

《逃犯(葡萄牙)令》
(第 503 章，附屬法例 U)

FUGITIVE OFFENDERS (PORTUGAL) ORDER
(Cap. 503 sub. leg. U)

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《逃犯(葡萄牙)令》

(第 503 章第 3 條)

FUGITIVE OFFENDERS (PORTUGAL) ORDER

(Cap. 503, section 3)

[2004 年 11 月 7 日] 2004 年第 170 號法律公告

[7 November 2004] L.N. 170 of 2004

1. (已失時效而略去)
2. 條例中的程序在香港及葡萄牙之間適用
現就——
 - (a) 適用於特區政府和葡萄牙共和國政府；及
 - (b) 所載條款在附表中敘述，的移交逃犯安排，指示本條例中的程序在該等條款所載的限制、約束、例外規定及約制的規限下，在香港及葡萄牙共和國之間適用。

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

附表

[第 2 條]

中華人民共和國香港特別行政區政府
和葡萄牙共和國政府
關於移交逃犯的協定

中華人民共和國香港特別行政區(“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，與葡萄牙共和國政府，

願訂立相互移交逃犯的規定；

協議如下：

第一條

移交的義務

SCHEDULE

[s. 2]

AGREEMENT BETWEEN
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA
AND
THE GOVERNMENT OF THE PORTUGUESE
REPUBLIC
CONCERNING
SURRENDER OF FUGITIVE OFFENDERS

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 the Portuguese Republic,

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

Have agreed as follows:

ARTICLE 1

OBLIGATION TO SURRENDER

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追緝以便就第二條所描述的罪行作出檢控、判刑或強制執行判刑的人移交給對方。

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

第二條

罪行

(1) 凡屬以下描述的任何罪行，而該罪行根據締約雙方的法律均屬可判處監禁或以其他形式拘留一年以上，或可判處更嚴厲刑罰者，須就該罪行批准移交：

- (1) 謀殺或誤殺(包括刑事疏忽導致死亡)；構成罪行的殺人；意圖謀殺而襲擊
- (2) 協助、教唆、慫使或促致他人自殺
- (3) 惡意傷人；殘害他人；使人受到嚴重或實際身體傷害；襲擊致造成實際身體傷害；威脅殺人；不論是以武器、危險物質或其他方式蓄意或罔顧後害或損害有關的罪行
- (4) 性罪行(包括強姦)；性侵犯、猥褻侵犯；對兒童作出不法的性方面的作為；法定的性罪行
- (5) 對兒童、有精神缺陷或不省人事的人作出嚴重猥褻行為
- (6) 綁架；拐帶；非法禁錮；非法關禁；買賣或販運奴隸或其他人；劫持人質
- (7) 刑事恐嚇
- (8) 與危險藥物(包括麻醉藥、精神病科藥品，以及在非法製造麻醉藥及精神病科藥物時所用的先質及必需的化學品)有關的法律所訂的罪行；與販毒得益有關的罪行

ARTICLE 2

OFFENCES

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

- (1) murder or manslaughter, including criminal negligence causing death; culpable homicide; assault with intent to commit murder
- (2) aiding, abetting, counselling or procuring suicide
- (3) maliciously wounding; maiming; inflicting grievous or actual bodily harm; assault occasioning actual bodily harm; threats to kill; intentional or reckless endangering of life whether by means of a weapon, a dangerous substance or otherwise, offences relating to unlawful wounding or injuring
- (4) offences of a sexual nature including rape; sexual assault; indecent assault; unlawful sexual acts on children; statutory sexual offences
- (5) gross indecency with a child, a mental defective or an unconscious person
- (6) kidnapping; abduction; false imprisonment; unlawful confinement; dealing or trafficking in slaves or other persons; taking a hostage

