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Statutory Rules 1988 No. 1

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## Extradition (Republic of Portugal) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and pursuant to section 4 of the *Acts Interpretation Act 1901*, hereby make the following Regulations under the *Extradition Act 1988*.

Dated 24 November 1988.

**N. M. STEPHEN**

Governor-General

By His Excellency's Command,

Lionel Bowen  
Attorney-General

### Citation

1. These Regulations may be cited as the Extradition (Republic of Portugal) Regulations.

### Interpretation

2. In these Regulations, unless the contrary intention appears:  
"the Act" means the *Extradition Act 1988*.

### Declaration of Republic of Portugal as extradition country

3. The Republic of Portugal is declared to be an extradition country.

### Application of Act

4. The Act applies in relation to the Republic of Portugal subject to the Treaty on Extradition between Australia and the Republic of Portugal that came into force on 29 August 1988 (being the treaty a copy of the English text of which is set out in the Schedule).

## SCHEDULE

Regulation 4

TREATY ON EXTRADITION BETWEEN AUSTRALIA AND THE REPUBLIC OF PORTUGAL

Australia and the Republic of Portugal,

DESIRING to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty for the extradition of persons charged with or convicted of offences,

HAVE AGREED as follows:

ARTICLE 1OBLIGATION TO EXTRADITE

1. Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution before a competent authority or the imposition of a sentence by such an authority or the enforcement of such a sentence in the Requesting State for an extraditable offence.

ARTICLE 2EXTRADITABLE OFFENCES

1. For the purposes of this Treaty, extraditable offences are offences which are punishable under the laws of both Contracting Parties by imprisonment or other measure of deprivation of liberty for a maximum period of at least one year. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other measure of deprivation of liberty, extradition shall be granted only if a period of at least six months imprisonment or other measure of deprivation of liberty remains to be served.

2. For the purpose of this Article, in determining whether an offence is an offence against the law of both Contracting Parties:

- (a) it shall not matter whether the laws of the Contracting Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
- (b) the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.

3. Where the offence for which extradition is requested has been committed outside the territory of the Requesting State extradition shall be granted, subject to the provisions of this Treaty:

- (a) if the person whose extradition is requested is a national of the Requesting State; or
- (b) if the law of the Requested State provides for the punishment of an offence committed outside its territory in similar circumstances.

4. Where extradition of a person is requested for an offence against a law relating to taxation, duties, customs, foreign exchange control, extradition shall not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting State.

5. Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which extradition is requested was committed, provided that:

**SCHEDULE—continued**

- (a) it was an offence in the Requesting State at the time of the acts or omissions constituting the offence; and
- (b) the acts or omissions alleged would, if they had taken place in the Requested State at the time of the making of the request for extradition, have constituted an offence against the law in force in that State.

**ARTICLE 3**  
**NATIONALS**

- 1. The Requested State shall have the right to refuse to extradite its nationals, and shall refuse to do so, if its constitution or its law so require.
- 2. Where the Requested State refuses to extradite a person on the ground that the person is a national of the Requested State, it shall, if the Requesting State so requests and the laws of the Requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been requested may be taken.

