

**CHAPTER 77**

**THE EXTRADITION (COMMONWEALTH COUNTRIES) ACT**

SUBSIDIARY LEGISLATION

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*List of Subsidiary Legislation*

	<i>Page</i>
1. The Extradition (Australia) Order.....	3
2. The Extradition (United Kingdom) Order.....	5
3. The Extradition (Singapore) Order.....	7
4. The Extradition (Lesotho) Order.....	9
5. The Extradition (Malawi) Order.....	11
6. The Extradition (Zambia) Order.....	13
7. The Extradition (United Kingdom Dependent Territories) Order.....	15
8. The Extradition (Papua New Guinea) Order.....	19
9. The Extradition (New Zealand) Order.....	21
10. Extradition (Contiguous and Foreign Countries) (People’s Republic of China) Order, 2023.....	23

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**THE EXTRADITION (AUSTRALIA) ORDER**

[Legal Notice 126 of 1969]

1. This Order may be cited as the Extradition (Australia) Order.
  2. The Commonwealth of Australia is designated as a designated Commonwealth country for the purposes of the Act.
  3. For the purposes of this Order any territory for the external relations of which the Commonwealth of Australia is responsible shall be treated as part of the Commonwealth of Australia.
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**THE EXTRADITION (UNITED KINGDOM) ORDER**

[Legal Notice 219 of 1969]

1. This Order may be cited as the Extradition (United Kingdom) Order.
  2. The United Kingdom of Great Britain and Northern Ireland is designated as a designated Commonwealth country for the purposes of the Act.
  3. For the purposes of this Order, the Channel Islands and the Isle of Man shall be treated as part of the United Kingdom.
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**THE EXTRADITION (SINGAPORE) ORDER**

[Legal Notice 45 of 1970]

1. This Order may be cited as the Extradition (Singapore) Order.
  2. The Republic of Singapore is designated as a designated Commonwealth Country for the purposes of the Act.
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**THE EXTRADITION (LESOTHO) ORDER**

[Legal Notice 183 of 1971]

1. This Order may be cited as the Extradition (Lesotho) Order.
2. The Kingdom of Lesotho is hereby designated as a designated Commonwealth Country for the purposes of the Act.



**THE EXTRADITION (MALAWI) ORDER**

[Legal Notice 136 of 1972]

1. This Order may be cited as the Extradition (Malawi) Order.
  2. The Republic of Malawi is designated as a designated Commonwealth Country for the purposes of the Act.
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**THE EXTRADITION (ZAMBIA) ORDER**

[Legal Notice 208 of 1972, Legal Notice 47 of 1987]

1. This order may be cited as the Extradition (Zambia) Order.
  2. The Republic of Zambia is designated as a Commonwealth Country for the purposes of this Act.
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**THE EXTRADITION (UNITED KINGDOM  
DEPENDENT TERRITORIES) ORDER**

ARRANGEMENT OF ORDERS

*Order*

*SCHEDULE*

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**THE EXTRADITION (UNITED KINGDOM  
DEPENDENT TERRITORIES) ORDER**

[Legal Notice 15 of 1973]

1. This Order may be cited as the Extradition (United Kingdom Dependent Territories) Order.
2. The territories set forth in the Schedule to this Order are designated as designated Commonwealth countries for the purposes of the Act, and in accordance with subsection (3) of section 3 of the Act are treated as separate countries at the request of the Government of the United Kingdom which is responsible for their external affairs.

**SCHEDULE**

Gibraltar.

Gilbert and Ellis Islands Colony.

Hong Kong.

New Hebrides.

Pitcairn, Ducie and Oeno Islands.

Falkland Islands and Dependencies.

Saint Helena and Dependencies.

Seychelles.

The Bahama Islands.

Bermuda.

British Honduras.

The British Indian Ocean Territory.

The British Solomon Islands Protectorate.

The British Virgin Islands.

The Sovereign Base Areas of Akrotiri and Dhekelia.



**THE EXTRADITION (PAPUA NEW GUINEA) ORDER**

[Legal Notice 255 of 1976]

1. This Order may be cited as the Extradition (Papua New Guinea) Order.
  2. The Independent State of Papua New Guinea is designated as a designated Commonwealth Country for the purposes of the Act.
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**THE EXTRADITION (NEW ZEALAND) ORDER**

[Legal Notice 168 of 2009]

1. This Order is cited as the Extradition (New Zealand) Order.
  2. New Zealand is designated as a designated Commonwealth Country for purposes of this Act.
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**EXTRADITION (CONTIGUOUS AND FOREIGN COUNTRIES)  
(PEOPLE'S REPUBLIC OF CHINA) ORDER, 2023**

[Legal Notice 136 of 2023]

