

**Article by Article comparison of the Agreement between  
the Governments of the HKSAR and the Republic of Korea  
for Surrender of Fugitive Offenders (“SFO”)  
and the model agreement on SFO (“model agreement”)**

**PREAMBLE**

The preamble is substantially the same as the model agreement.

**ARTICLE 1 – OBLIGATION TO SURRENDER**

Some drafting changes have been made but the effect is the same as Article 1 of the model agreement. It is substantially the same as articles in other signed agreements such as Article 1 of the HKSAR/Australia Agreement.

**ARTICLE 2 - OFFENCES**

The main change in paragraph 1 is that the list of offences is moved to the Annex to the Agreement at the request of the Republic of Korea. This is only a change in format but not the substance of the agreement.

Paragraph 2(a) is substantially the same as Article 2(4)(a) of the HKSAR/US Agreement, whereas paragraph 2(b) is substantially the same as Article 2(3) of the HKSAR/Australia Agreement.

Paragraph 3 is substantially the same as Article 2(2) of the model agreement.

Paragraph 4 reflects section 5(1)(b) of Fugitive Offenders Ordinance (Cap. 503). It is similar to Article 2(5) of the HKSAR/Portugal Agreement. This paragraph also specifies what supporting documents should be enclosed with the request for surrender.

Paragraph 5 is substantially the same as Article 2(4) of the HKSAR/Australia Agreement.

### **ARTICLE 3 – SURRENDER OF NATIONALS**

Paragraphs 2 and 3 are added to make it clear that the Requesting Party can request the Requested Party to institute proceedings if the latter refuses to surrender its nationals. Similar provisions can be found in Article 3 of the HKSAR/Singapore Agreement and Article 3 of the HKSAR/Philippines Agreement.

### **ARTICLE 4 – DEATH PENALTY**

It is the same as Article 4 of the model agreement

### **ARTICLE 5 – MANDATORY REFUSAL TO SURRENDER**

The signed agreements generally provide for articles dealing with mandatory and discretionary refusal. This article on mandatory refusal is substantially the same as articles in other signed agreements.

Article 5(a) is similar to Article 6(2) of the HKSAR/ Malaysia Agreement and Article 6(2) of the HKSAR/India Agreement.

Paragraph (b) is added as the Korean law requires mandatory refusal in this regard. It is consistent with Article 5(1) and (2) of the model agreement.

Paragraphs (c) and (d) are similar to Article 5(3) of the model agreement.

Paragraph (e) reflects section 5(1)(c) of Cap. 503. It is substantially the same as Article 6(b) and (c) of the model agreement and Article 5(1)(b) of the HKSAR/Canada Agreement.

### **ARTICLE 6 – DISCRETIONARY REFUSAL OF SURRENDER**

This discretionary refusal article comprehends grounds of refusal which are found in other signed agreements. This article is very similar to Article 6 of the HKSAR/Canada Agreement.

## **ARTICLE 7 – POSTPONED OR TEMPORARY SURRENDER**

This Article is similar to Article 5 of the HKSAR/Malaysia Agreement and Article 17 of the HKSAR/US Agreement.

## **ARTICLE 8 – REQUEST AND SUPPORTING DOCUMENTS**

This article is based on Article 7 of the model agreement. Paragraph 1 specifies that the consular channel be used.

Paragraph 3(b) is slightly modified as the concept of “committal for trial” mentioned in Article 7(3) of the model agreement is not known to Korean law. The formulation used simply applies the evidentiary requirements of the Requested Party.

Paragraphs 5 and 6 are substantially the same as Articles 10 and 11 of the HKSAR/Australia Agreement, although in paragraph 5(a) the term “prosecutor” is added at the request of the Koreans.

## **ARTICLE 9 – PROVISIONAL ARREST**

This is based on Article 8 of the model agreement.

In paragraph 2, the reference to the Interpol is deleted as Korean law does not allow requests be sent through the Interpol.

Paragraph 3 is similar to Article 14(1) of the HKSAR/Indonesia Agreement.

## **ARTICLE 10 – SURRENDER BY CONSENT**

It is substantially the same as Article 18 of the HKSAR/US Agreement and Article 18 of the HKSAR/Singapore Agreement.

## **ARTICLE 11 – ADDITIONAL INFORMATION**

Paragraph (1) is the same as Article 9(1) of the model agreement. Provisions similar to the new paragraphs 2 and 3 can be found in Article 13 of the HKSAR/Indonesia Agreement.

## **ARTICLE 12 – CONCURRENT REQUESTS**

It expands Article 9(2) of the model agreement to make it clear that the provisions apply to concurrent requests for the same or different offences and that each requesting jurisdiction must be notified of the decision.

## **ARTICLE 13 – REPRESENTATION AND COSTS**

This article is substantially the same as Article 11 of the model agreement. Paragraph (2), however, makes it clear that translation and escort expenses are to be borne by the Requesting Party; this is consistent with Hong Kong practice. A similar provision can be found in Article 12(2) of the HKSAR/US Agreement.

## **ARTICLE 14 – SURRENDER**

It expands Article 12 of the model agreement, by requiring that reasons must be given for refusals. It is substantially the same as Article 15 of the HKSAR/Canada Agreement.

## **ARTICLE 15 – SURRENDER OF PROPERTY**

It is substantially the same as Article 13 of the model. The word “article” in paragraphs 1-3 is changed to “property” to align with the wording used in paragraph 4. It is also consistent with the wording adopted in sections 8 and 9 of Cap. 503.

Paragraph 4 is substantially the same as Article 16(3) of the HKSAR/Canada Agreement.

## **ARTICLE 16 – RULE OF SPECIALTY**

This Article is based on Article 14 of the model agreement. Paragraph 1(b) is modified in the light of section 5(2)(b) of Cap. 503. Paragraph (2) is substantially the same as Article 19(3) of the HKSAR/Indonesia Agreement.

### **ARTICLE 17 – RE-SURRENDER**

This Article is substantially the same as Article 18 of the HKSAR/Canada Agreement.

### **ARTICLE 18 - TRANSIT**

Most of the signed agreements contain transit provisions. This article is similar to Article 20 of HKSAR/Indonesia Agreement, Article 19 of the HKSAR/US Agreement and Article 20 of the HKSAR/Malaysia Agreement.

### **ARTICLE 19 - CONSULTATION**

Although there is no counterpart in the HKSAR model agreement, it is a useful provision.

### **ARTICLE 20 – ENTRY INTO FORCE AND TERMINATION**

It is substantially the same as Article 16 of the model agreement and provisions in other signed agreements such as Article 21 of the HKSAR/Australia Agreement.

### **ANNEX – DESCRIPTION OF OFFENCES REFERRED TO IN ARTICLE 2**

The list of offences is consistent with the lists in other signed Agreements.