

I (a) 項目

《逃犯（新加坡）令（1997 年第 594 號法律公告）1998 年（生效日期）公告》

- 第 236 號法律公告
- 臨立會參考資料摘要
- 與協定範本逐一條文比較

Item I (a)

Fugitive Offenders( Singapore ) Order( L.N.594 of 1997 ) ( Commencement ) Notice  
1998

- *L.N.236*
- *PLC Brief*
- *Article by article comparison with the model agreement*

1998 年第 236 號法律公告

逃犯(新加坡)令(1997 年第 594 號法律公告)  
1998 年(生效日期)公告

本人現根據《逃犯(新加坡)令》第 1 條，指定 1998 年 6 月 11 日為該命令開始實施的日期。

保安局局長  
黎慶寧

1998 年 5 月 25 日

L.N. 236 of 1998

FUGITIVE OFFENDERS (SINGAPORE) ORDER (L.N. 594 OF 1997)  
(COMMENCEMENT) NOTICE 1998

Under section 1 of the Fugitive Offenders (Singapore) Order, I appoint 11 June 1998 as the day on which the Order shall come into operation.

Peter LAI  
Secretary for Security

25 May 1998

## 臨時立法會參考資料摘要

### 《逃犯條例》（1997 年第 23 號條例）

#### 《逃犯（聯合王國）令》 《逃犯（新加坡）令》

## 引言

行政會議在十二月九日的會議上**建議**，並由行政長官下令將《逃犯（聯合王國）令》（見附件 A）和《逃犯（新加坡）令》（見附件 B）提交臨時立法會審議。

## 背景和論據

### 《逃犯條例》

2. 條例第 3 條規定，行政長官會同行政會議可就任何移交逃犯安排，以命令指示條例中的程序，須在該命令所載的限制、約束、例外規定及約制的規限下，適用於香港和與香港簽訂這類安排的其他地方。

3. 香港已經根據條例第 3（1）條的規定，就移交逃犯的雙邊安排（與荷蘭、加拿大、澳大利亞、馬來西亞、菲律賓、美利堅合眾國、印度尼西亞和印度）制定八條命令。

### 《逃犯（聯合王國）令》和《逃犯（新加坡）令》

4. 香港特別行政區分別在一九九七年十一月五日和十一月十一日，與聯合王國和新加坡簽署協定。《逃犯（聯合王國）令》和《逃犯（新加坡）令》將會令上述協定生效。每條命令均會把有關協定載於附表，並規定條例訂明的程序將適用於香港和有關的司法管轄區，但須受到協定的條款規管。

5. 條例第 3（9）條規定，行政長官會同行政會議不應制定命令，除非作出的命令所關乎的移交逃犯安排實質上與條例的條文相符。有關的兩份協定正好與條例實質上相符。

6. 每條命令都將於保安局局長在憲報指定的日期生效。該日期會與有關協定生效的日期相同。

7. 在政權交接前，香港與聯合王國及新加坡的移交逃犯安排是以英聯邦司法管轄區之間的安排為基礎，但該些安排已於一九九七年七月一日失效，因此，我們必須制定有關命令，確保協定早日生效，縮短我們與該兩個司法管轄區在引渡方面的真空期。

### 立法程序時間表

8. 立法程序時間表將會如下一

刊登憲報	一九九七年十二月十二日
提交臨時立法會	一九九七年十二月十七日
生效日期	由保安局局長指定

### 與人權的關係

9. 根據律政司的意見，有關命令與基本法有關人權的條文一致。

### 對財政和人手的影響

10. 建議制定的附屬法例將無需額外的財政和人手資源。

### 公眾諮詢

11. 命令會使有關協定根據現行法律架構得以生效，因此無須進行公眾諮詢。

## 查詢

12. 如果對本文件的內容有任何查詢，請與下述人士聯絡—

### 電話號碼

保安局首席助理局長  
邱霜梅女士

28102329

保安局助理局長  
任雅玲女士

25377171

保安局

一九九七年十二月

(SBCR10 & 14/1/2716/80(96))

《逃犯（聯合王國）令》

《逃犯（新加坡）令》

附件

附件 A- 逃犯（聯合王國）令

附件 B- 逃犯（新加坡）令

逃犯（聯合王國）令

（由行政長官會同行政會議根據《逃犯條例》  
（1997年第23號）第3條訂立）

1. 生效日期

本命令自保安局局長以憲報公告指定的日期起實施。

2. 條例中的程序在香港和聯合王國之間適用

關於—

（a） 適用於中華人民共和國香港特別行政區政府和大不列顛及北愛爾蘭聯合王國政府，並且

（b） 在附表中敘述，

的移交逃犯安排，現特指示，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，在香港和大不列顛及北愛爾蘭聯合王國之間適用。

附表

〔第2條〕

中華人民共和國香港特別行政區政府  
和大不列顛及北愛爾蘭聯合王國政府  
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，與大不列顛及北愛爾蘭聯合王國（“聯合王國”）政府，（下文稱為“締約雙方”），

願訂立相互移交逃犯的安排；

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，並根據被要求方的法律，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描述的罪行提出檢控、判刑或執行判刑的人移交給對方。就本協定而言，該等人士稱為“逃犯”。

## **第二條** **罪行**

(1) 凡觸犯以下所描述的任何罪行，而該罪行依照締約雙方的法律屬可判處監禁或其他形式拘留十二個月或以上，或可判處更嚴厲刑罰者，須准予移交：

- (i) 謀殺；誤殺或應受懲處的殺人罪
- (ii) 協助、教唆、慫使或促致他人自殺
- (iii) 惡意傷人；造成他人身體嚴重傷害；侵犯他人致造成實際身體傷害或損害；侵犯
- (iv) 強姦
- (v) 猥褻侵犯
- (vi) 對兒童作嚴重猥褻行為
- (vii) 綁架，拐帶；盜竊兒童（拐取）；拐帶兒童；非法拘禁
- (viii) 犯有關危險藥物的法律的罪行
- (ix) 藉欺騙取得財物或金錢利益；欺詐；盜竊；搶劫；入屋行竊；勒索；處理及接受贓物；盜用公款
- (x) 犯破產法律的罪行
- (xi) 公司董事及其他職員作虛假陳述



- ( xii ) 犯有關贗製錢幣的法律的罪行；製造偽鈔；犯與偽造有關的法律的罪行；製造欺詐性帳目及偽造帳目
- ( xiii ) 賄賂或貪污
- ( xiv ) 犯與財政事項、稅項或關稅有關的罪行，儘管被要求方的法律並沒有徵收同樣的稅項或關稅或沒有如要求方法律般訂定同樣的稅項、關稅或海關規例
- ( xv ) 偽證和唆使他人作偽證；企圖妨礙司法公正
- ( xvi ) 刑事損壞，包括縱火及放火
- ( xvii ) 犯有關火器的法律的罪行
- ( xviii ) 犯有關爆炸品的法律的罪行
- ( xix ) 弄沉或摧毀在海上的船舶；在公海的船舶上侵犯他人，意圖毀滅生命或造成嚴重身體傷害；兩個或以上的人在公海的船舶上反抗或串謀反抗船長的權力
- ( xx ) 國際法中涉及船舶或航空器的海盜行爲
- ( xxi ) 買賣奴隸
- ( xxii ) 種族滅絕或串謀或直接及公開煽惑他人進行種族滅絕
- ( xxiii ) 非法扣押或控制航空器
- ( xxiv ) 妨礙逮捕或檢控下述人士：已犯或相信已犯根據本協定屬可准予移交的罪行的人士，而根據締約雙方的法律，該罪行屬可判處監禁或以其他形式拘留五年或以上者
- ( xxv ) 串謀犯欺詐或行騙罪
- ( xxvi ) 走私

- ( xxvii ) 根據對締約雙方有約束力的國際公約可將逃犯移交的罪行
- ( xxviii ) 企圖或串謀觸犯、或煽惑他人觸犯、或參與任何根據本協定可准予移交的罪行
- ( xxix ) 根據締約雙方的法律可准予移交的任何其他罪行

(2) 倘若要求移交逃犯的目的是為了執行判刑，則亦須符合另一項規定，即餘下未服滿的監禁或拘留期必須最少還有六個月。

(3) 就本條第(1)款而言，在確定一項罪行是否根據締約雙方的法律屬可判罰的罪行時，須考慮該逃犯被指稱的作為或不作為的全部，而不須顧及要求方法律所規定的有關的罪行構成因素。

(4) 就本條第(1)款而言，如該逃犯被指稱的作為或不作為在犯罪時候觸犯要求方的法律，而在接獲移交要求時在被要求方亦屬觸犯法律的罪行，則該罪行根據締約雙方的法律均屬罪行。

