

MEMORANDUM

HKSAR/SRI LANKA AGREEMENT
ON THE SURRENDER OF FUGITIVE OFFENDERS

The following are the main differences between the initialled text and the model agreement:-

Article 1 - Obligation to surrender

Sri Lanka requested inclusion of paragraph (2) to reflect the fact that the surrender of fugitives would need to be processed in accordance with the domestic laws of the Parties. The provision, however, also makes it clear that these domestic procedures must be in accordance with the provisions of the agreement.

Article 2 - Offences

The list in paragraph (1) has been expanded and is very similar to the lists of offences in other signed agreements.

Paragraph (3) establishes the “conduct” test. Similar provisions appear in all the signed agreements.

Paragraph (4) is substantially the same as provisions in most of the signed agreements [Australia, Canada, Malaysia, Philippines, Indonesia, UK, Singapore, New Zealand].

Paragraph (5) provides in effect that persons convicted in their absence can be surrendered unless they did not have an opportunity to be present at their trial. Such persons are to be treated as accused persons for the purposes of proceedings in the requested Party. Paragraph (5) is consistent with the requirements of the Fugitive Offenders Ordinance in this regard [see section 5(1)(b) and section 10(8)].

Article 6 - Mandatory Refusal of Surrender: Article 7 - Discretionary Refusal of Surrender

Articles 6 and 7 follow the approach (also adopted in other signed agreements) of grouping the grounds for refusal into either mandatory or discretionary grounds.

Paragraph (2) of Article 6 creates exceptions to the offences which can be considered to be offences of a political character. A similar approach was adopted in the HKSAR/India agreement [see Article 6(2)]. The offences excluded are those likely to be committed by terrorists.

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Article 17 - Specialty and Resurrender

This Article deals with both specialty and resurrender. The model agreement does not deal with resurrender. All of the signed agreements, however, have similar provisions dealing with resurrender.

Article 18 - Transit

Similar Articles appear in many of the signed agreements [Australia, Canada, USA, Philippines, Indonesia, New Zealand].