

L.N. 252 of 2006**FUGITIVE OFFENDERS (REPUBLIC OF KOREA) ORDER**

(Made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503))

1. Commencement

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Procedures in Ordinance to apply between Hong Kong and Republic of Korea

In relation to the arrangements for the surrender of fugitive offenders the terms of which are recited in the Schedule, it is directed that the procedures in the Ordinance shall apply as between Hong Kong and the Republic of Korea subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.

SCHEDULE

[s. 2]

**AGREEMENT FOR THE SURRENDER OF FUGITIVE OFFENDERS
BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF
CHINA AND THE GOVERNMENT OF THE
REPUBLIC OF KOREA[#]**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region"), having been duly authorized to conclude this Agreement by the Central People's Government of the People's Republic of China, and the Government of the Republic of Korea (hereinafter referred to as "the Parties"),

Note: [#] The Agreement for the Surrender of Fugitive Offenders between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Korea was done in the Chinese, English and Korean languages, each text being equally authentic. The Korean text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.

Desiring to make provisions for the reciprocal surrender of fugitive offenders,

Affirming their respect for each other's legal system and judicial institutions,

Have agreed as follows:

ARTICLE 1

Obligation to Surrender

The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement, any person who is found in the jurisdiction of the Requested Party and who is wanted by the Requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence referred to in Article 2 of this Agreement.

ARTICLE 2

Offences

1. Surrender of fugitive offenders shall be granted for an offence coming within any of the descriptions of offences specified in the Annex to this Agreement, which shall form an integral part of this Agreement, in so far as the offence 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.
2. In determining whether an offence is against the laws of both Parties:
 - (a) it shall not matter whether the laws of the Parties place the offence within the same category of offence or denominate the offence by the same terminology;
 - (b) the totality of the conduct alleged against the person whose surrender is sought shall be taken into account and it shall not matter whether, under the laws of the Parties, the constituent elements of the offence differ.
3. Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence, a further requirement shall be that a period of imprisonment or detention of at least six (6) months remains to be served.
4. Where the surrender of a fugitive offender is requested for the purpose of carrying out a sentence, the Requested Party may refuse surrender if it appears that the conviction was obtained in his absence and he did not have the opportunity of being tried in his presence, unless he has the opportunity to

have his case retried in his presence. Requests for the surrender of persons convicted in their absence shall be accompanied by the supporting documents referred to in paragraph 3 of Article 8 as well as the supporting documents referred to in paragraph 4 of Article 8.

5. Surrender may be granted pursuant to the provisions of this Agreement in respect of an offence, provided that:

- (a) it was an offence in the Requesting Party at the time of the conduct constituting the offence; and
- (b) the conduct alleged would, if it had taken place in the jurisdiction of the Requested Party at the time of the making of the request for surrender, have constituted an offence against the law in force in the jurisdiction of the Requested Party.

ARTICLE 3

Surrender of Nationals

1. The Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of nationals of the People's Republic of China. The Government of the Republic of Korea reserves the right to refuse the surrender of its nationals.

2. Where the Requested Party exercises this right, the Requesting Party may request that the case be submitted to the authorities of the Requested Party in order that proceedings for prosecution of the person may be considered. That Party shall inform the Requesting Party of any action taken and the outcome of any prosecution.

3. Nationality shall be determined at the time of the commission of the offence for which surrender is requested.

ARTICLE 4

Death Penalty

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 the death penalty will not be imposed or, if imposed, will not be carried out.

