

**DEPARTMENT OF FOREIGN AFFAIRS AND TRADE  
CANBERRA**

**TREATY  
ON  
EXTRADITION  
BETWEEN  
AUSTRALIA  
AND  
THE PEOPLE'S REPUBLIC OF CHINA**

Sydney, 6 September 2007

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**TREATY ON EXTRADITION BETWEEN AUSTRALIA AND  
THE PEOPLE'S REPUBLIC OF CHINA**

Australia and the People's Republic of China (hereinafter referred to as "the Parties"),

DESIRING, on the basis of equality, mutual benefit and respect for sovereignty, to make more effective the cooperation of the two countries in the suppression of crime by concluding a treaty on extradition,

HAVE AGREED as follows:

**ARTICLE 1  
OBLIGATION TO EXTRADITE**

Each Party agrees to extradite to the other, in accordance with the provisions of this Treaty and at the request of the other Party, any persons found in its territory and wanted for prosecution, or the imposition or enforcement of a sentence, in the Requesting Party for an extraditable offence.

**ARTICLE 2  
EXTRADITABLE OFFENCES**

1. For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Parties existing at the time of the request by imprisonment for a period of one year or more, or by a more severe penalty.

2. Where the request for extradition relates to a person convicted of an extraditable offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.
3. For the purposes of this Article in determining whether an offence is an offence against the law of both Parties:
  - (a) it shall not matter whether the laws of the Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology;
  - (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Parties, the description of constituent elements of the offence differ; and
  - (c) where the offence relates to taxation, customs duties, foreign exchange control or other revenue matters, it shall not matter that the law of the Requested Party does not involve the same kind of tax, duty, foreign exchange control or revenue matter.
4. If the request for extradition concerns two or more offences, at least one of which is an extraditable offence as provided in paragraph 1 of this Article, the Requested Party may, subject to its domestic law, grant extradition for all of the offences.
5. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances.

### **ARTICLE 3**

#### **MANDATORY GROUNDS FOR REFUSAL**

Extradition shall be refused if:

- (a) the offence for which extradition is requested is regarded by the Requested Party as a political offence;
- (b) the Requested Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on account of that person's race, sex, language, religion, nationality, political opinion or personal status, or that that person's position in judicial proceedings may be prejudiced for any of those reasons;
- (c) the offence for which extradition is requested only constitutes a military offence;
- (d) the person has been finally convicted, acquitted or pardoned, or has undergone the punishment provided by the law of the Requested Party, in respect of the offence for which the person's extradition is requested;
- (e) the person sought has, according to the laws of either Party, become immune from prosecution by reason of lapse of time;
- (f) in accordance with the law of the Requesting Party, the person sought may be sentenced to death for the offence for which the extradition is requested, unless the Requesting Party undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;
- (g) the Requested Party has substantial grounds for believing the person sought has been or will be subjected to torture or other cruel, inhuman or humiliating treatment or punishment in the Requesting Party;
- (h) the request for extradition is made by the Requesting Party pursuant to a judgment rendered in absentia and the Requesting Party does not guarantee to have the case retried after extradition; or

- (i) the conduct did not constitute an offence against the laws of the Requesting Party at the time it occurred.

#### **ARTICLE 4**

#### **DISCRETIONARY GROUNDS FOR REFUSAL**

Extradition may be refused if:

- (a) the Requested Party has jurisdiction over the offence for which the extradition is requested in accordance with its domestic law and is conducting, or contemplates instituting, proceedings against the person sought for that offence;
- (b) the Requested Party has decided to refrain from prosecuting the person for the offence in respect of which extradition is sought;
- (c) the Requested Party, while taking into account the seriousness of the offence and the interests of the Requesting Party, considers that the extradition would be incompatible with humanitarian considerations in view of that person's age, health or other personal circumstances;
- (d) the person, on being extradited to the Requesting Party, shall be tried or sentenced by an ad hoc court; or
- (e) the offence for which extradition is requested has been committed outside the territory of either Party and the law of the Requested Party does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances.

