

**Reprint
as at 28 August 1998**



**Extradition (Hong Kong Special
Administrative Region of the
People's Republic of China) Order
1998**

(SR 1998/243)

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 24th day of August 1998

Present:

His Excellency the Governor-General in Council

Pursuant to section 3 of the Extradition Act 1965, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following order.

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Ministry of Justice.

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Order

- 1 Title and commencement**
- (1) This order may be cited as the Extradition (Hong Kong Special Administrative Region of the People's Republic of China) Order 1998.
- (2) This order comes into force on 1 October 1998.
- 2 Application of Extradition Act 1965 to Hong Kong Special Administrative Region**
- The Extradition Act 1965 is applied to the Hong Kong Special Administrative Region of the People's Republic of China in respect of the agreement set out in the Schedule.
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Schedule

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Agreement for the Surrender of Accused and Convicted Persons Between the Government of New Zealand and the Government of the Hong Kong Special Administrative Region of the People's Republic of China

The Government of New Zealand and 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

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.

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

Article 2—*continued*

- 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;

Article 2—*continued*

- (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) 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 a 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) 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

Article 6—*continued*

- (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

Article 7—*continued*

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.

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

Article 10—*continued*

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.

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 containing 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

Article 12—*continued*

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.

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;

Article 14—*continued*

- (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

Article 16—*continued*

- 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.

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

Article 18—*continued*

- 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.

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.

Article 20—*continued*

- (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 English and Chinese languages, each text being equally authentic.

For the Government of
New Zealand:

Carl Worker
New Zealand Consul-General

For the Government of Hong
Kong Special Administrative
Region of the People's Republic
of China:

Peter H L Lai
Secretary for Security
Government Secretariat
Hong Kong Special
Administrative Region of the
People's Republic of China

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order is made under the Extradition Act 1965 and comes into force on 1 October 1998. It applies that Act to the Hong Kong Special Administrative Region of the People's Republic of China and therefore gives effect to the extradition agreement between New Zealand and the Hong Kong Special Administrative Region. The agreement is set out in the *Schedule*.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 27 August 1998.

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Notes

1 *General*

This is a reprint of the Extradition (Hong Kong Special Administrative Region of the People's Republic of China) Order 1998. The reprint incorporates all the amendments to the order as at 28 August 1998, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not

included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*