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- (9) 以欺騙手段取得財產或金錢利益；盜竊；搶劫；入屋犯法(包括破啟及進入)；盜用公款；勒索；敲詐；非法處理或收受財產；偽造帳目；與財產或財務事宜有關而涉及欺詐的任何其他罪行；與非法剝奪財產有關的法律所訂的任何罪行
- (10) 破產法或破產清盤法所訂的罪行
- (11) 與公司有關的法律所訂的罪行(包括由高級人員、董事及發起人所犯的罪行)
- (12) 與證券及期貨交易有關的罪行
- (13) 與偽製有關的罪行；與偽造或使用偽造物件有關的法律所訂的罪行
- (14) 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
- (15) 與賄賂、貪污、秘密佣金及違反信託義務有關的法律所訂的罪行
- (16) 偽證及唆使他人作偽證
- (17) 與妨礙或阻礙司法公正有關的罪行
- (18) 縱火；刑事損壞或損害(包括與電腦數據有關的損害)
- (19) 與火器有關的法律所訂的罪行
- (20) 與爆炸品有關的法律所訂的罪行
- (21) 與環境污染或保障公眾衛生有關的法律所訂的罪行
- (22) 叛變或於海上的船隻上所犯的任何叛變性的作為
- (23) 按國際法屬牽涉船舶或飛機的海盜行為
- (24) 非法扣押或控制飛機或其他運輸工具
- (25) 危害種族或直接和公開煽惑他人進行危害種族
- (26) 方便或容許任何人從羈押中逃走
- (27) 與控制任何種類貨物進出口或國際性資金移轉有關的法律所訂的罪行

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- (7) criminal intimidation
- (8) offences against the law relating to dangerous drugs including narcotics and psychotropic substances and precursors and essential chemicals used in the illegal manufacture or narcotic drugs and psychotropic substances and offences related to the proceeds of drug trafficking
- (9) obtaining property or pecuniary advantage by deception; theft; robbery; burglary (including breaking and entering); embezzlement; blackmail; extortion; unlawful handling or receiving of property; false accounting; any other offence in respect of property or fiscal matters involving fraud; any offence against the law relating to unlawful deprivation of property
- (10) offences against bankruptcy law or insolvency
- (11) offences against the law relating to companies including offences committed by officers, directors, and promoters
- (12) offences relating to securities and futures trading
- (13) any offence relating to counterfeiting; any offence against the law relating to forgery or uttering what is forged
- (14) an offence against the laws relating to protection of intellectual property, copyrights, patents or trademarks
- (15) an offence against the law relating to bribery, corruption, secret commissions, and breach of trust
- (16) perjury and subornation of perjury
- (17) offences relating to the perversion or obstruction of the course of justice
- (18) arson; criminal damage or mischief including mischief in relation to computer data
- (19) an offence against the law relating to firearms
- (20) an offence against the law relating to explosives

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- (28) 走私；與違禁品(包括歷史及考古文物)的進出口有關的法律所訂的罪行
- (29) 關乎出入境事宜的罪行(包括以欺詐方式取得或使用護照或簽證)
- (30) 為了經濟收益而安排或方便任何人非法進入要求方的管轄區
- (31) 與賭博或獎券活動有關的罪行
- (32) 與非法終止懷孕有關的罪行
- (33) 拐帶、遺棄、扔棄或非法羈押兒童；涉及利用兒童的任何其他罪行
- (34) 與賣淫及供賣淫用的處所有關的法律所訂的罪行
- (35) 涉及非法使用電腦的罪行
- (36) 與財務事宜、課稅或關稅有關的罪行，儘管被要求方的法律並沒有如要求方般徵收同類的稅項或關稅；或並沒有如要求方般訂有同類的稅項、關稅或海關規例
- (37) 與從羈押中非法逃走有關的罪行；監獄叛亂
- (38) 重婚
- (39) 與婦女及女童有關的罪行
- (40) 與虛假或有誤導成分的商品說明有關的法律所訂的罪行
- (41) 與管有或清洗從觸犯任何罪行(而該罪行為根據本協定可就其而批准移交的)(以下簡稱“本條所述罪行”)所獲的得益有關的罪行
- (42) 阻止逮捕或檢控曾犯或相信曾犯本條所述的罪行的人
- (43) 任何罪行，而該罪行為根據對締約雙方有約束力的國際公約可就其而批准移交逃犯的；由於對締約雙方有約束力的國際組織決定而訂定的罪行
- (44) 串謀犯欺詐罪或串謀詐騙
- (45) 串謀犯或以任何種類的組織犯本條所述罪行

