

**EXTRADITION**

**Surrender of Fugitive Offenders**

**Agreement Between the  
UNITED STATES OF AMERICA  
and HONG KONG**

Signed at Hong Kong December 20, 1996



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966  
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

## HONG KONG

### **Extradition: Surrender of Fugitive Offenders**

*Agreement signed at Hong Kong December 20, 1996;  
Transmitted by the President of the United States of America  
to the Senate March 3, 1997 (Treaty Doc. 105-3,  
105<sup>th</sup> Congress, 1<sup>st</sup> Session);  
Reported favorably by the Senate Committee on Foreign Relations  
July 30, 1997 (Senate Executive Report No. 105-2,  
105<sup>th</sup> Congress, 1<sup>st</sup> Session);  
Advice and consent to ratification by the Senate  
October 23, 1997;  
Ratified by the President November 26, 1997;  
Exchange of diplomatic notes at Hong Kong  
December 22, 1997;  
Entered into force January 21, 1998.*

**AGREEMENT BETWEEN**

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

**AND**

**THE GOVERNMENT OF HONG KONG**

**FOR THE SURRENDER OF FUGITIVE OFFENDERS**

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The Government of the United States of America and the Government of Hong Kong, having been duly authorised to conclude this Agreement by the sovereign government which is responsible for its foreign affairs (hereinafter called "the Parties");

Desiring to make provision for effective cooperation in the suppression of crime and 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 is found in the jurisdiction of the requested Party and who is wanted by the requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence described in Article 2.

**ARTICLE 2**  
**Description of Offences**

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

- (i) Murder; manslaughter; assault with intent to commit murder;
- (ii) Aiding, abetting, counselling or procuring suicide;
- (iii) Maliciously wounding; maiming; inflicting grievous bodily harm; assault occasioning actual bodily harm;
- (iv) Offences of a sexual nature, including rape, sexual assault, indecent assault, unlawful sexual acts upon children or persons with mental disabilities;
- (v) Kidnapping; abduction; false imprisonment; dealing or trafficking in slaves or other persons; taking a hostage;
- (vi) Criminal intimidation; blackmail; extortion;
- (vii) Offences against the laws relating to drugs, including narcotics and psychotropic substances and precursors and essential chemicals used in the illegal manufacture of narcotic drugs and psychotropic substances, and offences relating to the proceeds of drug trafficking;
- (viii) Offences relating to possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement;
- (ix) Criminal exploitation of children, whether for sexual or other purposes (including commercial dealing in child pornography);

- (x) Obtaining property or pecuniary advantage by deception; theft; robbery; burglary, housebreaking, or similar offences; unlawful handling or receiving of property; false accounting; embezzlement; any other offence in respect of property involving fraud;
- (xi) Offences involving the unlawful use of computers;
- (xii) Offences against bankruptcy laws;
- (xiii) Offences against the laws relating to corporations or companies, including offences committed by officers, directors and promoters;
- (xiv) Offences relating to securities and futures trading;
- (xv) Any offence relating to counterfeiting; any offence against the laws relating to forgery or uttering what is forged;
- (xvi) An offence against the law relating to bribery of persons, including public officials, as well as unlawful payments connected with public contracting or other expenditures of public funds;
- (xvii) Perjury and subornation of perjury; false statements; attempting to pervert or obstruct the course of justice;
- (xviii) Criminal damage, including arson;
- (xix) An offence against the law relating to firearms, weapons, or explosives;
- (xx) An offence relating to the protection of public health or the environment;
- (xxi) An offence against the laws relating to protection of intellectual property, copyrights, patents, or trademarks;
- (xxii) 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;
- (xxiii) An offence against the laws relating to the control of exportation or importation of goods of any type, or the international transfer of funds;
- (xxiv) Smuggling; offences against laws relating to the import or export of prohibited items, including historical and archaeological as well as other items;

