punished, detained or restricted in his or her personal liberty

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- (c) 描述要求移交所根據的罪行的法律條文的說明、該項罪行可判處的懲罰的說明，以及就該項罪行提出訴訟或執行有關該項罪行懲罰的任何時限。
- (3) 如該項移交要求與一名被告有關，須一併提供由要求方的法官、裁判官或其他主管當局發出的逮捕令的副本，以及任何根據被要求方的法律，如該罪行發生在被要求方的管轄範圍內，足以使該被告被交付審判的證據。
- (4) 如該項移交要求與被定罪或被判刑的人有關，則須一併提供定罪或判刑證明書副本，及：
- (a) 如該人被定罪但未被判刑，有關法院就此發出的說明及逮捕令副本；或
- (b) 如該人已被判刑，顯示該項判刑可強制執行和未服刑期尚有多少的說明。

第十條

確認

- (1) 依照第九條隨移交要求一併提供的任何文件如經確認，須被接受為與審查該項要求有關的法律程序中的證據。
- (2) 就本協定而言，假如文件看來是經以下方式處理，即屬經確認文件：
- (a) 經要求方的法官，裁判官或要求方的官員簽署或證明；及
- (b) 經要求方的主管當局蓋上官方印章。

第十一條

證明文件的語文

by reason of race, colour, ethnic origin, sex, religion, nationality or political opinions.

- (2) A person who has been finally acquitted, convicted or pardoned under the law of the Requesting or Requested Party for any offence set out in the request shall not be surrendered for that offence.
- (3) Surrender shall not be granted if the offence for which surrender is sought is an offence under military law which is not also an offence under ordinary criminal law.

ARTICLE 7

DISCRETIONARY REFUSAL OF SURRENDER

- (1) Surrender may be refused if the Requested Party considers that:
- (a) the offence is, having regard to all the circumstances, not sufficiently serious to warrant the surrender of the person sought;
- (b) there has been excessive delay, for reasons which cannot be imputed to the person sought, in bringing charges, in bringing the case to trial or in making the person serve his or her sentence or the remainder thereof;
- (c) the surrender of the person might place that Party in breach of its obligations under international treaties;
- (d) in the circumstances of the case, the surrender would be incompatible with humanitarian considerations in view of

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

第十二條

暫時逮捕

- (1) 在緊急情況下，經要求方提出申請，被要求方可根據本身的法律，暫時逮捕被要求移交的人。
- (2) 暫時逮捕的申請書須載有：
 - (a) 要求移交該人的意向說明；
 - (b) 該人的逮捕令或被定罪判決書已經作出的說明；
 - (c) 該人身分、國籍及可能所在地的資料；
 - (d) 該人的描述；
 - (e) 罪行和案件事實的簡介；
 - (f) 就該罪行可判或已判的刑罰；及
 - (g) (如適用的話)未服完的刑期。
- (3) 暫時逮捕的申請，可以任何方式通過第九條第(1)款所述的途徑提出或通過國際刑警組織提出，提出申請的方式須能以書面形式紀錄。
- (4) 如被要求移交者遭暫時逮捕滿六十天(由逮捕之日起計)，而被要求方仍未接獲把他移交的要求和支持文件，暫時逮捕便須終止。但如其後接獲移交的要求和支持文件，根據本段釋放該人並不阻止提出或繼續進行移交的程序。

第十三條

補充資料

the age, health or other personal circumstances of the person sought; or

- (e) the person whose surrender is requested has been sentenced or would be liable to be tried or sentenced in the Requesting Party by an extraordinary or ad hoc court or tribunal.
- (2) The Requested Party may refuse to surrender a person for an offence which is regarded by its law as having been committed within the jurisdiction of its courts. If the Requested Party so refuses, the Requesting Party may request that the case be submitted to its competent authorities in order that proceedings for prosecution be considered.
 - (3) The Requested Party may refuse surrender where the person sought has been finally acquitted, convicted or pardoned in a third jurisdiction for the same offence for which surrender is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.
 - (4) Where the surrender of a person is requested for the purpose of carrying out a sentence the Requested Party may refuse surrender if it appears that the conviction was obtained in the person's absence, unless the person has the opportunity to have the case retried in his or her presence, in which case the person shall be considered as an accused person under this Agreement.
 - (5) The Requested Party may refuse surrender if the request relates to the prosecution or punishment of a person for an offence which, had it been committed within the jurisdiction of the Requested Party, could no longer be prosecuted by reason only of lapse of time.

