

I (b) 項目

《逃犯（新西蘭）令》

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1998 年第 263 號法律公告

逃犯(新西蘭)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西蘭之間適用

就——

(a) 適用於中華人民共和國香港特別行政區政府和新西蘭政府，並且

(b) 在附表中敘述，

的移交逃犯安排，現指示本條例中的程序在該等安排所載的限制、約束、例外規定及約制的規限下，在香港和新西蘭之間適用。

附表

[第 2 條]

中華人民共和國香港特別行政區政府和新西蘭政府
的移交被控告及被定罪人士協定

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

願訂立相互移交因刑事罪行而被控告及被定罪人士的規定，

協議如下：——

第一條

移交的義務

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

L.N. 263 of 1998

FUGITIVE OFFENDERS (NEW ZEALAND) 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 New Zealand

In relation to the arrangements for the surrender of fugitive offenders which are—

(a) applicable to the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of New Zealand; and

(b) recited in the Schedule,

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

SCHEDULE

[s. 2]

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

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

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

Have agreed as follows:

ARTICLE 1

OBLIGATION TO SURRENDER

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

第三條**罪行**

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

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

(2) 凡要求移交是為了執行一項判刑，該項要求亦須符合另一項規定，即餘下的監禁或拘留期須不得少於六個月。

ARTICLE 2**OFFENCES**

(1) Surrender shall be granted for an offence coming within any of the following categories of offences insofar as it is according to the law of both Parties punishable by imprisonment or other form of detention for two years or more, or by a more severe penalty and insofar as such offence is one for which surrender may be granted under the law of the Requested Party:

- (a) Murder or manslaughter;
- (b) Aiding, abetting, counselling or procuring suicide;
- (c) Offences involving wounding, injuring, causing grievous bodily harm; endangering the life or safety of any person; threatening to kill or cause grievous bodily harm;
- (d) Offences of a sexual nature including sexual violation; rape; sexual assault; indecent assault; sexual offences against children;
- (e) Kidnapping; abduction; false imprisonment; taking a hostage; dealing or trafficking in slaves or other persons;
- (f) Offences against the laws relating to drugs including narcotics and psychotropic substances;
- (g) Offences against the laws relating to theft; robbery; burglary; blackmail and extortion; handling or receiving property;
- (h) Offences against the laws relating to fraud or other forms of dishonesty; obtaining property, money, valuable securities or pecuniary advantage by false pretences; conspiracy to defraud;
- (i) Offences relating to counterfeiting, forgery or uttering;
- (j) Offences relating to companies including offences committed by officers, directors, and promoters;
- (k) Offences against the laws relating to bribery and corruption;
- (l) Perjury and offences relating to obstructing or defeating the course of justice;
- (m) Arson; criminal damage to property;
- (n) Piracy;
- (o) Killing an unborn child; offences relating to the unlawful termination of pregnancy;
- (p) Stealing or abandoning a child;
- (q) Procuring sexual intercourse;
- (r) Bigamy;
- (s) Offences relating to the possession or laundering of the proceeds of crime;
- (t) Offences for which surrender may be granted under international conventions binding on the Parties; offences created as a result of decisions of international organisations which are binding on the Parties;
- (u) Aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting or conspiring to commit any offence for which surrender may be granted under this Agreement;
- (v) Any other offence for which surrender may be granted in accordance with the law of both Parties.

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

(3) 就本條而言，在確定一項罪行在被要求方的法律下是否屬可判處懲罰的罪行時，該人的行為根據其被指稱的作為或不作為的全部予以審查後，如在被要求方的法律下構成罪行即已足夠，儘管要求方法律對構成罪行的有關因素所作的規定與被要求方法律對有關因素所作的規定並不相同。

(4) 就第二條第(1)款而言，如構成罪行的行為在犯罪時屬觸犯要求方法律的罪行，而在被要求方接獲移交要求時亦屬觸犯被要求方法律的罪行，則該項罪行根據締約雙方的法律均屬罪行。

第三條

國民的移交

(1) 新西蘭政府保留拒絕移交其國民的權利。香港特別行政區政府保留拒絕移交中華人民共和國的國民的權利。

(2) 被要求方行使此項權利時，要求方可要求把案件提交被要求方主管當局，以考慮對該人進行起訴。

第四條

死刑

如某項根據本協定要求移交的罪行依照要求方的法律可判處死刑，但就該項罪行而言，被要求方的法律並無判處死刑的規定或通常不會執行死刑，則除非要求方提出被要求方認為充分的保證，即被移交者將不會被判處死刑或即使被判處死刑亦不會執行，被要求方可拒絕移交。

第五條

移交根據

只有在下述情況下，始須把要求方所要求移交的人移交：

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

第六條

強制拒絕移交

(1) 如被要求方有充分理由相信以下事項屬實，則不得移交一名人士：

- (a) 該人被控告或被定罪的罪行屬政治性質，或提出移交要求的目的，實際上是就一項屬於政治性質的罪行審理或懲罰該人；

(3) For the purposes of this Article, in determining whether an offence is an offence punishable under the law of Requested Party it shall be sufficient if the conduct of the person, examined by reference to the totality of the acts or omissions alleged against the person, would constitute an offence against that law, notwithstanding that the elements of the offence prescribed by the law of the Requesting Party are not identical with the elements prescribed by the law of the Requested Party.