- (xxv) Immigration offences including fraudulent acquisition or use of a passport or visa;
  - (xxvi) Arranging, for financial gain, the illegal entry of persons into the jurisdiction of the requesting Party;
  - (xxvii) An offence relating to gambling or lotteries;
  - (xxviii) Mutiny or other mutinous acts committed on board a vessel at sea;
  - (xxix) Piracy;
  - (xxx) Unlawful use, destruction, possession, control, seizure or hijacking of aircraft, vessels or other means of transportation;
  - (xxxi) Genocide or direct and public incitement to commit genocide;
  - (xxxii) Offences under multilateral international conventions, binding on the Parties, for which fugitive offenders may be surrendered;
  - (xxxiii) Impeding the arrest, detection or prosecution of a person who has or is believed to have committed an offence for which surrender may be granted under this Agreement;
  - (xxxiv) Offences related to unlawful escape from custody, or flight to avoid prosecution;
  - (xxxv) 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;
  - (xxxvi) Any other offence which is punishable under the laws of both Parties by imprisonment or other form of detention for more than one year, or by a more severe penalty, unless surrender for such offence is prohibited by the laws of the requested Party.
- (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 this Article, in determining whether an offence is an offence against the law of the requested Party, the conduct of the person shall be examined by reference to the totality of the acts or omissions alleged against the person without reference to the elements of the offence prescribed by the law of the requesting Party.

- (4) An offence shall fall within the description of offences in this Article:
- (a) whether or not the laws of the Parties place the offence within the same category of offences or describe the offence by the same terminology; or
  - (b) whether or not the offence is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.
- (5) For the avoidance of doubt, an offence under military law, which is not an offence under ordinary criminal law, shall not be considered to be an offence for purposes of paragraph (1) of this Article.

**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 States of America reserves the right to refuse the surrender of nationals of the United States of America in cases in which the requested surrender relates to the defence, foreign affairs or essential public interest or policy of the United States of America.
- (3) The executive authority of the Government of Hong Kong reserves the right to refuse the surrender of nationals of the State whose government is responsible for the foreign affairs relating to Hong Kong in cases in which:
- (a) The requested surrender relates to the defence, foreign affairs or essential public interest or policy of the State whose government is responsible for the foreign affairs relating to Hong Kong, or
  - (b) The person sought neither has the right of abode in Hong Kong nor has entered Hong Kong for the purpose of settlement, and the State whose government is responsible for the foreign affairs relating to Hong Kong 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 States of America neither has the right of abode in Hong Kong nor has entered Hong Kong for the purpose of settlement and the State whose government is responsible for the foreign affairs relating to Hong Kong 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 Capital Punishment**

(1) When the offence for which surrender is sought is punishable by death under the laws of the requesting Party and is not punishable by death under the laws of the requested Party, the requested Party may refuse surrender unless the requesting Party provides assurances that the death penalty will not be imposed or, if imposed, will not be carried out.

(2) In instances in which a requesting Party has provided an assurance that the death penalty will not be carried out, the death penalty, if imposed by the courts of the requesting Party, shall not be carried out.

#### **ARTICLE 5 Prior Proceedings**

(1) Surrender shall not be granted when the person sought has been convicted or acquitted in the requested Party for the offence for which surrender is requested.

(2) Surrender shall not be precluded by the fact that the authorities in the requested Party have decided not to prosecute the person sought for the acts for which surrender is requested or to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

**ARTICLE 6**  
**Political Offences**

(1) A fugitive offender shall not be surrendered if the offence of which that person is accused or was convicted is an offence of a political character.

(2) For the purposes of this Article, the following offences shall not be considered to be offences of a political character:

- (a) murder or other willful crime against the person of the Head of State of the United States, or, in the case of Hong Kong, the Head of State whose government is responsible for its foreign affairs, or in either case of a member of the Head of State's immediate family;
- (b) an offence for which both Parties have an obligation pursuant to a multilateral international agreement to surrender the person sought or to submit the case to their competent authorities for decision as to prosecution;
- (c) a conspiracy or attempt to commit any of the foregoing offences, or aiding or abetting a person who commits or attempts to commit such offences.

(3) Notwithstanding the terms of paragraph (2) of this Article, surrender shall not be granted if the competent authority of the requested Party, which for the United States shall be the executive authority, determines:

- (a) that the request was politically motivated;
- (b) that the request for surrender, though purporting to be made on account of an offence for which surrender may be granted, was in fact made for the primary purpose of prosecuting or punishing the person sought on account of his race, religion, nationality or political opinion; or
- (c) that the person sought is likely to be denied a fair trial or punished on account of his race, religion, nationality, or political opinions.