(5) 在由締約任何一方所註冊的船舶、航空器或氣墊航行器內作出的行為，將被視為在該締約方的地區內作出。

### **第三條** **國民的移交**

(1) 除本條第(2)款及第(3)款另有規定外，不得以關於被要求移交者的國籍的問題為理由拒絕移交。

(2) 聯合王國政府行政當局保留權利，若所要求的移涉及聯合王國的國防、外交或重大公眾利益或政策，可拒絕移交聯合王國國民。

(3) 香港特別行政區政府行政當局保留權利，在下述情況，可拒絕移交中華人民共和國的國民；

- ( a ) 所要求的移涉及中華人民共和國的國防、外交或重大公眾利益或政策；或

- (b) 被要求移交者無香港特別行政區居留權，亦非為定居目的而進入香港特別行政區，而中華人民共和國對所要求的移交涉及的罪行具有管轄權，並且已經展開或完成起訴該人的法律程序。

(4) 若聯合王國要求移交的人無香港特別行政區居留權，亦非為定居目的而進入香港特別行政區，而中華人民共和國對有關的罪行具有管轄權，並且正在調查該罪行，則可押後至其迅速完成調查工作後，有關方面才就移交的要求採取行動。

(5) 假如根據本條第(2)款或(3)(a)款行使拒絕移交的權利，要求方可要求把案件提交被要求方主管當局，以考慮進行起訴。

#### **第四條** **死刑**

倘根據本協定提出移交逃犯要求所涉的罪行，按照要求方的法律可判處死刑，但按照被要求方的法律並無判處死刑的規定或通常不會執行死刑，則除非要求方作出被要求方認為充分的保證，即被移交者將不會被判死刑或即使被判死刑亦不會執行，否則被要求方可拒絕移交。

#### **第五條** **拒絕移交**

(1) 如被要求方認為一

- (a) 某人被控告或被裁定的罪行屬政治性質的罪行；
- (b) 某人被控告或裁定的罪行是軍事法律上的罪行而非普通刑事法上的罪行；
- (c) 提出移交某人的要求（雖然聲稱是因為一項可予以移交的罪行），目的實際上是因為他的種族、宗教、國籍或政治意見而檢控他或懲罰他；或
- (d) 某人一經交回，可能因其種族、宗教、國籍或政治意見而在審判時受到不公平對待、被懲罰、被拘留或使其人身自由受限制，

則不得移交該人。

(2) 如被要求方認為基於下列原因，在考慮到所有情況後，把被要求移交者交回是不公平或壓迫性的，則應拒絕移交：

- (a) 該人被控告或判定的罪行性質輕微；或
- (b) 該人被指稱觸犯罪行已有相當時間，或該人已非法逃匿相當時間；或
- (c) 對該人的控告並非真誠地為司法公正而作出；或
- (d) 移交該人可能引起與年齡或健康有關的極嚴重後果。

(3) 如有關罪行是在要求方的地區外觸犯，則被要求方不得移交該人，惟下述情況則屬例外：

- (a) 被要求方在對應情況下對該罪行具管轄權；或
- (b) 如要求方為聯合王國政府，則對該罪行的管轄權是以該名逃犯的國籍為依據。

(4) 如根據任何一方的法律，被要求移交者不能因其罪行而被檢控或懲罰，則應拒絕移交該人。

(5) 如被要求方的法律把有關罪行視作在其法院的管轄範圍內觸犯，則被要求方可拒絕移交有關逃犯。

## **第六條** **押後移交**

如有關人士因任何其他罪行正在被要求方的管轄區內被起訴或受懲罰，則可押後至訴訟結束及其所被判處的懲罰執行後才將其移交。

## **第七條** **移交責任**

只在下述情況下始須把逃犯移交：

- (a) 就被控告者而言，
- (i) 如移交要求是向香港特別行政區提出，則根據被要求方的法律，須有足夠證據證明假如被要求移交者所被控告的罪行是發生在被要求方的境內，被要求方有理由把被要求移交者交付審訊；或
  - (ii) 如移交要求是向聯合王國提出，則根據被要求方的法律，假如有關罪行是發生在被要求方的管轄區內，以及假如有關起訴是對該人所被告發事項循簡易程序審訊，即有足夠證據構成須由該人答辯的指控。
- (b) 如該人已被定罪，則須有足夠資料顯示有關判刑可強制執行，而該人即為該已被定罪者。

### **第八條** **移交要求及證明文件**

- (1) 移交逃犯的要求須以書面通過有關當局提出。締約雙方會不時知會對方何謂有關當局。
- (2) 移交要求須連同下列資料一併提出：
- (a) 有關被要求移交者的盡可能準確的描述，以及其他可助確定該人身分和國籍的資料，包括其居留地（如知道的話）；
  - (b) 要求移交所根據的罪行的說明及詳細資料；及
  - (c) 如有關罪行乃根據法律條文而訂立，須提供法律條文文本，並說明該罪行可判處的懲罰，以及有否就該罪行提出訴訟或執行所判懲罰定下任何時限。
- (3) 如該項移交要求涉及一名被控告的人，則該項要求亦須連同一份由要求方的法官、裁判官或主管當局發出的逮捕令確認副本及足夠證據（見第七（a）條所指定）一併提交。

(4) 如該項移交要求涉及被定罪或被判刑的人，則該項要求亦須連同下列資料一併提交：

- (a) 定罪或判刑證明書的確認副本；及
- (b) 顯示該項判刑可強制執行和尚有多少未服刑期的說明；及
- (c) 如該人已被定罪但未被判刑，由有關法院就此發出的說明及逮捕令確認副本。

### **第九條** **暫時逮捕**

(1) 在緊急情況下，經要求方的主管當局提出申請，被要求方可以根據本身的法律，暫時逮捕被要求移交者。暫時逮捕的申請書須載有要求移交該人的意向的表示並已具備逮捕令或定罪判決書的說明，以及其他必需資料，包括用以識別該人身分的詳情，以證明假如該罪行是發生在被要求方的管轄區內，或假如被要求移交者是在被要求方的管轄區內被定罪，亦有理由發出逮捕令。

(2) 要求暫時逮捕的申請可通過提出要求移交逃犯的相同途徑提出，或通過國際刑警組織提出。

(3) 如被要求方收不到移交要求，則該被要求移交者的暫時逮捕由逮捕日期起計滿六十天便通常不會予以延長。該人獲釋後，如被要求方其後接獲把他移交的要求，則本條文並不妨礙被要求方再度逮捕或移交該人。

### **第十條** **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協定作出決定，則被要求方須要求提供所需的補充資料，並可指定提交上述資料的期限。

(2) 如被要求移交者已被逮捕，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取得，則該人可被釋放。按此釋放被捕的人，並不妨礙要求方重新提出把該人移交的要求。

## **第十一條** **確認**

(1) 任何根據本協定第八條或第十條支持移交要求的文件如經確認，在被要求方的管轄區內進行的訴訟中將被接納作為證據。

(2) 就本協定而言，假如文件是經下述方式處理，即屬經已確認：

- (a) 看來經發出該文件的管轄區的法官、裁判官或主管當局的其他官員簽署；及
- (b) 看來經蓋上要求方的主管當局或要求方的官員的官方印章或公印作為證明，

或經被要求方法律認可的任何其他方式確認。

## **第十二條** **同時要求**

如締約一方和一個或多個與聯合王國或香港特別行政區（即被要求的一方）有移交逃犯安排的政府同時要求移交某逃犯，被要求方須在本身法律容許的範圍內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政府之間所有現行協定中的有關條文規定、所涉及罪行的相對嚴重性及犯罪地點、各方提出移交要求的日期、被要求移交者的國籍或公民身分和通常居住的地方，以及其後將其移交往另一個國家的可能性。被要求方如把該逃犯移交另一管轄區，須將其作出有關決定的原因通知締約另一方。

## **第十三條** **文件的語文**

在任何個案中，被要求方可要求按照本協定提交的文件須翻譯成其所使用的一種法定語文。該等翻譯文件須經被要求方的法律所指定的形式證明。

#### **第十四條** **代表和開支**

- (1) 被要求方須為因移交要求而引起的任何訴訟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) 如移交要求明顯地會引起特別性質的開支，締約雙方須進行磋商，以決定如何支付該等開支。
- (3) 如要求方自行安排法律代表和援助，則須負擔因此而引致的任何開支。
- (4) 被要求方須負擔因逮捕和拘留被要求移交者所引致的開支直至該人被移交為止。其後的一切開支由要求方負擔。

#### **第十五條** **移交安排**

- (1) 被要求方須把就移交要求作出的決定迅速知會要求方。如被要求方拒絕全部或部分移交要求，便須解釋理由。
- (2) 如要移交逃犯，被要求方當局須在一個經與要求方商定的日期，把該人送往被要求方的管轄區內一處對締約雙方都方便的離境地點。被要求方須知會要求方該逃犯因其被要求移交而遭拘留的時間長短。
- (3) 要求方如在經雙方商定的日期並無接收其要求移交的逃犯，則該逃犯可根據被要求方的法律申請釋放，除非有足夠理由證明不能釋放，否則該逃犯可獲釋放。
- (4) 如逃犯是根據本條第(3)款獲得釋放，被要求方其後可拒絕因同一罪行把該逃犯移交。

#### **第十六條** **移交財產**

- (1) 在批准移交逃犯的要求後，被要求方須應要求方的要求並按照本身的法律把以下所有物件，包括金錢，交予要求方—
  - (a) 可作為有關罪行的證據的物件；或