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- (21) an offence against laws relating to environmental pollution or protection of public health
- (22) mutiny or any mutinous act committed on board a vessel at sea
- (23) piracy involving ships or aircraft, according to international law
- (24) unlawful seizure or exercise of control of an aircraft or other means of transportation
- (25) genocide or direct and public incitement to commit genocide
- (26) facilitating or permitting the escape of a person from custody
- (27) an offence against the laws relating to the control of exportation or importation of goods of any type, or the international transfer of funds
- (28) smuggling; offences against the laws relating to import and export of prohibited items, including historical and archaeological items
- (29) immigration offences including fraudulent acquisition or use of a passport or visa
- (30) arranging or facilitating for financial gain, the illegal entry of persons into the jurisdiction of the requesting Party
- (31) an offence relating to gambling or lotteries
- (32) offences relating to the unlawful termination of pregnancy
- (33) stealing, abandoning exposing or unlawfully detaining a child; any other offences involving the exploitation of children
- (34) offences against the laws relating to prostitution and premises kept for the purposes of prostitution
- (35) offences involving the unlawful use of computers

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- (46) 協助、教唆、慫恿或促致他人犯本條所述罪行，或(作為犯本條所述罪行的事實之前或之後的從犯)煽惑他人犯本條所述罪行，或企圖犯本條所述罪行
- (47) 任何其他罪行，而該罪行為按締約雙方的法律可就其而批准移交的
- (2) 凡要求移交是為了執行判刑，該項要求亦須符合另一項規定，即餘下須服的監禁或拘留期須不少於六個月。
- (3) 就本條而言，在確定某罪行在締約雙方的法律下是否均屬可判處懲罰的罪行時，須考慮被尋求移交者被指稱的作為或不作為的全部而不須顧及要求方法律就該罪行所規定的構成因素。
- (4) 就本條第(1)款而言，如構成罪行的行為在犯罪時屬觸犯要求方的法律的罪行，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。
- (5) 凡要求移交逃犯是為了執行判刑，而看來該人是在缺席的情況下被定罪，被要求方可拒絕把該人移交，除非該人有機會在他出席的情況下獲得重審，則屬例外。在此情況下，他須被視為本協定所指的被控人。

- (36) offences relating to fiscal matters, taxes or duties, notwithstanding that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax duty or customs regulation of the same kind as the requesting Party
- (37) offences relating to the unlawful escape from custody; mutiny in prison
- (38) bigamy
- (39) an offence relating to women and girls
- (40) any offence against the law relating to false or misleading trade descriptions
- (41) offences relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement
- (42) 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
- (43) offences for which fugitive offenders may be surrendered under international conventions binding on the Parties; offences created as a result of decisions of international organisations which are binding on the Parties
- (44) conspiracy to commit fraud or to defraud
- (45) conspiracy to commit or any type of association to commit any offence for which surrender may be granted under this Agreement
- (46) aiding abetting counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit any offence for which surrender may be granted under this Agreement

(47) any other offence for which surrender may be granted in accordance with the laws of both Parties

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

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

(4) For the purposes of paragraph (1) of this Article, an offence shall be an offence according to the laws of both Parties if the conduct constituting the offence was an offence against the law of the requesting Party at the time it was committed and an offence against the law of the requested Party at the time the request for surrender is received.

(5) Where the surrender of a fugitive offender is requested for the purpose of carrying out a sentence the requested Party may refuse to surrender him if it appears that the conviction was obtained in his absence, unless he has the opportunity to have his case retried in his presence, in which case he shall be considered as an accused person under this Agreement.

第三條

國民的移交

葡萄牙共和國政府保留拒絕移交其公民和永久性居民的權利。香港特別行政區政府保留拒絕移交其永久性居民和中華人民共和國的國民的權利。

ARTICLE 3

SURRENDER OF NATIONALS

The Government of the Portuguese Republic reserves the right to refuse the surrender of its citizens and permanent residents. The Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of its permanent residents and nationals of the People's Republic of China.

