

Hong Kong, China-Malaysia Extradition Treaty

AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG AND THE GOVERNMENT OF MALAYSIA FOR THE SURRENDER OF FUGITIVE OFFENDERS

The Government 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 Malaysia;

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, being accused or convicted of an offence under Article 2 committed within the jurisdiction of the one Party, is found within the jurisdiction of the other Party.

ARTICLE 2 NATURE 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 for not less than one year or by a more severe penalty;

- (i) murder;
- (ii) manslaughter or culpable homicide not amounting to murder;
- (iii) aiding, abetting, counselling or procuring suicide;
- (iv) wounding, inflicting grievous bodily harm; assault occasioning actual bodily harm;
- (v) rape;
- (vi) indecent assault or use of criminal force with intent to outrage modesty;
- (vii) an offence punishable under the laws relating to women and girls;
- (viii) gross indecency with a child;
- (ix) abduction and kidnapping;
- (x) false imprisonment;
- (xi) dealing in slaves or other persons;
- (xii) an offence against the law relating to dangerous drugs including narcotics and psycho-tropic substances;
- (xiii) an offence relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted;
- (xiv) cheating, criminal breach of trust or obtaining property or pecuniary advantage by deception;
- (xv) housebreaking or burglary, theft and handling or receiving stolen property;
- (xvi) robbery;
- (xvii) extortion or blackmail;
- (xviii) embezzlement or criminal misappropriation;
- (xix) criminal breach of trust;
- (xx) fraud, conspiracy to commit fraud or to defraud;

- (xxi) an offence of criminal conspiracy;
- (xxii) an offence against bankruptcy laws;
- (xxiii) an offence against the laws relating to companies and securities;
- (xxiv) an offence relating to fiscal matter, 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;
- (xxv) counterfeiting, forgery and related offences;
- (xxvi) an offence against the laws relating to bribery and corruption;
- (xxvii) perjury; attempting to pervert the course of justice;
- (xxviii) criminal damage, including arson or mischief by fire;
- (xxix) an offence against the law relating to firearms or ammunition;
- (xxx) an offence against the law relating to explosives;
- (xxxi) sinking or destroying a vessel at sea; assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm; revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master;
- (xxxii) unlawful seizure or exercise of control of an aircraft;
- (xxxiii) 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 and which is punishable according to the laws of both Parties by imprisonment for a period of five years or more;
- (xxxiv) smuggling;
- (xxxv) piracy;
- (xxxvi) an attempt or conspiracy or instigation or incitement to commit, or participation in, any offence for which surrender may be granted under this Agreement;
- (xxxvii) an offence for which fugitive offenders may be surrendered under any International Convention binding on both Parties.

(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 at least six months remains 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 purpose 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.

ARTICLE 3 SURRENDER OF NATIONALS

(1) The Government of Malaysia reserves the right to refuse the surrender of its nationals. The Government of Hong Kong reserves the right to refuse the surrender of nationals of the state whose Government is responsible for its foreign affairs.

(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
JURISDICTION

- (1) Surrender may be refused for an offence which is regarded as one over which the requested Party has jurisdiction.
- (2) If surrender is refused pursuant to paragraph (1), the requested Party shall submit the case to its competent authorities with a view to causing the fugitive offender to be proceeded against under its laws.

ARTICLE 5
TEMPORARY AND DEFERRED SURRENDER

- (1) If the 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 the 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 6
RESTRICTIONS ON 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 his return (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
 - (c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
- (2) For the purposes of this Agreement, the following offences shall not be considered to be of a political character:
 - (a) murder or other wilful crime against the person of the Head of State of Malaysia, 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 States's immediate family;
 - (b) any offence which is not to be regarded as an offence of a political character by virtue of an international agreement binding on both Parties;
 - (c) an attempt or conspiracy to commit or participate in, any such offences.
- (3) Surrender for an offence shall also be refused if the person whose surrender is sought cannot under the laws of either Party be prosecuted or punished for that offence.