ARTICLE 5

Mandatory Refusal of Surrender

Surrender shall not be granted under this Agreement in any of the following circumstances:

- (a) when the Requested Party has substantial grounds for believing that the offence for which surrender is requested is a political offence or an offence connected with a political offence. Reference to a political offence shall not include the following offences:
 - (i) the taking or attempted taking of the life or an attack on the person of a Head of State or Head of Government or a member of the person's immediate family; and
 - (ii) any offence which, by reason of a multilateral international agreement, the Parties must not treat as a political offence or an offence connected with a political offence;
- (b) when the person sought is being prosecuted by the Requested Party for the offence for which the surrender is requested;
- (c) when the person sought has been finally convicted or acquitted by the Requested Party for the offence for which the person's surrender is requested;
- (d) when the prosecution or the punishment for the offence for which surrender is requested would be barred by reasons prescribed under the law of either Party including a law relating to the lapse of time;
- (e) when the Requested Party has substantial grounds for believing that the request for surrender has been presented with a view to prosecuting or punishing the person sought, by reason of race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of those reasons.

ARTICLE 6

Discretionary Refusal of Surrender

Surrender may be refused under this Agreement in any of the following circumstances:

- (a) when the offence for which surrender is sought is regarded under the law of the Requested Party as having been committed in whole or in part within the territory or area of the Requested Party, and in case of such refusal the Requesting Party may request that the case be submitted to the authorities of the Requested Party in order that proceedings for prosecution may be considered;

- (b) when the person sought has been finally acquitted or convicted in a third jurisdiction for the same offence for which surrender is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable;
- (c) when, in exceptional cases, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the surrender would be incompatible with humanitarian considerations; and
- (d) when it appears to the Requested Party that, by reason of the passage of time since the person is alleged to have committed the offence for which surrender is sought or to have become unlawfully at large it would, having regard to all the circumstances, be unjust or oppressive to return him.

ARTICLE 7

Postponed or Temporary Surrender

1. If the person sought is being proceeded against or under punishment in the jurisdiction of the Requested Party for an offence other than that for which the person's surrender is requested, the person's surrender may be deferred until the conclusion of the proceedings and the execution of any punishment awarded to him.
2. If the request for surrender is granted in the case of a person who is being proceeded against or under punishment in the jurisdiction of the Requested Party for an offence other than that for which the person's surrender is requested, the Requested Party may temporarily surrender the person sought to the Requesting Party for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting Party and shall be returned to the Requested Party after the conclusion of the proceedings against that person, in accordance with conditions to be determined between the Parties.

ARTICLE 8

Request and Supporting Documents

1. Requests for surrender shall be made in writing to the competent authority of the Requested Party through the Consulate General of the Republic of Korea in Hong Kong, unless the Parties otherwise agree. The competent authority for the Republic of Korea shall be the Ministry of Justice

and the competent authority for the Hong Kong Special Administrative Region shall be the Department of Justice, unless a different competent authority is notified by either 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 the person's identity and nationality including, if known, his or her whereabouts;
- (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 for it and whether any time limit is imposed on the institution of proceedings, or on the execution of any punishment imposed, for that offence.

3. A request for surrender of a person who is sought for prosecution shall also be accompanied by:

- (a) a warrant of arrest issued by a judge or magistrate of the Requesting Party or a copy of that warrant; and
- (b) such evidence as, according to the law of the Requested Party, would permit a decision to be taken to surrender that person for the offence for which surrender is requested.

4. If the request relates to a person already convicted or sentenced, it shall also be accompanied by:

- (a) a copy of the certificate of the conviction or sentence; and
- (b) (i) if the person was convicted but not sentenced, a statement to that effect by the appropriate court and a copy of the warrant of arrest; or
(ii) if the person was sentenced, a statement that the sentence is enforceable and indicating how much of the sentence has still to be served.

5. Documents supporting a request for surrender shall be admitted in evidence as proof of the facts contained therein if duly authenticated. Documents are duly authenticated if they purport to be:

- (a) signed or certified by a judge, magistrate, prosecutor or an official of the Requesting Party; and
- (b) sealed with the official seal of the competent authority of the Requesting Party.

6. All documents submitted in accordance with this Agreement shall be in or translated into an official language of the Requested Party, unless the Requested Party dispenses with this requirement.