(4) For the purposes of Article 2(1), an offence shall be an offence according to the laws of both Parties if the conduct constituting the offence was an offence against the law of the Requesting Party at the time it was committed and an offence against the law of the Requested Party at the time the request for surrender is received.

ARTICLE 3

SURRENDER OF NATIONALS

(1) The Government of New Zealand reserves the right to refuse the surrender of its nationals. The Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of nationals of the People's Republic of China.

(2) Where the Requested Party exercises this right the Requesting Party may request that the case be submitted to the competent authorities of the Requested Party in order that proceedings for prosecution of the person may be considered.

ARTICLE 4

DEATH PENALTY

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

ARTICLE 5

BASIS FOR SURRENDER

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

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

ARTICLE 6

MANDATORY REFUSAL OF SURRENDER

(1) A person shall not be surrendered if the Requested Party has substantial grounds for believing:

- (a) that the offence of which that person is accused or was convicted is an offence of a political character or that the request for surrender has in fact been made with a view to trying or punishing him or her for an offence of a political character;

- (b) 提出移交要求(該項要求雖然看來是因為一項可准予移交的罪行而提出)實際上是因為該人的種族、膚色、所屬民族、性別、宗教、國籍或政見而檢控或懲罰該人；或
- (c) 該人經交回，可因其種族、膚色、所屬民族、性別、宗教、國籍或政見而——
 - (i) 在審判中受到不公平對待；或
 - (ii) 被懲罰、被拘留或使其人身自由受限制。
- (2) 犯移交要求中所述的任何罪行，但根據要求方或被要求方的法律最後獲釋、被定罪或獲赦的人，不得就該罪行被移交。
- (3) 如要求移交所根據的罪行是軍事法下的罪行，但並非同時是普通刑事法下的罪行，則不得准予移交。

第七條

酌情拒絕移交

- (1) 被要求方如認為有以下情況出現，可拒絕移交：
 - (a) 在考慮所有情況後，有關罪行的嚴重性不足以支持移交該名被要求移交的人士；
 - (b) 由於不能歸咎於被要求移交的人的理由，以致提出起訴，把案件提交審判或使被要求移交的人服刑或使他或她服餘下的刑期有過分延誤；
 - (c) 移交該人可使被要求方違反根據國際條約須履行的義務；
 - (d) 在該案的情況下，鑑於被要求移交的人的年齡、健康或其他個人狀況，把該人移交不合人道；或
 - (e) 被要求移交人在要求方的管轄範圍內由一個特別或專門法庭或審裁處已經判刑或將被審理或判刑。
- (2) 如根據被要求方的法律，該名人士所犯罪行被視為是在被要求方的法院的管轄範圍內犯的，被要求方可拒絕因該罪行移交該名人士。被要求方如作出拒絕，要求方可要求將該案件呈交其主管當局以便考慮訴訟程序。
- (3) 如被要求移交的人已在第三司法管轄區內因其被要求移交所根據的同一罪行最終獲釋、被定罪或獲赦，及如已被定罪的話，判處的刑期已完全執行或不再須予執行，則被要求方可拒絕移交。
- (4) 凡要求移交一名人士是為了執行一項判刑，該人看似是在缺席的情況下被定罪，被要求方可拒絕把他移交，除非他有機會在他出席的情況下獲得重審，則屬例外，在此情況下，他須被視為本協定範圍內的被告。
- (5) 如移交的要求關乎一名因其所犯一項罪行而被檢控或判處懲罰的人士，而假如他是在被要求方的管轄範圍內觸犯該罪行時可以只是因為時效消失而不再被檢控，則被要求方可拒絕把他移交。

- (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, colour, ethnic origin, sex, religion, nationality, or political opinions; or
- (c) that the person might, if returned—
 - (i) be prejudiced at that person's trial; or
 - (ii) be punished, detained or restricted in his or her personal liberty by reason of race, colour, ethnic origin, sex, religion, nationality or political opinions.
- (2) A person who has been finally acquitted, convicted or pardoned under the law of the Requesting or Requested Party for any offence set out in the request shall not be surrendered for that offence.
- (3) Surrender shall not be granted if the offence for which surrender is sought is an offence under military law which is not also an offence under ordinary criminal law.