#### **ARTICLE 5**

#### **EXTRADITION OF NATIONALS**

1. Each Party shall have the right to refuse extradition of its nationals.
2. If the Requested Party refuses to grant extradition on the basis of nationality, that Party shall, at the request of the Requesting Party, submit the case to its competent authorities for the purpose of instituting criminal proceedings in accordance with its domestic law. For this purpose, the Requesting Party shall provide the Requested Party with documents and evidence relating to the case.

**ARTICLE 6**  
**CHANNELS OF COMMUNICATION**

1. For the purpose of this Treaty, the Parties shall communicate with each other through their respectively designated authorities unless otherwise provided for in this Treaty.
2. The designated authorities referred to in paragraph 1 of this Article shall be the Ministry of Foreign Affairs for the People's Republic of China, and the Australian Government Attorney-General's Department for Australia.

**ARTICLE 7**  
**REQUEST FOR EXTRADITION AND REQUIRED DOCUMENTS**

1. A request for extradition shall be made in writing and shall be transmitted through the diplomatic channel. A request for extradition and all supporting documents shall be authenticated in accordance with Article 8.
2. A request for extradition shall include or be accompanied by:
  - (a) the name of the requesting authority;
  - (b) the name, age, sex, nationality, identification documents, occupation and domicile or residence of the person sought and other information that may help to determine that person's identity and possible location; and if available, a description of that person's appearance and any photographs or fingerprints of that person;
  - (c) a statement of each offence for which extradition is sought and a statement of the conduct which is alleged against the person in respect of each offence for which extradition is sought;
  - (d) the text of the relevant provisions of law necessary to establish criminal jurisdiction, determine the offence and

prescribe the penalty that can be imposed for the offence;  
and

- (e) the text of the relevant provisions of law describing any time limit on the prosecution or execution of sentence.
3. In addition to the provisions of paragraph 2 of this Article:
- (a) a request for extradition which is aimed at conducting a criminal proceeding against the person sought shall also be accompanied by a copy of the warrant of arrest issued by the competent authority of the Requesting Party;
  - (b) a request for extradition which is aimed at carrying out a sentence imposed on the person sought shall also be accompanied by a copy of the effective court judgment and a description of the period of sentence which has already been carried out; or
  - (c) a request for extradition of a person who has been convicted of an offence but where no sentence has been imposed shall also be accompanied by a copy of the effective court judgment and a statement that it is intended to impose a sentence.
4. A request for extradition and its supporting documents shall be accompanied by translations in the language of the Requested Party.
5. Three photocopies of the request and supporting documents shall also be provided.

## **ARTICLE 8 AUTHENTICATION**

A document is authenticated for the purposes of this Treaty if:

- (a) it purports to be signed or certified by a judicial officer or an official of the Requesting Party; and

- (b) it purports to be sealed with an official seal of competent authorities of the Requesting Party or of an officer of the Requesting Party.

## **ARTICLE 9**

### **ADDITIONAL INFORMATION**

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within forty-five days or such a shorter time as agreed between the Parties.
2. If the person whose extradition is requested is under arrest or subjected to other forms of restriction of personal liberty and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody and other forms of restriction. Such release shall not preclude the Requesting Party from making a fresh request for the extradition of the person.
3. Where the person is released in accordance with paragraph 2 of this Article, the Requested Party shall notify the Requesting Party as soon as practicable.

## **ARTICLE 10**

### **PROVISIONAL ARREST**

1. In cases of urgency, the Requesting Party may apply for the provisional arrest of the person sought pending a presentation of the request for extradition. Such request may be submitted in writing through the channels provided for in Article 6, the International Criminal Police Organization (INTERPOL) or other channels agreed to by both Parties. Requests may be transmitted by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity, including electronic means.
2. The request for provisional arrest shall contain information and documents indicated in paragraph 2 of Article 7, a statement of the

existence of any documents indicated in paragraph 3 of that Article and a statement that a formal request for the extradition of the person sought will follow.

