

LC Paper No. 573/06-07(01)

Model Agreement on Surrender of Fugitive Offenders
AGREEMENT FOR THE SURRENDER OF FUGITIVE OFFENDERS

The Government of Hong Kong,
having been duly authorised to conclude
this agreement by the sovereign government
which is responsible for its foreign affairs,
and the Government of,
Desiring to make provisions
for the reciprocal surrender of fugitive offenders;
Have agreed as follows:-

ARTICLE 1

The Parties agree to surrender to each other,
subject to the provisions laid down in this Agreement, any
person who, being accused or convicted of an offence under
Article 2 committed within the jurisdiction of the one
Party, is found within the jurisdiction of the other Party.

ARTICLE 2

(1) Surrender of fugitive offenders shall be granted for an offence coming within any of the following descriptions of offences in so far as it is according to the laws of both Parties punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty :

- (i) Murder or manslaughter
- (ii) Aiding, abetting, counselling or procuring suicide
- (iii) Maliciously wounding; inflicting grievous bodily harm; assault occasioning actual bodily harm
- (iv) Rape
- (v) Indecent assault
- (vi) Gross indecency with a child
- (vii) Kidnapping; abduction; false imprisonment
- (viii) Offences against the law relating to dangerous drugs

- (ix) Obtaining property or pecuniary advantage by deception; theft; robbery; burglary; blackmail; handling stolen goods
- (x) Offences against bankruptcy law
- (xi) False statements by company directors and other officers
- (xii) Any offence relating to counterfeiting of coins; any offence against the law relating to forgery; false accounting
- (xiii) Bribery
- (xiv) Perjury and subornation of perjury; attempting to pervert the course of justice
- (xv) Criminal damage, including arson
- (xvi) An offence against the law relating to firearms
- (xvii) An offence against the law relating to explosives
- (xviii) Sinking or destroying a vessel at sea; assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm;

revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

- (xix) Piracy, involving ships or aircraft, according to international law
- (xx) Dealing in slaves
- (xxi) Genocide or conspiracy or direct and public incitement to commit genocide
- (xxii) Unlawful seizure or exercise of control of an aircraft
- (xxiii) Impeding the arrest or prosecution of a person who has or is believed to have committed an offence for which surrender may be granted under this Agreement and which is punishable according to the laws of both Parties by imprisonment or other form of detention of a period of five years or more
- (xxiv) An attempt or conspiracy to commit, or participation in, any offence for which surrender may be granted under this Agreement
- (xxv) Conspiracy to commit fraud or to defraud

(xxvi) Smuggling

(xxvii) Offences for which fugitive offenders may be surrendered under International Conventions currently applied

(2) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment or detention at least six months remain to be served.

(3) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence on the grounds that the person sought has been convicted of an offence for which surrender may be granted under this Agreement the appropriate authority of the requested Party may refuse to return or to keep such person in custody for such a purpose if it appears to the appropriate authority that the conviction was obtained in his absence.

ARTICLE 3

The Government of X reserves the right to refuse the surrender of its nationals. The Government of Hong Kong reserves the right to refuse the surrender of nationals of the state whose Government is responsible for its foreign affairs.

ARTICLE 4

If the offence for which surrender of a fugitive offender is requested under this Agreement is punishable according to the law of the requesting Party with the death penalty, and if in respect of such an offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, surrender may be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that this penalty will not be imposed or if imposed will not be carried out.

ARTICLE 5

(1) The requested Party may refuse to surrender a fugitive offender for an offence which is regarded by its law as having been committed within the jurisdiction of its courts

(2) If the person sought is being proceeded against or under punishment in the jurisdiction of the requested Party for any other offence, his surrender shall be deferred until the conclusion of the proceedings and the execution of any punishment awarded to him.

(3) A fugitive offender shall not be surrendered if a prosecution is barred or a conviction set aside for any reason provided for under the law of the requesting Party or the requested Party.

ARTICLE 6

A fugitive offender shall not be surrendered if the requested Party has substantial grounds for believing :

- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
- (b) that the request for his return (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
- (c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

ARTICLE 7

- (1) In Hong Kong the request for surrender of a fugitive offender shall be made to the appropriate authority, as may be notified from time to time by one Party to the other.
- (2) The request shall be accompanied by :

- (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity and nationality including, if known, his place of residence;
- (b) a statement and particulars of the offence for which surrender is requested;
- (c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and whether any time limit is imposed on the institution of proceedings, or on the execution of any punishment imposed, for that offence;
- (3) If the request relates to the accused person, it shall also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority of the requesting Party and by such evidence as, according to the law of the requested Party, would justify his committal for trial if the offence had been committed within the jurisdiction of the requested Party.
- (4) If the request relates to a person already convicted and sentenced, it shall also be accompanied by :

- (a) a certificate of the conviction and sentence; and
- (b) a statement showing how much of the sentence has not been carried out.

ARTICLE 8

(1) In urgent cases the person sought may, in accordance with the law of the requested Party, be provisionally arrested on the application of the competent authorities of the requesting Party. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, within the jurisdiction of the requested Party.

(2) An application for provisional arrest may be forwarded through the same channels as a request for surrender or through the International Criminal Police Organisation (Interpol).