ARTICLE 7

DISCRETIONARY REFUSAL OF SURRENDER

- (1) Surrender may be refused if the Requested Party considers that:
 - (a) the offence is, having regard to all the circumstances, not sufficiently serious to warrant the surrender of the person sought;
 - (b) there has been excessive delay, for reasons which cannot be imputed to the person sought, in bringing charges, in bringing the case to trial or in making the person serve his or her sentence or the remainder thereof;
 - (c) the surrender of the person might place that Party in breach of its obligations under international treaties;
 - (d) in the circumstances of the case, the surrender would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought; or
 - (e) the person whose surrender is requested has been sentenced or would be liable to be tried or sentenced in the Requesting Party by an extraordinary or ad hoc court or tribunal.
- (2) The Requested Party may refuse to surrender a person for an offence which is regarded by its law as having been committed within the jurisdiction of its courts. If the Requested Party so refuses, the Requesting Party may request that the case be submitted to its competent authorities in order that proceedings for prosecution be considered.
- (3) The Requested Party may refuse surrender where the person sought has been finally acquitted, convicted or pardoned in a third jurisdiction for the same offence for which surrender is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.
- (4) Where the surrender of a person is requested for the purpose of carrying out a sentence the Requested Party may refuse surrender if it appears that the conviction was obtained in the person's absence, unless the person has the opportunity to have the case retried in his or her presence, in which case the person shall be considered as an accused person under this Agreement.
- (5) The Requested Party may refuse surrender if the request relates to the prosecution or punishment of a person for an offence which, had it been committed within the jurisdiction of the Requested Party, could no longer be prosecuted by reason only of lapse of time.

第八條**延遲移交**

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

第九條**移交要求及證明文件**

- (1) 移交要求和有關文件須通過有關當局提出。締約一方會不時知會締約另一方有關當局。
- (2) 提出要求時，須一併提供下列資料：
- (a) 該被要求移交的人的盡量準確的描述，和其他可助確定該人的身分、國籍和在地的資料；
 - (b) 被要求移交的人的各項罪行說明，以及就每項罪行的有關作為或不作為的說明；及
 - (c) 描述要求移交所根據的罪行的法律條文的說明，該項罪行可判處的懲罰的說明，以及就該項罪行提出訴訟或執行有關該項罪行懲罰的任何時限。
- (3) 如該項移交要求與一名被告有關，須一併提供由要求方的法官、裁判官或其他主管當局發出的逮捕令的副本，以及任何根據被要求方的法律，如該罪行發生在被要求方的管轄範圍內，足以使該被告被交付審判的證據。
- (4) 如該項移交要求與被定罪或被判刑的人有關，則須一併提供定罪或判刑證明書副本，及：
- (a) 如該人被定罪但未被判刑，有關法院就此發出的說明及逮捕令副本；或
 - (b) 如該人已被判刑，顯示該項判刑可強制執行和未服刑期尚有多少的說明。

第十條**確認**

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

ARTICLE 8**POSTPONEMENT OF SURRENDER**

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

ARTICLE 9**THE REQUEST AND SUPPORTING DOCUMENTS**

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

ARTICLE 10**AUTHENTICATION**

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

第十一條

證明文件的語文

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

第十二條

暫時逮捕

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

第十三條

補充資料

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

ARTICLE 11

LANGUAGE OF DOCUMENTATION

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

ARTICLE 12

PROVISIONAL ARREST

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

ARTICLE 13

ADDITIONAL INFORMATION

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

第十四條**同時要求**

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

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

而被要求方如果決定把該人移交另一管轄區，須將其決定通知要求方。

第十五條**代表及開支**

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

第十六條**移交安排**

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

ARTICLE 14**CONCURRENT REQUESTS**

If the surrender of a person is requested concurrently by one of the Parties and a State with whom New Zealand or the Hong Kong Special Administrative Region, whichever is being requested, has agreements or arrangements for the surrender of accused and convicted persons, the Requested Party shall make its decision having regard to all the circumstances including:

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

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

ARTICLE 15**REPRESENTATION AND COSTS**

- (1) The Requested Party shall make all necessary arrangements for legal representation and assistance in any proceedings in its jurisdiction arising out of a request for surrender.
- (2) Subject to Article 15(3), the Requested Party shall meet the costs of any proceedings arising from the request in its jurisdiction and shall bear any expenses associated with the arrest and detention of the person whose surrender is sought until that person is surrendered. The Requesting Party shall bear all subsequent expenses including the costs of transporting the person from the jurisdiction of the Requested Party.
- (3) If it becomes apparent that exceptional expenses may be incurred as a result of a request for surrender the Parties shall consult with a view to deciding how these expenses will be met.