3. On receipt of such a request, the Requested Party may take the necessary steps to take into custody the person sought and the Requesting Party shall be promptly notified of the result of its request.
4. A person taken into custody on the basis of such a request may be set at liberty upon the expiration of 45 days from the date the person was taken into custody if a request for extradition, supported by the documents specified in Article 7, has not been received by the Requested Party.
5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings to extradite the person sought if an extradition request is subsequently received.

## **ARTICLE 11**

### **REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES**

1. Where requests are received from two or more States including the Requesting Party for the extradition of the same person, the Requested Party shall determine to which of those States the person is to be extradited and shall notify the requesting States of its decision.
2. In determining to which State a person is to be extradited, the Requested Party shall consider all relevant circumstances and in particular:
  - (a) if the requests relate to different offences - the relative seriousness of the offences;
  - (b) the time and place of commission of each offence;
  - (c) the respective dates of the requests;
  - (d) the nationality of the person;

- (e) the ordinary place of residence of the person; and
- (f) the possibility of re-extraditing the person to a third State.

**ARTICLE 12**  
**DECISION ON THE REQUEST FOR EXTRADITION**

1. The Requested Party shall deal with the request for extradition in accordance with the procedures provided by its domestic law and shall promptly inform the Requesting Party of its decision.
2. If the Requested Party refuses the whole or any part of the request for extradition the reasons for refusal shall be notified to the Requesting Party.
3. Before refusing extradition the Requested Party shall, where appropriate, consult with the Requesting Party to provide it with ample opportunity to present its opinions and to provide information relevant to its request.

**ARTICLE 13**  
**SURRENDER OF THE PERSON TO BE EXTRADITED**

1. If extradition has been granted by the Requested Party, the Parties shall agree on the time, place and other relevant matters relating to the surrender of the person. The Requested Party shall surrender the person from a point of departure in its territory convenient to the Requesting Party. The Requested Party shall inform the Requesting Party of the period of time for which the person to be extradited has been detained prior to the surrender.
2. If the Requesting Party has not taken over the person to be extradited within fifteen days after the date agreed for the surrender of the person, the Requested Party may release that person immediately and may refuse a fresh request by the Requesting Party for extradition of that person for the same offence unless otherwise provided for in paragraph 3 of this Article.
3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify

the other Party. The Parties shall once again agree on the relevant matters for the surrender of the person, and the provisions of paragraph 2 of this Article shall apply.

#### **ARTICLE 14**

#### **SURRENDER OF PROPERTY**

1. If the Requesting Party so requests, the Requested Party shall, to the extent permitted by its domestic law, seize the proceeds and instruments of the offence and other property which may serve as evidence found in its territory and when extradition is granted, shall surrender this property to the Requesting Party.
2. When the extradition is granted the property mentioned in paragraph 1 of this Article shall nevertheless be surrendered even if the extradition can not be carried out owing to the death, disappearance or escape of the person sought.
3. The surrender of such property shall not prejudice any legitimate right of the Requested Party or any third party to that property. Where these rights exist, the Requesting Party shall, at the request of the Requested Party, promptly return the surrendered property without charge to the Requested Party as soon as possible after the conclusion of the proceedings.
4. The Requested Party may, for conducting any other pending criminal proceedings, postpone the surrender of the above-mentioned property until the conclusion of such proceedings, or temporarily surrender that property on condition that it is returned by the Requesting Party.

#### **ARTICLE 15**

#### **POSTPONEMENT OF EXTRADITION AND TEMPORARY SURRENDER**

1. If the Requested Party is conducting or contemplates instituting a proceeding against the person sought, or the person is serving a sentence in the Requested Party for an offence other than that for which the extradition has been requested, the Requested Party may,

after having made a decision to grant extradition, postpone the surrender until the conclusion of the proceeding or the service of the sentence. The Requested Party shall inform the Requesting Party of the postponement of the surrender.