第四條

死刑、終身監禁和無確定期限監禁

- (1) 如根據本協定就某罪行要求移交逃犯，而根據要求方的法律該罪行屬可判處死刑的，則被要求方必須拒絕移交。
- (2) 如根據本協定就某罪行要求移交逃犯，而根據要求方的法律該罪行屬可判處終身監禁或無確定期限監禁的，則除非要求方作出被要求方認為充分的保證，即要求方不會判處該等刑罰，或即使判處該等刑罰亦不會執行，否則被要求方必須拒絕移交。

第五條

移交根據

只有在按照被要求方的法律屬有足夠證據，證明假若被尋求移交的人被控所犯罪行在被要求方的地方內觸犯，被要求方亦有充分理由把被尋求移交者交付審判，或證明被尋求移交者即是遭要求方法院定罪的人，始須把該人移交。

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，則不得移交有關逃犯：

ARTICLE 4

DEATH PENALTY, LIFE AND INDETERMINATE SENTENCES

- (1) If the offence for which surrender of a fugitive offender is requested under this Agreement is punishable according to the law of the requesting Party with the death penalty, surrender shall be refused.
- (2) If the offence for which surrender of a fugitive offender is requested under this Agreement is punishable according to the law of the requesting Party with life imprisonment or a prison sentence of undetermined duration, surrender shall be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that these penalties will not be imposed or, if imposed, will not be carried out.

ARTICLE 5

BASIS FOR SURRENDER

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

ARTICLE 6

MANDATORY REFUSAL OF SURRENDER

- (1) A fugitive offender shall not be surrendered if the requested Party has substantial grounds for believing:

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- (a) 該人被控或被定罪的罪行屬政治性質的罪行；
- (b) 提出的移交要求宣稱是因某項可就其而批准移交的罪行而提出，但實際上是由於為該人的種族、宗教、國籍或政治意見而檢控或懲罰該人的目的而提出的；或
- (c) 該人如被交回，便可能因其種族、宗教、國籍或政治意見而在其審訊時蒙受不利或被懲罰、拘留，或其人身自由受到限制。
- (2) 就移交要求內所列出的任何罪行，如根據要求方或被要求方的法律，逃犯已最終獲釋、被定罪或獲赦免，或禁止對該逃犯作出檢控或已撤銷對該逃犯的定罪，則不得就該罪行移交該逃犯。

第七條

酌情拒絕移交

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成為移交的理由；
- (b) 基於不能歸咎於被尋求移交的人的理由，以致在提出起訴、把案件提交審判或使被尋求移交的人服刑或使其服餘下的刑期方面有過分延誤；
- (c) 尋求移交所根據的罪行，是在被要求方的法院的司法管轄權範圍內犯的；
- (d) 移交可令致被要求方違反其根據國際條約須履行的義務；或
- (e) 在該個案的情況下，鑑於被尋求移交的人的年齡、健康或其他個人狀況，把該人移交不合人道。

- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
- (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, religion, nationality or political opinions; or
- (c) that the person might, if returned, be prejudiced at that person's trial or punished, detained or restricted in his or her personal liberty by reason of race, religion, nationality or political opinions.
- (2) A fugitive offender who has been finally acquitted, convicted or pardoned or whose prosecution is barred or whose conviction has been set aside under the law of the requesting or requested Party for any offence set out in the request shall not be surrendered for that offence.

ARTICLE 7

DISCRETIONARY REFUSAL OF SURRENDER

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;
- (b) there has been excessive delay, for reasons which cannot be imputed to the person sought, in bringing charges, in bringing the case to trial or in making the person serve his or her sentence or the remainder thereof;
- (c) the offence for which surrender is sought was committed within the jurisdiction of its courts;
- (d) the surrender might place that Party in breach of its obligations under international treaties; or

第八條

延遲移交

被尋求移交者如因與要求移交所根據的罪行以外的任何罪行正在被要求方的管轄範圍內被起訴或受懲罰，則可准予移交，但亦可予延遲至法律程序已完結及任何所判處的懲罰執行後才移交。

第九條

移交要求及支持文件

- (1) 移交要求須以下述方式提出：
 - (a) 如葡萄牙共和國是要求方，則由駐香港特別行政區的葡萄牙共和國領事代表向香港特別行政區律政司提出；
 - (b) 如香港特別行政區是要求方，則由香港特別行政區律政司向駐香港特別行政區的葡萄牙共和國領事代表提出，或經由締約雙方協定的其他有關當局提出。
- (2) 提出要求時，須連同下列資料：
 - (a) 對被尋求移交的人盡量準確的描述以及其他可助確定該人的身分、國籍和所在地的資料；
 - (b) 尋求移交所根據的各項罪行的陳述，以及就每項罪行被尋求移交的人被指稱的作為或不作為的陳述；及

- (e) in the circumstances of the case, the surrender would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought.