**ARTICLE 4**  
**EXCEPTIONS TO EXTRADITION**

- 1. Extradition shall not be granted if:
  - (a) the offence for which extradition is requested is regarded by the Requested State as a political offence, provided that offences which are not political offences according to
    - (i) the law of the Requested State; or
    - (ii) any international convention to which both Contracting Parties are party, Shall not be regarded as political offences for the purposes of this Treaty;
  - (b) there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purposes of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion or that that person's position may be prejudiced for any of those reasons;
  - (c) the offence for which extradition is requested is punishable by death;
  - (d) the offence for which extradition is requested is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting Parties;
  - (e) final judgement has been rendered in the Requested State or in a third state in respect of the offence for which the extradition is requested, and
    - (i) the judgement resulted in the person's acquittal;
    - (ii) the term of imprisonment to which the person was sentenced has been completely enforced, or is wholly or, with respect to the part not enforced, the subject of a pardon or an amnesty; or
    - (iii) the court convicted the person without imposing a penalty;
  - (f) the person whose extradition is requested is the subject of an amnesty in respect of the offence for which extradition is requested, or has, according to the law of either Contracting Party, become immune from prosecution or punishment by reason of lapse of time, or for any other reason;
  - (g) the person, on being extradited to the Requesting State, would be liable:
    - (i) to be tried or sentenced in that State by a court or tribunal that has been specially established for the purpose of trying the person's case, or that is only occasionally, or under exceptional circumstances, authorised to try persons accused of the offence for which extradition is requested; or
    - (ii) to serve a sentence imposed by such a court or tribunal.

## SCHEDULE—continued

2. The Requested State shall have the right to refuse extradition if:
- (a) the competent authorities of the Requested State have decided to refrain from prosecuting the person whose extradition is requested for the offence in respect of which extradition is requested;
  - (b) the offence for which extradition is requested is regarded under the law of the Requested State as having been committed in whole or in part within that State;
  - (c) a prosecution in respect of the offence for which extradition is requested is pending in the Requested State against the person whose extradition is requested;
  - (d) the person sought has been convicted in that person's absence of the offence for which extradition is requested, unless the Requesting State provides an assurance, which is considered by the Requested State to be sufficient, that the person sought shall, upon surrender, have a right to appeal against the conviction or to seek a new trial; or
  - (e) the offence for which extradition is requested is punishable by life imprisonment. For the purposes of this Treaty, an offence shall not be regarded as punishable by life imprisonment if the Requesting State gives the Requested State an assurance that, notwithstanding the imposition of a sentence of life imprisonment, the person could be released;
3. The Requested State may recommend to the Requesting State that a request for extradition be withdrawn, specifying the reasons therefor, where it considers, taking into account the age, health or other personal circumstances of the person sought, that extradition should not be requested.

ARTICLE 5RULE OF SPECIALITY

1. Subject to paragraph 3 of this Article, a person extradited under this Treaty shall not be detained or tried, or be subjected to any other restriction of personal liberty, in the Requesting State for any offence committed before the extradition other than:
- (a) an offence for which extradition was granted; or
  - (b) any other extraditable offence in respect of which the Requested State consents.
2. A request for the consent of the Requested State under this Article shall be accompanied by the documents mentioned in paragraph 2 of Article 8.
3. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has returned to the Requesting State after leaving it.
4. If the description of the offence charged in the Requesting State is altered in the course of proceedings, the person extradited shall be proceeded against or sentenced only in so far as the offence under its new description is an offence for which extradition could be granted pursuant to this Treaty.

ARTICLE 6RE-EXTRADITION TO A THIRD STATE

1. Where a person has been surrendered to the Requesting State by the Requested State, the Requesting State shall not extradite that person to any third state for an offence committed before that person's surrender unless:
- (a) the Requested State consents to that re-extradition; or
  - (b) the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was surrendered by the Requested State or has returned to the Requesting State after leaving it.

**SCHEDULE—continued**

2. In relation to any consent pursuant to sub-paragraph 1 (a) of this Article the Requested State may request the production of the documents mentioned in Article 8 as well as any declaration made by the extradited person in respect of the re-extradition.

ARTICLE 7

CONCURRENT REQUESTS

1. If extradition is requested concurrently by a Contracting Party and by one or more other States, whether for the same or for different acts or omissions, the Requested State shall determine to which of those States the person is to be extradited having regard to the circumstances, and in particular, the existence of other treaties binding on the Requested State, the relative gravity of the offences and where they were committed, the respective dates of the requests, the nationality of the person and the possibility of subsequent re-extradition.

ARTICLE 8

EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 9.