**ARTICLE 7**  
**Humanitarian Considerations**

The competent authority of the requested Party, which for the United States shall be the executive authority, may refuse the surrender of a fugitive when such surrender is likely to entail exceptionally serious consequences related to age or health.

**ARTICLE 8**  
**Required Documents**

(1) Requests for the surrender of a fugitive offender shall be made in writing by and to the appropriate authorities of the Parties as may be notified between them from time to time.

(2) All requests shall be accompanied by:

- (a) a description of the person sought, together with any other information which would help to establish his identity and nationality including, if known, his whereabouts;
- (b) information describing the facts of the offence and the procedural history of the case; 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 a specification of any time limit which is imposed on the institution of proceedings.

(3) If the request relates to a person wanted for prosecution, 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 his committal for trial if the offence had been committed within the jurisdiction of the requested Party.

(4) If the request relates to a person found guilty, convicted or sentenced, it shall also be accompanied by:

- (a) a copy of any certificate or record in relation to the finding of guilt, the conviction or the sentence; and
- (b) if the person was found guilty or convicted but not sentenced, a statement or record to that effect by the appropriate court and a copy of the warrant of arrest; or
- (c) if the person was sentenced, a statement that the sentence is enforceable and indicating how much of the sentence has still to be served.

(5) All documents submitted by the requesting Party in accordance with this Agreement shall be in or translated into an official language of the requested Party, or any other language agreed upon by the Parties.

**ARTICLE 9**  
**Admissibility and Authentication**

Documents accompanying a request for surrender shall be received and admitted as evidence if:

- (a) in the case of a request from the United States of America, they are:
  - (i) signed or certified by a state or federal judge, magistrate or official of the United States of America, and
  - (ii) sealed with the official seal of the competent authority of the United States of America;
- (b) in the case of a request from Hong Kong, they are certified by the principal consular officer of the United States resident there; or
- (c) they are certified or authenticated in any other manner accepted by the law of the requested Party.

**ARTICLE 10**  
**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 shall contain a description of the person sought, information as to his whereabouts, an indication of intention to request his surrender, a statement of the existence and terms of a warrant of arrest or that the person has been found guilty, convicted or sentenced, a statement of the maximum punishment that can be imposed or the punishment that has been imposed for the offence, and a statement of the acts or omissions (including time and place) alleged to constitute the offence.
- (3) The requesting Party shall be notified without delay of the disposition of its application and the reasons for any refusal.
- (4) An application for provisional arrest shall be in writing and shall be forwarded through the same channels as a request for surrender or through the International Criminal Police Organisation (Interpol).
- (5) The provisional arrest of the person sought shall be terminated upon the expiration of sixty days from the date of his arrest if the request for his surrender supported, as required, by the documents referred to in paragraphs (2) to (4) of Article 8 have not been received by the requested Party. This provision shall not prevent his re-arrest or surrender if the request for his surrender is received subsequently.

**ARTICLE 11**  
**Concurrent Requests**

If the surrender of a fugitive offender is requested concurrently by one of the Parties and a State or States with which the United States of America or Hong Kong, whichever is being requested, has arrangements for the surrender of fugitive offenders, the executive authority of the requested Party shall make its decision having regard to all the circumstances, including the relevant provisions of such arrangements, the place of commission of the offences, their relative seriousness, the respective dates of the requests, the nationality of the fugitive offender, the nationality of the victim, and the possibility of subsequent surrender to another jurisdiction.

**ARTICLE 12**  
**Representation and Expenses**

(1) The requested Party shall at its own expense make the necessary arrangements for the requesting Party's legal representation and assistance in any proceedings arising out of a request for the surrender of a fugitive offender. In the event that the requesting Party arranges its own additional legal representation and assistance, it shall bear any additional expenses incurred.

(2) The requesting Party shall bear the expenses related to the translation of documents and the international transportation of the person surrendered from the jurisdiction of the requested Party. The requested Party shall bear all other expenses incurred in its jurisdiction.

(3) Neither Party shall make any pecuniary claim against the other Party arising out of the arrest, detention, examination, or surrender of persons sought under this Agreement.

**ARTICLE 13**  
**Standard of Proof**

A fugitive offender 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 he is accused had been committed in the territory of the requested Party or to establish that he is the person found guilty, convicted or sentenced by the courts of the requesting Party.