ARTICLE 9

Provisional Arrest

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 authority of the Requesting Party. The application for provisional arrest shall contain:

- (a) a description of the person sought;
- (b) the location of the person sought, if known;
- (c) a brief statement of the facts of the case, including, if possible, the time and location of the offence;
- (d) a description of the laws violated and the sentence prescribed by the law;
- (e) a statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and
- (f) a statement that a request for surrender of the person sought will follow.

2. An application for provisional arrest may be forwarded to the competent authority of the Requested Party by any means affording a record in writing through the same channels as a request for surrender or through direct contact between the competent authorities of both Parties.

3. On receipt of such an application, the Requested Party shall take the necessary steps to secure the arrest of the person sought and the Requesting Party shall be promptly notified of the result of its request.

4. The provisional arrest of the person sought shall be terminated upon the expiration of forty-five (45) days from the date of arrest if the request for surrender has not 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 (15) days. This provision shall not prevent the re-arrest or surrender of the person sought if the request for surrender is received subsequently.

ARTICLE 10

Surrender by Consent

1. If the person sought consents to surrender to the Requesting Party, the Requested Party may surrender the person as expeditiously as possible without further proceedings.

2. To the extent required under the law of the Requested Party, the provisions of Article 16 shall apply to a person surrendered pursuant to this Article.

ARTICLE 11

Additional Information

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 person whose surrender is sought is under arrest and the additional information furnished is not sufficient in accordance with this Agreement or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a fresh request for the surrender of that person.
3. Where the person is released from custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.

ARTICLE 12

Concurrent Requests

1. If the Requested Party receives requests from the other Party and from any other jurisdiction for the surrender of the same person either for the same offence or for different offences, the Requested Party shall determine to which jurisdiction the person is to be surrendered and shall notify each requesting jurisdiction of its decision.
2. In determining to which jurisdiction a person is to be surrendered, the Requested Party shall have regard to all the circumstances including the provisions in this regard in any agreements in force between the Requested Party and the Requesting Party or other jurisdictions, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality and the ordinary place of residence of the person sought, and the possibility of subsequent surrender to another jurisdiction, and shall furnish the other Party with information justifying its decision in the event of surrender of the fugitive to another jurisdiction.

ARTICLE 13

Representation and Costs

1. The Requested Party shall, if asked by the Requesting Party, make the necessary arrangements for the Requesting Party's legal representation and assistance in any proceedings arising out of a request for the surrender of a fugitive offender. In the event that the Requesting Party arranges its own legal representation and assistance, it shall bear any costs incurred.
2. The Requesting Party shall bear the expenses related to the translation of documents and the transportation of the person surrendered from the Requested Party to the Requesting Party. The Requested Party shall pay all other expenses incurred in its jurisdiction by reason of the proceedings.

ARTICLE 14

Surrender

1. The Requested Party shall, as soon as a decision on the request for surrender has been made, communicate that decision to the Requesting Party. Reasons shall be given for any complete or partial refusal of a request for surrender.
2. The Requested Party shall surrender the person sought to the appropriate authorities of the Requesting Party at a mutually convenient location in the jurisdiction of the Requested Party.
3. Subject to the provisions of paragraph 4 of this Article, if the Requesting Party does not take custody of the person sought within the time prescribed by the law of the Requested Party, the person may be released and the Requested Party may subsequently refuse to surrender the person 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 upon a new date for surrender and the provisions of paragraph 3 of this Article shall apply.

ARTICLE 15

Surrender of Property

1. To the extent permitted under the laws of the Requested Party, when a request for surrender of a fugitive offender is granted, the Requested Party shall hand over to the Requesting Party all property, 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 the person's possession or discovered subsequently.
2. If the property in question is liable to seizure or confiscation within the jurisdiction of the Requested Party, that Party may, in connection with pending proceedings, temporarily retain it or hand it over to the Requesting Party on condition it is 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 property shall on request be returned to the Requested Party without charge as soon as possible after the end of the proceedings.
4. The property mentioned in paragraph 1 shall, if the Requesting Party so requests, be handed over to that Party to the extent permitted by the laws of the Requested Party, even if the surrender cannot be carried out due to the death or escape of the person sought.