ARTICLE 16**ARRANGEMENTS FOR SURRENDER**

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

第十七條**移交財產**

- (1) 在被要求方的法律許可範圍內，同時在任何第三方的權利應獲得尊重的前提下，因犯有關罪行而取得的物件，凡是與移交要求有關的，或可能要用作有關罪行的證據的，如被發現，而移交要求又經獲准，即須悉數移交。
- (2) 如果被要求方的法律有所規定，或為了要保障任何第三方的權利，同時被要求方又提出要求，上述物品在訴訟程序完結後，即須在切實可行的範圍內盡快歸還給被要求方而不得收取費用。
- (3) 如果被要求方的法律許可，要求方又提出要求，即使被要求移交的人因死亡、失蹤或逃脫而未能移交，上述物品仍須移交給要求方。

第十八條**特定罪行規例**

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

第十九條**轉移交**

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

ARTICLE 17**SURRENDER OF PROPERTY**

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

ARTICLE 18**RULE OF SPECIALTY**

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

ARTICLE 19**RESURRENDER**

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

第二十條**過境**

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

第二十一條**生效、中止及終止**

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

下列簽署人各經其政府正式授權，已在本協定上簽字為證。

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

行政會議秘書
陳美寶

行政會議廳
1998 年 6 月 16 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西蘭之間適用。本命令是因香港與新西蘭所締結並在 1998 年 4 月 3 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已予敘述。應注意該等程序受到該等安排所載的限制、約束、例外規定及約制所規限。

ARTICLE 20**TRANSIT**

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

ARTICLE 21**ENTRY INTO FORCE SUSPENSION AND TERMINATION**

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

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

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

Mable CHAN
Clerk to the Executive Council

COUNCIL CHAMBER
16 June 1998

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 New Zealand. The Order is made in consequence of the arrangements for the surrender of fugitive offenders entered into by Hong Kong and New Zealand and signed in Hong Kong on 3 April 1998. Those arrangements are recited in the Schedule to the Order. It should be noted that those procedures are subject to the limitations, restrictions, exceptions and qualifications contained in those arrangements.

立法會參考資料摘要

《逃犯條例》（第 503 章）

《逃犯（新西蘭）令》

引言

行政會議在六月十六日的會議上建議，並由行政長官下令將《逃犯（新西蘭）令》（見附件）提交立法會審議。

背景和論據

《逃犯條例》

2. 《逃犯條例》（條例）第 3 條規定，行政長官會同行政會議可就任何的移交逃犯安排，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、澳洲、馬來西亞、菲律賓、美國、印尼、印度、英國和新加坡）制定 10 項命令。

《逃犯（新西蘭）令》

4. 香港特別行政區（香港特區）於一九九八年四月三日就移交逃犯的安排與新西蘭簽署協定。《逃犯（新西蘭）令》將會令上述協定生效。該命令把有關協定載於附表，規定條例訂明的程序將適用於香港特區和新西蘭，但須受協定的條款規管。

5. 條例第 3（9）條規定，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，否則行政長官會同行政會議不應制定命令。有關的協定與條例實質上相符。

6. 命令的生效日期將由保安局局長在憲報指定。命令會與協定同日生效，而生效日期將於諮詢新西蘭後決定，並且須視乎對方的程序何時完成。

7. 在政權交接前，香港與新西蘭的移交逃犯安排是根據一項英聯邦計劃實施的對等法例作為基礎。這項由英國延伸至香港的法例已於一九九七年七月一日失效，由該日起，香港特區再無法與新西蘭作出

引渡安排。因此，我們必須盡快制定法令，恢復與新西蘭在引渡方面的關係。

立法程序時間表

8. 立法程序時間表將會如下一

刊登憲報	一九九八年七月三日
提交立法會	一九九八年七月八日
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，請與下述人士聯絡一