**ARTICLE 14**  
**Terms of Surrender**

- (1) If a fugitive offender is to be surrendered, the person sought shall be sent by the authorities of the requested Party to such convenient place of departure within that Party's jurisdiction as agreed upon by the Parties.
- (2) The requested Party shall promptly notify the requesting Party of its decision on the request for surrender. If the request is denied in whole or in part, the requested Party, to the extent permitted under its law, shall provide an explanation of the reasons for the denial. The requested Party shall provide copies of the pertinent judicial decisions upon request.
- (3) Subject to the provisions of paragraph (4) of this Article, if the requesting Party does not take custody of the person claimed on the date agreed by the two Parties, he may be released from custody, and the executive authority of the requested Party may subsequently refuse to surrender him 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 such case, except to the extent inconsistent with the law of the requested Party, the two Parties shall agree on a new date for surrender and the provisions of paragraph (3) of this Article shall apply.

**ARTICLE 15**  
**Transfer of Property**

When a person is surrendered pursuant to Articles 1 or 18 of this Agreement, the requested Party shall, so far as its law allows and subject to such conditions as it may impose having regard to the rights of other claimants, furnish the requesting Party with all sums of money and other articles:

- (a) which may serve as proof of the offences to which the request relates; or
- (b) which may have been acquired by the person sought as a result of the offence and are in his possession.

**ARTICLE 16**  
**Speciality**

- (1) A fugitive offender who has been surrendered shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence 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 for which surrender may be granted under this Agreement in respect of which the requested Party consents to his so being proceeded against, sentenced or detained. For the purpose of this sub-paragraph:
    - (i) the requested Party may require the submission of the documents called for in Article 8; and
    - (ii) the person surrendered may be detained by the requesting Party for up to ninety days while the request is being processed.
- (2) A person surrendered under this Agreement may not be surrendered or transferred beyond the jurisdiction of the requesting Party for the offence for which his surrender was granted, or for an offence committed prior to his original surrender, unless the requested Party consents.
- (3) Paragraphs (1) and (2) of this Article shall not prevent a person being proceeded against, sentenced or detained, or surrendered to another jurisdiction, if he has had an opportunity to leave the jurisdiction of the Party to which he has been surrendered and has not done so within thirty days or has voluntarily returned to that jurisdiction having left it.

**ARTICLE 17**  
**Temporary and Deferred Surrender**

- (1) If a request for surrender is made in respect of a person who is serving a sentence in accordance with the laws of the requested Party, that Party may temporarily surrender such person to the requesting Party for the purpose of prosecution.

(2) If a request for surrender is made in respect of a person who is being proceeded against by the requested Party, the requested Party:

- (a) shall proceed with the proceedings for surrender after the prosecution against such person has been concluded and he is acquitted; or
- (b) may, if such person is convicted and sentenced to imprisonment, proceed with the proceedings for surrender and, upon his committal, temporarily surrender that person to the requesting Party for the purpose of prosecution.

(3) Where a person is temporarily surrendered, he shall be kept in custody by the requesting Party and be returned to the requested Party after the conclusion of the proceedings against him, in accordance with conditions to be determined by agreement of the Parties.

#### **ARTICLE 18** **Surrender by Consent**

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

(2) To the extent required under the law of the requested Party, the provisions of Article 16 shall apply to a person surrendered pursuant to this Article.

#### **ARTICLE 19** **Transit**

(1) Either Party may authorise transportation through its jurisdiction of a person surrendered to the other Party by a third State. A request for transit shall be made in writing and shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.

(2) No authorisation is required where air transportation is used and no landing is scheduled in the jurisdiction of the Party. If an unscheduled landing occurs in the jurisdiction of the other Party, the other Party may require the request for transit as provided in paragraph (1). That Party shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within ninety-six hours of the unscheduled landing.

**ARTICLE 20**  
**Entry into Force, Termination and Application**

- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.
- (2) Either Party may terminate the Agreement at any time by giving notice to the other in writing. In that event, the Agreement shall cease to have effect six months after the receipt of the notice.
- (3) This Agreement shall apply to requests for surrender made after its entry into force. It shall also apply to requests for surrender pending at the date of its entry into force. Articles 4 and 16 of this Agreement shall apply to fugitive offenders who have been surrendered between the Parties prior to the entry into force of this Agreement.
- (4) This Agreement shall apply to offences committed before as well as after it enters into force provided that, at the time of making the request, the offence is an offence under the laws of both Parties.

