

《逃犯(南非)令》
(第 503 章, 附屬法例 AH)
Fugitive Offenders (South Africa) Order
(Cap. 503 sub. leg. AH)

版本日期 Version date 9.2.2012
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經核證文本
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(《法例發布條例》(第 614 章) 第 5 條)
 (Legislation Publication Ordinance (Cap. 614), section 5)

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條文 Provision	頁數 Page number	最後更新日期 Last updated date
主體 Main	1—2	9.2.2012
附表 Schedule	S-1—S-48	9.2.2012

尚未實施的條文 / 修訂 ——

尚未實施的條文及修訂的資料，可於「電子版香港法例」(<http://www.elegislation.gov.hk>) 閱覽。

Provisions / Amendments not yet in operation —

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制定史

本為 2010 年第 43 號法律公告 —— 2012 年第 1 號編輯修訂紀錄

Enactment History

Originally L.N. 43 of 2010 — E.R. 1 of 2012

《逃犯(南非)令》
(第 503 章, 附屬法例 AH)

目錄

條次		頁次
1.	(已失時效而略去)	1
2.	本條例中的程序在香港與南非之間適用	1
附表	《中華人民共和國香港特別行政區政府與南非共和國政府關於移交逃犯的協定》	S-1

Fugitive Offenders (South Africa) Order
(Cap. 503 sub. leg. AH)

Contents

Section		Page
1.	(Omitted as spent)	2
2.	Procedures in Ordinance to apply between Hong Kong and South Africa	2
Schedule	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of South Africa Concerning Surrender of Fugitive Offenders	S-2

《逃犯(南非)令》

(第 503 章第 3 條)

(略去制定語式條文——2012 年第 1 號編輯修訂紀錄)

[2011 年 12 月 2 日] 2011 年第 162 號法律公告

(格式變更——2012 年第 1 號編輯修訂紀錄)

1. (已失時效而略去——2012 年第 1 號編輯修訂紀錄)

2. **本條例中的程序在香港與南非之間適用**

現就條款於附表中敘述的移交逃犯安排，指示本條例中的程序在香港與南非共和國之間適用，但須受該等安排的條款所載的限制、約束、例外規定及約制所規限。

Fugitive Offenders (South Africa) Order

(Cap. 503, section 3)

(Enacting provision omitted—E.R. 1 of 2012)

[2 December 2011] L.N. 162 of 2011

(Format changes—E.R. 1 of 2012)

1. (Omitted as spent—E.R. 1 of 2012)

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

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

附表

[第 2 條]

Schedule

[s. 2]

《中華人民共和國香港特別行政區政府與南非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，與南非共和國政府，

為訂立相互移交逃犯的規定，

協議如下：

Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of South Africa 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 Republic of South Africa;

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

Have agreed as follows:

第一條

移交的義務

- (1) 締約雙方同意依據本協定的條文及按照各自的法律，把任何在被要求方的司法管轄區內找到的並遭要求方通緝以就第 2 條所描述的罪行提出檢控、判刑或執行判刑的人移交給對方。

ARTICLE 1

OBLIGATION TO SURRENDER

- (1) The Parties agree to surrender to each other pursuant to the provisions of this Agreement and in accordance with their respective laws 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.

S-3

附表

第 503AH 章

- (2) 就南非法律而言，凡在本協定內提述“移交”之處，須解釋為具有與“引渡”相同的涵義。

第二條

罪行

- (1) 凡屬以下所描述的任何罪行，而該罪行根據締約雙方的法律屬可判處監禁或以其他方式拘留超過一年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果危及人命；與不法傷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；

Schedule

S-4

Cap. 503AH

- (2) References in this Agreement to “surrender” shall for the purposes of South African law be interpreted as having the same meaning as “extradition” or “extradite”.

