

Chapter:	503F	FUGITIVE OFFENDERS (UNITED STATES OF AMERICA) ORDER	Gazette Number	Version Date
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		Empowering section	L.N. 42 of 1998	21/01/1998
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(Cap 503 section 3)

[21 January 1998] (L.N. 42 of 1998)

(Originally L.N. 203 of 1997)

Section:	1	(Omitted as spent)	L.N. 42 of 1998	21/01/1998
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(Omitted as spent)

Section:	2	Procedures in Ordinance to apply between Hong Kong and United States of America	L.N. 42 of 1998	21/01/1998
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In relation to the arrangements for the surrender of fugitive offenders which are–

- (a) applicable to the Government of Hong Kong and the Government of the United States of America; and
- (b) recited in Schedule 1,

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

Section:	3	Consequential amendments	L.N. 42 of 1998	21/01/1998
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The relevant enactments specified in Schedule 2 are amended as set out in that Schedule.

Schedule:	1	AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE SURRENDER OF FUGITIVE OFFENDERS	L.N. 42 of 1998	21/01/1998
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[section 2]

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The Government of Hong Kong, having been duly authorised to conclude this Agreement by the sovereign government which is responsible for its foreign affairs, and the Government of the United States of America (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, in formation 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 Chinese and English languages, both texts being equally authentic.

Schedule:	2	CONSEQUENTIAL AMENDMENTS TO RELEVANT ENACTMENTS	L.N. 42 of 1998	21/01/1998
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[section 3]

United States of America (Extradition) Order 1976

1. Schedule 2 amended

Schedule 2 to the United States of America (Extradition) Order 1976 (App. III, p. DR1) is amended by repealing "Hong Kong".

United States of America (Extradition) (Amendment) Order 1986

2. Section 3 amended

Section 3 of the United States of America (Extradition) (Amendment) Order 1986 (S.I. 1986/2020 U.K.) is

amended by adding "(excluding Hong Kong)" after "other territories".

United States of America (Extradition) (Amendment) Order 1987

3. Repeal

The United States of America (Extradition) (Amendment) Order 1987 (S.I. 1987/2046 U.K.) is repealed.

Suppression of Terrorism Act 1978 (Application of Provisions)
(United States of America) Order 1986

4. Order repealed to certain extent

The Suppression of Terrorism Act 1978 (Application of Provisions) (United States of America) Order 1986 (S.I. 1986/2146 U.K.) is repealed to the extent that it applies any provisions of the Suppression of Terrorism Act 1978 (1978 c. 26 U.K.) in relation to the United States of America as between the United States of America and Hong Kong.

Suppression of Terrorism Act 1978
(Hong Kong) Order 1987

5. Order repealed to certain extent

The Suppression of Terrorism Act 1978 (Hong Kong) Order 1987 (S.I. 1987/2045 U.K.) is repealed to the extent that it applies, or provides for the application of, any provisions of the Suppression of Terrorism Act 1978 (1978 c. 26 U.K.) in relation to the United States of America as between the United States of America and Hong Kong.