

**Article by Article Comparison of the Agreement between
Hong Kong SAR and the Czech Republic on
Surrender of Fugitive Offenders (SFO) and the Model Text on SFO**

Title and Preamble

The references to “Government of” have been deleted at the request of the Czech Republic. In the Czech Republic, such Agreements require parliamentary approval and signature by the President. Therefore, the Agreement should be with the Czech Republic and not the Government of the Czech Republic. There are precedents in the agreements with Ukraine and Japan.

The references to “fugitive offender” have been changed to “persons wanted for criminal proceedings” at the request of the Czech Republic. The Czech Republic does not have the concept “fugitive offender” in its law. Neither does it have the concept of “accused and convicted person” (under their law, there is no difference between a sentenced person and a convicted person). Therefore, both sides agreed on “persons wanted for criminal proceedings”. This is broad enough to cover persons wanted for prosecution or for the imposition or enforcement of a sentence (see Article 1).

Article 1: Obligation to Surrender

This is substantially the same as the model text, except that some drafting changes have been made and the reference to any person “being accused or convicted of an offence” has been replaced with “wanted ... for prosecution or for the imposition or enforcement of a sentence”.

Article 2: Central Authorities

This Article is not in the model text but was inserted to be consistent with the provisions in the Agreements for Mutual Legal Assistance in Criminal Matters, and for the Transfer of Sentenced Persons, which were negotiated with the Czech Republic at the same time. The insertion of this fuller article on Central Authorities avoids the need for notification of Central Authorities contemplated by Article 7(1) of the model text, which has been deleted from the Agreement (see Article 8). A similar nomination of Central Authorities in the body of the text itself appears in the agreements with Portugal (9(1)), Germany (8(1)), South Korea (8(1)) and Finland (9(1)).

Article 3: Offences

Article 3(1) & 3(2) represent a departure from the model text where all extraditable offences are listed in the agreement. The alternative formulation was agreed between the HKSAR and the Czech sides after CPG’s approval in this regard was obtained.

Article 3(2) stipulates that the Contracting Parties shall exchange their list of offences, for which surrender may be granted under their respective law, prior to the commencement of the Agreement.

Article 3(3) is the same as Article 2(2) of the model text, except that the reference to “fugitive offender” has been deleted.

Article 3(4) spells out the conduct test for the “double criminality” requirement. A similar provision appears in all other signed SFO agreements.

Article 3(5) clarifies that for the purposes of double criminality it is sufficient that the offence in relation to which the person is wanted was an offence in the requested jurisdiction at the time the request for surrender was made (rather than at the time the offence was committed). There are precedents in earlier agreements with Australia (2(4)), Canada (2(4)), Indonesia (2(4)), Malaysia (2(4)), New Zealand (2(4)), Philippines (2(4)), Singapore (2(4)), UK (2(4)), Portugal (2(4)), Sri Lanka (2(4)), South Korea (2(5)) and Finland (2(4)).

Article 3(6) is substantially the same as Article 2(3) of the model text, except that provision is made to surrender in such circumstances if the person will have the opportunity of being re-tried in his presence. A similar provision appears in the agreements with the Netherlands (2(4)), Indonesia (2(5)), India (2(4)), Ireland (2(6)), Singapore (2(5)), Sri Lanka (2(5)), Portugal (2(5)) and South Korea (2(4)).

Article 4: Surrender of Nationals

Article 4 is the same as Article 3 of the model text.

Article 5: Death Penalty

Article 5 corresponds with Article 4 of the model text.

Article 6: Basis for Surrender

Article 6 corresponds with Article 12(1) of the model text.

Article 7: Refusal or Postponement of Surrender

Article 7(1) paragraphs 1(a), (b) and (c) are the same as the corresponding paragraphs in Article 6 of the model text, except that “sex” has been added to paragraphs (b) and (c) at the request of the Czech Republic. There is no objection. A similar formulation is found in the agreements with New Zealand (6(1)(b)), Ireland (5(1)(c)), Germany (5(2)) and Finland (6(1)(b) and (c)).

Article 7(2) corresponds with Article 5(3) of the model text.