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

DONE at Hong Kong, in duplicate, this twentieth day of December one thousand nine hundred and ninety six in the English and Chinese languages, both texts being equally authentic.



FOR THE GOVERNMENT  
OF THE UNITED STATES OF AMERICA:



FOR THE GOVERNMENT  
OF HONG KONG:

美利堅合眾國政府  
和  
香港政府  
關於  
移交逃犯的協定

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美國政府與經負責管理與香港有關的外交事務的主權國政府正式授權締結本協定的香港政府，(下文稱“締約雙方”)，

願訂立有效合作以遏止罪行與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描述的罪行提出檢控、判刑或執行判刑的人移交給對方。

第二條  
罪行的類別

(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以其他形式拘留多於一年或可判處更嚴厲刑罰者，須准予移交：

- (i) 謀殺；誤殺；意圖謀殺而行凶；
- (ii) 協助、教唆、慫恿或促致他人自殺；
- (iii) 惡意傷人；殘害他人；造成他人身體嚴重傷害；侵犯他人致造成身體傷害；
- (iv) 犯與性有關的罪行，包括強姦、性侵犯、猥褻侵犯和非法對兒童或弱智人士作性行爲；
- (v) 綁架；拐帶；非法拘禁；買賣或販運奴隸或其他人；扣押人質；
- (vi) 刑事恐嚇；敲詐或勒索；
- (vii) 犯有關藥物，包括毒品和精神藥物以及用於非法製造毒品和精神藥物的前體和主要化學物的罪行以及有關販毒收益的罪行；

- (viii) 與管有或清洗從觸犯任何根據本協定可准予移交的罪行所得收益有關的罪行；
- (ix) 剝削兒童，無論為性或其他目的（包括兒童色情方面的商業交易）；
- (x) 藉欺騙取得財物或金錢利益；盜竊；搶劫；入屋行竊、破門入屋、或類似罪行；非法處理或收受財物；偽造帳目；盜用公款；犯其他與財物有關而涉及欺詐手段的罪行；
- (xi) 涉及非法使用電腦的罪行；
- (xii) 犯破產法律的罪行；
- (xiii) 犯有關法人團體或公司的法律；包括由職員、董事或創辦人所犯的罪行；
- (xiv) 犯有關證券和期貨交易的罪行；
- (xv) 犯有關贗製的罪行；犯任何有關偽造或使用偽造的東西的法律的罪行；
- (xvi) 犯有關賄賂法律的罪行，包括賄賂公職人員，以及非法支付涉及公共合同或其他公共開支的款項；
- (xvii) 偽證和唆使他人作偽證；作虛假陳述；企圖妨礙司法公正；
- (xviii) 刑事損壞，包括縱火；
- (xix) 犯有關火器、武器或爆炸品的法律的罪行；
- (xx) 犯有關保障公眾衛生及環境的法律的罪行；

- (xxi) 犯違反有關保護知識產權、版權、專利權或商標的法律的罪行；
- (xxii) 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；
- (xxiii) 犯違反有關控制任何類別貨品的出口或進口；或國際上基金轉移的法律的罪行；
- (xxiv) 走私；犯有關進出口違禁品，包括歷史文物和考古文物以及其他物品的罪行；
- (xxv) 入境罪行，包括以訛騙手法取得或使用護照或簽證；
- (xxvi) 為財務利益，安排他人非法進入要求方的管轄區；
- (xxvii) 犯有關賭博或博彩的罪行；
- (xxviii) 在海上的船舶上叛變或作出任何叛變行為；
- (xxix) 海盜行為；
- (xxx) 非法使用、損壞、管有、控制、扣押或騎劫航空器、船舶或其他交通工具；
- (xxxii) 種族滅絕或直接及公開煽惑他人進行種族滅絕；
- (xxxiii) 根據對締約雙方有約束力的多邊國際公約可將逃犯移交的罪行；
- (xxxiiii) 妨礙逮捕、偵查或檢控已犯或相信已犯根據本協定屬可准予移交的罪行的人士；