(b) 該逃犯因其所犯罪行而取得並由其管有或其後被發現的物件。

(2) 如有關物件可能會在被要求方的管轄區內被充公或沒收，被要求方可就即將進行的訴訟，暫時保留或在要求方保證歸還的條件下把物件移交給要求方。

(3) 此等規定不得損害被要求方的權利或該逃犯以外的其他人士的權利。如該等權利存在，要求方須應被要求方的要求在訴訟程序結束後盡快把有關物件歸還被要求方，不收取任何費用。

### **第十七條** **特定罪行**

(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) 下令交回該逃犯所根據的罪行；

(b) 任何由該項下令移交的有關資料所揭露的，不論類別而性質較輕微的罪行，但該項罪行須是根據本協定能把該逃犯交回的罪行；

(c) 該逃犯所犯的任何其他在本協定下可批准移交的罪行，而被要求方亦同意該人接受處置；

但如該逃犯曾有機會離開要求方的管轄區，但在其可自由離開的四十天內仍未離開，或在離開該管轄區後自願重返該地，則屬例外。

(2) 如涉及某項罪行的移交逃犯令不能合法地發出，或事實上不會發出，則被要求方不得根據上文第(1)(c)款表示同意。

### **第十八條** **轉移交**

(1) 凡已被移交往要求方的逃犯，要求方不得由於該逃犯在移交前所犯罪行而把他移交給另一管轄區，除非有以下情況，則屬例外：

- (a) 被要求方表示同意；或
- (b) 該逃犯曾有機會離開要求方的管轄區，但在其可自由離開的四十天內仍未離開，或在離開該管轄區後自願重返該地。

(2) 被要求表示同意的一方，可要求對方出示由另一管轄區為支持其移交要求而提交的文件。

### **第十九條 協定的適用**

本協定適用範圍如下：

(1) 就聯合王國而言，適用於：

- (a) 英格蘭及威爾斯、蘇格蘭以及北愛爾蘭；及
- (b) 馬因島及海峽群島，以及由聯合王國負責管理其國際關係而本協定經修訂後通過外交渠道交換照會所延伸至的任何其他地區；

(2) 就中華人民共和國香港特別行政區而言，適用於該特別行政區。

### **第二十條 生效、暫時中止及終止**

(1) 締約雙方須以書面通知對方已完成為使本協定生效的必需程序。本協定由較後發出的通知的發出日期起計三十天後生效。

(2) 締約一方可隨時通過提出移交逃犯要求的相同渠道，通知締約另一方暫時中止或終止本協定。本協定於締約另一方接獲有關通知時即告暫時中止。如終止本協定，則本協定於締約另一方接獲有關通知六個月後失效。

下列簽署人，經其各自政府正式授權，已在本協定上簽字為證。

本協定一式兩份，以中文及英文寫成，並於一九九七年十一月五日在香港簽訂，各文本均為具有同等效力的真確本。

行政會議廳

1997 年 月 日

**註釋**

本命令使《逃犯條例》（1997 年第 23 號）所列明的移交逃犯程序在香港和大不列顛及北愛爾蘭聯合王國之間適用。本命令是因香港與大不列顛及北愛爾蘭聯合王國所締結並在 1997 年 11 月 5 日於香港簽署的移交逃犯安排而相應訂立的。該等安排在本命令的附表中敘述。應注意該等程序受到規限，其中包括受到該等安排所載的限制及約束所規限。

逃犯（新加坡）令

（由行政長官會同行政會議根據《逃犯條例》  
（1997年第23號）第3條訂立）

1. 生效日期

本命令自保安局局長以憲報公告指定的日期起實施。

2. 條例中的程序在香港和新加坡共和國  
之間適用

關於—

- （a） 適用於中華人民共和國香港特別行政區政府和新加坡共和國政府，並且
- （b） 在附表中敘述，

的移交逃犯安排，現特指示，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，在香港和新加坡共和國之間適用。

附表

〔第2條〕

中華人民共和國香港特別行政區政府  
和新加坡共和國政府  
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，與新加坡共和國政府，

願訂立相互移交逃犯的規定，

協議如下：

## 第一條 移交的義務

締約雙方同意，按照本協定所訂定的條文，把任何被控告或被裁定在締約一方管轄區內觸犯本協定第二條所列的罪行，並在另一方管轄區內發現的人移交給對方。

## 第二條 罪行

(1) 凡犯以下所描述的任何罪行，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不少於一年或可判處更嚴厲刑罰的逃犯，均須准予移交：

- ( a)      ( i)            任何等級的謀殺罪；
- ( ii)           誤殺或應受懲處的殺人罪；
- ( iii)           犯有關墮胎法律的罪行；
- ( iv)           惡意或蓄意傷人或嚴重傷害他人身體；
- ( v)            侵犯他人致造成身體傷害；
- ( vi)           強姦；
- ( vii)           與女性進行非法的性交；
- ( viii)           猥褻侵犯；
- ( ix)           誘使或販賣婦女或青年作不道德勾當；
- ( x)            重婚；
- ( xi)           綁架、拐帶或非法拘禁或販買奴隸；
- ( xii)           拐帶、遺棄、扔棄或非法羈留兒童；

- ( xiii ) 賄賂；
- ( xiv ) 偽證或唆使他人作偽證或串謀妨礙司法公正；
- ( xv ) 縱火；
- ( xvi ) 犯與偽鈔有關的罪行；
- ( xvii ) 觸犯與偽造有關的法律的罪行；
- ( xviii ) 偷竊、盜用公款、欺詐性侵佔、欺詐性偽造帳目、以欺騙手段取得財物或信貸、收受贓物或任何其他與財物有關而涉及欺詐行為的罪行；
- ( xix ) 入屋犯法、爆竊或犯任何同類的罪行；
- ( xx ) 搶劫罪；
- ( xxi ) 勒索或以恐嚇或濫權手法進行敲詐；
- ( xxii ) 觸犯破產法律或公司法律的罪行；
- ( xxiii ) 惡意或蓄意損壞財物；
- ( xxiv ) 意圖危害車輛、船舶或航空器的行為；
- ( xxv ) 觸犯有關危險藥物或毒品的法律的罪行；
- ( xxvi ) 海盜行為；
- ( xxvii ) 反抗船長或機長的權力；
- ( xxviii ) 違反與寶石、黃金及其他貴重金屬有關的進出口禁制的罪行；
- ( xxix ) 騎劫及其他危害航空器安全的行為；

(xxx) 根據締約雙方的法律可准予移交的任何其他罪行；及

(b) 協助及教唆，或慫使或促致他人犯本條第(a)段所述的任何罪行，或在犯該等罪行前或後是從犯，或企圖或串謀犯該等罪行。

(2) 倘若要求移交逃犯的目的是為了執行判刑，而餘下未服滿的監禁或拘留期少於四個月，除非被要求方信納要求方有充分理由要求移交逃犯，否則可拒絕移交有關逃犯。

(3) 就本條而言，在決定一項罪行是否根據締約雙方的法律屬可判罰的罪行時，須考慮被要求移交的人被指稱的作為或不作為的全部，而不須顧及要求方法律所規定的罪行構成因素。

(4) 就本條第(1)款而言，如構成罪行的作為或不作為在犯罪時候觸犯要求方的法律，而在接獲移交要求時在被要求方亦屬罪行，則該罪行根據締約雙方的法律均屬罪行。

(5) 當要求移交逃犯的目的是為了執行判刑時，如逃犯看似是在缺席的情況下被定罪，則被要求方可拒絕把他移交，除非他有機會在他出席的情況下獲得重審，而在此情況下他須被視為本協定範圍內的被告人。

### **第三條** **國民的移交**

(1) 香港特別行政區政府有權拒絕移交中華人民共和國的國民。新加坡共和國政府有權拒絕移交其國民。

(2) 被要求方行使此項權利時，要求方可要求將有關案件提交被要求方的主管當局，以便考慮對該人進行檢控。

(3) 有關被移交人士的國籍須以要求移交所根據的罪行發生時為準。

#### **第四條** **移交根據**

祇有在根據被要求方的法律有足夠證據，證明假如被要求移交者被控告所犯罪行在被要求方的境內觸犯，該罪行屬表面證據成立的案件，或證明被要求移交者即是遭要求方法院定罪的人，始須把該人移交。

#### **第五條** **強制拒絕移交**

(1) 如被要求方有充分理由相信以下事項，則不得移交該名逃犯：

- (a) 該人被控告或被裁定的罪行屬政治性質的罪行；
- (b) 提出移交要求（雖然聲稱是因為一項可予以移交的罪行）的目的實際上是因為其種族、宗教、國籍或政治意見而檢控或懲罰該人；或
- (c) 該人一經交回，可能因其種族、宗教、國籍或政治意見而在審判時受到不公平對待、被懲罰、被拘留或使其人身自由受限制。

(2) 如有關逃犯已受審及獲釋或受罰，或已獲赦或根據要求方或被要求方的法律，不能對有關要求所述的任何罪行進行起訴，則不得就該罪行或構成該罪行的同樣作為或不作為的任何其他罪行移交逃犯。