電話號碼

保安局首席助理局長 邱霜梅女士	2810 2329
保安局高級行政主任林 吳宛姿女士	2810 2325

保安局

一九九八年七月

(SBCR 9/1/2716/80(98)Pt.4

註釋

《逃犯（新西蘭）令》

這條法令根據《逃犯條例》（條例）第 3（1）條制定，使香港特區與新西蘭簽訂的協定得以執行。

2. 以下是對協定主要內容的註釋：

名稱

這條協定的描述提及移交被控告及被定罪人士而非移交逃犯，但條例第 2（6）條清楚訂明，協定應按“移交逃犯安排”的定義理解。

第一條：移交的義務

本條訂明移交的一般義務，與條例第 4 條的內容一致。

第二條：罪行

本條指明可准予移交的罪行。有關條文從兩方面限制條例第 2 條及條例附表 1 所述“有關罪行”的定義—

（a） 最低刑罰必須為監禁兩年而非一年。

（b） 罪行清單以第二條開列的為依據。

第三條：國民的移交

本條就拒絕移交國民的酌情權訂定條文，內容與條例第 13（4）條相對應。

第四條：死刑

本條就批准移交一事訂定有關死刑的保留條文，內容與條例第 13（5）條相對應。

第五條：移交根據

本條主要就要求方必須提供表面證據一事訂定條文。有關提供這類證據的規定見條例第 10（6）（b）（iii）條。

第六條：強制拒絕移交

本條列明強制拒絕移交的理由。相對應條文見條例第 5（1）條。請留意第 5（1）（c）及（d）條受這條法令所引進的膚色、所屬民族和性別等準則所限制〔見第六條（1）（b）及（c）〕。

第七條：酌情拒絕移交

這些酌情拒絕的理由視乎個別協定而定，不盡相同。一般來說，這些理由旨在涵蓋移交逃犯會造成不公平的情況。根據條例第 13 條，行政長官可完全酌情決定是否下令移交逃犯，他會根據本條指明的理由行使酌情權。

第八條：延遲移交

本條第（1）段無須有條例相應條文支持，並且容許一方延遲履行有關展開移交逃犯法律程序的義務，直至本地訴訟結束或懲罰執行後才移交逃犯。

本條第（2）段所載為香港特區的其他協定所未有。條文旨在配合對第三司法管轄區有關轉移交逃犯的義務。〔有關轉移交逃犯事宜見第十九條〕

第九條：移交要求及證明文件

本條指明需連同移交逃犯要求一併提交的文件。條例的相應條文載於第 10（6）（b）條，該條提述“支持文件”，該詞的定義見第 2 條。

第十條：認證

本條規定有關文件須經確認才可被接受。條例第 10（6）（b）條載有相對應的規定，第 23（2）條則清楚列明文件獲確認的條件，有關條件與本條的規定相同。

第十一條：證明文件的語文

本條意思清晰明確，香港所有已簽訂的其他協議內均有同樣條文。

第十二條：暫時逮捕

本條允許要求方在備妥支持要求文件前申請暫時逮捕逃犯。條例第 7（1）（b）條訂明暫時逮捕逃犯的程序〔請留意條例第 2 條把“臨時手令”界定為根據第 7（1）（b）條發出的手令〕。

第十三條：補充資料

本條是無需法例支持的典型條文。

第十四條：同時要求

本條也是無需法例支持的典型條文。本條為被要求方提供指引，說明在兩方同時提出要求時，應接納哪一方的要求。

第十五條：代表及開支

本條也是無需法例支持的典型條文。

第十六條：移交安排

本條訂明實際安排移交逃犯的程序。請留意條例第 14 條訂明若干期限，在期限內必須簽署移交令和移交逃犯。

第十七條：移交財產

本條旨在容許把處理移交時所檢取的財產轉交給要求方。條例第 8 和 9 條訂明檢取和處置這些財產的程序。

第十八條：特定罪行規例

本條為逃犯提供特定罪行的保障。對於已移交香港的人士的保障，有關法律依據見條例第 17（1）條。此外，根據條例第 5（2）條，除非某人在要求移交一方的地區獲得特定罪行的保障，否則該人不得被香港移交。

第十九條：轉移交

本條保障逃犯免被轉移交到第三司法管轄區。對於已移交香港的人士的保障，有關法律依據見條例第 17（2）條。此外，根據條例第 5（5）條，除非某人在要求移交一方的地區獲得免被轉移交的保障，否則該人不得被香港移交。

第二十條：過境

本條的責任是“在其法律許可下”履行。條例第 20 條批准過境。

第二十一條：生效、中止及終止

本條為典型條文。

LEGISLATIVE COUNCIL BRIEF

Fugitive Offenders Ordinance(Cap.503)

FUGITIVE OFFENDERS (NEW ZEALAND) ORDER

INTRODUCTION

At the meeting of the Executive Council on 16 June 1998, the Council ADVISED and the Chief Executive ORDERED that the Fugitive Offenders (New Zealand) Order at Annex should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

The Fugitive Offenders Ordinance

2. Section 3 of the Fugitive Offenders Ordinance (the Ordinance) provides that the Chief Executive in Council may, in relation to any surrender of fugitive offenders (SFO) arrangements, 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. Ten orders in relation to SFO bilateral arrangements (with the Netherlands, Canada, Australia, Malaysia, the Philippines, the US, Indonesia, India, the UK and Singapore) have been made under section 3(1) of the Ordinance.