ARTICLE 8

POSTPONEMENT OF SURRENDER

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

ARTICLE 9

THE REQUEST AND SUPPORTING DOCUMENTS

- (1) Requests for surrender shall—
 - (a) where the Portuguese Republic is the requesting Party be made by the consular representative of the Portuguese Republic in the Hong Kong Special Administrative Region to the Department of Justice of the Hong Kong Special Administrative Region;
 - (b) where the Hong Kong Special Administrative Region is the requesting Party be made by the Department of Justice of the Hong Kong Special Administrative Region to the consular representative of the Portuguese Republic in the Hong Kong Special Administrative Region,
or be made through such other appropriate authorities as may be agreed by the Parties.
- (2) The request shall be accompanied by:

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- (c) 訂立有關罪行的法律條文文本，以及就該項罪行可判處的懲罰的陳述和就該項罪行提起法律程序或執行所判處的任何懲罰的時限的陳述。
- (3) 如移交要求與被控人有關，要求須連同由要求方的法官、裁判官或其他主管當局發出的逮捕手令的複本，以及根據被要求方的法律，證明假若有關罪行在被要求方的管轄範圍內觸犯，亦有充分理由把該被控人交付審判的證據。
- (4) 如移交要求與已被定罪或被判刑的人有關，則要求須連同：
- (a) 定罪或判刑證明書複本；及
 - (b) 如該人已被定罪但未被判刑，有關法院就此發出的陳述及逮捕手令複本；或
 - (c) 如該人已被判刑，顯示該項判刑屬可強制執行以及尚須服的刑期的陳述。

- (a) as accurate a description as possible of the person sought, together with any other information which would help to establish that person's identity, nationality and location;
 - (b) a statement of each offence for which surrender is sought and a statement of the acts and omissions which are alleged against the person in respect of each offence; and
 - (c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and any time limit on the institution of proceedings, or on the execution of any punishment for that offence.
- (3) If the request relates to an accused person it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the requesting Party and by such evidence as, according to the law of the requested Party, would justify committal for trial if the offence had been committed within the jurisdiction of the requested Party.
- (4) If the request relates to a person already convicted or sentenced, it shall also be accompanied by:
- (a) a copy of the certificate of the conviction or sentence; and
 - (b) if the person was convicted but not sentenced, a statement to that effect by the appropriate court and a copy of the warrant of arrest; or
 - (c) if the person was sentenced, a statement indicating that the sentence is enforceable and how much of the sentence has still to be served.

第十條

認證

ARTICLE 10

AUTHENTICATION

- (1) 支持移交要求的文件如已妥為認證，須被接納為證明該等文件所述事實的證據。假如文件看來是經下述方式處理，即屬已妥為認證：

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- (a) 由要求方的法官、裁判官或要求方的官員所簽署或核證的；
及
- (b) 蓋上要求方的主管當局的正式印鑑。
- (2) 由要求方提供用以支持移交要求的任何文件譯本，須在有關移交的法律程序中被接納作所有用途。

第十一條

文件的語文

要求須採用被要求方的法定語文或翻譯成被要求方的法定語文。為支持要求而提交的所有文件，在被要求方的要求下，亦須連同被要求方的法定語文的譯本一併提交。

第十二條

補充資料

- (1) 如要求方提交的資料不足，以致被要求方未能根據本協定作出決定，被要求方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) 如被尋求移交的人已被逮捕，而所提交的補充資料根據本協定並不足夠或沒有在指定時間內收到，則該人可被釋放。但此釋放並不阻止要求方重新提出把該人移交的要求。

(1) Documents supporting a request for surrender shall be admitted in evidence as proof of the facts contained therein if duly authenticated. Documents are duly authenticated if they purport to be:

- (a) signed or certified by a judge, magistrate or an official of the requesting Party, and
- (b) sealed with the official seal of a competent authority of the requesting Party.

(2) Any translation of documents submitted in support of a request for surrender provided by the requesting Party shall be admitted for all purposes in proceedings for surrender.

ARTICLE 11

LANGUAGE OF DOCUMENTATION

Requests shall be in, or translated into, an official language of the requested Party. All documents submitted in support of a request shall be accompanied, if so required by the requested Party, by a translation into an official language of the requested Party.