WHEREAS an extradition treaty has been signed between the Government of the Republic of Kenya and the Government of the People's Republic of China with respect to the surrender of fugitive criminals,

AND WHEREAS the terms of the Extradition Treaty signed between the two countries on the 15th May, 2017 are set out in the Schedule to this Order,

NOW THEREFORE, in exercise of the powers conferred by section 3 of the Extradition (Contiguous and Foreign Countries) Act, the Attorney-General makes the following Order—

1. This Order may be cited as the Extradition (Contiguous and Foreign Countries) (People's Republic of China) Order, 2023.
2. The Attorney-General declares that Part II of the Act shall apply in the case of the People's Republic of China, subject to the conditions, exceptions and qualifications specified in the Treaty set out in the Schedule.
3. This Order shall remain in force for the duration of the Treaty set out in the Schedule.

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SCHEDULE

TREATY ON EXTRADITION BETWEEN THE GOVERNMENT OF THE REPUBLIC  
OF KENYA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

The Government of the Republic of Kenya and the Government of People's Republic of China desiring to promote an effective cooperation between the two countries with the intent of suppressing crime on the basis of mutual respect for sovereignty, equality and mutual benefit, considering that this purpose can be achieved through the conclusion of a bilateral Treaty establishing rules on extradition matters.

Have agreed as follows:

Article 1

OBLIGATION TO EXTRADITE

Each Party undertakes to extradite to the other, in accordance with the provisions of this Treaty and at the request of the Requesting Party, persons found in its territory and wanted by the other Party for the purpose of conducting criminal proceedings against or executing sentence imposed on that person.

Article 2

EXTRADITABLE OFFENCES

1. Extradition shall not be granted unless the conduct for which the extradition is sought constitutes an offence under the laws of both Parties and meets one of the following conditions:

- (a) where the request for extradition is made for the purpose of conducting criminal proceedings, the offence is punishable under the laws of both Parties by the penalty of imprisonment for a period of at least one year or by any heavier penalty; or
- (b) where the request for extradition is made for the purpose of executing a sentence of imprisonment, a period of sentence that remains to be served by the person sought is at least six months at the time when the request for extradition is made.

[Subsidiary]

2. In determining whether a conduct constitutes an offence under the laws of both Parties in accordance with paragraph 1 of this Article, it shall not matter whether the laws of the both Parties place the conduct within the same category of offence or describe the offence by the same terminology.

3. If the request for extradition concerns two or more conducts each of which constitutes an offence under the laws of both Parties and at least one of which fulfils the conditions provided for in paragraph 1 of this Article, the Requested Party may grant extradition for all of those conducts.

4. In respect of offences relevant to taxes and duties, customs duties and foreign exchange, extradition shall not be refused only on the ground that the laws of the Requested Party do not impose the same kind of taxes and duties or do not contain the same type of provisions in connection with taxes, duties, customs duties and foreign exchange as the laws of the Requesting Party.

## Article 3

## MANDATORY GROUNDS FOR REFUSAL

Extradition shall be refused if:

**(a)** the Requested Party considers that the offence for which the extradition is requested is a political offence, or that the Requested Party has granted asylum to the person sought. However, the following shall not be considered as political offences:

- (i) any offence against the life or person of a Head of State or government or a member of his or her immediate family;
- (ii) terrorism offences and any other criminal offence not considered as political offence under any international treaties, to which both States are Parties;

**(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, religion, nationality or political opinion, or that that person's position in judicial proceedings may be prejudiced for any of those reasons;

**(c)** the offence for which the extradition is requested only constitutes a military offence;

**(d)** the person sought has become, under the laws of either party, immune from prosecution or execution of sentence for any reason, including lapse of time or pardon;

**(e)** the Requested Party has already rendered a final judgement or terminated with finality the criminal proceedings against the person sought in respect of the offence for which the extradition is requested;

**(f)** the person sought has been or would possibly be subjected to torture or other cruel, inhuman or degrading treatment or punishment in the Requesting Party;

**(g)** the request for extradition is made by the Requesting Party pursuant to a judgement rendered in absentia unless the Requesting Party guarantees that the person sought has the opportunity to have the case retried in his presence; and

**(h)** the Requested Party considers that granting extradition may impair its sovereignty, security, public order or other essential interests.

## Article 4

## DISCRETIONARY GROUNDS FOR REFUSAL

Extradition may be refused if;

**(a)** the Requested Party has criminal jurisdiction over the offence for which the extradition is requested in accordance with its domestic law, and is conducting or contemplates to institute a criminal proceeding against the person sought for that offence;

(b) the Requested Party, while taking into account the seriousness of the offence and the interests of the Requested Party, considers that the extradition would be incompatible with humanitarian considerations in view of that person's age, health or other personal circumstances.