ARTICLE 7
PROCEDURES AND DOCUMENTATION FOR SURRENDER

- (1) The request for surrender of a fugitive offender shall be made to 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 his identity and nationality including, if known, his location;
 - (b) a statement and particulars of the offence for which surrender is requested;
 - (c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and a specification of any time limit that is imposed on the institution of proceedings, or on the execution of any punishment imposed, for that offence.
- (3) If the request relates to an accused person, it shall also be accompanied by a 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 already convicted and sentenced, or convicted but not yet sentenced, it shall also be accompanied by:
 - (a) in respect of a person convicted and sentenced, a certificate of the conviction and sentence and a statement showing how much of the sentence has not been carried out; and
 - (b) in respect of a person convicted but not yet sentenced, a statement to that effect by the appropriate court and the warrant of arrest.

ARTICLE 8
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 competent authorities of the requesting Party. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, within the jurisdiction of the requested Party.
- (2) An application for provisional arrest may be forwarded through the same channels as a request for surrender or through the International Criminal Police Organisation (INTERPOL).
- (3) The provisional arrest of the person sought shall be terminated upon the expiration of forty- five days from the date of his arrest if the request for his surrender shall not have been received. This provision shall not prevent the re-arrest or surrender of the person sought if the request for his surrender is received subsequently.

ARTICLE 9
ADDITIONAL DOCUMENTATION

- (1) If the requested Party considers that the documents furnished in support of the request for the surrender of a person sought are not sufficient to fulfill the requirements of this Agreement, that Party shall request the submission of necessary additional documents. The requested Party may set a time limit for the submission of such documents, and may grant a reasonable extension of the time limit upon application of the requesting Party setting forth reasons therefor.
- (2) If the person sought is in custody and the additional documents submitted are not sufficient, or if such documents are not received within the period specified by the requested Party, that person may be discharged

from custody. Such discharge shall not prejudice the rearrest and the surrender of the person if the additional documents are subsequently received.

ARTICLE 10 CONCURRENT REQUESTS

If the surrender of a fugitive offender is requested concurrently by one of the Parties and a State or States with which Malaysia or Hong Kong, whichever is being requested, has arrangements for the surrender of fugitive offenders, the requested Party shall make its decision in so far as its law allows 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 order of the receipt of the requests, the relative seriousness and place of commission of the offences, the nationality of the person sought and the possibility of subsequent surrender to another State, and shall furnish the other Party with information justifying its decision in the event of surrender of the fugitive to another jurisdiction.

ARTICLE 11 ADMISSIBILITY AND AUTHENTICATION

The authorities of the requested Party shall admit as evidence, in any proceedings for the surrender of a fugitive offender, a sworn deposition or affirmation taken in the jurisdiction of the requesting Party, any warrant, any copy of any such deposition, affirmation or warrant, and any certificate of a conviction or sentence if it is authenticated:

- (a) in the case of a warrant by being signed, or in the case of any other original document by being certified, by a judge, magistrate or other competent authority of the requesting Party, or in the case of a copy by being so certified to be a true copy of the original; and
- (b) either by the oath of some witness or by being sealed with the official seal of the competent authority of the requesting Party; or in any such other manner as may be permitted by the law of the requested Party.

ARTICLE 12 TRANSLATION

The requesting Party shall on request provide an authenticated translation of all documents relating to the request into a language acceptable to the requested Party. This provision shall not affect the admissibility of an untranslated document furnished by the requesting Party.

ARTICLE 13 REPRESENTATION AND COSTS

- (1)
 - (a) The requested Party shall, if asked by the requesting Party, make the necessary arrangements for that Party's legal representation and assistance in any proceedings arising out of a request for the surrender of a fugitive offender.
 - (b) In the event that the requesting Party arranges its own legal representation and assistance, it shall bear any costs incurred.
 - (c) Where expenses are of a substantial or extraordinary nature, the Parties shall consult to determine the manner in which the costs shall be borne.
- (2) Subject to the provisions of paragraphs (1)(b) and (1)(c) of this Article, expenses incurred in the jurisdiction of the requested Party by reason of surrender shall be borne by that Party.
- (3) The cost of sending a fugitive offender to the jurisdiction of the requesting Party shall be borne by that Party.