The Fugitive Offenders (New Zealand) Order

4. The Hong Kong Special Administrative Region ("HKSAR") signed the SFO agreement with New Zealand on 3 April 1998. The Fugitive Offenders (New Zealand) Order will enable the agreement to be brought into force. The Order, which includes the agreement as a schedule, provides that the procedures in the Ordinance shall apply as between the HKSAR and New Zealand, subject to the terms of the 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. The agreement so conforms.

6. The Order 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 agreement enters into force. The commencement date will be settled after consultation with New Zealand and will depend on when necessary procedures in New Zealand will be completed.

7. Before the handover, Hong Kong's SFO arrangements with New Zealand depended on reciprocal legislation based on a Commonwealth Scheme. The British applied legislation lapsed on 1 July 1997 and since that date extradition between the HKSAR and New Zealand has not been possible. We need to make the Order as soon as possible to resume the extradition relationship with New Zealand.

LEGISLATIVE TIMETABLE

8. The legislative timetable will be-

Publication in the Gazette	3 July 1998
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Tabling in the Legislative Council	8 July 1998
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Commencement date	to be specified by the Secretary for Security
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HUMAN RIGHTS IMPLICATIONS

9. The Department of Justice has advised that the Order is 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 Order will permit the agreement 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-

Telephone No.

Mrs Carrie WILLIS
Principal Assistant Secretary for
Security

2810 2329

Mrs Juliet LAM
Senior Executive Officer, Security
Bureau

2810 2325

Security Bureau
July 1998
(SBCR 9/1/2716/80(98)Pt.4)

COMMENTARY

FUGITIVE OFFENDERS (NEW ZEALAND) ORDER

The Order which is made pursuant to section 3(1) of the Fugitive Offenders Ordinance [the Ordinance] will permit the Agreement between the HKSAR and New Zealand to enter into force.

2. The following commentary sets out the main features of the Agreement-

Title

The Agreement is described as being for the surrender of accused and convicted persons rather than for the surrender of fugitive offenders. Subsection 2(6) of the Ordinance however makes it clear that the Agreement is nevertheless comprehended by the definition of “arrangements for the surrender of fugitive offenders”.

Article 1: Obligation to Surrender

The Article which sets out the general obligation to surrender is consistent with section 4 of the Ordinance.

Article 2: Offences

This Article specifies the offences for which surrender is to be granted. It qualifies the definition of “relevant offence” in section 2 of the Ordinance in two respects-

- (a) the minimum punishment must be 2 years imprisonment instead of 1 year.
- (b) the list of offences in Article 2 reads down the list of offences in Schedule 1 of the Ordinance.

Article 3:Surrender of Nationals

This Article provides for a discretionary power to refuse the surrender of nationals; it is reflected in section 13(4) of the Ordinance.

Article 4:Death Penalty

This Article provides for a death penalty exception to granting surrender; it is reflected in section 13(5) of the Ordinance.

Article 5:Basis for Surrender

This Article principally provides for the submission of prima facie evidence by the Requesting Party; the requirement to provide such evidence is in section 10(6)(b)(iii) of the Ordinance.

Article 6:Mandatory Refusal of Surrender

This Article sets out the mandatory grounds for refusal of surrender. The corresponding provision in the Ordinance is section 5(1). Note that section 5(1)(c) and (d) will be qualified by the Order which imports colour, ethnic origin and sex as criteria [see Article 6(1)(b) and (c)].

Article 7:Discretionary Refusal of Surrender

These discretionary grounds of refusal vary from agreement to agreement. Generally speaking, they are intended to cover the situation where it would be unjust to surrender the fugitive. Under section 13 of the Ordinance the Chief Executive has an unfettered discretion to order surrender or not. He will exercise that discretion in the light of the grounds specified in this Article.

Article 8:Postponement of Surrender

Paragraph (1) does not require a corresponding provision in the Ordinance. It enables a Party to defer its obligation to commence surrender proceedings to enable domestic proceedings or punishment to be concluded.

Paragraph(2) has no counterpart in the HKSAR's other agreements. It dovetails in with obligations owed to third jurisdictions in relation to resurrender [Note that resurrender is dealt with in Article 19].

Article 9:Request and Supporting Documents

This Article specifies the documents which have to accompany requests for surrender. Section 10(6)(b) is the corresponding provision in the Ordinance. Section 10(6)(b) refers to "supporting documents"; this term is defined in section 2.

Article 10:Authentication

This Article requires that documents be duly authenticated to be admissible. Section 10(6)(b) of the Ordinance reflects this requirement. Section 23(2) of the Ordinance spells out what is required for due authentication; it is in the same terms as Article 10.

Article 11:Language of Documentation

This self-explanatory Article appears in all of Hong Kong's signed agreements.