## Article 5

## REFUSAL OF EXTRADITION OF NATIONALS

1. Each Party has discretion to refuse extradition of its nationals.

2. If the extradition is not granted pursuant to paragraph 1 of this Article, the Requested Party shall, if the Requesting Party so requests, submit the case to its competent authorities with a view to institution of criminal proceedings against the person under its domestic law. For this purpose, the Requesting Party shall provide the Requested Party with documents and evidence relating to the case.

3. The Requested Party shall communicate promptly to the Requesting Party the action taken and the results of the proceedings.

## 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 Office of the Attorney-General for the Republic of Kenya and the Ministry of Foreign Affairs for the People's Republic of China.

## Article 7

## REQUEST FOR EXTRADITION AND REQUIRED DOCUMENTS

1. The request for extradition shall be made in writing, and in duplicate, and shall include the following:

(a) the name of the requesting authority;

(b) the name, age, sex, nationality, number of identification documents, occupation, domicile or residence of the person sought and other information that may help to establish that person's identity and possible location; and if available, the description of that person's appearance, the photographs and fingerprints of that person;

(c) a statement of the facts of the offence, including the date, place, conduct and consequences of the offence;

(d) the text of the relevant provisions of the laws relating to criminalization and penalty of the offence; and

(e) the text of the relevant provisions of laws relating to the time limit on prosecution or execution of sentence.

2. In addition to the provisions of paragraph 1 of this Article, the request for extradition shall be accompanied by:

(a) a duly authenticated copy of the warrant of arrest issued by the competent authority of the requesting party when the request is made for the purpose of conducting criminal proceeding against the person sought;

(b) a duly authenticated copy of final judgment and a description of period of sentence which has already been executed, and if required, a copy of the warrant of arrest when the request is made for the purpose of executing a sentence imposed on the person sought.

3. The letter of request for extradition and other relevant documents submitted by the Requesting Party in accordance with paragraphs 1 and 2 of this Article shall be officially

[Subsidiary]

signed or sealed by the competent authority of the Requesting Party and be accompanied by translations into the language of the Requested Party except that the both Parties have agreed otherwise.

## Article 8

## ADDITIONAL INFORMATION

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient, the Party may request that additional information be furnished within for twenty-five days. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a new request for extradition of the same person for the same offence.

## Article 9

## AUTHENTICATION

Any documents submitted under this Treaty shall be considered as duly authenticated if signed and or sealed by the competent authority of the Requesting Party.

## Article 10

## PROVISIONAL ARREST

1. In case of urgency, one Party may make a request to the other Party for the provisional arrest of the person sought before making a request for extradition. Such request may be submitted in writing through the channels provided for in Article 6 of this Treaty, the International Criminal Police Organization (INTERPOL) or other channels agreed by both Parties.

2. The request for provisional arrest shall contain contents referred to in paragraph 1 of Article 7 of this Treaty, a statement of the existence of documents referred to in paragraph 2 of Article 7 and a statement that a formal request for extradition of the person sought will follow.

3. The Requested Party shall, without delay, inform the Requested Party of the result of its handling of the request.

4. Provisional arrest and any coercive measures imposed shall be terminated if, within the period of forty-five days after the arrest of the person sought, the Requested Party has not received the formal request for extradition.

5. The termination of provisional arrest and any coercive measures imposed pursuant to paragraph 4 of this Article shall not prejudice the extradition of the person sought if, the Requested Party has subsequently received the formal request for extradition.

## Article 11

## DECISION ON THE REQUEST FOR EXTRADITION.

1. The Requested Party shall handle the request for extradition in accordance with the procedures provided for 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.

## Article 12

## SURRENDER OF THE PERSON TO BE EXTRADITED.

1. If the extradition has been granted by the Requested Party, the Parties shall agree on the date, time, place and other relevant matters relating to the execution of the extradition. Meanwhile, 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 execution of the extradition, the Requested Party shall release that person immediately and may refuse a new 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 a Party fails to surrender or take over the person to be extradited within the agreed period for reasons beyond its control, the other Party shall be notified promptly. The Parties shall once again the relevant matters for the execution of the extradition, and agree on the provisions of paragraph 2 of this Article shall apply.

#### Article 13

##### RE-EXTRADITION

Where the person under extradition escapes back to the Requested Party before criminal proceedings are terminated or his sentence is served in the Requested Party, that person may be re-executed upon a new request for extradition made by the Requesting Party in respect of the same offence and the Requesting Party need not submit the documents and material provided for in Article 7 of this Treaty.

#### Article 14

##### POSTPONED EXTRADITION AND TEMPORARY EXTRADITION

1. The Requested Party may, after making its decision on the request for extradition, postpone the surrender of the person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that which extradition is sought. In such a case, the Requested Party shall inform the Requesting Party accordingly.