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 mentally defective or an unconscious person;

S-5

附表

第 503AH 章

- (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;
- (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;與涉及欺詐的財產或財務事宜有關的任何其他罪行;與非法剝奪財產有關的法律所訂的任何罪行;
- (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;

Schedule

S-6

Cap. 503AH

- (6) kidnapping; abduction; false imprisonment; unlawful confinement; dealing or trafficking in slaves or other persons; taking a hostage;
- (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 of 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 law;
- (11) offences against the law relating to companies including offences committed by officers, directors, and promoters;
- (12) offences relating to securities and futures trading;

S-7

附表

第 503AH 章

Schedule

S-8

Cap. 503AH

- | | |
|--|--|
| <p>(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；</p> <p>(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；</p> <p>(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；</p> <p>(16) 偽證及唆使他人作偽證；</p> <p>(17) 與妨礙或阻礙司法公正有關的罪行；</p> <p>(18) 縱火；刑事損壞或損害(包括與電腦數據有關的損害)；</p> <p>(19) 與火器有關的法律所訂的罪行；</p> <p>(20) 與爆炸品有關的法律所訂的罪行；</p> <p>(21) 與環境污染或保障公眾衛生有關的法律所訂的罪行；</p> <p>(22) 叛變或於海上的船隻上所犯的任何叛變性的作為；</p> <p>(23) 牽涉船舶或飛機的在國際法下的海盜行為；</p> <p>(24) 非法扣押或控制飛機或其他運輸工具；</p> <p>(25) 危害種族或直接和公開煽惑他人進行危害種族；</p> <p>(26) 方便或容許任何人從羈押中逃走；</p> | <p>(13) any offence relating to counterfeiting; any offence against the law relating to forgery or uttering what is forged;</p> <p>(14) an offence against the laws relating to protection of intellectual property, copyrights, patents or trademarks;</p> <p>(15) an offence against the law relating to bribery, corruption, secret commissions, and breach of trust;</p> <p>(16) perjury and subornation of perjury;</p> <p>(17) offences relating to the perversion or obstruction of the course of justice;</p> <p>(18) arson; criminal damage or mischief including mischief in relation to computer data;</p> <p>(19) an offence against the law relating to firearms;</p> <p>(20) an offence against the law relating to explosives;</p> <p>(21) an offence against laws relating to environmental pollution or protection of public health;</p> <p>(22) mutiny or any mutinous act committed on board a vessel at sea;</p> <p>(23) piracy involving ships or aircraft, according to international law;</p> |
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S-9

附表

第 503AH 章

Schedule

S-10

Cap. 503AH

- | | |
|--|---|
| <p>(27) 與控制任何種類貨物的進出口或國際性資金移轉有關的法律所訂的罪行；</p> <p>(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；</p> <p>(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)；</p> <p>(30) 為了經濟收益而安排或方便任何人非法進入要求方的司法管轄區；</p> <p>(31) 與賭博或獎券活動有關的罪行；</p> <p>(32) 與非法終止懷孕有關的罪行；</p> <p>(33) 拐帶、遺棄、扔棄或非法羈留兒童；涉及利用兒童的任何其他罪行；</p> <p>(34) 與賣淫及供賣淫用的處所有關的法律所訂的罪行；</p> <p>(35) 涉及非法使用電腦的罪行；</p> <p>(36) 與財政事宜、課稅或關稅有關的罪行，儘管被要求方的法律並沒有如要求方般徵收同類的稅項或關稅；或沒有如要求方般訂定同類的稅項、關稅或海關規例；</p> <p>(37) 與從羈押中非法逃走有關的罪行或監獄叛亂；</p> <p>(38) 重婚；</p> | <p>(24) unlawful seizure or exercise of control of an aircraft or other means of transportation;</p> <p>(25) genocide or direct and public incitement to commit genocide;</p> <p>(26) facilitating or permitting the escape of a person from custody;</p> <p>(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;</p> <p>(28) smuggling; offences against the laws relating to import and export of prohibited items, including historical and archaeological items;</p> <p>(29) immigration offences including fraudulent acquisition or use of a passport or visa;</p> <p>(30) arranging or facilitating for financial gain, the illegal entry of persons into the jurisdiction of the Requesting Party;</p> <p>(31) an offence relating to gambling or lotteries;</p> <p>(32) offences relating to the unlawful termination of pregnancy;</p> <p>(33) stealing, abandoning, exposing or unlawfully detaining a child and any other offences involving the exploitation of children;</p> <p>(34) offences against the laws relating to prostitution and premises kept for the purposes of prostitution;</p> |
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S-11