Article 12:Provisional Request

This Article permits the Requesting Party to seek provisional arrest of the fugitive before the request supporting documents are furnished. Section 7(1)(b) of the Ordinance prescribes a procedure for provisional arrest [Note that “provisional warrant” is defined in section 2 of the Ordinance as a warrant issued under section 7(1)(b)].

Article 13:Additional Information

This is a typical Article which needs no legislative underpinning.

Article 14: Concurrent Request

This is also a typical Article which needs no legislative underpinning. It gives the Requested Party guidelines as to which of two requests it will accede to.

Article 15:Representation and Costs

Again a typical Article which needs no legislative underpinning.

Article 16:Arrangements for Surrender

This Article specifies the procedure for arranging the physical surrender of the fugitive. Note that section 14 of the Ordinance prescribes certain time limits within which the order for surrender must be signed and the person removed.

Article 17: Surrender of Properties

This Article is intended to enable property seized in connection with the processing of the surrender to be transmitted to the Requesting Party. Sections 8 and 9 of the Ordinance prescribe a procedure for seizing and disposing of such property.

Article 18: Rules of Specialty

This Article gives the fugitive specialty protection. For persons surrendered to Hong Kong the protection is given legislative backing by section 17(1) of the Ordinance. Pursuant to section 5(2) of the Ordinance a person shall not be surrendered by Hong Kong unless he will have speciality protection in the place to which he is being surrendered.

Article 19: Resurrender

This Article gives the fugitive protection against resurrender to a third jurisdiction. For persons surrendered to Hong Kong the protection is given legislative backing by section 17(2) of the Ordinance. Pursuant to section 5(5) of the Ordinance a person shall not be surrendered by Hong Kong unless he will have re-surrender protection in the place to which he is being surrendered.

Article 20: Transit

The obligations here is “to the extent permitted by its law”. Section 20 of the Ordinance permits transit.

Article 21:Entry into Force Suspension and Termination

A typical provision.

香港特別行政區政府和新西蘭政府 的移交逃犯協定

與協定範本逐條比較

名稱

此協定被描述為移交被控告及被定罪人士協定而非移交逃犯協定。逃犯條例第 2(6) 條清楚訂明協定應按“移交逃犯安排”的定義理解。

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)款條文〕有所更改，只准許就可判處監禁兩年或以上的罪行作移交。本款所列的罪行清單比協定範本的清單更全面。

第(2)款與協定範本相同。

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。在所有香港已簽訂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籍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；有可能作出檢控。

第四條[死刑]

與範本第四條相同。

第五條[移交根據]

此條主要就提供表面證據一事訂定條文，與協定範本第十二條第(1)款有相同效用。

第六條[強制拒絕移交]

第(1)款與協定範本第六條實質上相同。留意第(b)及(c)項加入膚色，所屬民族及性別為準則。

第(2)款與協定範本第五條第(3)款實質上相同。

第(3)款在協定範本中並沒有相應條文。此款並非必定需要，因罪行清單〔見第二條〕並沒有指明任何只在軍事法下才構成的罪行。

第七條[酌情拒絕移交]

第(1)款與協定範本第十五條相似。第(c)項在協定範本並沒有相應條文，在幾份香港已簽訂的協定亦有包括在內。第(e)項根據聯合國協定範本訂定。

第(2)款與協定範本第五條第(1)款相似。

第八條[延遲移交]

第(1)款與協定範本第五條第(2)款實質上相同。

第(2)款在協定範本或其他已簽訂的協定中並沒有相應條文。此款旨在因應被要求方在其他協定下就轉移交須履行的義務。

第九條[移交要求及證明文件]

實質上與協定範本第七條相同。

第十條[認證]

實質上與協定範本第十條相同。此款被簡化為只指文件而非特定種類的文件。鑑於第十一條的規定無需採用範本第（2）款。

第十一條[證明文件的語文]

此條要求提供文件的翻譯本。

第十二條[暫時逮捕]

實質上與協定範本第八條相同。

第十三條[補充資料]

第（1）款與協定範本第九條（1）款實質上相同。

第（2）款在協定範本中並沒有相應條文，因應第（1）款而加入提供補充資料的期限。

第十四條[同時要求]

與協定範本第九（2）條實質上相同。

第十五條[代表及開支]

條文是根據協定範本第十一條而訂。但規定有義務提供法律代表及涵蓋有關特殊性質開支的條文。

第十六條[移交安排]

第（1）款在協定範本並無相應條文，本款是有用的條文。

第（2），（3）及（4）款實質上與條例第十二（2），（3）及（4）條相同。

第十七條[移交財產]

根據協定範本第十三條而訂定。第（3）款在協定範本並無相應條文，容許在即使不可移交逃犯的情況下，也可移交財產。在其他已簽訂的協定也有相似條文。

第十八條[特定罪行規例]