- (1) 如要求方提交的資料不足，以致被要求方不能根據本協定作出決定，被要求方得要求提供所需的補充資料，並可定出收取該等資料的期限。
- (2) 如被要求移交的人已被逮捕，而所提交資料根據本協定並不足夠或沒有在指定時間內收到，該人可被釋放。按此釋放被捕人並不阻止要求方就同一罪行重新提出把該人移交的要求。

第十四條

同時要求

如締約一方和一個與作為被要求方的新西蘭或香港特別行政區有移交被控告及被定罪人士的協定或安排的國家同時要求移交一名人士，被要求方須考慮所有情況後才作出決定，須考慮的情況包括：

- (a) 被要求方與各要求方之間所有現行協定中有關條文；
- (b) 所犯罪行的相對嚴重性及犯罪地點；
- (c) 各移交要求的提出日期；
- (d) 被要求移交的人的國籍和通常居住的地方；
- (e) 其後被移交給另一管轄區的可能性。

而被要求方如果決定把該人移交另一管轄區，須將其決定通知要求方。

第十五條

代表及開支

- (1) 被要求方須為因移交要求而須在其管轄區內進行的任何訴訟程序所需法律代表及援助作出所有必要的安排。

ARTICLE 8

POSTPONEMENT OF SURRENDER

- (1) If the person sought is being proceeded against or is under punishment or is detained in the jurisdiction of the Requested Party in connection with any offence other than that for which surrender is requested, surrender may be deferred until the conclusion of the proceedings, the execution of any punishment imposed or the release from detention, as the case may be.
- (2) When the person whose surrender is requested was previously surrendered by a third jurisdiction for prosecution or execution of sentence, no action shall be taken pursuant to such request until such time has elapsed as is required by any agreement with that third jurisdiction or until the person has had an opportunity of leaving the jurisdiction of the Requested Party.

ARTICLE 9

THE REQUEST AND SUPPORTING DOCUMENTS

- (1) Requests for surrender and related documents shall be conveyed through the appropriate authority as may be notified from time to time by one Party to the other.
- (2) The request shall be accompanied by:

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附表

SCHEDULE—ARTICLE 10

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- (2) 除第十五條第(3)款另有規定外，被要求方須為因移交要求而須在其管轄區內進行的任何訴訟程序負擔開支，並須負擔與逮捕和拘留被要求移交的人有關的開支，直至該人被移交為止。要求方須負擔其後的一切開支，包括把該人送離被要求方管轄區的開支。
- (3) 如因移交要求而明顯地會引起特殊開支，締約雙方須進行磋商，以決定如何支付這些費用。

第十六條

移交安排

- (1) 被要求方須在就移交要求作出決定後立即知會要求方其決定。被要求方如完全或部分拒絕要求，須說明原因。
- (2) 要移交一個人時，被要求方當局須把該人送往其管轄區內由要求方選定的方便離境地點。
- (3) 除第十六條第(4)款另有規定外，要求方須在被要求方指定的期間內把該人帶走，而如果在該期間內仍未把該人帶走，被要求方可拒絕因同一罪行把該人移交。
- (4) 締約一方如因不受其控制的情況以致不能移交或接管須被移交的人，即須知會締約另一方。在此情況下，締約雙方須另定新的移交日期，而第十六條第(3)款的規定須適用。

第十七條

移交財產

- (1) 在被要求方的法律許可範圍內，同時在任何第三方的權利應獲得尊重的前提下，因犯有關罪行而取得的物件，凡是與移交要求有關的，或可能要用作有關罪行的證據的，如被發現，而移交要求又經獲准，即須悉數移交。

- (a) as accurate a description as possible of the person sought, together with any other information which would help to establish that person's identity, nationality and location;
- (b) a statement of each offence for which surrender is sought and a statement of the relevant acts and omissions in respect of each offence; and
- (c) a statement of the provisions of the law describing the offence for which surrender is requested and a statement of the punishment which can be imposed therefor and any time limit on the institution of proceedings or on the execution of any punishment for that offence.

- (3) If the request relates to an accused person it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the Requesting Party and by such evidence as, according to the law of the Requested Party, would justify committal for trial if the offence had been committed within the jurisdiction of the Requested Party.
- (4) If the request relates to a person already convicted or sentenced, it shall also be accompanied by a copy of the certificate of the conviction or sentence, and
- (a) 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
- (b) if the person was sentenced, a statement indicating that the sentence is enforceable and how much of the sentence has still to be served.

