

Chapter:	503U	FUGITIVE OFFENDERS (PORTUGAL) ORDER	Gazette Number	Version Date
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		Empowering section	L.N. 170 of 2004	07/11/2004
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(Cap 503, section 3)

[7 November 2004] *L.N. 170 of 2004*

(Originally L.N. 204 of 2001)

Section:	1	(Omitted as spent)	L.N. 170 of 2004	07/11/2004
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(Omitted as spent)

Section:	2	Procedures in Ordinance to apply between Hong Kong and Portugal	L.N. 170 of 2004	07/11/2004
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In relation to the arrangements for the surrender of fugitive offenders-

- (a) which are applicable to the Government and the Government of the Portuguese Republic; and
- (b) the terms of which are recited in the Schedule,

it is directed that the procedures in the Ordinance shall apply as between Hong Kong and the Portuguese Republic subject to the limitations, restrictions, exceptions and qualifications contained in the terms so recited.

Schedule:		SCHEDULE	L.N. 170 of 2004	07/11/2004
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[section 2]

AGREEMENT BETWEEN  
 THE GOVERNMENT OF THE HONG KONG  
 SPECIAL ADMINISTRATIVE REGION OF THE  
 PEOPLE'S REPUBLIC OF CHINA  
 AND  
 THE GOVERNMENT OF THE PORTUGUESE REPUBLIC  
 CONCERNING  
 SURRENDER OF FUGITIVE OFFENDERS

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

Desiring to make provision 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

## OFFENCES

(1) Surrender 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:

- (1) murder or manslaughter, including criminal negligence causing death; culpable homicide; assault with intent to commit murder
- (2) aiding, abetting, counselling or procuring suicide
- (3) maliciously wounding; maiming; inflicting grievous or actual bodily harm; assault occasioning actual bodily harm; threats to kill; intentional or reckless endangering of life whether by means of a weapon, a dangerous substance or otherwise, offences relating to unlawful wounding or injuring
- (4) offences of a sexual nature including rape; sexual assault; indecent assault; unlawful sexual acts on children; statutory sexual offences
- (5) gross indecency with a child, a mental defective or an unconscious person
- (6) kidnapping; abduction; false imprisonment; unlawful confinement; dealing or trafficking in slaves or other persons; taking a hostage
- (7) criminal intimidation
- (8) offences against the law relating to dangerous drugs including narcotics and psychotropic substances and precursors and essential chemicals used in the illegal manufacture or narcotic drugs and psychotropic substances and offences related to the proceeds of drug trafficking
- (9) obtaining property or pecuniary advantage by deception; theft; robbery; burglary (including breaking and entering); embezzlement; blackmail; extortion; unlawful handling or receiving of property; false accounting; any other offence in respect of property or fiscal matters involving fraud; any offence against the law relating to unlawful deprivation of property
- (10) offences against bankruptcy law or insolvency
- (11) offences against the law relating to companies including offences committed by officers, directors, and promoters
- (12) offences relating to securities and futures trading
- (13) any offence relating to counterfeiting; any offence against the law relating to forgery or uttering what is forged
- (14) an offence against the laws relating to protection of intellectual property, copyrights, patents or trademarks
- (15) an offence against the law relating to bribery, corruption, secret commissions, and breach of trust
- (16) perjury and subornation of perjury
- (17) offences relating to the perversion or obstruction of the course of justice
- (18) arson; criminal damage or mischief including mischief in relation to computer data
- (19) an offence against the law relating to firearms
- (20) an offence against the law relating to explosives
- (21) an offence against laws relating to environmental pollution or protection of public health
- (22) mutiny or any mutinous act committed on board a vessel at sea
- (23) piracy involving ships or aircraft, according to international law
- (24) unlawful seizure or exercise of control of an aircraft or other means of transportation
- (25) genocide or direct and public incitement to commit genocide
- (26) facilitating or permitting the escape of a person from custody
- (27) an offence against the laws relating to the control of exportation or importation of goods of any type, or the international transfer of funds
- (28) smuggling; offences against the laws relating to import and export of prohibited items, including historical and archaeological items
- (29) immigration offences including fraudulent acquisition or use of a passport or visa
- (30) arranging or facilitating for financial gain, the illegal entry of persons into the jurisdiction of the requesting Party
- (31) an offence relating to gambling or lotteries
- (32) offences relating to the unlawful termination of pregnancy
- (33) stealing, abandoning exposing or unlawfully detaining a child; any other offences involving the exploitation of children