ARTICLE 12

ADDITIONAL INFORMATION

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

第十三條

暫時逮捕

- (1) 在緊急情況下，經要求方提出申請，被要求方可酌情決定並根據本身的法律，暫時逮捕被尋求移交的人。
- (2) 暫時逮捕的申請書須載明要求移交所尋求的人的意向、針對該人的逮捕手令或被定罪判決書已經作出的陳述、有關所尋求的人身分、國籍及可能所在地的資料、對所尋求的人的描述、對有關罪行和案件事實的簡述、就該罪行可判或已判刑罰的陳述、及(如適用的話)尚未服完的刑期的陳述。
- (3) 暫時逮捕的申請，可經任何能提供書面紀錄的方式，通過領事途徑提出或由香港特別行政區律政司和葡萄牙共和國的 *Procuradoria-Geral da Republica* 雙方直接向對方提出。國際刑警組織的設施也可用以提出這些要求。
- (4) 如被尋求移交者在暫時逮捕之日起六十日屆滿時，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。但如其後接獲移交要求和支持文件，根據本款釋放該人並不阻止提起或繼續進行移交的法律程序。

第十四條

ARTICLE 13

PROVISIONAL ARREST

discharged. Such discharge shall not preclude the requesting Party from making a fresh request for the surrender of the person.

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

ARTICLE 14

同時要求

如締約一方和一個與作為被要求方的葡萄牙共和國或香港特別行政區有移交被控人士及被定罪人士的協定或安排的國家同時要求移交一名人士，被要求方須考慮所有情況後才作出決定，須考慮的情況包括被要求方與各要求方之間任何現行協定中有關條文、所犯罪行的相對嚴重性及犯罪地點、各移交要求的提出日期、被尋求移交的人的國籍和通常居住的地方，以及其後將其移交給另一個國家的可能性。被要求方如果決定把該人移交另一管轄區，須將支持作出有關決定的資料向締約另一方提供。

第十五條

代表和開支

- (1) 被要求方須為因移交要求而引起的任何法律程序作出一切必要的安排和負擔開支，並須在其他方面代表要求方的利益。
- (2) 如察覺因移交要求而會引起特殊開支，締約雙方須進行磋商，以決定如何支付這些費用。
- (3) 被要求方須負擔因逮捕和拘留被尋求移交者所引致的開支，直至該人已被移交為止。要求方須負擔其後的一切開支。

第十六條

移交安排

CONCURRENT REQUESTS

If the surrender of a person is requested concurrently by one of the Parties and a State with whom the Portuguese Republic 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 the provisions in this regard in any agreements in force between the requested Party and the requesting Parties, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality and ordinary place of residence of the person sought and the possibility of subsequent surrender to another state, and furnish the other Party with information justifying its decision in the event of surrender of the person to another jurisdiction.

ARTICLE 15

REPRESENTATION AND COSTS

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

ARTICLE 16

ARRANGEMENTS FOR SURRENDER

- (1) 被要求方須在就移交要求作出決定後立即將其決定通知要求方。
- (2) 要移交任何人時，被要求方當局須把該人送往其管轄區內由要求方指示的方便離境地點。
- (3) 除本條第(4)款另有規定外，要求方須在被要求方指定的期間內把該人帶走，而如在該期間內該人未被帶走，則被要求方可拒絕就同一罪行把該人移交。
- (4) 締約一方如因非其所能控制的情況以致不能移交或接管將被移交的人，即須知會締約另一方。在此情況下，締約雙方須協定新的移交日期，而本條第(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的範圍內，當移交逃犯的要求獲批准後：
 - (a) 被要求方須把以下物件，包括金錢，交予要求方——
 - (i) 可作為有關罪行的證據的物件；或
 - (ii) 被尋求移交的人因有關罪行而取得並由其管有或其後被發現的物件。
 - (b) 假如有關物件在待決的法律程序中，在被要求方的管轄區內可予檢取或充公，則被要求方可暫時保留有關物件或在要求方保證歸還的條件下把該等物件交給要求方。
- (2) 第(1)款的規定不得損害被要求方的權利或被尋求移交的人以外的其他人士的權利。如該等權利存在，須應要求在法律程序結束後在切實可行的範圍內盡快把有關物件免費歸還被要求方。