ARTICLE 10

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附表

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- (2) 如果被要求方的法律有所規定，或為了要保障任何第三方的權利，同時被要求方又提出要求，上述物品在訴訟程序完結後，即須在切實可行的範圍內盡快歸還給被要求方而不得收取費用。
- (3) 如果被要求方的法律許可，要求方又提出要求，即使被要求移交的人因死亡、失蹤或逃脫而未能移交，上述物品仍須移交給要求方。

第十八條

特定罪行規例

- (1) 已被移交的人，除因下述罪行外，不得因其他在被移交前所犯的罪行而被要求方起訴、判刑、拘留或以任何其他形式限制其人身自由：
 - (a) 下令移交該人所根據的罪行；
 - (b) 因下令移交該人所根據的事實而揭發的同等或較輕微罪行而該罪行又是根據本協定本已可以把該人移交的罪行；或
 - (c) 在被要求方的法律許可下，任何可以根據本協定下令把該人移交的罪行，而被要求方又同意就此罪行對該人作出處理；除非該人曾有機會離開其已被移交往的一方的管轄區，但從其可以自由離開起計四十天內並沒有離開，或在離開後自願返回該管轄區的，則屬例外。
- (2) 根據第十八條第(1)款(c)段被要求表示同意的一方，可要求對方提交第九條所述的任何文件或說明。

第十九條

轉移交

AUTHENTICATION

- (1) Any document that, in accordance with Article 9, accompanies a request for surrender shall, if duly authenticated, be admitted in evidence in proceedings relating to the examination of the request.
- (2) A document is authenticated for the purposes of this Agreement if it purports to be:
 - (a) signed or certified by a judge, magistrate or an official of the Requesting Party; and
 - (b) sealed with the official seal of a competent authority of the Requesting Party.

ARTICLE 11

LANGUAGE OF DOCUMENTATION

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

ARTICLE 12

- (1) 被要求方把一個人移交給要求方後，不得因該人在被移交前所犯罪行而把該人移交或轉送至要求方管轄區以外的地方，惟以下情況，則屬例外：
- (a) 該人曾有機會離開香港特別行政區或新西蘭(視乎實際情況而定)，但從其可以自由離開起計四十天內並沒有離開，或在離開後自願返回該地；或
- (b) 被要求方同意該項移交。
- (2) 根據第十九條第(1)款(b)段被要求表示同意的一方，可要求對方提交第九條所述的任何文件或說明。

第二十條

過境

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

第二十一條

生效、中止及終止

- (1) 本協定將於締約雙方用以確認已各自履行各項使本協定生效的規定的互換照會內所訂明的日期起生效。
- (2) 本協定適用於在本協定生效前及生效後所犯的罪行。
- (3) 締約任何一方均可通過根據第九條第(1)款知會的途徑通知另一方隨時中止或終止本協定。要中止本協定，只須接獲有關的通知，即告生效。若要終止本協定，在接獲終止的通知後滿三個月，本協定即告失效。

PROVISIONAL ARREST

- (1) In urgent cases the person sought may, in accordance with the law of the Requested Party, be provisionally arrested on the application of the Requesting Party.
- (2) The application for provisional arrest shall contain:
- (a) a statement of intention to request the surrender of the person sought;
- (b) a statement of the existence of a warrant of arrest or a judgment of conviction against that person;
- (c) information concerning the person's identity, nationality and probable location;
- (d) a description of the person;
- (e) a brief description of the offence and the facts of the case;
- (f) a statement of the sentence that can be or has been imposed for the offence; and
- (g) where applicable, how much of that sentence remains to be served.
- (3) An application for provisional arrest may be transmitted by any means affording a record in writing through the channel notified under Article 9(1) or through the International Criminal Police Organisation (Interpol).
- (4) The provisional arrest of the person sought shall be terminated upon the expiration of sixty days from the date of arrest if the request for surrender and supporting documents have not been received. The release of a person pursuant to this paragraph shall not prevent the institution or continuation of surrender proceedings

- (4) 除非締約雙方先經外交途徑互換照會，商定把本協定適用於托克勞的條件，否則本協定不適用於托克勞。

下列簽署人各經其政府正式授權，已在本協定上簽字為證。

本協定以中文及英文寫成，並於一九九八年四月三日在香港特別行政區簽訂，各文本均為具有同等效力的真確本。

if the request and the supporting documents are received subsequently.

ARTICLE 13

ADDITIONAL INFORMATION

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

ARTICLE 14

CONCURRENT REQUESTS

If the surrender of a person is requested concurrently by one of the Parties and a State with whom New Zealand or the Hong Kong Special Administrative Region, whichever is being requested, has agreements

or arrangements for the surrender of accused and convicted persons, the Requested Party shall make its decision having regard to all the circumstances including:

- (a) the provisions in this regard in any agreements in force between the Requested Party and the Requesting Parties;
- (b) the relative seriousness and place of commission of the offences;
- (c) the respective dates of the requests;
- (d) the nationality and ordinary place of residence of the person sought;
- (e) the possibility of subsequent surrender to another jurisdiction

and shall notify the other Party of its decision in the event of surrender of the person to another jurisdiction.