2. A request for extradition shall be accompanied by:

- (a) if the person is accused of an offence—the original and two copies of the warrant for the arrest of the person, a statement of each offence for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offence;
- (b) if a person has been convicted in that person's absence of an offence—a judicial or other document, or a copy thereof, authorising the apprehension of the person, a statement of each offence for which extradition is requested, a statement of the acts or omissions which are alleged against the person in respect of each offence and a statement of the relevant law that ensures the right to appeal against the decision or to seek a new trial;
- (c) if the person has been convicted of an offence otherwise than in that person's absence—documents evidencing the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;
- (d) if the person has been convicted of an offence otherwise than in that person's absence but no sentence has been imposed—documents evidencing the conviction and a statement affirming that it is intended to impose a sentence;
- (e) in all cases—a statement of the relevant law creating the offence, including any provision relating to the limitation of proceedings and a statement of the penalty that can be imposed for the offence;
- (f) in all cases—a description which is as accurate as possible of the person sought together with any other information which may help to establish the person's identity and nationality; and
- (g) if applicable, a statement concerning acts which have prevented the person from becoming immune from prosecution or sentence by reason of lapse of time in relation to the offence for which extradition is requested, according to the law of the Requesting State;

3. A request for extradition emanating from Australia shall provide:

- (a) matter which is as precise as possible to identify the person whose extradition is requested;
- (b) matter to demonstrate that the person sought is subject to the criminal jurisdiction of Australia, or of a part thereof;

**SCHEDULE—continued**

- (c) in the case of an offence committed in a third State, matter to demonstrate that the third State does not claim the person sought for that offence;
  - (d) in cases of conviction in absentia information that the person sought may appeal against the conviction or seek a new trial;
  - (e) an assurance that the person sought will be afforded the protection provided for by Articles 5 and 6 of this Treaty.
4. To the extent permitted by the law of the Requested State, extradition may be granted of a person sought pursuant to the provisions of this Treaty notwithstanding that the requirements of the preceding paragraphs of this Article have not been complied with, provided that the person consents to an order for extradition being made.

**ARTICLE 9****AUTHENTICATION OF SUPPORTING DOCUMENTS**

1. A document that, in accordance with Article 8, accompanies a request for extradition shall be admitted, if authenticated, in any extradition proceedings in the Requested State.
2. A document is authenticated for the purposes of this Treaty if:
  - (a) it purports to be signed or certified by a Judge, Magistrate or officer in or of the Requesting State; and
  - (b) it purports to be sealed with an official or public seal of the Requesting State or of a Minister of State, or of a Department or officer of the Government, of the Requesting State.

**ARTICLE 10****ADDITIONAL INFORMATION**

1. If the Requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient, in accordance with this Treaty, to enable extradition to be granted, that State may request that additional information be furnished within such time as it specifies.
2. The fact that the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time initially specified, or within such further time as the Requested State specifies shall not preclude the Requesting State from making a fresh request for the extradition of the person.
3. If a person who is under arrest in relation to extradition is released from custody as a consequence of the failure of the Requesting State to provide additional information requested pursuant to paragraph 1 of this Article, the Requested State shall notify the Requesting State as soon as practicable.

**ARTICLE 11****PROVISIONAL ARREST**

1. In case of urgency a Contracting Party may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or otherwise for the provisional arrest of the person sought, pending the presentation of the request for extradition through the diplomatic channel. The application may be transmitted by post or telegraph or by any other means affording a record in writing.
2. The application for provisional arrest shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 8 authorising the apprehension of the person, a statement of the punishment that can be, or has been imposed for the offence and, if requested by the Requested State, a concise statement of the acts or omissions alleged to constitute the offence.