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

ARTICLE 17

SURRENDER OF PROPERTY

- (1) To the extent permitted under the law of the requested Party, when a request for surrender of a fugitive offender is granted, the requested Party:
 - (a) shall hand over to the requesting Party all articles, including sums of money,
 - (i) which may serve as proof of the offence; or
 - (ii) which have been acquired by the person sought as a result of the offence and are in that person's possession or are discovered subsequently.
 - (b) may, if the articles in question are liable to seizure or confiscation within the jurisdiction of the requested Party in

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(3) 如要求方提出要求，有關物件須移交給該方，即使由於被尋求移交的人死亡或逃脫以致未能把他移交。

connection with pending proceedings, temporarily retain them or hand them over on condition they are returned.

(2) The provisions of paragraph (1) shall not prejudice the rights of the requested Party or of any person other than the person sought. When such rights exist the articles shall on request be returned to the requested Party without charge as soon as practicable after the end of the proceedings.

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

第十八條

特定罪行及轉移交

ARTICLE 18

SPECIALTY AND RESURRENDER

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

- (a) 批准移交該人所根據的罪行；
- (b) 該罪行不論如何描述，與批准移交該人所根據的事實實質上相同，但該罪行須是根據本協定能就其而把該人移交的，而且就該罪行可判處的刑罰不能比就移交該人所根據的罪行而判處的刑罰更重；
- (c) 任何其他罪行，而該罪行為根據本協定可就其而批准移交的，而被要求方亦同意就此罪行對該人作出處理；

除非該逃犯曾有機會行使權利離開其已被移交往的一方的管轄區，但在四十天內仍未離開，或在離開後自願重返該管轄區的，則屬例外。

(2) 已被移交的逃犯不得因其在被移交前所犯罪行而遭轉移交給另一管轄區，惟以下情況，則屬例外：

- (a) 被要求方同意該項轉移交；或

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

- (a) the offence or offences in respect of which his surrender was granted;
- (b) an offence, however described, based on substantially the same facts in respect of which his surrender was granted, provided such offence is one for which he could be surrendered under this Agreement, and provided further such offence is punishable by a penalty no more severe than the penalty for the offence for which he was surrendered;
- (c) any other 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 exercise his right to leave the jurisdiction of the Party to which he has been surrendered and he has not

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- (b) 該逃犯曾有機會行使權利離開其已被移交往的一方的管轄區，但在四十天內仍未離開，或在離開後自願重返該管轄區。
- (3) 根據本條第(1)(c)或(2)(a)款被要求表示同意的一方，可要求對方提交第九條所指的任何文件或陳述，及被移交的人就該事所作的任何陳述。

done so within forty days or has voluntarily returned to that jurisdiction having left it.

(2) A fugitive offender who has been surrendered shall not be re-surrendered to another jurisdiction for an offence committed prior to his surrender unless:

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

(3) A Party whose consent is requested under paragraphs (1)(c) or (2)(a) of this Article may require the submission of any document or statement referred to in Article 9, and any statement made by the surrendered person on the matter.

第十九條

生效、中止及終止

ARTICLE 19

ENTRY INTO FORCE SUSPENSION AND TERMINATION

- (1) 本協定將於締約雙方以書面通知對方已遵從各自為使本協定生效的規定之日期後三十天開始生效。
- (2) 本協定的條文適用於在本協定生效後提出的要求，而不論要求中所列罪行的犯罪日期。
- (3) 締約任何一方均可隨時通過根據第九條第(1)款所指的途徑，通知締約另一方中止或終止本協定。在接獲有關的通知後，本協定即告中止。就終止本協定而言，在接獲終止的通知後滿六個月，本協定即告失效。

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

(2) The provisions of this Agreement shall apply to requests made after its entry into force regardless of the date of the commission of the offence or offences set out in the request.

(3) Each of the Parties may suspend or terminate this Agreement at any time by giving notice to the other through the channel referred to in paragraph (1) of Article 9. Suspension shall take effect on receipt of the relevant notice. In the case of termination the Agreement shall cease to have effect six months after the receipt of notice to terminate.

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。

本協定於二零零一年五月二十四日在香港特別行政區簽訂，一式兩份，每份均用中文、葡萄牙文及英文寫成，各文本同等真確。

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 twenty-fourth day of May Two Thousand and One in duplicate in the Chinese, Portuguese and English languages, each text being equally authentic.