2. If the postponement of the surrender mentioned in paragraph 1 of this Article would seriously impede the prosecution or the investigation by the Requesting Party of the offence for which the extradition is requested, the Requested Party may, to the extent permitted by its domestic law, temporarily transfer the person sought to the Requesting Party according to the terms and conditions agreed to by both Parties. The Requesting Party shall promptly return that person to the Requested Party upon conclusion of relevant proceedings.
3. When, in the opinion of the Requested Party, the person whose extradition has been granted cannot be transported from the Requested Party to the Requesting Party without serious danger to the person's life due to grave illness, the surrender of the person may be deferred until such time as the danger, in the opinion of the Requested Party, has been sufficiently mitigated. The Requested Party shall inform the Requesting Party of the postponement of the surrender.

## **ARTICLE 16**

### **RULE OF SPECIALITY**

1. Subject to paragraph 2 of this Article, a person extradited under this Treaty shall not be detained, proceeded against or subject to the execution of sentence in the territory of the Requesting Party for any offence committed before her or his extradition other than:
  - (a) an offence for which extradition was granted;
  - (b) any other extraditable offence provable on the same facts and punishable by the same or lesser penalty as the offence for which extradition was granted; or
  - (c) any other extraditable offence in respect of which the Requested Party consents. A request for consent shall be

accompanied by such of the documents mentioned in Article 7 as are sought by the Requested Party and any statement provided by the extradited person concerning that offence.

2. Paragraph 1 of this Article does not apply if:
  - (a) that person has not left the territory of the Requesting Party within thirty days after having been free to do so. However, this period of time shall not include the time during which that person fails to leave the territory of the Requesting Party for reasons beyond his or her control; or
  - (b) the person has voluntarily returned to the territory of the Requesting Party after leaving it.

## **ARTICLE 17**

### **EXTRADITION TO A THIRD STATE**

1. Where a person has been extradited to the Requesting Party by the Requested Party, the first-mentioned Party shall not extradite that person to any third State for an offence committed before that person's extradition unless:
  - (a) the Requested Party consents to the extradition;
  - (b) that person has not left the territory of the Requesting Party within thirty days after having been free to do so. However, this period of time shall not include the time during which that person fails to leave the territory of the Requesting Party for reasons beyond his or her control; or
  - (c) the person has voluntarily returned to the territory of the Requesting Party after leaving it.
2. A request for consent shall be accompanied by such of the documents mentioned in Article 7 as are sought by the Requested Party and any statement provided by the extradited person concerning that offence.

**ARTICLE 18**  
**TRANSIT**

1. When one Party is to extradite a person from a third state through the territory of the other Party, the former shall request the latter for permission of such transit. No such permission is required where air transportation is used and no landing in the territory of the latter is scheduled.
2. The Requested Party shall, insofar as not contrary to its essential interests or domestic law, grant the request for transit made by the Requesting Party.
3. Permission for the transit of a person may, subject to the law of the Requested Party, include permission for the person to be held in custody during transit.

**ARTICLE 19**  
**NOTIFICATION**

The Requesting Party shall promptly provide the Requested Party with information on the proceedings or the execution of sentence against the extradited person or information concerning the re-extradition of that person to a third State.

**ARTICLE 20**  
**COSTS**

1. The Requested Party shall make all necessary arrangements for any proceedings arising out of a request for extradition and shall otherwise represent the interests of the Requesting Party.
2. Costs arising from the procedures for extradition in the Requested Party shall be borne by that Party. Costs of transportation and the transit costs in connection with the surrender or taking over of the extradited person shall be borne by the Requesting Party.

**ARTICLE 21**  
**RELATIONSHIP WITH MULTILATERAL CONVENTIONS**

This Treaty shall not affect any right enjoyed and any obligation undertaken by the Parties under any multilateral conventions.