- (xxxiv) 犯有關非法從羈留中逃走，或外逃以避免檢控的罪行；
- (xxxv) 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；
- (xxxvi) 任何其他根據締約雙方的法律規定屬可判處監禁或以其他形式拘留多於一年或可判處更嚴厲刑罰的罪行；除非被要求方的法律禁止有關罪行逃犯的移交。
- (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) 就本條而言，在確定一項罪行是否違反被要求方的法律的罪行時，審查該人的行為須以該人被指稱的作為或不作為的全部為準，而不須顧及要求方法律所規定的有關的罪行構成因素。
- (4) 下述者均屬於本條所描述的罪行：
- (a) 無論締約雙方的法律是否將有關罪行放在同一罪行類別或以同一名詞描述該罪行；
- (b) 無論該罪行是否美國聯邦法律規定須顯示涉及州際運輸，或使用郵遞或其他影響州際或對外貿易設施的事項，該等事項目的只在於確立美國聯邦法庭的管轄權。
- (5) 為避免疑點，軍事法律上的罪行，而非普通刑事法上的罪行，將不會根據本條第(1)款被視為一項罪行。

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) 美國政府行政當局保留權利，若所要求的移涉及美國的國防、外交或重大公眾利益或政策，可拒絕移交美國國民。
- (3) 香港政府行政當局保留權利，在下述情況，可拒絕移交負責管理與香港有關的外交事務的政府所屬國家的國民：
  - (a) 所要求的移涉及負責管理與香港有關的外交事務的政府所屬國家的國防、外交或重大公眾利益或政策；或
  - (b) 被要求移交者無香港居留權，亦非為定居目的而進入香港，而負責管理與香港有關的外交事務的政府所屬國家對所要求的移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) 若美國要求移交的人無香港居留權，亦非為定居目的而進入香港，而負責管理與香港有關的外交事務的政府所屬國家對有關的罪行具有管轄權，並且正在調查該罪行，在其迅速完成調查工作後，香港才可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

(1) 倘某項根據本協定提出移交逃犯要求的罪行，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，則除非要求方作出充分的保證，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。

(2) 要求方如作出保證不會執行死刑，則要求方的法庭如果判處死刑，該死刑也不會執行。

#### 第五條 事前訴訟

(1) 倘被要求移交者因根據其被要求移交的罪行已在被要求方定罪或被判無罪，則可拒絕移交。

(2) 即使被要求方當局已決定不對被要求移交者提出檢控其被要求移交的有關作為，或已決定停止對該人因該等作為所進行的任何刑事訴訟，亦不排除會進行移交。

#### 第六條 政治罪行

(1) 如逃犯被控或被裁定所犯罪行屬政治性質，則不得把有關逃犯移交。

(2) 就本條文而言，下列罪行不得視為屬於政治性質：

- (a) 謀殺美國國家元首或其他蓄意針對美國國家元首的罪行，或就香港而言，謀殺負責香港外交事務的政府所屬國家的元首，或其他蓄意針對他的罪行，或無論是就美國或負責香港外交事務的國家而言，謀殺國家元首的直系親屬或其他蓄意針對他們的罪行；

(b) 有關罪行爲雙方根據國際多邊協定有義務移交被要求移交者或把案件交由本身的主管當局決定是否進行檢控；

(c) 串謀或企圖觸犯任何上述罪行或協助或教唆他人觸犯或企圖觸犯該等罪行。

(3) 儘管本條第(2)款另有規定，但如被要求方的主管當局(就美國而言是指行政當局)確定有下列情況，則不得批准移交逃犯：

(a) 基於政治動機提出要求；

(b) 雖然聲稱是因一項可移交罪行而提出移交要求，但其主要目的實際上是因爲該被要求移交者的種族、宗教、國籍或政治意見而檢控或懲罰該名人士；或

(c) 被要求移交者可能因其種族、宗教、國籍或政治意見而不獲公平審判或被懲罰。

#### 第七條 人道考慮

如移交逃犯可能對該逃犯因年齡或健康關係而引致異常嚴重後果時，則被要求方的主管當局(就美國而言是指行政當局)可拒絕移交該逃犯。

#### 第八條 所需文件

(1) 移交逃犯的要求須由締約一方的有關當局向締約另一方的有關當局以書面提出。締約雙方會不時知會對方向何謂有關當局。

(2) 所有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描述，以及其他可助確定該人身份和國籍，包括其所在（如知道的話）的資料；
- (b) 描述罪行事實及案件程序背景的資料；及
- (c) 訂明被要求移交者所犯罪行的法律條文說明、就該項罪行可判處的懲罰的說明，和就該項罪行提出訴訟的任何時限的說明。