ARTICLE 15

REPRESENTATION AND COSTS

- (1) The Requested Party shall make all necessary arrangements for legal representation and assistance in any proceedings in its jurisdiction arising out of a request for surrender.
- (2) Subject to Article 15(3), the Requested Party shall meet the costs of any proceedings arising from the request in its jurisdiction and shall bear any expenses associated with the arrest and detention of the person whose surrender is sought until that person is surrendered. The Requesting Party shall bear all subsequent

expenses including the costs of transporting the person from the jurisdiction of the Requested Party.

- (3) If it becomes apparent that exceptional expenses may be incurred as a result of a request for surrender the Parties shall consult with a view to deciding how these expenses will be met.

ARTICLE 16

ARRANGEMENTS FOR SURRENDER

- (1) The Requested Party shall, as soon as a decision on the request for surrender has been made, communicate that decision to the Requesting Party. Reasons shall be given for any complete or partial refusal of the request.
- (2) When a person is to be surrendered, that person shall be sent by the authorities of the Requested Party to such convenient place of departure within that Party's jurisdiction as the Requesting Party shall indicate.
- (3) Subject to Article 16(4), the Requesting Party shall remove the person within the period specified by the Requested Party and if the person is not removed within that period the Requested Party may refuse to surrender that person for the same offence.
- (4) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be surrendered, it shall

notify the other Party. In that case, the Parties shall agree a new date for surrender and the provisions of Article 16(3) shall apply.

ARTICLE 17

SURRENDER OF PROPERTY

- (1) To the extent permitted under the law of the Requested Party and subject to the rights of third parties which shall be duly respected, all articles acquired as a result of the offence to which the request relates or which may be required as evidence of the offence shall, if found, be surrendered if the request for surrender is granted.
- (2) Where the law of the Requested Party or the protection of the rights of third parties so require and the Requested Party so requests, the articles shall be returned to the Requested Party without charge as soon as practicable after the end of the proceedings.
- (3) If permitted by the law of the Requested Party and the Requesting Party so requests, the articles shall be surrendered to that Party even though the person cannot be surrendered owing to death, disappearance or escape.

ARTICLE 18

RULE OF SPECIALTY

- (1) A person 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 the surrender other than:
- (a) the offence or offences in respect of which the surrender was ordered;
 - (b) an equivalent or lesser offence, disclosed by the facts in respect of which the surrender was ordered, if the offence is one for which the person could have been surrendered under this Agreement; or
 - (c) where permitted by the law of the Requested Party, any other offence being an offence for which surrender may be ordered under this Agreement in respect of which the Requested Party consents to the person being dealt with
- unless the person has first had an opportunity to leave the jurisdiction of the Party to which he or she has been surrendered and has not done so within forty days of having been free to do so or has voluntarily returned after having left.
- (2) A Party whose consent is requested under Article 18(1)(c) may require the submission of any document or statement referred to in Article 9.

ARTICLE 19

RESURRENDER

- (1) Where a person has been surrendered to the Requesting Party by the Requested Party, that person is not liable to be surrendered or transferred beyond the jurisdiction of the Requesting Party for an offence committed before the person's surrender unless:
 - (a) the person has first had an opportunity to leave the Hong Kong Special Administrative Region or New Zealand, as the case may be, and has not done so within forty days of having been free to do so or has voluntarily returned after having left; or
 - (b) the Requested Party consents to that surrender.
- (2) A Party whose consent is requested under Article 19(1)(b) may require the submission of any document or statement referred to in Article 9.

ARTICLE 20

TRANSIT

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

ARTICLE 21

ENTRY INTO FORCE SUSPENSION AND
TERMINATION

- (1) This Agreement shall enter into force on a date to be specified in an exchange of notes between the Parties confirming that their respective requirements for the entry into force of this Agreement have been complied with.
- (2) This Agreement shall apply to offences committed before as well as after it enters into force.
- (3) Each of the Parties may suspend or terminate this Agreement at any time by giving notice to the other through the channel notified under Article 9(1). Suspension shall take effect on receipt of the relevant notice. In the case of termination the Agreement shall cease to have effect three months after the receipt of notice to terminate.
- (4) This Agreement shall not apply to Tokelau unless the Parties have exchanged Notes through the diplomatic channel agreeing the terms on which this Agreement shall so apply.

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

Done at the Hong Kong Special Administrative Region this third day of April One thousand nine hundred and ninety eight in the Chinese and English languages, each text being equally authentic.