**SCHEDULE—continued**

3. On receipt of an application for provisional arrest the Requested State shall take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its application.
4. A person arrested upon an application for provisional arrest may be set at liberty upon the expiration of 30 days from the date of the arrest if a request for extradition has not been received.
5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

**ARTICLE 12**  
**SURRENDER**

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State through the diplomatic channel. Reasons shall be given for refusal, in whole or in part, of a request.
2. Where extradition is granted, the person shall be removed from the Requested State from a point of departure in that State convenient to the Contracting Parties.
3. The Requesting State shall remove the person from the Requested State within such reasonable period as the Requested State specifies and, if the person is not removed within that period, the person may be released and the Requested State may refuse to extradite the person for the same offence.
4. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited it shall notify the other Contracting Party. The two Contracting Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

**ARTICLE 13**  
**POSTPONED AND TEMPORARY SURRENDER**

1. The Requested State may postpone the surrender of a person in order to proceed against the person, or so that the person may serve a sentence, for an offence other than an offence constituted by an act or omission for which extradition is requested. In such cases the Requested State shall advise the Requesting State accordingly.
2. To the extent permitted by its law, the Requested State may temporarily surrender the person sought to the Requesting State in accordance with conditions to be determined between the Contracting Parties.

**ARTICLE 14**  
**SURRENDER OF PROPERTY**

1. To the extent permitted under the law of the Requested State and subject to the rights of third parties, which shall be duly respected, all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.
2. The property mentioned in paragraph 1 of this Article shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition, having been consented to, cannot be carried out.
3. Where the law of the Requested State or the rights of third parties so require, any articles so surrendered shall be returned to the Requested State free of charge if that State so requests.

SCHEDULE—continued

ARTICLE 15

TRANSIT

1. Where a person is to be extradited to a Contracting Party from a third State through the territory of the other Contracting Party, the Contracting Party to which the person is to be extradited shall request the other Contracting Party to permit the transit of that person through its territory.
2. Upon receipt of such a request the Requested Contracting Party shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so, provided that in any case, the transit of a person may be refused on any ground on which the extradition of that person might be refused under this Treaty.
3. Permission for the transit of a person shall, subject to the law of the Requested Contracting Party, include permission for the person to be held in custody during transit.
4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting Party in whose territory the person is being held may direct that the person be released if that person's transportation is not continued within a reasonable time.
5. The Contracting Party to which the person is being extradited shall reimburse the other Contracting Party for any expense incurred by that other Contracting Party in connection with the transit.

ARTICLE 16

EXPENSES

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interest of the Requesting State.
2. The Requested State shall bear the expenses incurred in its territory in the arrest and detention of the person whose extradition is requested until the person is surrendered to a person nominated by the Requesting State.
3. The Requesting State shall bear the expenses incurred in conveying the person from the territory of the Requested State.

ARTICLE 17

LANGUAGE

A Contracting Party which sends to the other Contracting Party a document in accordance with this Treaty that is not in the language of the other Contracting Party shall provide a translation of the document into the language of the other Contracting Party.

ARTICLE 18

RESOLUTION OF DOUBT

Any doubts and difficulties arising out of the application and interpretation of this Treaty shall be resolved by consultation between the Contracting Parties.

ARTICLE 19

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. This Treaty shall apply to any Territory under the administration of the Republic of Portugal thirty days after the date of notification by the Republic of Portugal to



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**SCHEDULE—continued**

Australia that the constitutional requirements for the entry into force of the Treaty in relation to that Territory have been complied with.

3. On its entry into force this Treaty shall, as between Australia and the Republic of Portugal, terminate and replace:

- (a) the Treaty between the United Kingdom of Great Britain and Ireland and Portugal for the Mutual Extradition of Fugitive Criminals, done at Lisbon on 17 October 1892; and
- (b) the Supplementary Convention to the aforesaid Treaty done at Lisbon on 20 January 1932

4. Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE at Lisbon

on the 21st day of April One Thousand, nine hundred and eighty seven in English and Portuguese,

Both texts being equally authentic.

AUSTRALIA  
LIONEL BOWEN

THE REPUBLIC OF PORTUGAL  
AZEVEDO SOARES

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on *L* 1988.

*30 November*