#### **第六條** **酌情拒絕移交**

(1) 按照本協定的條款要求移交任何人時，如被要求方的有關當局認為基於下列原因，在考慮到所有情況後，把該人交回是不公平或壓迫性的，則可拒絕移交：

- (a) 該人被控告或判定的罪行性質輕微；或



- (b) 該人被指稱觸犯罪行已有相當時間，或該人已非法逃匿相當時間；或
- (c) 對該人的控告並非真誠地為司法公正而作出；或
- (d) 移交該人可能引起與年齡或健康有關的極嚴重效果。

(2) 遇下列情況，被要求方亦可拒絕移交逃犯：

- (a) 新加坡政府是被要求方，而移交逃犯將會對該國政府在國防或外交事務方面的利益有極大影響；
- (b) 香港特別行政區政府是被要求方，而移交逃犯將會對中華人民共和國政府在國防或外交事務方面的利益有極大影響。

(3) 如被要求方認為移交可引致其違反其根據國際條約須履行的義務，則可拒絕移交。

(4) 當新加坡共和國政府是被要求方時，如被要求移交的逃犯為駐於被要求方領土的第三國武裝部隊成員，則被要求方不須移交該名逃犯。上述規定亦適用於與該等武裝部隊成員一同服役的文職人員及該等部隊成員及文職人員的受扶養人。

#### **第七條** **延遲移交**

被要求移交者如因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區內被起訴或受懲罰，可准予移交或推遲至訴訟結束及任何所判處的懲罰執行後才移交。

#### **第八條** **移交要求及支持文件**

(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何謂有關當局。

(2) 提出要求時，須一併提供下列資料：

- (a) 有關被要求移交者的盡可能準確的描述，和其他可助確定該人的身分、國籍和所在地的資料；
- (b) 要求移交所根據的各項罪行的說明，和就每項罪行說明被要求移交者被指稱的作為或不作為；及
- (c) 如有關罪行乃根據法律條文而訂立，須提供法律條文內容，以及說明該罪行可判處的懲罰和就該罪行提出訴訟或執行所判處的任何懲罰的時限。

(3) 如移交要求所涉及的人的身分是被告人，要求方須隨同移交要求提交一份由要求方的法官、裁判官或其他主管當局發出的逮捕令的副本及有關證據，該證據須足以證明根據被要求方的法律，假如該人被控告所犯罪行發生在被要求方的管轄區內，該罪行屬表面證據成立的案件。

(4) 如移交要求所涉及的人是已被定罪或被判刑的人，則須一併提交：

- (a) 定罪或判刑證明書副本；及
- (b) 倘該人被定罪但未被判刑，由有關法院就此發出的說明及逮捕令副本；或
- (c) 如該人已被判刑，一份顯示該項判刑屬可強制執行和未服刑期尚有多少的說明。

## **第九條** **確認**

(1) 支持移交要求的文件如經正式確認，須被接受作為證明文件所述事實的證據。假如文件看來是經下述方式處理，即屬經正式確認：

- (a) 經要求方的法官或裁判官證明為載有或紀錄上述證據的正本或該文件的真確副本；及
- (b) 經要求方的主管當局蓋上官方印章。

(2) 由要求方提供用以支持移交要求的文件經確認譯本，須在移交訴訟中被接受作所有有關用途。

### **第十條** **文件的語文**

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

### **第十一條** **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。被要求方可指定提交上述資料的期限。如要求方陳明理由提出申請，被要求方可把期限合理地延長。

(2) 如被要求移交者已被逮捕，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取得，該人可被釋放。按此釋放被捕的人並不阻止要求方重新提出把該人移交的要求。

### **第十二條** **暫時逮捕**

(1) 在緊急情況下，被要求方可應要求方的申請，酌情決定按照法律的規定，臨時拘捕被要求移交者。

(2) 暫時逮捕的申請書須載有要求移交該人的意向、該人的逮捕令或被定罪判決書經已作出的說明、該人身分、國籍及可能所在地的資料、該人的描述、罪行和案件事實的簡介、就該罪行可判或已判的刑罰、及（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八條第（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** **同時要求**

如締約一方和一個與新加坡共和國或香港特別行政區(即被要求的一方)有移交被控告及被定罪人的協定或安排的國家同時要求移交某人，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所有現行協定中的有關條文規定、所涉及罪行的相對嚴重性及犯罪地點、各方提出移交要求的日期、被要求移交者的國籍和通常居住的地方、以及其後被移交往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，須將其決定通知要求方。

### **第十四條** **代表及開支**

(1) 被要求方須為因移交逃犯要求而須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。如移交要求由香港特別行政區提出，須由新加坡的檢察總長或他所委託或任命的律師負責進行訴訟程序。如移交要求由新加坡提出，則須由主管律政當局根據香港特別行政區的法律和慣例進行訴訟程序。

(2) 因移交要求或進行移交而在被要求方的管轄區內引起的開支，須由被要求方負擔。如因移交要求明顯地會引起特殊性質的開支，則締約雙方須進行磋商，以決定如何支付這些開支。

(3) 要求方須負擔移交後的一切開支。

### **第十五條** **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。

(2) 如決定把某人移交，須在被要求方當局的看守下，把該人送往被要求方管轄區內方便離境的地點。

(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，如果該人在該期間內未被帶走，被要求方可拒絕因同一罪行把該人移交。

(4) 締約一方因不受其控制的情況以致不能移交或接收被移交者，須知會締約另一方。在此情況下，雙方須另行商定移交的新日期，而本條第(3)款的規定將適用。

## 第十六條

### 移交財產

(1) 在被要求方法律容許的範圍內，如逃犯在被逮捕時所擁有的財產（包括金錢），可作為獲准移交所涉及罪行的證據，被要求方可沒收並向要求方移交所有這些財產。

(2) 如有關財產可在被要求方的管轄區內遭沒收或充公，被要求方可為未決的訴訟暫時保留該等財產或在會獲歸還的條件下把該等財產交給要求方。

(3) 此等規定不得損害被要求方的權利或除被要求移交者以外其他人士的權利。如該等權利存在，要求方須於訴訟程序結束後盡快歸還該等財產，不收取任何費用。

## 第十七條

### 特定罪行及轉移交

(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) 批准移交該人所根據的罪行；

- (b) 該罪行不論如何描述，是因批准移交該人所根據的事實而揭發的，但該項罪行須是根據本協定能把該人移交的罪行，而且該罪行可判處的刑罰不能重於就移交該人所根據的罪行而判處的刑罰；

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

- (2) 已被移交的逃犯不得由於其在被移交前所犯罪行而遭轉移交給另一管轄區。

### **第十八條** **同意移交**

(1) 如被要求移交者同意被移交予要求方，則被要求方可按照本身法律，無須作進一步處理程序而盡快把該人移交。

- (2) 在被要求方法律的規定範圍內，第十七條的規定適用於按本條移交的人。

### **第十九條** **生效及終止**

(1) 締約雙方須在各自履行為使本協定生效的規定後，以書面通知對方。本協定由較後發出的通知的發出日期起計三十天後生效。

(2) 本協定的條文將適用於本協定生效後提出的移交要求，而無須理會移交要求所列的犯罪日期。

(3) 締約一方可隨時通過第八條第(1)款的規定所知會的渠道通知締約另一方終止本協定。本協定於締約另一方接獲終止通知的六個月後停止生效。

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。

本協定以中文及英文寫成，並於一九九七年十一月十一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。

行政會議秘書

行政會議廳

1997 年 月 日

#### 註釋

本命令使《逃犯條例》（1997 年第 23 號）所列明的移交逃犯程序在香港和新加坡共和國之間適用。本命令是因香港與新加坡共和國所締結並在 1997 年 11 月 11 日於香港簽署的移交逃犯安排而相應訂立的。該等安排在本命令的附表中敘述。應注意該等程序受到規限，其中包括受到該等安排所載的限制及約束所規限。

## **PROVISIONAL LEGISLATIVE COUNCIL BRIEF**

### **Fugitive Offenders Ordinance (Ordinance No. 23 of 1997)**

#### **FUGITIVE OFFENDERS (UNITED KINGDOM) ORDER FUGITIVE OFFENDERS (SINGAPORE) ORDER**

### **INTRODUCTION**

At the meeting of the Executive Council on 9 December 1997, the Council ADVISED and the Chief Executive ORDERED that the Fugitive Offenders (United Kingdom) Order, at Annex A, and Fugitive Offenders (Singapore) Order, at Annex B, should be introduced into the Provisional Legislative Council.

### **BACKGROUND AND ARGUMENT**

#### **The Fugitive Offenders Ordinance**

2. Section 3 of the Ordinance provides that the Chief Executive in Council may, in relation to any arrangements for the surrender of fugitive offenders (SFO), by order direct that the procedures in the Ordinance shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications contained in the order.

3. Eight orders in relation to SFO bilateral arrangements (with the Netherlands, Canada, Australia, Malaysia, the Philippines, the US, Indonesia and India) have been made under section 3(1) of the Ordinance.