- (34) offences against the laws relating to prostitution and premises kept for the purposes of prostitution
- (35) offences involving the unlawful use of computers
- (36) 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 requesting Party
- (37) offences relating to the unlawful escape from custody; mutiny in prison
- (38) bigamy
- (39) an offence relating to women and girls
- (40) any offence against the law relating to false or misleading trade descriptions
- (41) offences relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement
- (42) impeding the arrest or prosecution of a person who has or is believed to have committed an offence for which surrender may be granted under this Agreement
- (43) offences for which fugitive offenders may be surrendered under international conventions binding on the Parties; offences created as a result of decisions of international organisations which are binding on the Parties
- (44) conspiracy to commit fraud or to defraud
- (45) conspiracy to commit or any type of association to commit any offence for which surrender may be granted under this Agreement
- (46) aiding abetting counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit any offence for which surrender may be granted under this Agreement
- (47) any other offence for which surrender may be granted in accordance with the laws 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 laws of both Parties the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account without reference to the elements of the offence prescribed by the law of the requesting Party.

(4) For the purposes of paragraph (1) of this Article, 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.

(5) Where the surrender of a fugitive offender is requested for the purpose of carrying out a sentence the requested Party may refuse to surrender him if it appears that the conviction was obtained in his absence, unless he has the opportunity to have his case retried in his presence, in which case he shall be considered as an accused person under this Agreement.

### ARTICLE 3

#### SURRENDER OF NATIONALS

The Government of the Portuguese Republic reserves the right to refuse the surrender of its citizens and permanent residents. The Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of its permanent residents and nationals of the People's Republic of China.

### ARTICLE 4

#### DEATH PENALTY, LIFE AND INDETERMINATE SENTENCES

(1) If the offence for which surrender of a fugitive offender is requested under this Agreement is punishable according to the law of the requesting Party with the death penalty, surrender shall be refused.

(2) If the offence for which surrender of a fugitive offender is requested under this Agreement is punishable according to the law of the requesting Party with life imprisonment or a prison sentence of undetermined duration, surrender shall be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that these penalties will not be imposed or, if imposed, will not be carried out.

## ARTICLE 5

### BASIS FOR SURRENDER

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

## ARTICLE 6

### MANDATORY REFUSAL OF SURRENDER

- (1) A fugitive offender shall not be surrendered if the requested Party has substantial grounds for believing:
- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
  - (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, religion, nationality or political opinions; or
  - (c) that the person might, if returned, be prejudiced at that person's trial or punished, detained or restricted in his or her personal liberty by reason of race, religion, nationality or political opinions.

(2) A fugitive offender who has been finally acquitted, convicted or pardoned or whose prosecution is barred or whose conviction has been set aside under the law of the requesting or requested Party for any offence set out in the request shall not be surrendered for that offence.

## ARTICLE 7

### DISCRETIONARY REFUSAL OF SURRENDER

Surrender may be refused if the requested Party considers that:

- (a) the offence is, having regard to all the circumstances, not sufficiently serious to warrant the surrender;
- (b) 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 offence for which surrender is sought was committed within the jurisdiction of its courts;
- (d) the surrender might place that Party in breach of its obligations under international treaties; or
- (e) in the circumstances of the case, the surrender would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought.

## ARTICLE 8

### POSTPONEMENT OF SURRENDER

If the person sought is being proceeded against or is under punishment in the jurisdiction of the requested Party for any offence other than that for which surrender is requested, surrender may be granted or deferred until the conclusion of the proceedings and the execution of any punishment imposed.

## ARTICLE 9

## THE REQUEST AND SUPPORTING DOCUMENTS

- (1) Requests for surrender shall—
  - (a) where the Portuguese Republic is the requesting Party be made by the consular representative of the Portuguese Republic in the Hong Kong Special Administrative Region to the Department of Justice of the Hong Kong Special Administrative Region;
  - (b) where the Hong Kong Special Administrative Region is the requesting Party be made by the Department of Justice of the Hong Kong Special Administrative Region to the consular representative of the Portuguese Republic in the Hong Kong Special Administrative Region, or be made through such other appropriate authorities as may be agreed by the Parties.
- (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 acts and omissions which are alleged against the person in respect of each offence; and
  - (c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and any time limit on the institution of proceedings, or on the execution of any punishment for that offence.
- (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) a copy of the certificate of the conviction or sentence; and
  - (b) if the person was convicted but not sentenced, a statement to that effect by the appropriate court and a copy of the warrant of arrest; or
  - (c) if the person was sentenced, a statement indicating that the sentence is enforceable and how much of the sentence has still to be served.

### ARTICLE 10

#### AUTHENTICATION

- (1) Documents supporting a request for surrender shall be admitted in evidence as proof of the facts contained therein if duly authenticated. Documents are duly authenticated if they purport 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.
- (2) Any translation of documents submitted in support of a request for surrender provided by the requesting Party shall be admitted for all purposes in proceedings for surrender.