Article 7(3)

Articles 7(3)(a) and (b) are substantially the same as Articles 15(a) and (b) of the model text.

Article 7(3)(c) corresponds with Article 5(1) of the model text.

Article 7(3)(d) was added as it was considered a useful provision by the two sides. There are a number of precedents e.g. Australia (7(d)), Indonesia (8(b)), Netherlands (7(c)), New Zealand (7(1)(c)), Philippines (6(1)(c)), Singapore (6(3)), Sri Lanka (7(d)), Portugal (7(d)), Germany (7(2)(3)) and Finland (7(1)(c)).

Article 7(3)(e) is substantially the same as Article 15(d) of the model text.

Article 15(c) of the model text has not been included. The same ground was also omitted in Hong Kong's agreements with Australia, Indonesia, Netherlands, New Zealand, Philippines, US, Sri Lanka, Portugal, Germany, South Korea and Finland.

Article 7(4) corresponds with Article 5(2) of the model text.

Article 8: The Request and Supporting Documents

Article 8(1) (a), (b) and (c) are substantially the same as Article 7(2)(a), (b) and (c) of the model text. At the request of the Czech Republic, paragraph (b) includes reference to a description of the acts or omissions in relation to the offence together with time and place. This is not objectionable.

Article 8(2) corresponds with Article 7(3) of the model text. The reference to "judge, magistrate or other competent authority" has been replaced with "court or other judicial authority" at the request of the Czech Republic to give them increased flexibility. This is not objectionable.

Article 8(3) corresponds with Article 7(4) of the model text. Sub-paragraph (b) has been added to provide greater clarity. Similar provisions appear in the agreements with Portugal (9(4)(b)), South Korea (8(4)(b)(i)) and Finland (9(4)(a)). A reference to "relevant judgment" has been added to sub-paragraph (a) at the request of the Czech Republic because they do not have certificates of conviction. This is not objectionable.

Article 9: Authentication

This is the equivalent to Article 10(1) of the model text but its wording has been refined to realign with the wording of section 23 of the Fugitive Offenders Ordinance Cap. 503. Precedents can be found in the agreements with the Netherlands (11), Canada (8(5)), Australia (10), Philippines (9(2)), Indonesia (11(1)), India (12(2)), Singapore (9(1)), United Kingdom (11(2)), New Zealand (10(2)), Sri Lanka (10(1)), Portugal (10(1)), Germany (9), South Korea (8(5)) and Finland (10(2)).

Article 10: Language of Documentation

This is a new article. It specifies the languages in which requests and documents may be submitted to the respective Parties. Similar formulation can be found in the agreement with Finland (11).

Article 11: Additional Information

Article 11(1) is the same as Article 9(1) of the model text, save that express provision was made for extending the time limit, at the request of the Czech Republic. This is not objectionable.

Article 11(2) has been added to ensure release of the person if additional information is not received. Similar provisions appear in the agreements with Australia (13(2)), Indonesia (13(2)), Malaysia (9(2)), New Zealand (13(2)), Philippines (12(2)), Singapore (11(2)), Portugal (12(2)), UK (10(2)) and Sri Lanka (11(2)), South Korea (11(2)) and Finland (13(2)).

Article 12: Provisional Arrest

Article 12(1) is substantially the same as the first part of Article 8(1) of the model text. The second sentence was added because the Czech Republic wanted to be promptly informed of the result of the request.

Article 12(2) is the equivalent of the second part of Article 8(1) of the model text. The Czech Republic wanted an actual copy of the warrant of arrest rather than a statement concerning its existence. This is not objectionable.

Article 12(3) is substantially the same as Article 8(2) of the model text.

Article 12(4) corresponds with Article 8(3) of the model text, save that the 45 day period with a 15 day extension for receipt of the request has been replaced with a 60 day period. There are precedents in our other SFO Agreements, for example, with the Netherlands (9(4)), Canada (11(4)), USA (10(5)), Indonesia (14(4)), India (10(3)), UK (9(3)), Singapore (12(4)), New Zealand (12(4)), Sri Lanka (12(4)), Portugal (13(4)) and Germany (10(4)).

Article 13: Concurrent Requests

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

Article 14: Representation and Costs

Article 14(1) is substantially the same as Article 11(1) of the model text.