#### **The Fugitive Offenders (United Kingdom) Order and the Fugitive Offenders (Singapore) Order**

4. The Hong Kong Special Administrative Region ("HKSAR") signed agreements with the United Kingdom on 5 November 1997 and with Singapore on 11 November 1997 respectively. The Fugitive Offenders (United Kingdom) Order and the Fugitive Offenders (Singapore) Order will



enable these agreements to be brought into force. Each of the Orders includes the relevant agreement in a Schedule and provides that the procedures in the Ordinance shall apply as between Hong Kong and the particular jurisdiction concerned, subject to the terms of the particular agreement.

5. Section 3(9) of the Ordinance provides that the Chief Executive in Council shall not make an order, unless the arrangements for the surrender to which the order relates are substantially in conformity with the provisions of the Ordinance. Both agreements so conform.

6. Each of the Orders will come into operation on a day to be appointed by the Secretary for Security, by notice in the Gazette, to coincide with the day the relevant agreement enters into force.

7. Before the handover, Hong Kong's arrangements for SFO with the United Kingdom and Singapore were based on arrangements between Commonwealth jurisdictions which lapsed on 1 July 1997. It is essential to put the Orders in place to ensure that the agreements can be brought into force early to shorten our extradition gap with the two jurisdictions.

#### **LEGISLATIVE TIMETABLE**

8. The legislative timetable will be-

Publication in the Gazette	12 December 1997
Tabling in the Provisional Legislative Council	17 December 1997
Commencement date	to be specified by the Secretary for Security

#### **HUMAN RIGHTS IMPLICATIONS**

9. The Department of Justice confirms that the Orders are consistent with the human rights provisions of the Basic Law.

## **FINANCIAL AND STAFFING IMPLICATIONS**

10. The proposed subsidiary legislation has no additional financial or staffing implications.

## **PUBLIC CONSULTATION**

11. The Orders will permit the agreements to be brought into force in accordance with the existing legal framework. Public consultation was not, therefore, considered necessary.

## **ENQUIRIES**

12. Enquiries on the contents of this paper should be directed to-

	<u>Telephone No.</u>
Mrs Carrie WILLIS Principal Assistant Secretary for Security	28102329
Ms Eva YAM Assistant Secretary for Security	25377171

**Security Bureau**  
**December 1997**  
**(SBCR 10&14/1/2716/80(96))**

**FUGITIVE OFFENDERS (UNITED KINGDOM) ORDER**  
**FUGITIVE OFFENDERS (SINGAPORE) ORDER**

**ANNEXES**

Annex A - Fugitive Offenders (United Kingdom) Order

Annex B - Fugitive Offenders (Singapore) Order

**FUGITIVE OFFENDERS (UNITED KINGDOM) ORDER**

(Made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (23 of 1997))

**1. Commencement**

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

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

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 the United Kingdom of Great Britain and Northern Ireland; and
- (b) recited in the Schedule,

it is hereby directed that the procedures in the Ordinance shall apply as between Hong Kong and the United Kingdom of Great Britain and Northern Ireland subject to the limitations, restrictions, exceptions and qualifications contained in those arrangements.

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 UNITED KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND  
FOR THE 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 United Kingdom of Great Britain and Northern Ireland ("United Kingdom"), (hereinafter referred to as "the Parties");

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

Have agreed as follows:

## **ARTICLE 1**

### **Obligation to Surrender**

The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement and in accordance with the law of the requested Party, any person who is found in the jurisdiction of the requested Party and who is wanted by the requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence under Article 2. Such persons shall, for the purposes of this Agreement, be referred to as "fugitive offenders".

## **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 of twelve months or more, or by a more severe penalty:

- (i) Murder; manslaughter or culpable homicide
- (ii) Aiding, abetting, counselling or procuring suicide
- (iii) Maliciously wounding; inflicting grievous bodily harm; assault occasioning actual bodily harm or injury; assault
- (iv) Rape
- (v) Indecent assault
- (vi) Gross indecency with a child
- (vii) Kidnapping, abduction; child theft (plagium); child abduction; false imprisonment
- (viii) Offences against the law relating to dangerous drugs
- (ix) Obtaining property or pecuniary advantage by deception; fraud; theft; robbery; burglary; blackmail; handling stolen goods and reset; embezzlement
- (x) Offences against bankruptcy law
- (xi) False statements by company directors and other officers
- (xii) Any offence against the law of counterfeiting of coins; counterfeiting of currency; any offence against the law relating to forgery; fraudulent and false accounting
- (xiii) Bribery or corruption
- (xiv) 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 law of the requesting Party

- (xv) Perjury and subornation of perjury; attempting to pervert the course of justice
- (xvi) Criminal damage, including arson and fire raising
- (xvii) An offence against the law relating to firearms
- (xviii) An offence against the law relating to explosives
- (xix) Sinking or destroying a vessel at sea; assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm; revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master
- (xx) Piracy, involving ships or aircraft, according to international law
- (xxi) Dealing in slaves
- (xxii) Genocide or conspiracy or direct and public incitement to commit genocide
- (xxiii) Unlawful seizure or exercise of control of an aircraft
- (xxiv) Impeding the arrest or prosecution of a person who has or is believed to have committed an offence for which surrender may be granted under this Agreement and which is punishable according to the laws of both Parties by imprisonment or other form of detention of a period of five years or more
- (xxv) Conspiracy to commit fraud or to defraud
- (xxvi) Smuggling
- (xxvii) Offences for which fugitive offenders may be surrendered under International Conventions binding on the Parties

(xxviii) An attempt or conspiracy to commit, or inciting, participating in, any offence for which surrender may be granted under this Agreement

(xxix) Any other offences for which surrender may be granted in accordance with the laws of both Parties

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

(3) For the purpose of paragraph (1) 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 fugitive offender 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 acts or omissions alleged against the fugitive offender were 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) Conduct in a vessel, aircraft or hovercraft registered by a Party shall be treated as if it were conducted in the area of that Party.



**ARTICLE 3**

**Surrender of Nationals**

(1) Except as provided in paragraphs (2) and (3) of this Article, surrender shall not be refused on grounds relating to the nationality of the person sought.

(2) The executive authority of the Government of the United Kingdom reserves the right to refuse the surrender of nationals of the United Kingdom in cases in which the requested surrender relates to the defence, foreign affairs or essential public interest or policy of the United Kingdom.

(3) The executive authority of 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 in cases in which:

- (a) the requested surrender relates to the defence, foreign affairs or essential public interest or policy of the People's Republic of China,  
or
- (b) the person sought neither has the right of abode in the Hong Kong Special Administrative Region nor has entered the Hong Kong Special Administrative Region for the purpose of settlement, and the People's Republic of China has jurisdiction over the offence relating to the requested surrender and has commenced or completed proceedings for the prosecution of that person.

(4) In cases in which the person sought by the United Kingdom neither has the right of abode in the Hong Kong Special Administrative Region nor has entered the Hong Kong Special Administrative Region for the purpose of settlement and the People's Republic of China has jurisdiction over the offence and is investigating the offence, action on the request may be deferred until such time as the investigation has been expeditiously concluded.

(5) Where the right to refuse surrender is exercised in accordance with paragraph (2) or paragraph (3)(a) of this Article, the requesting Party may request that the case be submitted to the competent authorities of the requested Party in order that proceedings for prosecution may be considered.

#### **ARTICLE 4**

##### **Death Penalty**

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.

**ARTICLE 5**

**Refusal of Surrender**

- (1) A person shall not be surrendered if it appears to the requested Party:
  - (a) that the offence of which that person is accused or was convicted is an offence of a political character;
  - (b) that the offence of which that person is accused or was convicted is an offence under military law which is not also an offence under the general criminal law;
  - (c) that the request for his return (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
  - (d) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
  
- (2) Surrender of the person sought shall be refused if it appears to the requested Party that:
  - (a) by reason of the trivial nature of the offence of which he is accused or convicted; or
  - (b) by reason of the passage of time since he is alleged to have committed the offence or to have become unlawfully at large as the case may be; or
  - (c) because the accusation against him is not made in good faith in the interests of justice; or

- (d) because such a surrender is likely to entail exceptionally serious consequences related to age or health

it would, having regard to all the circumstances, be unjust or oppressive to return him.

(3) A person shall not be surrendered for any offence which has been committed outside the area of the requesting Party unless

- (a) the requested Party would in corresponding circumstances have jurisdiction over such an offence; or
- (b) when the Government of the United Kingdom is the requesting Party jurisdiction over the offence is based on the fugitive offender's nationality.

(4) Surrender for an offence shall be refused if the person whose surrender is sought cannot under the law of either Party be prosecuted or punished for that offence.

(5) The requested Party may refuse to surrender a fugitive offender for an offence which is regarded by its law as having been committed within the jurisdiction of its courts.

## **ARTICLE 6**

### **Deferred Surrender**

If the person is being proceeded against or under punishment in the jurisdiction of the requested Party for any other offence, his surrender may be deferred until the conclusion of the proceedings and the execution of any punishment awarded to him.