ARTICLE 16

Rule of Speciality

1. 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 surrender other than:
- (a) the offence in respect of which surrender is granted;
 - (b) an equivalent or lesser offence, however described, based on the facts in respect of which his surrender was granted, provided such offence is one for which he could be surrendered under this Agreement;
 - (c) any other offence being an offence for which surrender may be granted under this Agreement and the Requested Party consents;
- unless that person has first had an opportunity to leave the jurisdiction of the Requesting Party and has not done so within forty (40) days of having been free to do so or has returned voluntarily to that jurisdiction having left it.
2. A Party whose consent is requested under subparagraph (c) of paragraph 1 of this Article may require the submission of any document referred to in Article 8 and any statement made by the surrendered person on the matter.

ARTICLE 17

Re-surrender

1. Where a person has been surrendered to the Requesting Party, that Party shall not surrender the person to any other jurisdiction for an offence committed before that person's surrender unless:
 - (a) the Requested Party consents; or
 - (b) the person has first had an opportunity to leave the jurisdiction of the Requesting Party and has not done so within forty (40) days of having been free to do so or has returned voluntarily to that jurisdiction having left it.
2. A Party whose consent is requested under subparagraph (a) of paragraph 1 of this Article may require the production of the documents submitted by the other jurisdiction in support of its request for surrender.

ARTICLE 18

Transit

1. To the extent permitted by its law, the right to transport through the jurisdiction of one of the Parties a person surrendered to the other Party by a third party may be granted on request made by any means affording a record in writing. The request for transit shall contain a description of the person being transported and a brief statement of the facts of the case. The request for transit may be forwarded to the competent authority of the Requested Party through the same channels as a request for surrender or through direct contact between the competent authorities of both Parties.
2. Permission for the transit of a person surrendered shall include authorization for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the Party of transit in maintaining custody.
3. Where a person is being held in custody pursuant to paragraph 2 of this Article, the Party in whose jurisdiction the person is being held may direct that the person be released if transportation is not continued within a reasonable time.
4. Authorization for transit shall not be required when air transport is to be used and no landing is scheduled in the jurisdiction of the Party of transit. If an unscheduled landing occurs in the jurisdiction of that Party, it may require the other Party to furnish a request for transit as provided in paragraph 1 of this Article. The Party of transit shall, within the limits permitted by its law,

detain the person to be transported until the transportation is continued, provided that the request is received within ninety-six (96) hours of the unscheduled landing.

ARTICLE 19

Consultations

1. The Parties shall, at the request of either Party, promptly hold consultations concerning the interpretation, application or implementation of this Agreement.
2. The competent authorities of the Parties may consult each other directly in connection with the processing of individual cases.

ARTICLE 20

Entry Into Force and Termination

1. This Agreement shall enter into force thirty (30) 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. This Agreement shall apply to requests made after its entry into force regardless of the date of commission of the offence or offences.
3. Either of the Parties may terminate this Agreement at any time by giving notice in writing to the other. In that event, this Agreement shall cease to have effect six (6) months after the receipt of the notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Hong Kong this twenty-sixth day of June 2006 in the Chinese, English and Korean languages, all texts being equally authentic.

ANNEX

Descriptions of Offences referred to in Article 2

- (1) The unlawful taking of human life; assault with intent to commit murder.
- (2) Aiding, abetting, counselling or procuring suicide.