附表

第 503AH 章

Schedule

S-12

Cap. 503AH

- | | |
|--|--|
| <p>(39) 與婦女及女童有關的罪行；</p> <p>(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；</p> <p>(41) 與管有或清洗從觸犯本條所述任何罪行所獲得益有關的罪行；在第二條中，“本條所述任何罪行”指某些罪行，而這些罪行須是根據本協定可就其批准移交的；</p> <p>(42) 阻止逮捕或檢控曾犯或相信曾犯本條所述任何罪行的人；</p> <p>(43) 若干罪行，而該等罪行須是根據對締約雙方均有約束力的國際公約可就其移交逃犯的；或對締約雙方均有約束力的國際組織的決定所訂定的罪行；</p> <p>(44) 串謀犯欺詐罪或串謀詐騙；</p> <p>(45) 串謀犯或以任何種類的組織犯本條所述任何罪行；</p> <p>(46) 協助、教唆、慫恿或促致他人犯本條所述任何罪行，或（作為犯本條所述任何罪行的事實之前或之後的從犯）煽惑他人犯該等罪行，或企圖犯該等罪行；及</p> <p>(47) 若干其他罪行，而該等罪行須是締約一方以書面通知對方確認為按照其法律可就該等罪行批准移交的。</p> <p>(2) 凡要求移交是為了執行判刑，則該要求亦須符合另一項規定，即餘下須服的監禁期或拘留期須不少於六個月。</p> <p>(3) 就本條而言，在確定某罪行根據締約雙方的法律是否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，而不須顧及要求方的法律就該罪行所訂明的構成因素。</p> | <p>(35) offences involving the unlawful use of computers;</p> <p>(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;</p> <p>(37) offences relating to the unlawful escape from custody or mutiny in prison;</p> <p>(38) bigamy;</p> <p>(39) an offence relating to women and girls;</p> <p>(40) any offence against the law relating to false or misleading trade descriptions;</p> <p>(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;</p> <p>(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;</p> <p>(43) offences for which fugitive offenders may be surrendered under international conventions binding on the Parties or offences created as a result of decisions of international organisations which are binding on the Parties;</p> <p>(44) conspiracy to commit fraud or to defraud;</p> |
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S-13

附表

第 503AH 章

Schedule

S-14

Cap. 503AH

- (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，而在接獲移交要求時亦屬觸犯被要求方的法律的罪行，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，而看來有關的逃犯是在缺席的情況下被定罪，被要求方可拒絕移交該逃犯。但如該逃犯有機會在其出席的情況下獲重審，則作別論，而在此情況下，該逃犯須被視為本協定所指的被控人。
- (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; and
- (47) any other offence which each Party has confirmed to the other, by notice in writing, is an offence for which surrender may be granted in accordance with its laws.
- (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.

第三條

國民的移交

香港特別行政區政府保留拒絕移交中華人民共和國國民的權利。南非共和國政府保留拒絕移交其國民的權利。

第四條

死刑

- (1) 如根據本協定就某罪行要求移交逃犯，而按照要求方的法律該罪行屬可判處死刑的，但按照被要求方的法律並無就該罪行判處死刑的規定或通常不會就其執行死刑，則除非要求方作出被要求方認為充分的保證，表示不會判處該刑罰或即使判處亦不會執行，否則可拒絕移交。
- (2) 如果要求方按照本條作出保證，即使要求方的法院判處死刑，亦不得予以執行。

- (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 the fugitive if it appears that the conviction was obtained in the fugitive's absence, unless the fugitive has the opportunity to have the case retried in the fugitive's presence, in which case the fugitive shall be considered as an accused person under this Agreement.

ARTICLE 3

SURRENDER OF 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. The Government of the Republic of South Africa reserves the right to refuse the surrender of its nationals.

ARTICLE 4

DEATH PENALTY

- (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, and if in respect of such an offence the death penalty is not provided for by the law of the Requested Party or is not normally carried out, surrender may be refused unless the Requesting Party gives such assurances as the Requested Party considers sufficient that this penalty will not be imposed or, if imposed, will not be carried out.

第五條

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者被控所犯罪行在被要求方的領域內觸犯，被要求方亦有理由將其交付審判，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

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：
- (a) 該人就屬政治性質的罪行而被控或被定罪；
 - (b) 移交要求雖然聲稱是因某項可就其而批准移交的罪行而提出，但實際上是為了要基於種族、宗教、性別、國籍或政治意見而作出檢控或懲罰；或
 - (c) 該人如被交回，便可能因種族、宗教、性別、國籍或政治意見而在其接受審訊時蒙受不利或被懲罰、拘留或被限制人身自由。

- (2) In instances in which a Requesting Party provides assurances in accordance with this Article the death penalty if imposed by the courts of the Requesting Party, shall not be carried out.