**ARTICLE 7**

**Liability to Surrender**

A fugitive offender shall be surrendered only if:

- (a) for an accused person
  - (i) in the case of a request to the Hong Kong Special Administrative Region, there is sufficient evidence provided, according to the law of the requested Party, to justify the committal for trial of the person sought if the offence of which he is accused were committed in the territory of the requested Party; or
  - (ii) in the case of a request to the United Kingdom, there is sufficient evidence provided, according to the law of the requested Party, to make a case requiring an answer by that person if the offence had been committed within the jurisdiction of the requested Party and if the proceedings were a summary trial of an information against him;
- (b) in the case of a person already convicted there is sufficient information provided showing that the sentence is enforceable and that he is the person convicted.

**ARTICLE 8**

**The Request and Supporting Documents**

- (1) Requests for the surrender of a fugitive offender shall be made in writing by and to the appropriate authorities as may be notified 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 his identity and nationality including, if known, his place of residence;
  - (b) a statement and particulars of the offence for which surrender is requested;
  - (c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefore and whether any time limit is imposed on the institution of proceedings, or on the execution of any punishment imposed, for that offence.
  
- (3) If the request relates to an accused person, it shall also be accompanied by an authenticated copy of the warrant of arrest issued by a judge, magistrate, or competent authority of the requesting Party and by sufficient evidence as specified in Article 7(a).
  
- (4) If the request relates to a person already convicted or sentenced, it shall also be accompanied by:
  - (a) an authenticated copy of the certificate of the conviction or sentence;
  - and

- (b) a statement that the sentence is enforceable and indicating how much of the sentence remains to be served; and
- (c) in the case of a person convicted but not sentenced, a statement to that effect by the appropriate court and an authenticated copy of the warrant of arrest.

## **ARTICLE 9**

### **Provisional Arrest**

(1) In urgent cases the person sought may, in accordance with the law of the requested Party, be provisionally arrested on the application of the competent authorities of the requesting Party. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, including details identifying that person, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, within the jurisdiction of the requested Party.

(2) An application for provisional arrest may be forwarded through the same channels as a request for surrender or through the International Criminal Police Organisation (Interpol).

(3) The provisional arrest of the person sought shall not normally extend beyond sixty days from the date of his arrest if the request for his surrender shall not have been received. Where

a person is released, this provision shall not prevent the re-arrest or surrender of the person sought if the request for his surrender is received subsequently.

## **ARTICLE 10**

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

## **ARTICLE 11**

### **Authentication**

(1) Any document that, in accordance with Article 8 or 10, supports a request for surrender shall be admitted in evidence, if authenticated, in any proceedings in the jurisdiction of the requested Party.



- (2) A document is authenticated for the purposes of this Agreement if:
- (a) it purports to be signed by a Judge, Magistrate or other officer of a competent authority in the jurisdiction where they were issued; and
  - (b) it purports to be certified by being sealed with an official or public seal of the competent authority of the requesting Party or of an officer of the requesting Party

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

## **ARTICLE 12**

### **Concurrent Requests**

If the surrender of a fugitive offender is requested concurrently by one of the Parties and a Government or Governments with whom the United Kingdom or the Hong Kong Special Administrative Region, whichever is being requested, has arrangements for the surrender of fugitive offenders, the requested Party shall make its decision in so far as its law allows having regard to all the circumstances including the provisions in this regard in any agreements in force between the requested Party and other requesting Governments, the relative seriousness and places of commission of the offences, the respective dates of the requests, the nationality or citizenship and ordinary residence of the person sought and the possibility of subsequent surrender to another State, and shall furnish the other

Party with information justifying its decision in the event of surrender of the fugitive to another jurisdiction.

### **ARTICLE 13**

#### **Language of Documentation**

In any particular case the requested Party may require documents submitted in accordance with this Agreement to be translated into, an official language of the requested Party. Any such translation shall be certified in the manner specified by the law of the requested Party.

### **ARTICLE 14**

#### **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) In the event that the requesting Party arranges its own legal representation and assistance, it shall bear any costs incurred.

(4) The requested Party shall bear the expenses arising out of the arrest and detention of the person whose surrender is sought

until that person has been surrendered. The requesting Party shall bear all subsequent expenses.

## **ARTICLE 15**

### **Arrangements for Surrender**

(1) The requested Party shall promptly communicate its decision on the request for surrender to the requesting Party. Reasons shall be given for any complete or partial refusal of the request.

(2) If a fugitive offender is to be surrendered, he shall be taken by the authorities of the requested Party on a date agreed with the requesting Party to a mutually convenient place of departure within the jurisdiction of the requested Party. The requested Party shall inform the requesting Party of the length of time for which the fugitive offender was detained in connection with the request for his surrender.

(3) If the requesting Party does not take custody of the fugitive offender on the date agreed by the two Parties, he may, in accordance with the law of the requested Party, apply for discharge and unless sufficient cause is shown to the contrary, he may be released.

(4) Where a fugitive offender is released in accordance with paragraph (3) of this Article the requested Party may subsequently refuse to surrender him for the same offence.

## ARTICLE 16

### Surrender of Property

(1) When a request for surrender of a fugitive offender is granted the requested Party shall, at the request of the requesting Party and in accordance with its law, hand over to the requesting Party all articles, including sums of money,

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

(2) If the articles in question are liable to seizure or confiscation within the jurisdiction of the requested Party the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition they are returned.

(3) These provisions shall not prejudice the rights of the requested Party or of any person other than the fugitive offender. When such rights exist the articles shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

## ARTICLE 17

### Speciality

(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 in respect of which his return is ordered;
- (b) any lesser offence however described disclosed by the facts in respect of which his return was ordered, provided such an offence is an offence for which he can be returned under this Agreement;
- (c) any other offence being an offence for which surrender may be granted under this Agreement in respect of which the requested Party may consent his being dealt with;

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

- (2) Consent shall not be given by a requested Party under paragraph (1) (c) above in respect of an offence in relation to which an order for the return of the fugitive offender could not lawfully be made, or would not in fact be made.

## **ARTICLE 18**

### **Re-Surrender**

(1) Where a fugitive offender has been surrendered to the requesting Party, that Party shall not surrender him to any other jurisdiction for an offence committed before his surrender unless:

- (a) the requested Party consents; or
- (b) he has first had an opportunity to leave the jurisdiction of the requesting Party and has not done so

within forty days of having been free to do so or has returned voluntarily to that jurisdiction having left it.

- (2) The Party whose consent is requested may require the production of the documents submitted by the other jurisdiction in support of its request for surrender.

## **ARTICLE 19**

### **Application of the Agreement**

This Agreement shall apply:

- (1) In relation to the United Kingdom:
- (a) to England and Wales, Scotland, and Northern Ireland; and
  - (b) to the Isle of Man and the Channel Islands and to any other territory for whose international relations the United Kingdom is responsible and to which this Agreement shall have been extended, subject to any modification, by an exchange of notes through the diplomatic channel;
- (2) In relation to the Hong Kong Special Administrative Region of the People's Republic of China, to such Region.

## **ARTICLE 20**

### **Entry into force, Suspension and Termination**

(1) Each of the Parties shall notify the other in writing of the completion of those procedures necessary to enable this Agreement to enter into force. The Agreement shall enter into force thirty days after the date of the later of the notifications.

(2) Either Party may suspend or terminate this Agreement at any time by giving notice to the other through the same channels as a request for the surrender of a fugitive offender. Suspension shall take effect on receipt of a notice to suspend. In the case of termination the Agreement shall cease to have effect six months after the receipt of a notice to terminate.

In witnesses hereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at Hong Kong, this fifth day of November one thousand nine hundred and ninety seven, in the Chinese and English languages, each text being equally authentic.

Clerk to the Executive Council

COUNCIL CHAMBER

1997

Explanatory Note

This Order applies the procedures for the surrender of fugitive offenders set out in the Fugitive Offenders Ordinance (23 of 1997) to Hong Kong and the United Kingdom of Great Britain and Northern Ireland. The Order is made in consequence of the arrangements for the surrender of fugitive offenders entered into by Hong Kong and the United Kingdom of Great Britain and Northern Ireland and signed in Hong Kong on 5 November 1997. Those arrangements are recited in the Schedule to the Order. It should be noted that those procedures are subject to, *inter alia*, the limitations and restrictions contained in those arrangements.



## **FUGITIVE OFFENDERS (SINGAPORE) ORDER**

(Made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (23 of 1997))

### **1. Commencement**

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

### **2. Procedures in Ordinance to apply between Hong Kong and Republic of Singapore**

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 the Republic of Singapore; and
- (b) recited in the Schedule,

it is hereby directed that the procedures in the Ordinance shall apply as between Hong Kong and the Republic of Singapore subject to the limitations, restrictions, exceptions and qualifications contained in those arrangements.

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 REPUBLIC OF SINGAPORE FOR THE 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 Singapore:

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

HAVE AGREED AS FOLLOWS:

**ARTICLE 1**

**OBLIGATION TO SURRENDER**

The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement, any person who, being accused or convicted of an offence under Article 2 committed within the jurisdiction of the one Party, is found within the jurisdiction of the other Party.