**ARTICLE 22**  
**SETTLEMENT OF DISPUTES**

1. The Parties shall consult promptly, at the request of either, concerning the interpretation, application or implementation of this Treaty either generally or in relation to a particular case.
2. Any dispute arising out of interpretation, application or implementation of this Treaty shall be resolved through consultation by diplomatic channels.

**ARTICLE 23**  
**ENTRY INTO FORCE AND TERMINATION**

1. Each Party shall inform the other by diplomatic note when all necessary steps have been taken for entry into force of this Treaty. This Treaty shall enter into force on the thirtieth day from the date of the later diplomatic note.
2. This Treaty applies to any requests presented after its entry into force even if the relevant offences occurred before the entry into force of this Treaty.
3. Either Party may terminate this Treaty at any time by notice in writing to the other Party through diplomatic channels. Termination shall take effect on the one hundred and eightieth day after the date on which the notice is given. Termination of this Treaty shall not affect the extradition proceedings commenced prior to termination.

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

Done in duplicate at Sydney this sixth day of September two thousand and seven in English and Chinese languages, each text being equally authentic.

For Australia

For the People's Republic of China

.....  
Hon Philip Ruddock  
Attorney-General

.....  
HE Yang Jiechi  
Minister of Foreign Affairs

# 澳大利亚和中华人民共和国引渡条约

澳大利亚和中华人民共和国（以下简称“双方”），

希望在相互尊重主权和平等互利的基础上，缔结引渡条约促进两国在打击犯罪方面的有效合作，

达成协议如下：

## 第一条 引渡义务

缔约一方同意根据本条约的规定，应另一方请求，将在其境内发现的为了就可引渡的犯罪进行起诉、判刑或者执行判决而被通缉的任何人引渡给另一方。

## 第二条 可引渡的犯罪

一、为本条约目的，可引渡的犯罪是指根据提出请求时缔约双方的现行法律可判处一年或者一年以上监禁或者更重刑罚的任何罪名的犯罪。

二、如果引渡请求涉及因可引渡的犯罪被定罪并且为了执行监禁的判决而被通缉的人，只有在尚须服刑的期限至少为六个月时才应同意引渡。

三、为本条目的，在决定一项犯罪是否是违反双方法律的犯罪时：

（一）不应考虑双方法律是否将构成该犯罪的行为归入同一犯罪种类或者使用同一罪名；

（二）应作为一个整体考虑被请求引渡人受到指控的行为，而不论双方法律对犯罪的构成要件的说明是否不同；

（三）当一项犯罪涉及税收、关税、外汇管制或者其他财税事项时，不应考虑被请求方法律未涉及相同的税收、关税、外汇管制或者财税事项。

四、如果引渡请求涉及两个以上的犯罪，只要至少一项犯罪是本条第一款规定的可引渡的犯罪，被请求方在不违反其国内法的情况下，可以就所有犯罪同意引渡。

五、当犯罪发生在请求方境外时，如果被请求方法律对类似情况下发生在其境外的犯罪规定了刑罚，则应同意引渡。

### 第三条 应当拒绝引渡的理由

有下列情形之一的，应当拒绝引渡：

(一) 被请求方认为引渡请求所针对的犯罪是政治犯罪；

(二) 被请求方有充分理由认为，请求引渡的目的是基于被请求引渡人的种族、性别、语言、宗教、国籍、政治见解或者个人身份而对该人进行刑事诉讼或者执行刑罚，或者该人在司法程序中的地位可能因为上述任何原因受到损害；

