

**Article-by-Article Comparison of the  
Agreement between the Government of the HKSAR and the  
Government of Ireland concerning Surrender of Fugitive Offenders  
("SFO") and the Model Agreement on SFO ("model agreement")**

**Preamble**

The preamble is the same as the model agreement.

**Article 1 – Obligation to Surrender**

**Paragraph 1** is substantially the same as Article 1 of the model agreement.

**Paragraph 2** is added at the request of Ireland to reflect the difference in terminology used in their domestic legislation.

**Article 2 - Offences**

**Paragraph (1)** is substantially the same as the model agreement. The offences listed under this paragraph are consistent with the description of extraditable offences listed in Schedule 1 to the Fugitive Offenders Ordinance (Cap. 503).

**Paragraph (2)** follows the similar provisions in the SFO Agreements with Portugal, Australia, Indonesia, Malaysia, the Philippines, the UK and the USA.

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

**Paragraph (4)** adopts similar formulation in the SFO Agreement with Sri Lanka.

**Paragraph (5)** is a useful provision to determine what constitutes an offence according to the law of both Parties. It spells out that the offence must be an offence against the law of both Parties at the time the request is received.

**Paragraph (6)** corresponds to Article 2(3) of the model agreement.

**Article 3 – Surrender of Nationals**

**Paragraph (1)** is the same as Article 3 of the model agreement.

**Paragraph (2)** follows the similar formulations in the SFO Agreements with Australia, India, Malaysia, Canada, New Zealand, the Philippines, Singapore, the UK and the USA.

#### **Article 4 – Basis for Surrender**

This article is substantially the same as Article 12(1) of the model agreement.

#### **Article 5 – Mandatory Refusal of Surrender**

**Paragraph (1)(a)** corresponds to Article 6(a) of the model agreement with the addition of “political offences” at the request of the Ireland. Similar provisions are found in the SFO Agreements with Indonesia and Germany.

**Paragraph (1)(b) and (c)** are substantially the same as Article 6(b) and (c) of the model agreement. Similar formulations are found in the SFO Agreements with New Zealand and Germany.

**Paragraph (2)** is modelled on Article 5(3) of the model agreement with the protection against double jeopardy limited to that in the requested Party only. This is consistent with section 5(1)(e) of Cap. 503. Similar formulation is found in the SFO Agreement with the USA.

**Paragraph (3)** relates to military offences. Similar provisions are found in the SFO Agreements with UK, New Zealand and Singapore.

**Paragraph (4)** corresponds to Article 4 of the model agreement. Similar formulations are found in the SFO Agreements with Portugal and Finland.

#### **Article 6 – Discretionary Refusal of Surrender**

**Paragraph (1)(a)** is substantially the same as Article 15(b) of the model agreement.

**Paragraph (1)(b)** is substantially the same as Article 5(1) of the model agreement.

**Paragraph (1)(c)** follows the similar provisions in the SFO Agreements with Portugal, Indonesia, the Netherlands, the Philippines and New Zealand.

**Paragraph (1)(d)** is substantially the same as Article 15(d) of the model agreement.

Article 15(a) of the model agreement is omitted. Similar omissions are found in the SFO Agreements with Indonesia and Singapore.

Article 15(c) of the model agreement is omitted. Similar omissions are found in the SFO Agreements with Portugal, Australia, Indonesia, the Netherlands, New Zealand and the Philippines.

**Paragraph (2)** is similar to Article 6(1)(b) of the Agreement and corresponds to Article 5(1) of the model agreement but qualified by an additional requirement that proceedings for prosecution are pending.

**Paragraph (3)** relates to double jeopardy in a third jurisdiction. Similar provisions are found in the SFO Agreements with Canada and New Zealand.

### **Article 7 – Postponement of Surrender**

This article is the same as Article 5(2) of the model agreement.

### **Article 8 – The Request and Supporting Documents**

**Paragraphs (1) and (2)** are substantially the same as Article 7(1) of the model agreement. Paragraphs (2)(a) and (b) state the competent authorities of each Party to whom requests shall be made. Similar approach is adopted in the SFO Agreement with Portugal.