**ARTICLE 2**

**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 not less than one year, or by a more severe penalty:

- (a) (i) murder of any degree;
- (ii) manslaughter or culpable homicide;

- (iii) an offence against the law relating to abortion;
- (iv) maliciously or wilfully wounding or inflicting grievous bodily harm;
- (v) assault occasioning actual bodily harm;
- (vi) rape;
- (vii) unlawful sexual intercourse with a female;
- (viii) indecent assault;
- (ix) procuring, or trafficking in, women or young persons for immoral purposes;
- (x) bigamy;
- (xi) kidnapping, abduction or false imprisonment, or dealing in slaves;
- (xii) stealing, abandoning, exposing or unlawfully detaining a child;
- (xiii) bribery;
- (xiv) perjury or subornation of perjury or conspiring to defeat the course of justice;
- (xv) arson;
- (xvi) an offence concerning counterfeit currency;
- (xvii) an offence against the law relating to forgery;
- (xviii) stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud;
- (xix) burglary, house-breaking or any similar offence;

- (xx) robbery;
- (xxi) blackmail or extortion by means of threats or by abuse of authority;
- (xxii) an offence against bankruptcy law or company law;
- (xxiii) malicious or wilful damage to property;
- (xxiv) acts done with the intention of endangering vehicles, vessels or aircraft;
- (xxv) an offence against the law relating to dangerous drugs or narcotics;
- (xxvi) piracy;
- (xxvii) revolt against the authority of the master of a ship or the commander of an aircraft;
- (xxviii) contravention of import or export prohibitions relating to precious stones, gold and other precious metals;
- (xxix) hijacking and other acts endangering safety of aircraft;
- (xxx) any other offences for which surrender may be granted in accordance with the laws of both Parties; and

(b) aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the offences listed in paragraph (a) of this Article.

(2) Where surrender is requested for the purpose of carrying out a sentence and the period of imprisonment or detention which remains to be served is less than four months, the requested Party

may refuse surrender unless it is satisfied that the requesting Party has substantial grounds for requesting surrender.

(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 act or omission 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.

### **ARTICLE 3**

#### **SURRENDER OF NATIONALS**

(1) The Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of nationals of the

People's Republic of China. The Government of the Republic of Singapore reserves the right to refuse the surrender of its nationals.

(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.

(3) The nationality of the person whose surrender is sought shall be determined at the time of the commission of the offence for which surrender is requested.

#### **ARTICLE 4**

#### **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 establish a prima facie case of the offence of which that person is accused if the offence had been committed in the territory of the requested Party or to establish that the person sought is the person convicted by the courts of the requesting Party.

#### **ARTICLE 5**

#### **MANDATORY 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 his or her 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 already been tried and discharged or punished, or pardoned or whose prosecution is barred under the law of the requesting or requested Party for any offence set out in the request shall not be surrendered for that offence or for any other offence constituted by the same act or omission as that offence.

## **ARTICLE 6**

### **DISCRETIONARY REFUSAL OF SURRENDER**

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

- (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large as the case may be; or
- (c) because the accusation against him is not made in good faith in the interests of justice; or
- (d) because such surrender would be likely to entail exceptionally serious consequences related to age or health,

it would, having regard to all the circumstances, be unjust or oppressive to return him.

(2) The requested Party may also refuse to surrender a fugitive offender:

- (a) where the Government of Singapore is the requested Party, the surrender would significantly affect the interests of the Government of Singapore in matters of defence or foreign affairs;
- (b) where the Government of the Hong Kong Special Administrative Region is the requested Party, the surrender would significantly affect the interests of the Government of the People's Republic of China in matters of defence or foreign affairs.

(3) Surrender may also be refused if the requested Party considers that the surrender might place that Party in breach of its obligations under an international treaty.

(4) Where the Government of the Republic of Singapore is the requested Party, the requested Party shall not be required to



surrender a fugitive offender who is a member of the armed forces of a third state stationed in the territory of the requested Party. The same shall apply to a civilian accompanying and serving with those armed forces and to the dependents of any such member or civilian.

#### **ARTICLE 7**

#### **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 8**

#### **THE REQUEST AND SUPPORTING DOCUMENTS**

(1) Requests for surrender and related documents shall be conveyed through the appropriate authorities as may be notified from time to time by one Party to the other.

(2) The request shall be accompanied by:

- (a) as accurate a description as possible of the person sought, together with any other information which would help to establish 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 establish a prima facie case of the offence of which that person is accused 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.

## **ARTICLE 9**

### **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 purport to be:

- (a) certified by a judge or magistrate of the requesting Party to be the original document containing or recording that evidence or a true copy of such a document; and
- (b) sealed with the official seal of a competent authority of the requesting Party.

(2) An authenticated 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 10**

#### **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 in each case.

#### **ARTICLE 11**

#### **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 additional information. The requested Party may fix a time-limit for the submission of such information and may grant a reasonable extension of the time-limit upon the application of the requesting Party setting forth reasons therefor.

(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 12**

### **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 by any means affording a record in writing through the channel notified under paragraph (1) of Article 8 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 if the request and the supporting documents are received subsequently.

### **ARTICLE 13**

#### **CONCURRENT REQUESTS**

If the surrender of a person is requested concurrently by one of the Parties and a state with whom the Republic of Singapore 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. The requested Party shall notify the requesting Party of its decision in the event of surrender of the person to another jurisdiction.

#### **ARTICLE 14**

#### **REPRESENTATION AND COSTS**

(1) The requested Party shall make all necessary arrangements for legal representation and assistance in any proceedings arising out of requests for the surrender of a fugitive offender. In the case of requests made by the Hong Kong Special Administrative Region, the Attorney-General of Singapore or counsel instructed or appointed by him shall conduct the proceedings. In the case of requests made by Singapore, the proceedings shall be conducted by the competent legal authorities in accordance with the law and practice of the Hong Kong Special Administrative Region.

(2) Expenses incurred in the jurisdiction of the requested Party arising from the request or by reason of surrender shall be borne by that Party. If it becomes apparent that expenses of an extraordinary nature are likely to be incurred, the Parties shall consult each other to determine how these expenses shall be met.

(3) The requesting Party shall bear all expenses following the surrender.

#### **ARTICLE 15**

## **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) When a person is to be surrendered, that person shall be delivered under the custody of the authorities of the requested Party to a convenient place of departure within that Party's jurisdiction.
- (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 16**

### **SURRENDER OF PROPERTY**

- (1) To the extent permitted under its law, the requested Party may seize and surrender to the requesting Party all property (including sums of money) found in the possession of the fugitive

offender at the time of his arrest which may serve as proof of the offence in respect of which surrender is granted.

(2) If the property in question is liable to seizure or confiscation within the jurisdiction of the requested Party the latter may, in connection with pending proceedings, temporarily retain it or hand it over on condition it is returned.

(3) These provisions shall not prejudice the rights of the requested Party or of any person other than the person sought. When such rights exist the property shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

## **ARTICLE 17**

### **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 his surrender other than:

- (a) the offence or offences in respect of which his surrender was granted;
- (b) an offence, however described, disclosed by the 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,



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

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

### **ARTICLE 18**

#### **SURRENDER BY CONSENT**

(1) If the person sought consents to surrender to the requesting Party, the requested Party may, in accordance with its laws, surrender the person as expeditiously as possible without further proceedings.

(2) To the extent required under the law of the required Party, the provisions of Article 17 shall apply to a person surrendered pursuant to this Article.

### **ARTICLE 19**

#### **ENTRY INTO FORCE AND TERMINATION**

(1) The Parties shall notify each other in writing after their respective requirements for the entry into force of this Agreement have been complied with. This Agreement shall enter into force thirty days from the date of the later notification.

香港特別行政區政府和新加坡共和國政府  
關於移交逃犯的協定

---

與協定範本的逐條比較

---

序言

與協定範本相同。

第一條〔移交的義務〕

具協定範本第一條相同效果。

第二條〔罪行〕

本條第（1）款〔相應協定範本第二條第（1）款〕的改動，使有關方面可移交涉及可判處不少於一年監禁罪行的逃犯，從而可理解為包括涉及可判處正好一年監禁罪行的逃犯。罪行清單比協定範本的清單更為全面。

第（2）款〔相應協定範本第二條第（2）款〕將有關期限由六個月減至四個月，以使可移交尚有四個月刑期的有關人士。

第（3）款並沒有相應的協定範本條文，是項設立「行為」驗證的條文為近期的引渡協定所普遍採用。它確保如果一項行為在兩地司法管轄範圍內均為刑事罪行，即使罪行的元素在兩地不盡對配，亦可移交。在所有香港已簽署的協定也有相似的條文。

第（4）款並沒有相應的協定範本條文。是項簡單有用的條文，在其他已簽署的協定也同樣採用。

第（5）款〔相應協定範本第二條第（3）款〕的改動，使在缺席情況下被判刑的有關人士倘有機會獲重審，其移交不會因此受防碍。

第三條〔國民的移交〕

本條第（1）款與協定範本第三條實質上相同。

第（2）及第（3）款則在協定範本沒有相應條文。加入第（2）款以使在移交因國民  
國藉理由而被拒絕的情況下可容許檢控的可能。當然，被要求方就該在其領土外觸  
犯的罪行須有司法管轄權，才有可能作出檢控。

