

For information

Subcommittee on Fugitive Offenders (South Africa) Order and Mutual Legal Assistance in Criminal Matters (South Africa) Order

Response to issues raised at the Sub-Committee meeting held on 20 May 2010

Purpose

At the Sub-committee meeting held on 20 May 2010, Members requested the Administration to provide supplementary information in respect of the Fugitive Offenders (South Africa) Order (“the Order”). This note provides the information requested by Members.

International Convention

2. The scope of “international convention” is restricted to that provided in item 43 of Schedule 1 of the Fugitive Offenders Ordinance (Cap. 503), i.e. “multi-lateral international conventions” only, and does not include “bilateral agreements”.

Other Offence

3. Item (47) in Article 2(1) is a “catch-all” clause to cover any future amendment to the law of either party which may affect the list of relevant offences. With this “catch-all” clause, re-negotiation to incorporate changes to the list of relevant offences in the Agreement can be avoided. Provision of similar effect can be found in the following Orders: Australia, Netherlands, Philippines, USA, Indonesia, India, Singapore, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland, Germany, Korea and Ireland.

Temporary Surrender

4. Article 8(3) was included at the request of South Africa and is consistent with section 15(3) of Cap. 503. South Africa has the same

understanding in respect of “serving a sentence” and “in custody” as that of Hong Kong.

Transit

5. Article 20(4) was included at the request of South Africa and is consistent with section 20(1) of Cap. 503 which provides that an authorized officer may hold a fugitive in transit for 48 hours, beyond which the CE’s authorization is required to continue to hold the fugitive in custody.

Termination

6. There is no similar provision for terminating the Agreement with immediate effect by mutual consent in other Surrender of Fugitive Offenders (SFO) Agreements entered into by Hong Kong. But since this termination clause can only be effected by mutual consent of both parties, it will not create a less favourable situation than termination clauses in other Agreements.

Article-by-Article Comparison

7. As requested by Members, a list of provisions that are of similar formulation with other fugitive offenders orders is set out at **Annex** (English version only).

May 2010
Security Bureau

**Fugitive Offenders (South Africa) Order
Article-by-Article Comparison**

Article 2

Paragraph (3)

Substantially same formulation in all orders.

Paragraph (4)

Substantially same formulation in Australia, Canada, Philippines, Indonesia, Singapore, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland and Ireland Orders.

Article 6

Paragraph (3)

United Kingdom: “general criminal law” Article 5(1)(b)

New Zealand, Finland, Ireland: substantially same formulation

Article 8

Paragraph (2)(a)

Substantially same as Malaysia Order Article 5(1)

Paragraph (2)(b)

Substantially same as Malaysia Order Article 5(3)

Article 10

Paragraph (1)

Substantially same formulation in the following Orders: Australia, Philippines, Indonesia, India, Singapore, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland, Germany, Ireland

Paragraph (2)

Substantially same formulation in the following Orders: Indonesia, Singapore, Portugal, Sri Lanka, Finland, Ireland

Article 11

Australia, Canada, Philippines, Singapore, New Zealand: “an official language of the requested party, to be specified by the requested Party in each case.”

Indonesia: “an official language of the Requested Party or any other language acceptable to the Requested Party, to be specified by the Requested Party in each case.”

Portugal, Ireland: “an official language of the requested Party.”

Article 12

Paragraph (2)

Australia, Philippines, Indonesia, Singapore, United Kingdom, New Zealand, Portugal, Sri Lanka, Korea, Ireland: same formulation.

Article 15

Paragraph (2)

Australia, Philippines, Indonesia, India, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland, Ireland : same formulation

Paragraph (4) latter part

New Zealand: “The Requesting Party shall bear all subsequent expenses including the costs of transporting the person from the jurisdiction of the Requested Party.”

Article 16

Paragraph (1)

Australia, Canada, Philippines, Indonesia, Singapore, New Zealand, Portugal, Sri Lanka, Finland, Ireland : same formulation

Article 17

Paragraph(3)

Canada, Indonesia, Portugal, Sri Lanka and Ireland: same formulation

Article 18

Paragraph (2)

Australia, Canada, Netherlands, Malaysia, Philippines, Indonesia, India, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland, Germany, Korea and Ireland: same formulation

Paragraph (3)

Netherlands, Indonesia, India, Portugal, Sri Lanka, Germany and Ireland: same formulation

Article 19

USA, Singapore and Ireland: “may surrender as expeditiously as possible”.

“shall, subject to its domestic law, surrender the person as expeditiously as possible” used in Agreement with South Africa at the request of South Africa. Although “shall” is used, but qualified by “subject to its domestic law” therefore no difference in effect.

Article 20

USA, Indonesia and Malaysia: similar formulation, with certain changes to reflect the legal requirements of each party.

Article 22

Paragraph (2)

Australia, Canada, Philippines, Indonesia, Singapore, Portugal, Sri Lanka, Germany, Korea and Ireland: same formulation

Paragraph (3)

“suspension” – Canada, Netherlands, Indonesia, India, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland, Germany and Ireland: same formulation

“immediate termination by mutual consent” – included at the request of South Africa, no other provision in the other Orders but since it is by mutual consent of both parties, it is acceptable.