ARTICLE 5

BASIS FOR SURRENDER

A person shall be surrendered only if the evidence is found to be 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

REFUSAL OF SURRENDER

- (1) A fugitive offender shall not be surrendered if the Requested Party has substantial grounds for believing:
- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
 - (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, religion, gender, nationality or political opinions; or

S-19
第 503AH 章

附表

Schedule

S-20
Cap. 503AH

- (2) 被要求方如認為有以下情況出現，可拒絕移交：
- (a) 該方在考慮所有情況後認為有關罪行屬性質輕微的罪行；
- (b) 基於不能歸咎於被尋求移交者的理由，以致在提出起訴、把案件提交審判或使被尋求移交者服刑或使其服餘下的刑期方面有過分延誤；
- (c) 尋求移交所關乎的罪行，是在被要求方的法院的司法管轄權範圍內犯的，而被要求方已表示被尋求移交者將被起訴；
- (d) 在為審訊的目的而尋求移交某人的個案中，該人在要求方的審訊中不會得到《公民權利及政治權利國際公約》第 14 條中所載的最低限度的保障；或在某人已就某罪行被定罪，且因該罪行而被尋求移交的個案中，該人在有關的審訊中並沒有得到該等保障；
- (e) 有充分理由相信被尋求移交者在要求方會有被施予酷刑或殘忍、不人道或有辱人格的待遇或懲罰的危險；或
- (f) 就某個案的情況而言，鑑於被尋求移交者的年齡、健康或其他個人狀況，將其移交並不符合人道。
- (3) 如有關罪行是軍法下的罪行，而非普通刑事法下的罪行，則被要求方須拒絕就該罪行作出移交。

- (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, gender, nationality or political opinions.
- (2) Surrender may be refused if the Requested Party considers that:
- (a) the offence is, having regard to all the circumstances, an offence of a trivial nature;
- (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 and the Requested Party has indicated that the person sought will be proceeded against;
- (d) in the case of a person whose surrender is sought for the purposes of trial, that person would not receive at trial in the Requesting Party the minimum guarantees contained in Article 14 of the International Covenant on Civil and Political Rights or, in the case of a person whose surrender is sought for an offence of which that person has been convicted, that person did not receive such guarantees at trial;
- (e) there are substantial grounds for believing that the person whose surrender is sought would be in danger of being subjected in the Requesting Party to torture or cruel, inhuman or degrading treatment or punishment; or

S-21
第 503AH 章

附表

Schedule

S-22
Cap. 503AH

第七條

先前法律程序

- (1) 如某逃犯已就要求所列出的任何罪行而最終獲判無罪、被定罪或赦免，或其定罪已根據要求方或被要求方的法律被撤銷，則該逃犯不得就該罪行而被移交。
- (2) 如被要求方的有關主管當局已作出以下的決定，則可拒絕移交——
 - (a) 不對被尋求移交者就移交要求所關乎的作為或不作為提出檢控；
 - (b) 中止已就該等作為或不作為而針對該人提起的任何刑事法律程序；或
 - (c) 就相同的作為或不作為調查被尋求移交者。

(f) 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.

- (3) The Requested Party shall refuse surrender for offences under military law that are not offences under ordinary criminal law.

ARTICLE 7

PRIOR PROCEEDINGS

- (1) A fugitive offender who has been finally acquitted, convicted or pardoned 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.
- (2) Surrender may be refused if the competent authorities of the Requested Party have decided—
 - (a) not to prosecute the person sought for the acts or omissions for which surrender is requested;
 - (b) to discontinue any criminal proceedings which have been instituted against the person sought for those acts or omissions; or
 - (c) to investigate the person sought for the same acts or omissions.

第八條

ARTICLE 8

延遲移交及暫時移交

POSTPONEMENT AND TEMPORARY SURRENDER

- (1) 如被尋求移交者因移交要求所關乎的罪行以外的任何罪行而正在被要求方的司法管轄區內被起訴或受懲罰，則可批准移交或將移交推遲至有關的法律程序結束及任何所判處的懲罰執行為止。
- (2) (a) 如就移交某人而提出的要求獲准，而該人在被要求方正被檢控或正服刑，則被要求方可暫時將該人移交予要求方，以進行檢控。
(b) 凡在上述情況下被移交的人如正在服刑，該人須按照經要求方和被要求方同意而決定的條件，在要求方的司法管轄區內被羈押，並在針對他的法律程序結束後被交回被要求方。
- (3) 任何在被要求方服刑的人如根據本條被移交，則他在要求方被羈押期間，須視作繼續服其在被要求方被判處的刑期。

