

**Article-by-Article Comparison of the
Agreement between the Government of the HKSAR and the
Government of Republic of South Africa 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 corresponds with Article 1 of the model agreement.

Paragraph 2 is added at the request of South Africa to make it clear that references to “surrender” in the Agreement mean “extradition” or “extradites” under South African law.

Article 2 - Offences

Paragraph (1) is substantially the same as corresponding Articles in SFO Agreements previously entered into with other jurisdictions (e.g. Article 2 of HKSAR/Australia SFO 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), with the addition of item (47) (similar items to item (47) are included in almost all the signed SFO Agreements).

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

Paragraph (3) adopts similar formulation in the SFO Agreement with the UK and Australia.

Paragraph (4) adopts similar formulation in the SFO Agreement with Australia and Korea.

Paragraph (5) corresponds with Article 2(3) of the model agreement.

Article 3 – Surrender of Nationals

This article is the same as Article 3 of the model agreement.

Article 4 – Death Penalty

Paragraph (1) corresponds with Article 4 of the model agreement.

Paragraph (2) is added at the request of South Africa to underline the obligation of the requesting party not to carry out the death penalty if imposed by its courts, in cases where such an assurance has been given.

Article 5 – Basis for Surrender

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

Article 6 – Refusal of Surrender

Paragraph (1) is substantially the same as Article 6 of the model agreement.

Paragraphs (2)(a) and (b) are substantially the same as Article 15(a) and (b) of the model agreement.

Paragraph (2)(c) is substantially the same as Article 5(1) of the model agreement.

Paragraph 2(d) is added at the request of South Africa. This ground of refusal in relation to Article 14 of the International Covenant on Civil and Political Rights is consistent with the general principle of right to receive a fair trial adopted by the HKSAR.

Paragraph 2(e) is added at the request of South Africa. This ground of refusal is consistent with the humanitarian policy adopted in the HKSAR.

Paragraph (2)(f) is substantially the same as Article 15(d) of the model agreement.

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

Article 7 – Prior Proceedings

Paragraph (1) corresponds with Article 5(3) of the model agreement.

Paragraph (2) is added to make it clear that surrender may be refused if the Requested Party has accepted jurisdiction in respect of the offence.

Article 8 – Postponement and Temporary Surrender

Paragraph (1) corresponds with Article 5(2) of the model agreement.

Paragraphs (2) and (3) are related to temporary surrender which is substantially the same as Article 5 of the SFO Agreement with Malaysia.

Article 9 – The Request and Supporting Documents

This article is substantially the same as Article 7 of the model agreement.

Article 10 - Authentication

This article corresponds with 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, the UK and Ireland.

Article 11 – Language of Documentation

This article corresponds with 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, Singapore and Ireland.

Article 12 – Additional Information

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

Paragraph (2) is 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, the UK and Ireland.

Article 13 – Provisional Arrest

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

Article 14 – Concurrent Requests

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

Article 15 – 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, the UK and Ireland.

Paragraph (4) - The former part of the paragraph in relation to the costs of translation is consistent with and expands on Article 11 of the Agreement on the language of documentation. For the latter part of the paragraph on the conveyance of persons, similar provision can be found in Article 15(2) of the SFO Agreement with New Zealand.

Article 16 – Arrangements for Surrender

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

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

Article 17 – Surrender 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, the Philippines and Ireland.

Article 18 – 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, the USA and Ireland.

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

Article 19 - Waiver

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

Article 20 – Transit

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

Article 21 - Consultation

This article is added at the request of South Africa. A provision to similar (but not identical) effect is found in Article 22 of the SFO Agreement with Indonesia.

Article 22 – 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, the USA and Ireland.

Paragraph (3) corresponds with 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, the UK and Ireland.