(3) The provisional arrest of the person sought shall be terminated upon the expiration of forty-five days from the date of his arrest if the request for his surrender shall not have been received unless the requesting Party can justify continued provisional arrest of the person sought, in which case the period of provisional arrest shall be terminated upon the expiration of a further fifteen days. This provision shall not prevent the re-arrest or surrender of the person sought if the request for his surrender is received subsequently.

ARTICLE 9

(1) If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Agreement, the latter Party shall request the necessary supplementary information and may fix a time-limit for receipt thereof.

(2) If the surrender of a fugitive offender is requested concurrently by one of the Parties and a State or States with whom x or Hong Kong, whichever is being requested, has arrangements for the surrender of fugitive offenders, the requested Party shall make its decision in so far as its law allows having regard to all the circumstances including the provisions in this regard in any Agreements in force between the requested Party and the requesting Parties, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person sought and the possibility of subsequent surrender to another State, and furnish the other Party with information justifying its decision in the event of surrender of the fugitive to another jurisdiction.

ARTICLE 10

(1) The authorities of the requested Party shall admit as evidence, in any proceedings for the surrender of a fugitive offender, a sworn deposition or affirmation taken in the jurisdiction of the requesting Party, any warrant, any copy of any such deposition, affirmation or warrant, and any certificate of a conviction or sentence if it is authenticated :

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(a) in the case of a warrant by being signed, or in the case of any other original document by being certified, by a judge, magistrate or other competent authority of the requesting Party, or in the case of a copy by being so certified to be a true copy of the original; and

(b) either by the oath of some witness or by being sealed with the official seal of the competent authority of the requesting Party;

or in any such other manner as may be permitted by the law of the requested Party.

(2) If in a particular case the requested Party should so request the requesting Party shall make available a duly authenticated translation of any document which has been submitted together with the request for surrender of a fugitive offender. This provision shall not affect the admissibility of an untranslated document furnished by the requesting Party.

ARTICLE 11

(1)(a) The requested Party shall, if asked by the requesting Party, make the necessary arrangements for that Party's legal representation and assistance in any proceedings arising out of a request for the surrender of a fugitive offender.

(b) In the event that the requesting Party arranges its own legal representation and assistance, it shall bear any costs incurred.

(2) Subject to the provisions of paragraph (1)(b) of this Article, expenses incurred in the jurisdiction of the requested Party by reason of surrender shall be borne by that Party.

ARTICLE 12

(1) A fugitive offender shall be surrendered only if the evidence be found sufficient according to the law of the requested Party either to justify the committal for trial of the person sought if the offence of which he is accused had been committed in the territory of the requested Party or to prove that he is the identical person convicted by the courts of the requesting Party.

(2) If a fugitive offender is to be surrendered, the person sought shall be sent by the authorities of the requested Party to such convenient place of departure within that Party's jurisdiction as the requesting Party shall indicate.

(3) Subject to the provisions of paragraph (4) of this Article, if the requesting Party does not take custody of the person claimed on the date agreed by the two Parties, he shall be released on the expiry of thirty days thereafter and the requested Party may subsequently refuse to surrender him for the same offence.

(4) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be surrendered, it shall notify the other Party. In that case, the two Parties shall agree a new date for surrender and the provisions of paragraph (3) of this Article shall apply.

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ARTICLE 13

(1) When a request for surrender of a fugitive offender is granted the requested Party shall so far as its law allows hand over to the requesting Party all articles, including sums of money,

(a) which may serve as proof of the offence; or

(b) which have been acquired by the person sought as a result of the offence and are in his possession or discovered subsequently.

(2) If the articles in question are liable to seizure or confiscation within the jurisdiction of the requested Party the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition they are returned.

(3) These provisions shall not prejudice the rights of the requested Party or of any person other than the person sought. When such rights exist the articles shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

ARTICLE 14

A fugitive offender who has been surrendered shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence for any offence committed prior to his surrender other than :

- (a) the offence in respect of which his return is ordered;
- (b) any lesser offence however described disclosed by the facts in respect of which his return was ordered;
- (c) any other offence being an offence for which surrender may be granted under this Agreement in respect of which the requested Party may consent to his being dealt with;

unless he has first had an opportunity to leave the jurisdiction of the Party to which he has been surrendered or he has not done so within forty days of his having been free to leave the jurisdiction or has returned to that jurisdiction having left it.

ARTICLE 15

The surrender of any person sought under the terms of this Agreement will be refused if it appears to the appropriate authority of the requested Party that :

(a) by reason of the trivial nature of the offence of which he is accused or was convicted or

(b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large as the case may be or

(c) because the accusation against him is not made in good faith in the interests of justice or

(d) because there exist valid humanitarian grounds

it would, having regard to all the circumstances, be unjust or oppressive to return him.

- ARTICLE 16

(1) This agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.

(2) Each of the Parties may terminate the Agreement at any time by giving notice to the other through the same channels as a request for the surrender of a fugitive offender. In that event the Agreement shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned, being duly authorised by their respective governments, have signed this Agreement.

Done at, this day of one thousand nine hundred and ninety, in the English, Chinese and languages, each text being equally authentic.