- (1) 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.
- (2) (a) If the request to surrender is granted in the case of a person who is being prosecuted or is serving a sentence in the Requested Party, that Party may temporarily surrender the person sought to the Requesting Party for the purpose of prosecution.
(b) Where a person so surrendered is serving a sentence, the person shall be kept in custody in the jurisdiction of the Requesting Party and shall be returned to the Requested Party after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement between the Requesting and Requested Parties.
- (3) A person serving a sentence in the Requested Party who is surrendered under this Article shall, whilst in custody in the Requesting Party, be regarded as continuing to serve the sentence imposed in the Requested Party.

第九條

ARTICLE 9

移交要求及支持文件

THE REQUEST AND SUPPORTING DOCUMENTS

- (1) 移交要求及相關文件須按以下規定傳達——
- (a) 如要求是由香港特別行政區提出的，則直接向南非司法及憲法發展部部長傳達；或
- (b) 如要求是由南非共和國提出的，則直接向香港律政司司長傳達，
- 或透過締約雙方不時同意的途徑傳達。
- (2) 提出要求時，須一併提供下列資料：
- (a) 對有關被尋求移交者的盡可能準確的描述，連同任何其他有助確定其身分、國籍和所在處的資料；
- (b) 對尋求移交所關乎的每項罪行的陳述，以及對就每項罪行指稱有關的人所犯的作為或不作為的陳述；及
- (c) 如有訂定有關罪行的法律條文，須提供該等條文的文本，以及列明可就該項罪行判處的懲罰和提起的法律程序或執行所判處的任何懲罰的時限的法律的陳述。
- (3) 如要求關乎一名被控人，則並須附同由要求方的法官、裁判官或其他有關主管當局發出的逮捕手令的文本，及任何證供（不論是在要求方的司法管轄區錄取或在其他地方錄取的），而根

- (1) Requests for surrender and related documents shall be transmitted—
- (a) in the case of requests by the Hong Kong Special Administrative Region, directly to the Minister for Justice and Constitutional Development in South Africa; or
- (b) in the case of requests by the Republic of South Africa, directly to the Secretary for Justice in Hong Kong,
- or through such channels as may be agreed upon by the Parties from time to time.
- (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 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 law setting out the punishment which can be imposed therefor and any time limit on the institution

S-27

附表

第 503AH 章

據被要求方的法律，該證供足以顯示假如該罪行是在被要求方的司法管轄區內犯的，則該被控人會被交付審判。

- (4) 如要求關乎一名已被定罪或已被判刑的人，則並須附同：
- (a) 有關的判決書的文本或定罪紀錄或判刑紀錄的文本；如未能提供該等文本，則須附同一份由司法人員或其他有關主管當局作出的說明該人已被定罪的陳述，或任何可反映有關控罪及定罪的定罪紀錄；
- (b) 由有關法院說明該人已被定罪但未被判刑的陳述及有關的逮捕手令的文本（如該人已被定罪但未被判刑）；或
- (c) 顯示判刑可強制執行和顯示判刑中有哪些部分已予執行的陳述（如該人已被判刑）。

Schedule

S-28

Cap. 503AH

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 whether taken in the jurisdiction of the Requesting Party or elsewhere 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 judgment or a record of the conviction or sentence or, if a copy is not available, a statement by a judicial officer or other competent authority that the person has been convicted or a copy of any record of conviction that reflects the charge and the conviction;
- (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 been carried out.

第十條

認證

- (1) 支持移交要求的文件如已妥為認證，須被接納為其內所述事實的證據。文件如由要求方的法官、裁判官或官員簽署或核證，並蓋上要求方有關主管當局的正式印章，即屬已妥為認證。
- (2) 由要求方提供用以支持移交要求的任何文件譯本，在移交法律程序中須就任何目的而被接納。

第十一條

文件的語文

按照本協定提交的所有文件，須以被要求方所接受的一種語文寫成，或須翻譯成該語文。

第十二條

補充資料

- (1) 如要求方提供的資料不足，以致被要求方不能根據本協定作出決定，被要求方須要求提供所需的補充資料，並可訂定收取補充資料的期限。

ARTICLE 10

AUTHENTICATION

- (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 are signed or certified by a judge, magistrate or an official of the Requesting Party and 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