Article 14(2) has been added to enable the Parties to consult on how extraordinary expenses should be met. This is a useful clause. There are precedents in agreements with Australia (15(2)), Canada (13(2)), Indonesia (16(3)), Malaysia (13(1)(c)), New Zealand (15(3)), Philippines (14(2)), Singapore (14(2)), UK (14(2)), Portugal (15(2)), Sri Lanka (14(2)) and Finland (15(3)).

Article 14(3) is substantially the same as Article 11(2) of the model text.

Article 15: Arrangements for Surrender

Article 15(1) has been added to require communication of the decision on a request to the requesting party. There are similar formulations in earlier agreements with Australia (16(1)), Philippines (15(1)), Indonesia (17(1)), Singapore (15(1)), Portugal (16(1)) and Sri Lanka (15(1)).

Article 15(2) is substantially the same as Article 12(2) of the model text.

Article 15(3)

A new requirement of not removing the person within 14 days from the date of communication of the decision for surrender to the requesting party was added at the suggestion of the Czech Republic. The requirement is added based on practical difficulties in making administrative arrangements for flights, transits and escorts within a short period of time. This can be accommodated under our law.

The provision regarding continued detention for 30 more days specified in Article 12(3) of the model text was omitted. Precedents can be found in agreements with Portugal, Australia, Indonesia, New Zealand, Malaysia, Philippines, Singapore, UK, USA, and Sri Lanka.

Article 15(4) is substantially the same as Article 12 (4) of the model text.

Article 16: Surrender of Property

Article 16(1) corresponds with Articles 13(1) to (2) of the model text.

Article 16(2) corresponds with Article 13(3) of the model text.

Article 16(3) was added to cater for a situation where a fugitive has escaped or died. This is a useful provision. Similar formulations can be found in agreements with Australia (17(4)), Portugal (17(3)), New Zealand (17(3)), Canada (16(3)), Indonesia (18(3)), Philippines (16(4)), Sri Lanka (16(3)), South Korea (15(4)) and Finland (17(4)).

Article 17: Specialty and Resurrender

Article 17(1) is substantially the same of Article 14 of the model text.

Article 17(2) was included to reflect the legal requirements under Hong Kong's law, namely sections 5(5) and 17(2) of the Fugitive Offender Ordinance Cap. 503. Section 5(5) provides that a person shall not be surrendered to a place outside Hong Kong unless that person will have "no resurrender" protection. Section 17(2) gives "no resurrender" protection to a person who is surrendered to Hong Kong. Resurrender provisions have been included in all signed agreements with Hong Kong.

Article 17(3) was added to clarify that the requested party may request additional information in deciding whether to give consent. There is no objection. There are precedents in agreements with New Zealand (18(2) and (19(2))), Portugal (18(3)), Australia (18(2) and (19(2))), Canada (17(2) and (18(2))), India (16(3)), Indonesia (19(3)), Philippines (17(2) and (18(2))), Sri Lanka (17(3)), Germany (16(2) and (17(2))), South Korea (16(2) and (17(2))) and Finland (18(2) and (19(2))).

Article 18: Transit

This was added to cater for cases of transit. It is a useful clause. Precedents can be found in SFO agreements with Australia (20), Canada (19), Indonesia (20), Malaysia (20), New Zealand (20), Philippines (19), USA (19), Sri Lanka (18), Germany (18), South Korea (18) and Finland (21).

Article 19: Entry into Force and Termination

Article 19(1) is the same as Article 16(1) of the model text.

Article 19(2) was added to elaborate on the temporal application of the agreement (see precedents in agreements with Portugal (19(2)), Australia (21(2)), Canada (20(2)), Indonesia (21(2)), New Zealand (21(2)), Philippines (20(2)), Singapore (19(2)), USA (20(4)), Sri Lanka (19(2)), Germany (23(2)), South Korea (20(2)) and Finland (22(2))).

Article 19(3) is substantially the same as Article 16(2) of the model text.

Authentic Texts

As the negotiation was conducted in English, it was agreed that in case of divergence over different texts of the Agreement, English shall prevail. Precedent can be found in the agreement with Finland.