- (3) Maliciously wounding; maiming; inflicting grievous or actual bodily harm; assault occasioning actual bodily harm; threats to kill; intentional or reckless endangering of life whether by means of a weapon, a dangerous substance or otherwise; offences relating to unlawful wounding or injuring.
- (4) Offences of a sexual nature including rape; sexual assault; indecent assault; unlawful sexual acts on children; statutory sexual offences.
- (5) Gross indecency with a child, a mental defective or an unconscious person.
- (6) Kidnapping; abduction; unlawful imprisonment or detention; dealing or trafficking in slaves or other persons; taking a hostage.
- (7) Criminal intimidation.
- (8) Offences against the law relating to dangerous drugs including narcotics and psychotropic substances and precursors and essential chemicals used in the illegal manufacture of narcotic drugs and psychotropic substances and offences related to the proceeds of drug trafficking.
- (9) Obtaining property or pecuniary advantage by deception; theft; robbery; burglary (including breaking and entering) or similar offences; embezzlement; blackmail; extortion; handling or receiving stolen property; false accounting; any other offence in respect of property or fiscal matters involving fraud; any offence against the law relating to unlawful deprivation of property.
- (10) Offences against bankruptcy law or insolvency law.
- (11) Offences against the law relating to companies including offences committed by officers, directors and promoters.
- (12) Offences relating to securities and futures trading.
- (13) Any offence relating to counterfeiting; any offence against the law relating to forgery or uttering what is forged.
- (14) Offences against the laws relating to protection of intellectual property, including copyright, patents, trademarks, designs or trade secrets.
- (15) An offence against the law relating to bribery, corruption, secret commissions and breach of trust.
- (16) Perjury and subornation of perjury.
- (17) Offences relating to the perversion or obstruction of the course of justice.
- (18) Arson; criminal damage or mischief including mischief in relation to computer data.
- (19) An offence against the law relating to firearms.
- (20) An offence against the law relating to explosives.

- (21) An offence against laws relating to environmental pollution or protection of public health.
- (22) Mutiny or any mutinous act committed on board a vessel at sea.
- (23) Piracy involving ships or aircraft.
- (24) Unlawful use, seizure or exercise of control of an aircraft, vessel or other means of transportation.
- (25) Genocide or direct and public incitement to commit genocide.
- (26) Facilitating or permitting the escape of a person from custody.
- (27) An offence against the laws relating to the control of exportation or importation of goods of any type, or the international transfer of funds.
- (28) Smuggling; offences against the laws relating to import and export of prohibited items, including historical and archaeological items.
- (29) Immigration offences including fraudulent acquisition or use of a passport or visa.
- (30) Arranging or facilitating for financial gain, the illegal entry of persons into the jurisdiction of the Requesting Party.
- (31) An offence relating to gambling or lotteries.
- (32) Offences relating to the unlawful termination of pregnancy.
- (33) Stealing, abandoning, exposing or unlawfully detaining a child; any other offences involving the exploitation of children.
- (34) Offences against the laws relating to prostitution and premises kept for the purposes of prostitution.
- (35) Offences involving the unlawful use of computers.
- (36) Offences relating to fiscal matters, taxes or duties, notwithstanding that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty or customs regulation of the same kind as the law of the Requesting Party.
- (37) Offences relating to unlawful escape from custody or flight to avoid prosecution; mutiny in prison.
- (38) Offences relating to women and girls.
- (39) Offences against the law relating to false or misleading descriptions of goods.
- (40) Offences relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement.
- (41) 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.

- (42) Offences for which fugitive offenders may be surrendered under international conventions binding on the Parties; offences created as a result of decisions of international organisations which are binding on the Parties.
- (43) Conspiracy to commit fraud or to defraud.
- (44) Conspiracy to commit, or any type of association to commit, any offence for which surrender may be granted under this Agreement.
- (45) Aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit any offence for which surrender may be granted under this Agreement.
- (46) Any other offence which is punishable under the laws of both Parties by imprisonment or other form of detention for more than one year, or by a more severe penalty, unless surrender for such offence is not permitted by the laws of the Requested Party.

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
14 November 2006

Explanatory Note

This Order applies the procedures for the surrender of fugitive offenders set out in the Fugitive Offenders Ordinance (Cap. 503) as between Hong Kong and the Republic of Korea. The Order is made in consequence of the arrangements for the surrender of fugitive offenders entered into by Hong Kong and the Republic of Korea and signed in Hong Kong on 26 June 2006. The terms of those arrangements are recited in the Schedule to the Order. Those procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms so recited.