All documents submitted in accordance with this Agreement shall be in, or translated into, a language acceptable to 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

S-31

附表

第 503AH 章

- (2) 如被尋求移交者已被逮捕，而所提供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。但在此情況下釋放該人並不阻止要求方重新提出把該人移交的要求。

第十三條

暫時逮捕

- (1) 在緊急情況下，經要求方提出申請，被要求方可按照其法律酌情決定暫時逮捕被尋求移交者。
- (2) 暫時逮捕的申請須顯示提出尋求移交某人的意向，並附有說明已具備針對該人的逮捕手令或定罪判決的陳述、有關該人的身分、國籍和可能所在處的資料、對該人的描述、對有關罪行及案件事實的簡述、就該罪行可判處或已判處的刑罰的陳述，以及（如適用的話）說明該刑罰有哪些部分尚未服完的陳述。
- (3) 暫時逮捕的申請可按照第 9(1) 條規定的方式以書面傳達，亦可利用國際刑警組織 (INTERPOL) 的設施提出該等要求。
- (4) 如被尋求移交者被暫時逮捕，但在該人被逮捕的日期起計 60 日屆滿時仍未收到有關的移交要求及支持文件，則暫時逮捕即須終止。依據本款釋放該人並不阻止在其後收到移交要求及支持文件時提起或繼續進行移交該人的法律程序。

Schedule

S-32

Cap. 503AH

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

ARTICLE 13

PROVISIONAL ARREST

- (1) In urgent cases the person sought may, at the discretion of the Requested Party and in accordance with its law, be provisionally arrested on the application of the Requesting Party.
- (2) The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought, a statement of the existence of a warrant of arrest or a judgment of conviction against that person, information concerning identity, nationality and probable location, a description of the person, a brief description of the offence and the facts of the case and a statement of the sentence that can be or has been imposed for the offence and, where applicable, how much of that sentence remains to be served.
- (3) An application for provisional arrest may be transmitted in writing in the same manner as provided for in Article 9(1). The facilities of the International Criminal Police Organization (INTERPOL) may also be used to transmit such a request.

S-33
第 503AH 章

附表

Schedule

S-34
Cap. 503AH

第十四條

同時要求

如締約一方和一個與香港特別行政區或南非共和國(視乎何者為被要求方而定)有移交被控人及被定罪的人的協定或安排的司法管轄區同時要求移交某人,則被要求方須在顧及所有情況後作出決定。須顧及的情況包括有關的同時要求是否依據移交逃犯的協定提出、該等協定或安排的有關條文、所涉罪行的相對嚴重性及犯罪地點、各移交要求的提出日期、被尋求移交者及受害人的國籍及通常居住地,以及其後將其移交往另一個司法管轄區的可能性。被要求方須將其決定通知要求方。

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支付開支,並須在其他情況下代表要求方的利益。

ARTICLE 14

CONCURRENT REQUESTS

- (4) The provisional arrest of the person sought shall be terminated upon the expiration of 60 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.

If the surrender of a person is requested concurrently by one of the Parties and another jurisdiction with whom the Hong Kong Special Administrative Region or the Republic of South Africa, 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. These circumstances shall include whether the concurrent request was made pursuant to an agreement for the surrender of fugitive offenders, the relevant provisions of the agreements or arrangements, 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 victim and the possibility of subsequent surrender to another jurisdiction. The Requested Party shall notify the Requesting Party of its decision.

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

S-35

附表

第 503AH 章

- (2) 如察覺移交要求可招致屬特殊性質的開支，締約雙方須進行磋商，以決定如何支付該等開支。
- (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，直至該人被移交為止。要求方須負擔其後的一切開支。
- (4) 要求方須支付翻譯與移交逃犯有關的文件以及將逃犯運離被要求方領域所招致的一切開支。

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將其決定告知要求方。
- (2) 移交要求如獲批准，要求方和被要求方的有關當局須商定移交被尋求移交者的日期和地點。
- (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，如在該期間內未把該人帶走，則被要求方可拒絕就同一罪行把該人移交。

Schedule

S-36

Cap. 503AH

- 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.
- (4) The Requesting Party shall pay all the expenses incurred in the translation of documents relating to the surrender of a fugitive offender and in conveying the person from the territory of the Requested Party.