(三) 引渡请求所针对的犯罪仅构成军事犯罪；

(四) 该人就请求引渡他的犯罪已被最终定罪、无罪释放或者被赦免，或者已接受被请求方法律规定的处罚；

(五) 根据任何一方的法律，被请求引渡人由于时效已过的原因，已经被免于追诉；

(六) 根据请求方法律，被请求引渡人可能因引渡请求所针对的犯罪被判处死刑，除非请求方保证不判处死刑，或者在判处死刑的情况下不执行死刑；

(七) 被请求方有充分理由认为被请求引渡人在请求方曾经遭受或者可能将会遭受酷刑或者其他残忍、不人道或者有辱人格的待遇或者处罚的；

(八) 请求方根据缺席判决提出引渡请求，并且没有保证在引渡后重新进行审理；

(九) 被指控的行为在发生时不构成违反请求方法律的犯罪。

#### 第四条 可以拒绝引渡的理由

有下列情形之一的，可以拒绝引渡：

(一) 被请求方根据其国内法对引渡请求所针对的犯罪具有管辖权，并且正在对被请求引渡人就该犯罪进行刑事诉讼，或者准备提起刑事诉讼；

(二) 被请求方已决定不就引渡请求所针对的犯罪起诉该人；

(三) 被请求方在考虑到犯罪的严重性和请求方利益的情况下，认为就被请求引渡人的年龄、健康和其他个人情况而言，引渡该人不符合人道主义的考虑；

(四) 该人在被引渡到请求方后将会受到特别法庭的审判；

(五) 引渡请求所针对的犯罪发生在双方境外，并且被请求方法律对类似情况下发生在其境外的犯罪未规定管辖权。

#### 第五条 国民的引渡

一、双方均有权拒绝引渡本国国民。

二、如果被请求方以国籍为由拒绝引渡，被请求方应当根据请求方的请求，将该案件提交主管机关以便根据其国内法提起刑事诉讼。为此目的，请求方应当向被请求方提供与该案件有关的文件和证据

## 第六条 联系途径

一、为本条约的目的，双方应当通过各自指定的机关进行联系，但本条约另有规定的除外。

二、本条第一款所述的指定的机关，在澳大利亚方面是澳大利亚政府司法部，在中华人民共和国方面是外交部。

## 第七条 引渡请求及所需文件

一、引渡请求应当通过外交途径以书面形式提交。引渡请求以及所有辅助文件应当根据第八条进行认证。

二、引渡请求应当包括或者附有：

（一）请求机关的名称；

（二）被请求引渡人的姓名、年龄、性别、国籍、身份证件、职业、住所地或者居所地，以及其他有助于确定该人身份和可能的所在地点的资料；如有可能，有关该人外表的描述及其照片和指纹；

（三）关于引渡请求所针对的各项犯罪的说明，以及该人就上

述各项犯罪而受到指控的行为的说明；

（四）有关确立该犯罪的刑事管辖权、定罪和规定就该犯罪可判处的刑罚的法律条文；

（五）有关追诉时效或者执行判决期限的法律条文。

三、除了本条第二款的规定外，

（一）旨在对被请求引渡人进行刑事诉讼的引渡请求还应当附有请求方主管机关签发的逮捕证的副本；

（二）旨在对被请求引渡人执行刑罚的引渡请求还应当附有已经生效的法院判决书的副本和关于已经执行刑期的说明；

（三）针对已经被定罪但未被判刑的人员的引渡请求还应当附有已经生效的法院判决书的副本和准备判刑的说明。

四、引渡请求及其辅助文件应当附有被请求方文字的译文。

五、请求方还应当提供引渡请求和辅助文件的三份复印件。

## 第八条 认证

为本条约目的，下列文件是已经认证的文件：

（一）由请求方司法官员或者官员签字或者证明的文件；

（二）由请求方主管机关或者官员加盖公章的文件。

## 第九条 补充材料

一、如果被请求方认为，为支持引渡请求而提供的材料不足以使其根据本条约同意引渡，被请求方可以要求在四十五天内或者双方同意的更短的时间内提交补充材料。

二、如果被请求引渡人已经被逮捕或者被以其他方式限制人身自由，并且根据本条约提交的补充材料仍不足够，或者未在指定时间内收到补充材料，对该人的羁押和其他方式的限制可予解除。但上述释放不妨碍请求方重新提出引渡该人的请求。

