

**L.N. 166 of 2013**

**Fugitive Offenders (Czech Republic) Order**

(Made by the Chief Executive in Council under section 3 of the  
Fugitive Offenders Ordinance (Cap. 503))

**1. Commencement**

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

**2. Procedures in Ordinance to apply between Hong Kong and Czech Republic**

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 Czech Republic subject to the limitations, restrictions, exceptions and qualifications contained in those terms.

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**Schedule**

[s. 2]

**Agreement between the Hong Kong Special  
Administrative Region of the People's Republic of China  
and the Czech Republic on Surrender of Persons Wanted  
for Criminal Proceedings<sup>#</sup>**

The Hong Kong Special Administrative Region of the People's Republic of China (hereinafter "the Hong Kong Special Administrative Region") having been duly authorised by the Central People's Government of the People's Republic of China to conclude this Agreement and the Czech Republic (hereinafter "the Contracting Parties");

Desiring to make provision for the reciprocal surrender of persons wanted for criminal proceedings;

Have agreed as follows:

Article 1

**OBLIGATION TO SURRENDER**

The Contracting Parties agree to surrender to each other, subject to the provisions laid down in this Agreement, any person who is found in the jurisdiction of the Requested Party and who is wanted by the Requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence described in Article 3.

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Note:<sup>#</sup> The Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Czech Republic on Surrender of Persons Wanted for Criminal Proceedings was done in the Chinese, English and Czech languages, each text being equally authentic. The Czech text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.

Article 2

CENTRAL AUTHORITIES

- (1) The Contracting Parties shall convey their requests for surrender and supporting documents through their Central Authorities.
- (2) The Central Authority of the Hong Kong Special Administrative Region is the Secretary for Justice or his or her duly authorised officer. The Central Authority for the Czech Republic is the Ministry of Justice or a state authority authorised by the Ministry of Justice.
- (3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.
- (4) Either Contracting Party may change its Central Authority in which case it shall notify the other of the change.

Article 3

OFFENCES

- (1) Surrender shall be granted for an offence:
  - (a) which is punishable under the laws of both Contracting Parties by imprisonment or other form of detention for more than one year or a more severe penalty; and
  - (b) for which surrender is permitted by the laws of both Contracting Parties.

(2) Each Contracting Party shall provide to the other a list of the offences for which surrender may be granted under its law. Each Contracting Party shall provide such a list no later than the date on which it notifies the other Contracting Party under Article 19(1) that its requirements for the entry into force of this Agreement have been complied with. Each Contracting Party shall promptly inform the other of any subsequent changes to its list.

(3) 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.

(4) For the purposes of this Article, in determining whether an offence is an offence punishable under the laws of both Contracting Parties the acts or omissions constituting the conduct 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.

(5) For the purposes of paragraph (1) of this Article, an offence shall be an offence according to the laws of both Contracting 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.

(6) Where the surrender of a person 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 these circumstances, the person shall be considered as an accused person under this Agreement.

Article 4

SURRENDER OF NATIONALS

The Czech Republic reserves the right to refuse the surrender of its nationals. The Hong Kong Special Administrative Region reserves the right to refuse the surrender of nationals of the People's Republic of China.

Article 5

DEATH PENALTY

If the offence for which surrender of a person 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 6

BASIS FOR SURRENDER

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

Article 7

REFUSAL OR POSTPONEMENT OF SURRENDER

- (1) A person shall not be surrendered if the Requested Party has substantial grounds for believing:
- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
  - (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, religion, nationality, sex 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 personal liberty by reason of race, religion, nationality, sex or political opinions.
- (2) Where a person has been finally acquitted, convicted or pardoned, or a prosecution is barred or his conviction has been set aside under the law of the Requesting or Requested Party for any offence set out in the request, he shall not be surrendered for that offence.
- (3) Surrender may be refused if the Requested Party considers that:
- (a) the offence is, having regard to all the circumstances, not sufficiently serious to warrant the surrender;

- (b) by reason of the passage of time since the person is alleged to have committed the offence or to have become unlawfully at large, as the case may be, it would be unjust or oppressive to surrender him having regard to all the circumstances;
  - (c) the offence for which surrender is sought was committed within the jurisdiction of its courts;
  - (d) the surrender might place that Party in breach of its obligations under international treaties or agreements; or
  - (e) in the circumstances of the case, the surrender would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought.
- (4) If the person sought is being proceeded against or is under punishment in 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) A request for surrender shall be in writing and 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 description of each offence for which surrender is sought, and a description of the acts and omissions which are alleged against the person in respect of each offence together with the time and place they occurred; 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.