ARTICLE 14
PRIMA FACIE RULE AND TERMS OF SURRENDER

- (1) 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 prove that he is the identical person convicted by the courts of the requesting Party.
- (2) 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 the requesting Party shall indicate.
- (3) Subject to the provisions of paragraph (4) of this Article, if the requesting Party does not take custody of the person sought on the date agreed by the two Parties, he shall be released on the expiry of such period as is specified under the law of the requested Party, and 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 that case, the two Parties shall agree to a new date for surrendered and the provisions of paragraph (3) of this Article shall apply.

ARTICLE 15
SURRENDER BY CONSENT

- (1) If the person sought consents to return to the jurisdiction of the requesting Party after personally being advised by a competent judicial authority of the effect of such consent under the law of the requested Party, the requested Party may surrender him without formal surrender proceedings.
- (2) The surrender of a person pursuant to this Article shall be subject to Article 17.

ARTICLE 16
SURRENDER OF PROPERTY

- (1) To the extent permitted under its law, the requested Party may seize and surrender to the requesting Party all property (including sums of money) found in the possession of the fugitive offender at the time of his arrest which may serve as proof of the offence in respect of which surrender is granted.
- (2) If the property in question is liable to seizure or confiscation within the jurisdiction of the requested Party the latter may, in connection with pending proceedings, temporarily retain it or hand it over on condition it is returned.
- (3) These provisions shall not prejudice the rights of the requested Party or of any person other than the person sought. When such rights exist the property shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

ARTICLE 17
RULE OF SPECIALITY

A fugitive offender who has been surrendered shall not be proceeded against, sentenced or kept in custody 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 being an 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 leave the jurisdiction of the Party to which he has been surrendered and he had not done so within forty days of his having been free to leave the jurisdiction or has returned to that jurisdiction having left it.

ARTICLE 18 RESURRENDER

A fugitive offender who has been surrendered shall not be resurrendered to another jurisdiction for trial or punishment for any offence that is committed before his return to Hong Kong or Malaysia as the case may be, unless

- (a) the consent of the appropriate authority of the requested Party has been obtained; or
(b) he has first had an opportunity to leave the jurisdiction of the Party to which he has been surrendered and he had not done so within twenty one days of his having been free to leave the jurisdiction or has returned to that jurisdiction having left it.

ARTICLE 19 ADDITIONAL GROUNDS OF REFUSAL

(1) The surrender of any person sought under the terms of this Agreement may be refused if it appears to the appropriate authority of the requested Party that:

- (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or
(b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large as the case may be; or
(c) because the accusation against him is not made in good faith in the interests of justice; or
(d) because there exist valid humanitarian grounds it would, having regard to all the circumstances, be unjust or oppressive to return him.

(2) The requested Party may also refuse to surrender a fugitive offender:

- (a) where the Government of Malaysia is the requested Party, where the surrender would significantly affect the interests of the Government of Malaysia in matters of defence or foreign affairs;
(b) where the Government of Hong Kong is the requested Party, where the surrender would significantly affect the interests of Government responsible for Hong Kong's foreign affairs in matters of defence or foreign affairs.

ARTICLE 20 TRANSIT

(1) Either Party may authorise transit through its area of a person surrendered to the other Party by a State not party to this Agreement. A request for transit shall be made through an authority to be notified from time to time by one Party to the other. The facilities of the International Criminal Police Organisation (INTERPOL) may be used to transmit such a request. It 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 kept in custody during the period transit.

(2) No authorisation is required where air transportation is used and no landing is scheduled in the area of a Party. If an unscheduled landing occurs in the area of a Party, that Party may require the other Party to make a 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 96 hours of the unscheduled landing.

ARTICLE 21
ENTRY INTO FORCE 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) Each of the Parties may terminate the Agreement at any time by giving notice to the other through the same channels as a request for the surrender of a fugitive offender. In that event the Agreement shall cease to have effect six months after the receipt of notice.

In witness whereof the undersigned, being duly authorized by their respective governments, have signed this Agreement.

Done at Hong Kong this eleventh day of January One thousand nine hundred and ninety five in Bahasa Malaysia, in the Chinese and English languages, each text being equally authentic.