### ARTICLE 11

#### LANGUAGE OF DOCUMENTATION

Requests shall be in, or translated into, an official language of the requested Party. All documents submitted in support of a request shall be accompanied, if so required by the requested Party, by a translation into an official language of the requested Party.

### ARTICLE 12

## ADDITIONAL INFORMATION

(1) If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Agreement, the latter Party shall request the necessary supplementary information and may fix a time-limit for receipt thereof.

(2) If the person whose surrender is sought is under arrest and the additional information furnished is not sufficient in accordance with this Agreement or is not received within the time specified, the person may be discharged. Such discharge shall not preclude the requesting Party from making a fresh request for the surrender of the person.

### ARTICLE 13

#### PROVISIONAL ARREST

(1) In urgent cases the person sought may, at the discretion of the requested Party and in accordance with its law, be provisionally arrested on the application of the requesting Party.

(2) The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought, a statement of the existence of a warrant of arrest or a judgment of conviction against that person, information concerning identity, nationality and probable location, a description of the person, a brief description of the offence and the facts of the case and a statement of the sentence that can be or has been imposed for the offence and, where applicable, how much of that sentence remains to be served.

(3) An application for provisional arrest may be transmitted by any means affording a record in writing through the consular channel or directly between the Department of Justice of the Hong Kong Special Administrative Region and Procuradoria-Geral da Republica of the Portuguese Republic. The facilities of the International Criminal Police Organisation may also be used to transmit such requests.

(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 14

#### CONCURRENT REQUESTS

If the surrender of a person is requested concurrently by one of the Parties and a State with whom the Portuguese Republic 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 the provisions in this regard in any agreements in force between the requested Party and the requesting Parties, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality and ordinary place of residence of the person sought and the possibility of subsequent surrender to another state, and furnish the other Party with information justifying 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 and meet the costs of any proceedings arising out of a request for surrender and shall otherwise represent the interests of the requesting Party.

(2) If it becomes apparent that exceptional expenses may be incurred as a result of a request for surrender

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

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

#### ARTICLE 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.

(2) When a person is to be surrendered, that person shall be sent by the authorities of the requested Party to such convenient place of departure within that Party's jurisdiction as the requesting Party shall indicate.

(3) Subject to the provisions of paragraph (4) of this Article, the requesting Party shall remove the person within the period specified by the requested Party and if the person is not removed within that period the requested Party may refuse to surrender that person for the same offence.

(4) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be surrendered, it shall notify the other Party. In that case, the two Parties shall agree a new date for surrender and the provisions of paragraph (3) of this Article shall apply.

#### ARTICLE 17

##### SURRENDER OF PROPERTY

(1) To the extent permitted under the law of the requested Party, when a request for surrender of a fugitive offender is granted, the requested Party:

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

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

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

#### ARTICLE 18

##### SPECIALTY AND RESURRENDER

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

- (a) the offence or offences in respect of which his surrender was granted;
- (b) an offence, however described, based on substantially the same facts in respect of which his surrender was granted, provided such offence is one for which he could be surrendered under this Agreement, and provided further such offence is punishable by a penalty no more severe than the penalty for the

offence for which he was surrendered;

(c) any other offence for which surrender may be granted under this Agreement in respect of which the requested Party may consent to his being dealt with, unless he has first had an opportunity to exercise his right to leave the jurisdiction of the Party to which he has been surrendered and he has not done so within forty days or has voluntarily returned to that jurisdiction having left it.

(2) A fugitive offender who has been surrendered shall not be re-surrendered to another jurisdiction for an offence committed prior to his surrender unless:

(a) the requested Party consents to such re-surrender; or

(b) he has first had an opportunity to exercise his right to leave the jurisdiction of the Party to which he has been surrendered and has not done so within forty days or has voluntarily returned to that jurisdiction having left it.

(3) A Party whose consent is requested under paragraphs (1)(c) or (2)(a) of this Article may require the submission of any document or statement referred to in Article 9, and any statement made by the surrendered person on the matter.

## ARTICLE 19

### ENTRY INTO FORCE SUSPENSION AND TERMINATION

(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) The provisions of this Agreement shall apply to requests made after its entry into force regardless of the date of the commission of the offence or offences set out in the request.

(3) Each of the Parties may suspend or terminate this Agreement at any time by giving notice to the other through the channel referred to in paragraph (1) of Article 9. Suspension shall take effect on receipt of the relevant notice. In the case of termination the Agreement shall cease to have effect six months after the receipt of notice to terminate.

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 twenty-fourth day of May Two Thousand and One in duplicate in the Chinese, Portuguese and English languages, each text being equally authentic.