(3) 如該項移交要求涉及一名被通緝的人，該項要求亦須連同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副本及其他證據一併提交，而該等證據根據被要求方的法律，足以證明假如該罪行發生在被要求方的管轄區內，該被通緝的人亦會被交付審判。

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

- (a) 有關被認為有罪、定罪或判刑的任何證明書或紀錄的副本；及
- (b) 如該人已被認為有罪或被定罪但未被判刑，由有關法院就此發出的說明或紀錄及逮捕令副本；或
- (c) 如該人已被判刑，顯示該項判刑可強制執行，和顯示尚有多少未服刑期的說明。

(5) 要求方按照本協定而提交的所有文件的所用語文須為，或翻譯為被要求方的一種官方語文或經雙方同意的任何其他語文。

第九條  
文件的可接受性及確認

隨移交要求一併提交的文件，如經下列方式處理，得接受作為證據：

- (a) 就美國提出的要求而言：
  - (i) 經美國各州或聯邦法官、裁判官或官員簽署或證明，及
  - (ii) 經美國的主管當局蓋上官方印章；
- (b) 就香港提出的要求而言，經美國駐香港的主要領事人員證明；或
- (c) 經被要求方法律認可的任何其他方式證明或確認。

第十條  
暫時逮捕

- (1) 在緊急情況下，經要求方提出申請，被要求方可以根據本身的法律，暫時逮捕被要求移交者。
- (2) 申請書內須載明有關被要求移交者的描述、他所在的資料、要求移交該人的意向的表示，持有逮捕令及逮捕令內容的說明，或該人被認為有罪、被定罪或判刑的說明、該項罪行可判處的最高懲罰或已判處懲罰的說明、以及指稱構成該項罪行的作為或不作為(包括時間和地點)的說明。
- (3) 要求方須盡快獲得通知有關其申請的處理情況，以及任何拒絕受理的理由。
- (4) 要求暫時逮捕的申請必須以書面提出，並須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。

(5) 如被要求方收不到附有第八條第(2)至(4)款所指所需文件的移交要求，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告終止。但如其後接獲把他移交的要求，則本條文並不阻止被要求方再度逮捕或移交該被要求移交者。

#### 第十一條 同時要求

如締約一方和一個或多個與美國或香港有移交逃犯安排的國家同時要求移交一名逃犯，被要求方的行政當局須考慮所有有關情況以作出決定，須考慮的情況包括：該等安排的有關條文、犯罪地點、所涉及罪行的相對嚴重性、各移交要求的提出日期、逃犯的國籍、受害人的國籍以及其後被移交往另一個管轄區的可能性。

#### 第十二條 代表和開支

(1) 被要求方須為要求方因移交逃犯要求而引起的任何訴訟中所需法律代表和援助作出必要的安排，並負擔有關開支。如要求方安排本身的額外法律代表和援助，則須負擔因此而引致的任何額外開支。

(2) 要求方須負擔與翻譯文件有關的開支，以及從被要求方的管轄區移送被移交者所涉及的國際間運輸的開支。被要求方須負擔在其管轄內引致的所有其他開支。

(3) 締約雙方不得因根據本協定而逮捕、拘留、審查或移交被要求移交者而向締約另一方提出任何金錢索賠。

#### 第十三條 舉證標準

祇有在根據被要求方的法律證實有足夠證據證明，假如有關罪行在被要求方的管轄區內發生，被要求方亦有理由把被要求移交者交付審判，或證實被要求移交者即是要求方法院認為有罪、定罪或判刑的人，始須把有關逃犯移交。