第（1）款實質上與協定範本第十四條相同。

第（2）款在協定範本並無相應條文。加入本條款有便被要求方根據第（1）（c）款的限制考慮給予同意。

第十九條[轉移交]

本條處理轉移交，在協定範本並無相應條文。

所有香港已簽訂的協定均有有關轉移交條文。

第二十條[過境]

本條有關處理過境的條文在協定範本並無相應條文。在一些香港已簽訂的協定中，當被追緝者從一方移交至其他司法管轄區，或從其他司法管轄區移交到一方，移交可在另一方過境。

第二十一條[生效、中止及終止]

與協定範本第十六條相似。

第（2）款在協定範本中並沒有相應條文。它反映移交逃犯範疇中的慣例。在其他幾份已簽訂的協定中亦有相同條文。

第（3）款容許中止此協定，其他幾份已簽訂的協定亦同樣容許中止協定。

**SURRENDER OF FUGITIVE OFFENDERS
NEW ZEALAND/HONG KONG SAR**

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

TITLE

The agreement is described as being for the surrender of accused and convicted persons rather than for the surrender of fugitive offenders. Subsection 2(6) of the Ordinance however makes it clear that the agreement is nevertheless comprehended by the definition of “arrangements for the surrender of fugitive offenders”.

ARTICLE 1 [OBLIGATION TO SURRENDER]

To the same effect as Article 1 of the Model.

ARTICLE 2 [OFFENCES]

Paragraph (1) [Model equivalent Article 2(1)] was varied to only allow surrender for offences carrying imprisonment of 2 years or more. The list of offences is more comprehensive than the list in the Model.

Paragraph (2) is the same as the Model.

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.

ARTICLE 3 [SURRENDER OF NATIONALS]

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

Paragraph (2) has 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.

ARTICLE 4 [DEATH PENALTY]

Same as Article 4 of the Model.

ARTICLE 5 [BASIS FOR SURRENDER]

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

ARTICLE 6 [MANDATORY REFUSAL OF SURRENDER]

Paragraph (1) is substantially the same as Article 6 of the Model. Note that sub-paragraphs (b) and (c) impose colour, ethnic origin and sex as criteria.

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

Paragraph (3) has no equivalent in the Model. It is not strictly necessary since the list of offences [see Article 2] does not specify any offences which are only offences under military law.

ARTICLE 7 [DISCRETIONARY REFUSAL OF SURRENDER]

Paragraph (1) is similar to Article 15 of the Model. Sub-paragraph (c) has no equivalent in the Model; it is included in a number of Hong Kong's other signed agreements. Sub-paragraph (e) derives from the UN Model.

Paragraph (2) is similar to Article 5(1) of the Model.

ARTICLE 8 [POSTPONEMENT OF SURRENDER]

Paragraph (1) is substantially the same as Article 5(2) of the Model.

Paragraph (2) which has no counterpart in the Model or signed agreements is included to complement resurrender obligations which the Requested Party has under other agreements.

ARTICLE 9 [THE REQUEST AND SUPPORTING DOCUMENTS]

Substantially the same as Article 7 of the Model.

ARTICLE 10 [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) of the Model is admitted as being unnecessary in the light of Article 11.

ARTICLE 11 [LANGUAGE OF DOCUMENTATION]

This Article requires the provision of translations.

ARTICLE 12 [PROVISIONAL ARREST]

Substantially the same as Article 8 of the Model.

ARTICLE 13 [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 in paragraph (1).

ARTICLE 14 [CONCURRENT REQUESTS]

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

ARTICLE 15 [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 16 [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 17 [SURRENDER OF PROPERTY]

Based on Article 13 of the Model. Paragraph (3) which has no equivalent in the Model permits property to be surrendered even though the fugitive cannot. There are similar provisions in other signed agreements.

ARTICLE 18 [RULE OF SPECIALTY]

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

Paragraph (2) has no equivalent in the Model. It is included to facilitate the Requested Party's consideration of giving consent pursuant to paragraph (1)(c).

ARTICLE 19 [RESURRENDER]

This Article dealing with resurrender has no equivalent in the Model. All of Hong Kong's signed agreements have provisions in relation to resurrender.

ARTICLE 20 [TRANSIT]

This Article dealing with transit has no equivalent in the Model. A number of Hong Kong's signed agreements allow for fugitives being surrendered to a Party from a third jurisdiction or from a Party to a third jurisdiction to transit the other Party.

ARTICLE 21 [ENTRY INTO FORCE SUSPENSION 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 a number of other signed agreements.

Paragraph (3) permits suspension of the Agreement. A number of other signed agreements also allow for suspension.

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