三、如果根据本条第二款释放该人，被请求方应当尽早通知请求方。

## 第十条 引渡拘留

一、在紧急情况下，请求方可以在提出引渡请求前请求引渡拘留被请求引渡人。上述请求可以通过本条约第六条规定的途径、国际刑事警察组织或者双方同意的其他途径以书面形式提出。请求可以通过包括电子方式在内的能出具书面记录并可供被请求方核实其真实性的任何方式传递。

二、引渡拘留请求应当包括第七条第二款所列的材料和文件，已经备有该条第三款所列文件的说明，以及随后将提出正式引渡请求的说明。

三、被请求方收到上述请求后，可以采取必要措施拘留被请求引渡人，并将对该请求的处理结果及时通知请求方。

四、如果被请求方未收到附有第七条所列文件的引渡请求，根据上述请求被拘留的人可以在拘留之日起四十五天后予以释放。

五、如果后来收到引渡请求，根据本条第四款对该人的释放不妨碍启动对被请求引渡人的引渡程序。

## 第十一条 数国提出的引渡请求

一、当收到包括请求方在内的两个以上国家就同一人提出的引渡请求时，被请求方应当决定向其中的哪一国引渡该人，并应当向各请求国通知其决定。

二、在决定向哪一国引渡该人时，被请求方应当考虑所有相关情况，特别是如下情况：

- （一）如果请求涉及不同犯罪，有关犯罪的相对严重性；
- （二）每项犯罪发生的时间和地点；
- （三）各项请求的日期；
- （四）该人的国籍；
- （五）该人通常的居住地；
- （六）将该人引渡给第三国的可能性。

## 第十二条 对引渡请求作出决定

一、被请求方应当根据其国内法规定的程序处理引渡请求，并将其决定及时通知请求方。

二、如果被请求方全部或者部分拒绝引渡请求，应当将拒绝的理由通知请求方。

三、被请求方在拒绝引渡前，应当在适当时与请求方磋商，以便为请求方提供足够的机会表达意见和提出有关其请求的材料。

### 第十三条 移交被引渡人

一、如果被请求方同意引渡，双方应当商定移交该人的时间、地点和其他有关事宜。被请求方应当在其境内对于请求方便利的离境点将该人移交请求方。被请求方应当将被引渡人在移交前已经被羁押的时间告知请求方。

二、如果请求方在商定移交该人之日后的十五天内未接收被引渡人，被请求方可以立即释放该人，并且可以拒绝请求方就同一犯罪再次提出的引渡该人的请求，但本条第三款另有规定的除外。

三、如果缔约一方因为其无法控制的原因不能移交或者接走被引渡人，应当通知缔约另一方。双方应当再次商定移交该人的有关事宜，并应当适用本条第二款的规定。

### 第十四条 移交财物

一、如果请求方提出请求，被请求方应当在其国内法允许的范围內，扣押在其境内发现的犯罪所得、犯罪工具以及可作为证据的其他财物，并且在同意引渡的情况下，将这些财物移交请求方。

二、在同意引渡的情况下，即使因为被请求引渡人死亡、失踪或者脱逃而无法实施引渡，本条第一款提及的财物仍应当移交。

三、移交上述财物不应损害被请求方或者任何第三方对该财物的合法权利。如果存在此种权利，请求方应当根据被请求方的请求，在诉讼终结后尽快将被移交的财物无偿返还被请求方。

四、被请求方为了进行其他未决刑事诉讼程序，可以暂缓移交上述财物直至诉讼终结，或者在请求方返还的条件下临时移交上述财物。

## 第十五条 暂缓引渡和临时引渡

一、如果被请求方正在对被请求引渡人就引渡请求未涉及的犯罪进行诉讼或者准备提起诉讼，或者该人正因为上述犯罪在被请求方服刑，被请求方可以在作出同意引渡的决定后，暂缓引渡该人直至诉讼终结或者服刑完毕。被请求方应当将暂缓引渡事项通知请求方。

二、如果本条第一款提及的暂缓引渡会严重妨碍请求方对引渡请求所针对的犯罪的起诉或者调查，被请求方可以在本国法律允许的范围内，根据双方商定的条件，将被请求引渡人临时引渡给请求方。请求方应当在有关程序终结后，立即将该人送还被请求方。