(2) If the request relates to an accused person it shall also be accompanied by a copy of the warrant of arrest issued by a court or other judicial authority of the Requesting Party and by such evidence as, according to the law of the Requested Party, would justify the committal of the person for trial if the offence had been committed within the jurisdiction of the Requested Party.

(3) 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 any relevant judgment; 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

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 appear to be:

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

Article 10

LANGUAGE OF DOCUMENTATION

- (1) All documents submitted in accordance with this Agreement to the Hong Kong Special Administrative Region shall be in, or translated into, Chinese or English.
- (2) All documents submitted in accordance with this Agreement to the Czech Republic shall be in, or translated into, Czech or English.
- (3) Any 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 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 supplementary information. The Requested Party may fix a time limit for receipt of this information and may extend the time limit as necessary.

(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. The Requested Party shall promptly inform the Requesting Party of its decision on provisional arrest.

(2) The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought, a copy of a warrant of arrest or of a judgment of conviction against that person or a statement of their existence, 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 Central Authorities 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 Contracting Parties and a State with whom the Hong Kong Special Administrative Region or the Czech Republic, whichever is being requested, has treaties, 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 treaties or agreements in force between the Requested Party and the Requesting Parties, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality and ordinary place of residence of the person sought and the possibility of subsequent surrender to another state, and furnish the other Contracting Party with information justifying its decision.

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 Contracting Parties shall consult with a view to deciding how these expenses will be met.

(3) The Requested Party shall bear the expenses arising out of the arrest and detention of the person whose surrender is sought until that person is surrendered. The Requesting Party shall bear all subsequent expenses.

Article 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 sent by the authorities of the Requested Party to such convenient place of departure within that Party's jurisdiction as the Requesting Party shall indicate.

(3) Subject to the provisions of paragraph (4) of this Article, the Requesting Party shall remove the person within the period specified by the Requested Party, which period shall be no less than 14 days from the date of communication of the decision to the Requesting Party according to paragraph (1), unless both Contracting Parties agree otherwise, 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 unforeseen circumstances prevent the Contracting Parties from surrendering or taking over a person the Parties shall inform each other. In that case, the Contracting 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 the law of the Requested Party, when a request for surrender of a person is granted, the Requested Party:

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

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

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

### Article 17

#### SPECIALTY AND RESURRENDER

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

- (a) the offence or offences in respect of which his surrender was granted;
- (b) an offence, however described, based on substantially the same facts in respect of which his surrender was granted, provided such offence is one for which he could be surrendered under this Agreement, and provided further such offence is punishable by a penalty no more severe than the penalty for the offence for which he was surrendered;
- (c) any other offence for which surrender may be granted under this Agreement and in respect of which the Requested Party is asked for, and gives, consent to the person being dealt with,

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

(2) A person who has been surrendered shall not be re-surrendered outside the jurisdiction of the Requesting Party for an offence committed prior to his surrender unless:

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

(3) A Contracting Party whose consent is requested under paragraphs (1)(c) or (2)(a) of this Article may require the submission of any document or statement referred to in Article 8, and any statement made by the surrendered person on the matter.

### Article 18

#### TRANSIT

To the extent permitted by its law, transit through a Contracting Party may be granted on a request in writing. The Contracting Party through which transit will occur may request the information referred to in paragraph (2) of Article 12.

Article 19

ENTRY INTO FORCE AND TERMINATION

(1) This Agreement shall enter into force thirty days after the date on which the Contracting 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 of the Contracting Parties may terminate this Agreement at any time by giving notice to the other Contracting Party. The Agreement shall cease to have effect six months after the receipt of notice to terminate.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Hong Kong, this Fourth day of March, Two thousand and Thirteen, in two originals, in the Chinese, English and Czech languages, each text being equally authentic. In case of divergence of interpretation the English text shall prevail.

Kinnie WONG  
Clerk to the Executive Council

COUNCIL CHAMBER

22 October 2013

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### **Explanatory Note**

This Order applies the procedures for the surrender of fugitive offenders set out in the Fugitive Offenders Ordinance (Cap. 503) as between Hong Kong and the Czech Republic. The Order is made in consequence of the arrangements for the surrender of fugitive offenders entered into by the Hong Kong Special Administrative Region and the Czech Republic and signed in Hong Kong on 4 March 2013. The terms of those arrangements are recited in the Schedule to the Order. Those procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms so recited.