第十四條  
移交條件

- (1) 如要移交逃犯，被要求方當局須把被要求移交者送往被要求方的管轄區內一處雙方商定的方便離境地點。
- (2) 被要求方須把對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，便須在其法律容許的範圍內，解釋拒絕移交要求的理由。如要求方提出要求，被要求方須提供有關司法決定的文件副本。
- (3) 除本條第(4)款另有規定外，要求方如在經雙方商定的日期並無接收其要求移交者，該被要求移交者可獲得釋放，此後被要求方的行政當局可拒絕因同一罪行把該人移交。
- (4) 若締約一方因不受其控制的情況以致不能移交或接收將被移交者，須知會締約另一方。在此情況下，除非是與被要求方法律不符，否則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。

第十五條  
移交財產

如根據本協定第一條或第十八條的規定移交一名人士，被要求方須在其法律許可範圍內，以及在符合被要求方於考慮其他索賠人的權利後可能訂定的條件下，把以下所有金錢及其他物件，交予要求方：

- (a) 可作為與是項要求有關的罪行的證據；
- (b) 被要求移交者因其所犯罪行而取得並由其管有的物件。

第十六條  
特定罪行

(1) 已被移交的逃犯不得爲了執行其在被移交前所犯罪行的判刑而被起訴、判刑或拘留，但因下列罪行者除外：

- (a) 下令移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) 根據本協定可准予移交，及經被要求方同意該逃犯可因此而被起訴、判刑或拘留的任何其他罪行。就本款而言：
  - (i) 被要求方可要求取得第八條規定所需的文件；及
  - (ii) 在處理要求期間，要求方可把已被移交者拘留不超過九十日。

(2) 除非被要求方同意，否則已根據本協定移交的人士，不可由於准予把他移交的罪行，或由於其在移交前所犯的罪行而被移交或轉移至要求方管轄區以外。

(3) 如被移交者曾有機會離開他被移交往的一方的管轄區，但在三十天內仍未離開，或在離開該管轄區後自願重返該地，則本條第(1)和(2)款並不阻止該逃犯被起訴、判刑或拘留，或移交往另一管轄區。

第十七條  
暫時及延遲移交逃犯

(1) 如被要求移交者爲一名正根據被要求方法律在服刑的人士，被要求方可暫時把該人移交予要求方，以便進行檢控。

- (2) 如被要求移交者為一名正遭被要求方起訴的人士：
- (a) 在對該人的檢控工作完成及宣告他無罪後，被要求方須進行把他移交的程序；或
  - (b) 如該人已被定罪和判處監禁，被要求方可進行把他移交的程序，並於該人被監禁期間，把該人暫時移交予要求方，以便進行檢控。
- (3) 按此被暫時移交的人，須按照經雙方同意而決定的條件，由要求方把他拘留，並在對他進行的訴訟完成後交回被要求方。

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，第十六條的規定適用於按本條移交的人。

第十九條  
過境

- (1) 第三國家在把一名人士移交給其中一締約方時，如須經過締約另一方的管轄區，該締約方可批准該人過境。過境要求須以書面提出，並須包括被運送的人的描述，以及案件實情的簡述。過境的人在過境期間可被羈留。
- (2) 如以飛機運送，並且沒有預定在締約一方的管轄區着陸，便毋須得到該締約方的批准。如未經預定而要在締約另一方的管轄區着陸，該締約方可要求締約另一方按第(1)款的規定提出過境要求。該締約方須扣押將被運送的人士，直至收到另一方的過境要求和實行過境為止，但該項過境要求須在非預定着陸後 96 小時內收到。

第二十條  
生效、終止及適用

- (1) 本協定將於締約雙方以書面通知對方已各自履行為使本協定生效的規定之日期後三十天開始生效。
- (2) 締約一方可隨時以書面通知締約另一方終止本協定。在這種情況下，本協定於締約另一方接獲該通知的六個月後失效。
- (3) 本協定適用於在本協定生效之後提出的移交要求，亦適用於在生效之日仍在處理的移交要求。本協定第四及第十六條適用於在本協定生效前已在締約雙方之間移交的逃犯。
- (4) 本協定適用於在本協定生效之前及之後觸犯的罪行，但在提出要求時，該罪行須為根據雙方法律規定的一項罪行。

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，以英文及中文寫成，並於一九九六年十二月二十日在香港簽訂，各文本均為具有同等效力的真確本。

  
美國政府代表

  
香港政府代表