三、如果被请求方认为，因被同意引渡人患有严重疾病，将其从被请求方送往请求方会严重危及其生命，对该人的引渡可予推迟，直至被请求方认为这一危险已得到充分缓解。被请求方应当将暂缓引渡事项通知请求方。

## 第十六条 特定规则

一、在不影响本条第二款的情况下，根据本条约被引渡的人不应当因其在引渡前所犯的任何犯罪而在请求方境内受到羁押、起诉或者执行刑罚，但下列犯罪除外：

（一）同意引渡的犯罪；

（二）基于与同意引渡的犯罪相同的事实，并且可判处与该犯罪相同或者更轻的刑罚的其他可引渡的犯罪；

（三）被请求方同意的任何其他可引渡的犯罪。寻求被请求方同意的请求应当附有第七条提及的、被请求方要求的文件，以及被引渡人关于该犯罪的陈述。

二、本条第一款不适用于下列情况：

（一）该人在可以自由离开的情况下，在三十天内未离开请求方领土。但是，该人由于自己无法控制的原因而未能离开请求方领土的时间不应当包括在内；

（二）该人离开后又自愿返回请求方领土。

## 第十七条 引渡给第三国

一、如果被请求方已将某人引渡至请求方，请求方不应当就该人在引渡前所实施的犯罪将其引渡给第三国，但下列情况除外：

(一) 被请求方同意引渡；

(二) 该人在可以自由离开的情况下，在三十天内未离开请求方领土。但是，该人由于自己无法控制的原因而未能离开请求方领土的时间不应当包括在内；

(三) 该人离开后又自愿返回请求方领土。

二、寻求被请求方同意的请求应当附有第七条提及的被请求方要求的文件，以及被引渡人关于该犯罪的陈述。

## 第十八条 过 境

一、一方从第三国引渡人员需经过另一方领土时，前一方应当向另一方提出同意过境的请求。如果使用航空运输并且没有在后一方境内降落的计划，则无需获得同意。

二、被请求方在不违反其基本利益或者国内法的情况下，应当同意请求方提出的过境请求。

三、在符合被请求方法律的情况下，同意该人过境可以包括同意在过境期间对该人予以羁押。

## 第十九条 通报

请求方应当及时向被请求方通报对被引渡人进行刑事诉讼、执行刑罚或者将该人再引渡给第三国的有关情况。

## 第二十条 费用

一、被请求方应当为因引渡请求而产生的任何诉讼程序作出所有必要安排，并且应当代表请求方利益。

二、在被请求方的引渡程序中产生的费用应当由被请求方承担。与移交和接收被引渡人有关的交通费用和过境费用应当由请求方承担。

## 第二十一条 与多边公约的关系

本条约不应当影响双方根据任何多边公约所享有的权利和承担的义务。

## 第二十二条 争议的解决

一、根据任何一方的请求，双方应当就本条约的解释、适用或者实施及时进行磋商，而不论涉及一般性问题还是特定案件。

二、由于本条约的解释、适用或者实施而产生的争议，应当通过外交途径协商解决。

## 第二十三条 生效和终止

一、缔约一方完成本条约生效所需的一切必要程序后，应当通过外交照会通知另一方。本条约自后一份照会发出之日起第三十天生效。

二、本条约适用于其生效后提出的任何请求，即使有关犯罪发生于本条约生效前。

三、任何一方可以随时通过外交途径，以书面形式通知另一方终止本条约。本条约自该通知发出之日后第一百八十天失效。本条约的终止不影响条约终止前已经开始的引渡程序。

下列签字人经各自政府正式授权签署本条约，以昭信守。

本条约于二零零七年九月六日在 悉尼  
签署，每份均用英文和中文写成，两种文本同等作准。

澳大利亚代表

中华人民共和国代表

总检察长

菲利普·拉多克

外交部长

杨洁篪

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