

Protocol to the Hong Kong, China-Malaysia Extradition Treaty

PROTOCOL SUPPLEMENTARY TO THE AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF MALAYSIA FOR THE SURRENDER OF FUGITIVE OFFENDERS DONE AT HONG KONG ON 11 JANUARY 1995

The Government of the Hong Kong Special Administrative Region of the People's Republic of China, having been duly authorised to conclude this Protocol by the Central People's Government of the People's Republic of China and the Government of Malaysia (hereinafter referred to as "the Parties to this Protocol"),

Recalling the Agreement between the Government of Hong Kong and the Government of Malaysia for the surrender of fugitive offenders, done at Hong Kong on 11 January 1995;

Recognizing that the People's Republic of China resumed the exercise of sovereignty over Hong Kong with effect from 1 July 1997 and in accordance with its constitution has on that date established the Hong Kong Special Administrative Region of the People's Republic of China;

Noting that the Government of the People's Republic of China has confirmed the continued application of the said Agreement to the Hong Kong Special Administrative Region and its recognition as an agreement entered into between the Government of the Hong Kong Special Administrative Region under the authorisation of the Government of the People's Republic of China and the Government of Malaysia;

Desiring to adopt provisions supplementary to those of the said Agreement to promote more effective implementation of the said Agreement,

Have agreed as follows:

Article I

This Protocol supplements the Agreement between the Government of Hong Kong and the Government of Malaysia for the surrender of fugitive offenders, done at Hong Kong on 11 January 1995 (hereinafter referred to as "the Agreement") and the Agreement and this Protocol shall be read and interpreted together as one single instrument.

Article II

Article 2(1) of the Agreement shall be amended—

- (a) in the chapeau, by replacing the words "not less than one year" by the words "more than 12 months";
- (b) in item (viii), by adding after the word "child" the words ", a mental defective or an unconscious person";
- (c) in item (xi), by inserting after the word "dealing" the words "or trafficking";
- (d) by inserting after item (xi) the following items:
 - “(xia) taking a hostage;
 - (xib) criminal intimidation;”;

- (e) in item (xii), by adding after the word “substances” the words “, precursors and essential chemicals used in the illegal manufacture of narcotics and psychotropic substances”;
- (f) in item (xxii), by inserting after the word “bankruptcy” the words “or insolvency”;
- (g) in item (xxiii), by replacing the words “and securities” by the words “, securities and futures trading”;
- (h) by inserting after item (xxiii) the following item:
 - “(xxiiia) an offence involving the unlawful use of computers;”;
- (i) by inserting after item (xxv) the following items:
 - (xxva) an offence against the laws relating to the protection of intellectual property, copyrights, patents or trademarks;
 - (xxvb) an offence against the laws relating to immigration including offences relating to passports and visas;
 - (xxvc) arranging or facilitating for financial gain, the illegal entry of persons into a jurisdiction;
 - (xxvd) an offence against the laws relating to gambling, betting or lotteries;”;
- (j) in item (xxviii), by adding after the word “fire” the words “or mischief in relation to computer data”;
- (k) in item (xxxii), by adding after the word “aircraft” the words “or other means of transportation”;
- (l) in item (xxxv), by adding after the word “piracy” the words “involving ships or aircraft or other means of transportation”;
- (m) by replacing item (xxxvi) by the following item:
 - “(xxxvi) an attempt or conspiracy or instigation or incitement to commit, aiding or abetting, counselling, causing or procuring the commission of, or participation in or being accessory before or after the fact to, any offence for which surrender may be granted under this Agreement;”;
- (n) by replacing the full stop at the end of item (xxxvii) by a semicolon; and
- (o) by adding after item (xxxvii) the following item:
 - “(xxxviii) any other offence for which surrender may be granted in accordance with the law of the requested Party.”.

Article III

Article 5 of the Agreement shall be amended in paragraph (1):

- (a) by replacing the full stop at the end of paragraph (1) by a colon; and
- (b) by inserting after paragraph (1) the following proviso:

“Provided that the requested Party may refuse the surrender of such person until such person has served that sentence.”.

Article IV

Article 8 of the Agreement shall be amended by inserting after paragraph (2) the following paragraph:

“(2A) On receipt of the application, the requested Party shall take appropriate steps to secure the arrest of the person sought. The requesting Party shall be notified without delay of the disposition of the application and the reasons for any denial.”.

Article V

Article 16 of the Agreement shall be amended by adding after paragraph (3) the following paragraph:

“(4) The property 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 fugitive offender.”.

Article VI

Article 17 of the Agreement shall be amended—

- (a) by renumbering the existing paragraph as paragraph (1); and
- (b) by adding after paragraph (1) the following paragraph:

“(2) For the purpose of paragraph (1)(c) of this Article, a Party whose consent is required may require the submission of any document or statement referred to in Article 7, and any statement made by the surrendered person on the matter for its consideration.”.

Article VII

The Agreement shall be amended by replacing Article 18 by the following Article:

“(1) A fugitive offender who has been surrendered under this Agreement shall not be resurrendered by the requesting Party to a third State or an international tribunal established in accordance with a multilateral international convention that applies to the requesting Party for trial or punishment for any offence that is committed before his surrender to the requesting Party unless—

- (a) the requested Party consents; and
- (b) if under the convention the consent of another State is required, that State consents.

(2) Paragraph (1) of this Article shall not prevent the resurrender of a surrendered fugitive offender to a third State or the relevant international tribunal established in accordance with a multilateral international convention that applies to the requesting Party if—

- (a) that fugitive offender leaves the territory of the requesting Party after the surrender and voluntarily returns to it; or
- (b) that fugitive offender does not leave the territory of the requesting Party within forty days of the day on which the person is free to leave.

(3) For the purpose of paragraph (1)(a) of this Article, a Party whose consent is requested may require the submission of any document or statement referred to in Article 7, and any statement made by the surrendered person on the matter for its consideration.”.

Article VIII

Article 19(2)(a) of the Agreement shall be amended by replacing the words “defence or foreign affairs” by the words “national security or public order”.

Article IX

This Protocol shall enter into force 30 days after the date on which the Parties to this Protocol have notified each other in writing that their respective requirements for the entry into force of the Protocol have been complied with.

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

Done in duplicate at Hong Kong this 17th day of October Two thousand and six, in the Chinese, English and Malay languages, each text being equally authentic.