2. If the postponement of the extradition may seriously impede the criminal proceedings in the Requesting Party, the Requested Party may, upon request and to the extent that its ongoing criminal proceedings are not hindered, temporarily extradite the person sought to the Requesting Party provided that the Requesting Party undertakes to return that person unconditionally and immediately upon conclusion of the relevant proceedings.

#### Article 15

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

Where requests are made by two or more states including one Party for extradition of the same person either for the same offence or or different offences, the Requested Party, in determining to which State the person is to be extradited, shall consider all relevant circumstances, in particular:

- (a) whether the requests were made pursuant to a treaty;
- (b) the gravity of the different offences;
- (c) the time and place of the commission of the offence;
- (d) the nationality and habitual residence of the person sought;
- (e) respective dates of the requests;
- (f) the possibility of subsequent extradition to a third state.

#### Article 16

##### RULE OF SPECIALITY

1. The person extradited in accordance with this Treaty shall not be proceeded against or subject to the execution of sentence in the Requesting Party for an offence committed by that person before his extradition other than that for which the extradition is granted, nor shall that person be extradited to a third state, unless:

[Subsidiary]

(a) the Requested Party has consented in advance. For the purpose of such consent, the Requested Party may require the submission of the documents and information referred to in Article 7 of this Treaty, and a statement by the extradited person with respect to the offence concerned;

(b) that person has not left 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 Requesting Party for reasons beyond his control; or

(c) that person has voluntarily returned to the Requesting Party after leaving it.

2. If the categorization of the offence for which the person was extradited is subsequently changed, that person may be prosecuted provided that the offence under its revised category is based substantially on the same facts contained in the extradition request and its supporting documents.

Article 17

HANDOVER PROPERTY

1. If the Requesting Party so requests, the Requested Party shall, to the extent permitted by its domestic law, seize the proceeds and instrumentalities of the offence and other property which may serve as evidence found in its territory, and when extradition is granted, shall handover these properties to the Requesting Party.

2. When the extradition is granted, the property referred to in paragraph 1 of this Article may nevertheless be handed over even if the extradition cannot be carried out owing to the death, disappearance or escape of the person sought.

3. The Requested Party may, for conducting any pending criminal proceedings, postpone the handover of above-mentioned property until the conclusion of such proceedings, or temporarily hand over that property on condition that the Requesting Party undertakes to return it.

4. The handover of such property shall not prejudice any legitimate rights or interests of the Requested Party or of any third party to that property. Where these rights or interests exist, the Requesting Party shall return the handed over property without charge to the Requested Party or the third party as soon as possible after the conclusion of the proceedings.

Article 18

TRANSIT

1. Where a Party is to extradite a person from a third state through the territory of the other Party, it shall request the other Party for the permission of such transit. No such request is required where air transportation is used and no landing in the territory of the other Party is scheduled.

2. The Requested Party shall, in so far as not contrary to its domestic law, grant the request for transit made by the Requesting Party.

Article 19

NOTIFICATION OF RESULT

The Requesting Party shall, upon request of the Requested Party, provide the Requested Party, provide the Requested Party promptly with the information on the proceedings or the execution of sentence against the extradited person or information concerning the extradition of that person to a third state.

Article 20

EXPENSES

1. The Requested Party shall bear the expenses arising from the procedures for extradition in its territory including the expenses incurred in arresting the person sought and maintaining that person in custody until the surrender to the Requesting Party, as well as the expenses associated with the seizure and keeping of the items referred to in Article 17.

2. The Requesting Party shall bear the expenses of transportation and the transit in connection with the hand over or takeover of the extradited person.

#### Article 21

#### RELATIONSHIP WITH OTHER TREATIES

This Treaty shall not prevent the Parties from cooperating with each other on extradition in accordance with other treaties to which both Parties are parties.

#### Article 22

#### SETTLEMENT OF DISPUTES

Any dispute arising from the interpretation or application of this Treaty shall be settled by consultation through diplomatic channels.

#### Article 23

#### ENTRY INTO FORCE, AMENDMENTS AND TERMINATION

1. Each Party shall inform the other by diplomatic note when all necessary steps have been taken under its laws for entry into force of this Treaty. This Treaty shall enter into force upon the thirtieth day from the date on which the later diplomatic note is sent.

2. This Treaty may be amended at any time by written agreement between parties. Any amendment shall enter into force in compliance with the procedure provided in paragraph 1 of this Article and shall be part of this Treaty.

3. Either Party may terminate this Treaty at any time by giving written notice to the other Party through diplomatic channels. Termination shall take effect on the one hundred and eightieth day from the date of notice. The termination shall not prejudice procedures initiated before the termination.

4. This Treaty shall apply to any request submitted after its entry into force, even if the relevant criminal offences were committed before the entry into force of this Treaty.

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