第（3）款的意思明顯。

#### **第四條〔移交根據〕**

是項有關表面証供的條文與協定範本第十二條第（1）款有相同效果。

#### **第五條〔強制拒絕移交〕**

本條第（1）款與協定範本第六條實質相同。

本條第（2）款實質等同協定範本第五條第（3）款。

請注意協定範本第五條第（1）款並沒有被採用，因為如果被追緝者在被要求方的司  
法管轄內就申請移交的相同罪行被檢控，則根據第五條第（2）款不能移交。

#### **第六條〔酌情拒絕移交〕**

本條第（1）款與協定範本第十五條實質相同。

本條第（2）款與逃犯條例第 24 條相應。

本條第（3）款並沒有相應的協定範本條文，但其他已簽定的協定條文均有相同條文。

加入本條第（4）款，是要使新加坡能履行其在「部隊地位」協定下的義務。

#### **第七條〔延遲移交〕**

與協定範本第五條第（2）款大體上相同。

#### **第八條〔移交要求及支持文件〕**

與協定範本第七條大體上相同。

### 第九條〔確認〕

與協定範本第十條大體上相同，此條第（1）款被簡化為只指文件而非特定種類的文件。第（2）款是有關翻譯本接受為證據的條文。請留意第十條規定須提供翻譯本。

### 第十條〔文件的語文〕

此條要求提供文件的翻譯本。

### 第十一條〔補充資料〕

第（1）款與協定範本第九條第（1）款大體上相同。

第（2）款在協定範本並沒有相應條文。此款是因應第（1）款所指定的提供補充資料的期限而加入。

### 第十二條〔暫時逮捕〕

與協定範本第八條大體上相同。

### 第十三條〔同時要求〕

與協定範本第九條第（2）款大體上相同。

### 第十四條〔代表及開支〕

此條根據協定範本第十一條訂定。此條明確規定提供法律代表的義務，亦加入對支付特殊性質的開支的闡述。

### 第十五條〔移交安排〕

第（1）款是有用的條款，在協定範本並無相應條文。

第（2），（3）及（4）款與協定範本中的第十二（2），（3）及（4）條實質上相同。

### 第十六條〔移交財產〕

與協定範本第十三條實質上相同。

### 第十七條〔特定罪行及轉移交〕

第（1）款協定範本第十四條實質上相同。

第（2）款處理轉移交，在協定範本並無相應條文所有香港已簽定的協定均有有關轉移交的條文。

### 第十八條〔同意移交〕

本條在協定範本並無相應條文，它容許如果被追緝者同意，他可無須經過法院全面聆訊而被移交。在其他已簽定的協定也有類似條文。逃犯條例第 10（6）及（7）條訂明同意移交的程序。

### 第十九條〔生效及終止〕

與協定範本第十六條相若。第（2）款在協定範本並無相應條文，它反映在移交逃犯方面的認可程序。在其他已簽定的協定也有相同條文。

### 註釋

協定範本第四條有關死刑的保留條款，在本協定並無相應條文，而以互換照會代替。就可被判處死刑的罪行，如請求方沒有提出不會對該罪行判處或執行死刑的保證，令被要求方滿意，照會條文容許被要求方可拒絕移交。逃犯條例第 13（5）條阻止行政長官就可判處死刑的罪行命令移交，除非得到保證不會判處死刑，或即使已判處死刑也不會執行。

**SURRENDER OF FUGITIVE OFFENDERS**  
**SINGAPORE/HKSAR**

---

**ARTICLE BY ARTICLE COMPARISON WITH**  
**THE MODEL AGREEMENT**

**PREAMBLE**

Same as Model.

**ARTICLE 1 [OBLIGATION TO SURRENDER]**

To the same effect as Article 1 of Model.

**ARTICLE 2 [OFFENCES]**

Paragraph (1) [Model equivalent Article 2(1)] was varied to permit surrender for offences carrying imprisonment of not less than one year thereby enabling offences which carry precisely one year's imprisonment to be comprehended. The list of offences is more comprehensive than the list in the Model.

Paragraph (2) [Model equivalent Article 2(2)] reduces the period from six months to four months so that a person may be surrendered if four months of his sentence remains to be served.

Paragraph (3) has no equivalent in the model. It establishes the 'conduct' test which has become common in recent extradition agreements. It ensures that surrender may take place if the conduct would be criminal in both jurisdictions even if the elements of the offences in both jurisdictions do not match. Similar provisions are included in all of Hong Kong's signed agreements.

Paragraph (4) has no equivalent in the Model. A straightforward and useful provision which is found in other signed agreements.

Paragraph (5) [Model equivalent Article 2(3)] varies from the model in that surrender will not be precluded if the person convicted in his absence has the opportunity to have his case retried.

### **ARTICLE 3 [SURRENDER OF NATIONALS]**

Paragraph (1) is substantially the same as Article 3 of the Model.

Paragraphs (2) and (3) have no equivalent in the model. Paragraph (2) is included to allow for the possibility of prosecution if surrender is refused on the basis of nationality; prosecution will of course only be possible if the Requested Party has jurisdiction over the offence which will have been committed outside its territory.

Paragraph (3) is self-explanatory.

### **ARTICLE 4 [BASIS FOR SURRENDER]**

This Article which provides for the provision of prima facie evidence is to the same effect as Article 12(1) of the Model.

### **ARTICLE 5 [MANDATORY REFUSAL OF SURRENDER]**

Paragraph (1) is substantially the same as Article 6 of the Model.

Paragraph (2) is substantially the same as Article 5(3) of the model.

Note that Article 5(1) of the model is not included since if a person is prosecuted in the Requested Party for the offence for which surrender is sought Article 5(2) will preclude surrender.

### **ARTICLE 6 [DISCRETIONARY REFUSAL OF SURRENDER]**

Paragraph (1) is substantially the same as Article 15 of the Model.

Paragraph (2) is reflected in Section 24 of the Ordinance.

Paragraph (3) has no equivalent in the Model. It is nevertheless included in most of Hong Kong's signed agreements.

Paragraph (4) is included to enable Singapore to discharge its obligations under Status of Forces Agreements.

#### **ARTICLE 7 [POSTPONEMENT OF SURRENDER]**

Substantially the same as Article 5(2) of the Model.

#### **ARTICLE 8 [THE REQUEST AND SUPPORTING DOCUMENTS]**

Substantially the same as Article 7 of the Model.

#### **ARTICLE 9 [AUTHENTICATION]**

Substantially the same as Article 10 of the Model. Paragraph (1) has been simplified to refer only to documents instead of particular types of documents. Paragraph (2) deals with the admissibility of translations. Note that Article 10 requires translations to be provided.

#### **ARTICLE 10 [LANGUAGE OF DOCUMENTATION]**

This Article requires the provision of translations.

#### **ARTICLE 11 [ADDITIONAL INFORMATION]**

Paragraph (1) is substantially the same as Article 9(1) of the Model.

Paragraph (2) has no equivalent but is included because of the time limit specified in paragraph (1).

#### **ARTICLE 12 [PROVISIONAL ARREST]**

Substantially the same as Article 8 of the Model.



**ARTICLE 13 [CONCURRENT REQUESTS]**

Substantially the same as Article 9(2) of the Model.

**ARTICLE 14 [REPRESENTATION AND COSTS]**

Based on Article 11 of the Model. There is however a definite obligation to provide legal representation. In addition extraordinary expenses are covered.

**ARTICLE 15 [ARRANGEMENTS FOR SURRENDER]**

Paragraph (1) has no equivalent in the Model; it is a useful provision.

Paragraphs (2), (3) and (4) are substantially the same as Article 12(2), (3) and (4) of the Model.

**ARTICLE 16 [SURRENDER OF PROPERTY]**

Substantially the same as Article 13 of the Model.

**ARTICLE 17 [SPECIALITY AND RESURRENDER]**

Paragraph (1) is substantially the same as Article 14 of the Model.

Paragraph (2) deals with resurrender which has no equivalent in the Model. All of Hong Kong's signed agreements have provisions in relation to resurrender.

**ARTICLE 18 [SURRENDER BY CONSENT]**

This Article which has no equivalent in the Model enables a fugitive to be surrendered without the need for a full hearing before the Magistrate provided that he consents. Similar Articles appear in other signed agreements. The Ordinance prescribes a procedure for surrender by consent [see section 10(6) and (7)].

**ARTICLE 19 [ENTRY INTO FORCE AND TERMINATION]**

Similar to Article 16 of the Model. Paragraph (2) which has no equivalent in the Model reflects accepted practice in the area of surrender of fugitive offenders. It appears in other signed agreements.

NOTE: Article 4 of the Model which provides for a death penalty exception has no equivalent in the Agreement itself. Instead this question is dealt with in an Exchange of Notes which permits the Requested Party to refuse surrender for a death penalty offence where no satisfactory assurances are given that the death penalty will not be imposed or carried out. Section 13(5) of the Ordinance prevents the Chief Executive from ordering surrender for a death penalty offence unless assurances are given that the death penalty will not be imposed or if imposed not carried out.