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.
- (2) If the request for surrender is granted, the relevant authorities of the Requesting and Requested Parties shall agree on the date and place for the surrender of the person sought.
- (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

S-37

附表

第 503AH 章

- (4) 締約一方如因非其所能控制的情況以致不能移交或接收被移交者，則須通知締約的另一方。在此情況下，締約雙方須另行商定新的移交日期，而本條第(3)款的規定須予適用。

第十七條

移交財產

- (1) 在被要求方的法律容許的範圍內，當移交逃犯的要求獲批准後：
- (a) 被要求方須檢取所有可作為有關罪行的證據或被尋求移交者因該罪行而取得並由其管有或於其後被發現的物件(包括金錢)，並將該等物件交予要求方；
- (b) 如有關物件可在被要求方的司法管轄區內因待決的法律程序而遭檢取或沒收，則被要求方可暫時保留該等物件或在須將該等物件歸還的條件下將其交予要求方。
- (2) 本條第(1)款的規定不得損害被要求方的權利或被尋求移交者以外的人的權利。如該等權利存在，則須應被要求方的要求而於法律程序完結後在切實可行範圍內盡快把有關物件歸還該方，且不收取任何費用。
- (3) 如要求方提出要求，則即使由於被尋求移交者死亡或逃脫以致未能進行移交，有關物件仍須移交給要求方。

Schedule

S-38

Cap. 503AH

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 on 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 seize and hand over to the Requesting Party all articles, including sums of money which may serve as proof of the offence, or which have been acquired by the person sought as a result of the offence and are in that person's possession or are discovered subsequently;
- (b) may, if the articles in question are liable to seizure or confiscation within the jurisdiction of the Requested Party in connection with pending proceedings, temporarily retain them or hand them over on condition they are returned.
- (2) The provisions of paragraph (1) of this Article 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

第十八條

特定罪行及轉移交

- (1) 除非已被移交的逃犯曾有機會行使離開其已被移交往的一方的司法管轄區的權利，但在 40 天內仍未離開，或在離開該司法管轄區後自願折返，否則不得因其在被移交前所犯的任何罪行而遭要求方起訴、判刑、拘留或向其施加任何其他人身自由限制，但下列罪行不在此限：
- (a) 批准移交所關乎的罪行；
 - (b) 任何罪行(不論如何描述)，其所基於的事實在很大程度上與批准移交所關乎的事實相同，但該罪行須是根據本協定能就其而移交有關逃犯的，且就該罪行可判處的刑罰，不比就移交該逃犯所關乎的罪行所判處的刑罰更重；
 - (c) 任何其他罪行，而該罪行是根據本協定可就其而批准移交的，且被要求方亦可同意就該罪行對該逃犯作出處理。
- (2) 已被移交的逃犯不得因其在被移交前所犯的罪行而遭轉移交至另一司法管轄區。惟以下情況則不在此限：
- (a) 被要求方同意作出如此移交；或

be returned to the Requested Party without charge as soon as practicable after the end of the proceedings.

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

ARTICLE 18

SPECIALTY AND RESURRENDER

- (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 that person's surrender other than:
- (a) the offence or offences in respect of which surrender was granted;
 - (b) an offence, however described, based on substantially the same facts in respect of which surrender was granted, provided such offence is one for which the fugitive offender 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 the fugitive offender 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 the fugitive offender being dealt with;

S-41

附表

第 503AH 章

- (b) 該逃犯曾有機會行使離開其已被移交往的一方的司法管轄區的權利，但在 40 天內仍未離開，或在離開該司法管轄區後自願折返。
- (3) 締約任何一方在考慮給予本條第 (1)(c) 款或 (2)(a) 款所指的同意時，可要求呈交第 9 條所提述的任何文件或陳述，以及被移交者就該事所作的任何陳述。

第十九條

同意移交

如被尋求移交者同意被移交予要求方，則被要求方須在其本地法律的規限下盡快把該人移交。第 18 條須適用於依據本條移交的人。

Schedule

S-42

Cap. 503AH

- unless the fugitive offender has first had an opportunity to exercise the right to leave the jurisdiction of the Party to which that person has been surrendered and has not done so within 40 days or has voluntarily returned to that jurisdiction after having left it.
- (2) A fugitive offender who has been surrendered shall not be resurrendered to another jurisdiction for an offence committed prior to the fugitive offender's surrender unless:
- (a) the Requested Party consents to such surrender; or
- (b) the fugitive offender has first had an opportunity to exercise the right to leave the jurisdiction of the Party to which that person has been surrendered and has not done so within 40 days or has voluntarily returned to that jurisdiction having left it.
- (3) A Party considering requests for consent 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.