**Paragraph (3)** is substantially the same as Article 7(2) of the model agreement. Sub-paragraph (b) elaborates on the types of documents in support of a request. Similar formulations are found in the SFO Agreements with Australia, Portugal, Indonesia, the Philippines and Singapore.

**Paragraphs (4) and (5)** are substantially the same as Articles 7(3) and 7(4) respectively of the model agreement.

### **Article 9 - Authentication**

This article corresponds to Article 10(1) of the model agreement. Certain modifications have been made to better reflect the actual operational requirements of both sides. Similar provisions are found in the SFO Agreements with Australia, India, Indonesia, the Netherlands, the Philippines, New Zealand, Singapore and the UK.

### **Article 10 – Language of Documentation**

This article corresponds to Article 10(2) of the model agreement with some modifications to reflect the practice of both sides. Similar provisions are found in the SFO Agreements with Australia, Canada, Portugal, Indonesia, the Philippines, New Zealand and Singapore.

### **Article 11 – Additional Information**

**Paragraph (1)** is the same as Article 9(1) of the model agreement.

**Paragraphs (2) and (3)** are added to set out the details of the operation of this article. Similar provisions are found in the SFO Agreements with Australia, Indonesia, the Philippines, New Zealand, Singapore and the UK.

### **Article 12 – Provisional Arrest**

This article is substantially the same as Article 8 of the model agreement.

### **Article 13 – Concurrent Requests**

This article is substantially the same as Article 9(2) of the model agreement.

### **Article 14 – Representation and Costs**

**Paragraphs (1) and (3)** are substantially the same as Article 11 of the model agreement.

**Paragraph (2)** is added to provide a mechanism for consultation. Similar formulations are found in the SFO Agreements with Australia, Canada, India, Indonesia, Malaysia, New Zealand, the Philippines, Portugal, Singapore and the UK.

### **Article 15 – Arrangements for Surrender**

**Paragraph (1)** follows the similar provisions in the SFO Agreements with Australia, Canada, Indonesia, New Zealand, Portugal, the Philippines, Singapore, the UK and the USA.

**Paragraphs (2) to (4)** are substantially the same as Article 12(2) to (4) of the model agreement.

### **Article 16 – Transfer of Property**

**Paragraphs (1) and (2)** are substantially the same as Article 13 of the model agreement.

**Paragraph (3)** is a useful provision. Similar provisions are found in the SFO Agreements with Australia, Portugal, Canada, Indonesia, New Zealand and the Philippines.

### **Article 17 – Specialty and Resurrender**

**Paragraph (1)** is substantially the same as Article 14 of the model agreement.

**Paragraph (2)** relates to protection against re-surrender to a third jurisdiction which is consistent with section 17(2) of Cap. 503. Similar provisions are found in the SFO Agreements with Australia, Canada, India, Indonesia, the Netherlands, New Zealand, the Philippines, the UK and the USA.

**Paragraph (3)** follows the similar formulations in the SFO Agreements with Australia, Canada, India, Indonesia, the Netherlands, New Zealand, the Philippines, the UK and the USA.

### **Article 18 – Surrender by Consent**

This article follows the similar provisions in the SFO Agreements with Malaysia, the USA and Singapore.

### **Article 19 – Transit**

This article follows the similar provisions in the SFO Agreements with Indonesia, Malaysia and the USA.

### **Article 20 – Entry into Force, Suspension and Termination**

**Paragraph (1)** is the same as Article 16 of the model agreement.

**Paragraph (2)** follows the similar formulations in the SFO Agreements with Portugal, Australia, Canada, Indonesia, New Zealand, the Philippines, Singapore and the USA.

**Paragraph (3)** corresponds to Article 16(2) of the model agreement with the addition of suspension of agreement as an option. Similar formulations are found in the SFO Agreements with Canada, India, Indonesia, the Netherlands, New Zealand and the UK.

**International Law Division  
Department of Justice  
May 2008**