

Extradition (People’s Republic of China) Regulations 2017

I, General the Honourable Sir Peter Cosgrove AK MC (Ret’d), Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 09 February 2017

Peter Cosgrove

Governor‑General

By His Excellency’s Command

Michael Keenan

Minister for Justice

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1 Name

 This instrument is the *Extradition (People’s Republic of China) Regulations 2017*.

2 Commencement

 (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | The day the extradition treaty enters into force.The Minister must announce, by notifiable instrument, the day the extradition treaty enters into force. |  |

Note 1: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Note 2: Article 23 of the extradition treaty sets out when the extradition treaty enters into force.

 (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

 This instrument is made under the *Extradition Act 1988*.

4 Definitions

 In this instrument:

***Act*** means the *Extradition Act 1988*.

***extradition treaty*** means the Treaty on Extradition between Australia and the People’s Republic of China, done at Sydney in Australia on 6 September 2007.

5 Declaration of the People’s Republic of China as an extradition country

 For the purposes of paragraph (a) of the definition of ***extradition country*** in section 5 of the Act, the People’s Republic of China is declared to be an extradition country.

6 Application of Act

 For the purposes of paragraph 11(1)(a) of the Act, the Act applies to the People’s Republic of China subject to the extradition treaty, a copy of the English text of which is set out in Schedule 1.

Schedule 1—Treaty on Extradition between Australia and the People’s Republic of China

Note: See section 6.

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 requestby 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:
	1. 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;
	2. 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
	3. 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:

1. the offence for which extradition is requested is regarded by the Requested Party as a political offence;
2. 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;
3. the offence for which extradition is requested only constitutes a military offence;
4. 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;
5. the person sought has, according to the laws of either Party, become immune from prosecution by reason of lapse of time;
6. 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;
7. 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;
8. 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
9. 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:

1. 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;
2. the Requested Party has decided to refrain from prosecuting the person for the offence in respect of which extradition is sought;
3. 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;
4. the person, on being extradited to the Requesting Party, shall be tried or sentenced by an ad hoc court; or
5. 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:
3. the name of the requesting authority;
4. 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;
5. 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;
6. 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
7. the text of the relevant provisions of law describing any time limit on the prosecution or execution of sentence.
8. In addition to the provisions of paragraph 2 of this Article:
9. 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;
10. 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
11. 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.
12. A request for extradition and its supporting documents shall be accompanied by translations in the language of the Requested Party.
13. 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:

1. it purports to be signed or certified by a judicial officer or an official of the Requesting Party; and
2. 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 anda 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:
3. if the requests relate to different offences ‑ the relative seriousness of the offences;
4. the time and place of commission of each offence;
5. the respective dates of the requests;
6. the nationality of the person;
7. the ordinary place of residence of the person; and
8. 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 domesticlaw, 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:
	1. an offence for which extradition was granted;
	2. 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
	3. 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:
	1. 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
	2. 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:
	1. the Requested Party consents to the extradition;
	2. 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
	3. 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.

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| --- | --- |
| For Australia …………………………………… | For the People’s Republic of China …………………………………… |
| Hon Philip Ruddock Attorney‑General  | HE Yang Jiechi Minister of Foreign Affairs  |