ARTICLE 19

WAIVER

If the person sought consents to be surrendered to the Requesting Party the Requested Party shall, subject to its domestic law, surrender the person as expeditiously as possible. Article 18 shall apply to a person surrendered pursuant to this Article.

第二十條

ARTICLE 20

過境

TRANSIT

- (1) 第三方在運送某人以移交給締約的其中一方時，如需途經締約的另一方的司法管轄區，該締約的另一方可予以批准。
- (2) 過境要求可按照第 9(1) 條規定的方式傳達。
- (3) 過境要求須包括 ——
 - (a) 對有關的人的描述，連同有助於確定其身分和國籍的任何資料；及
 - (b) 案件事實的簡述，以及列出第三方將該人移交所關乎的罪行。
- (4) 如准許某人過境，則在被要求方的法律的規限下，須同時准許在該人過境時予以羈押。如運送沒有在 48 小時內繼續進行，則該人被羈押之處所屬的締約一方的司法管轄區的行政當局可指令將其釋放。
- (5) 如締約一方採用空運，並且沒有預定在締約的另一方的領域著陸，則無須得到批准。如未經預定而在某一方的司法管轄區著陸，則該方可要求依據本條第 (2) 款提出過境要求，並可在其法律的規限下，將有關的人扣留，直至收到過境要求和落實過境為止。

- (1) Either Party may authorize transportation through its jurisdiction of a person surrendered to the other Party by a third Party.
- (2) A request for transit shall be transmitted in the same manner as provided for in Article 9(1).
- (3) The request for transit shall contain—
 - (a) a description of the person together with any information that may help to establish his or her identity and nationality; and
 - (b) a brief statement of the facts of the case, and a list of the offences for which the person was surrendered by the third Party.
- (4) Permission for the transit of a person shall, subject to the law of the Requested Party, include permission for the person to be held in custody during transit. If transportation is not continued within 48 hours the executive authority of the Party in whose jurisdiction the person is being held may direct that the person be released.
- (5) Authorization is not required when air transportation is used by one Party and no landing is scheduled on the territory of the other Party. If an unscheduled landing does occur, the Party in whose jurisdiction such landing occurs may require a request for transit to be made pursuant to paragraph (2) of this Article, and it may detain

S-45

第 503AH 章

附表

Schedule

S-46

Cap. 503AH

第二十一條

磋商

香港特別行政區律政司及南非共和國司法部或獲其各別指定的人，可就個別案件的處理及促進更有效地實施本協定的問題而直接進行磋商。

第二十二條

生效、中止及終止

- (1) 本協定將於締約雙方以書面通知對方為使本協定生效的各自規定已予履行之日起計 30 天後開始生效。
- (2) 本協定的條文須適用於在本協定生效後提出的要求，不論在要求中所列罪行的犯罪日期。
- (3) 締約的任何一方可隨時按照第 9(1) 條規定的方式通知締約的另一方中止或終止本協定。協定的中止於締約的另一方接獲中止通知後即生效。在終止協定方面，本協定於締約的另一方接獲終止通知起計六個月後失效；但如締約雙方同意，則可即時生效。

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。

the person subject to the provision of its law, until the request for transit is received and the transit is effected.

ARTICLE 21

CONSULTATION

The Departments of Justice of the Hong Kong Special Administrative Region and the Republic of South Africa or persons designated by the respective Departments of Justice may consult each other directly in connection with processing of individual cases and in furtherance of efficient implementation of the Agreement.

ARTICLE 22

ENTRY INTO FORCE, SUSPENSION AND TERMINATION

- (1) This Agreement shall enter into force 30 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) Either Party may suspend or terminate this Agreement at any time by giving notice to the other in the same manner as provided for in 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 six months after the receipt of notice to terminate;

S-47

第 503AH 章

附表

本協定的文本以中文及英文寫成，並於二零零九年二月二十日在香港簽訂，各文本均同等真確。

Schedule

S-48

Cap. 503AH

provided that the Parties may by mutual consent agree to terminate the Agreement with immediate effect.

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

Done at Hong Kong this 20th day of February, Two thousand and Nine in the Chinese and English languages, each text being equally authentic.