

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

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8 November 2013

Miss Carrie Wong
Assistant Legal Advisor
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong
Dear Miss Wong,

Fugitive Offenders (Czech Republic) Order (L.N.166)

I refer to your letters on the captioned subject dated 4 November 2013 and 5 November 2013 respectively. The Administration's replies to the questions in your letter are set out below.

Section 3(1)(b) of Fugitive Offenders Ordinance (Cap.503) provides that an order may specify to which relevant enactment specified in the order is to be repealed or amended. Section 3(10) provides that any relevant enactment specified in an order is repealed or amended with effect on the day on which the order comes into operation.

Repeal or amend any *“relevant enactment”*

Sections 3(1)(b) and (10) together provide for the specific mechanism to repeal or amend any “relevant enactment”. “Relevant enactment” is defined under section 3(16) to mean any Ordinance relating to the surrender of fugitive offenders and any imperial enactment.

History of section 3, Cap. 503

The legislative history of Cap.503 shows that some sections and schedules relevant to this mechanism had been repealed or replaced in 1998.

“Any Ordinance relating to the surrender of fugitive offenders”

The repealed sections 3(11) and section 28 of Cap.503 set out the Ordinances relating to the surrender of fugitive offenders that had been repealed (The Extradition (Hong Kong) Ordinance, Cap.236) and amended (as consequential amendments under the omitted Schedule 3) under section 3.

“imperial enactment”

“Imperial enactment” under “relevant enactment” was originally defined in section 3(16) of the 1997 version of Cap.503 as follows:

- (i) so far as it is part of the law of Hong Kong;
- (ii) relating to the surrender of fugitive offenders; and
- (iii) specified in Schedule 2.

The repealed Schedule 2 listed out the imperial enactments that might be amended or repealed under section 3 as follows:

1. The Extradition (Netherlands) Order 1899;
2. The Extradition (Genocide) Order 1970;
3. The United States of America (Extradition) Order 1976;
4. The United States of America (Extradition) (Amendment) Order 1986;
5. The Suppression of Terrorism Act 1978 (Application of Provisions) (United States of America) Order 1986;
6. The Fugitive Offenders (Designated Commonwealth Countries) Order;
7. The United States of America (Extradition) (Amendment) Order 1987;
8. The Suppression of Terrorism Act 1978 (Hong Kong) Order.

As an example, items 3, 4 and 5 above were repealed or amended by the Fugitive Offenders (United States of America) Order. Please see section 3 and Schedule 2 of the Fugitive Offenders (United States of America) Order which set out the consequential amendments to relevant enactments relating to the surrender of fugitive offenders with the United States of America.

Purpose of section 3 of Cap.503

From the above history, it is clear that the original purpose of section 3(1)(b) together with section 3(10) of Cap.503 was to provide for repeal and/or amendment of relevant Ordinances and UK enactments related to surrender of fugitive offenders that were part of the law of Hong Kong before 1997 and had been replaced by the new Cap 503. This purpose is completely different from that of section 4(1) of Mutual Legal Assistance in Criminal Matters Ordinance (Cap.525), which provides for the specification of modifications to the Ordinance specified in the order (as in Schedule 2 of the Mutual Legal Assistance in Criminal Matters (Spain) and (Czech Republic) Orders).

Section 3(9) of Cap.503 provides that the Chief Executive in Council shall not make an order unless the arrangements for the surrender of fugitive offenders to which the order relates are substantially in conformity with the provisions of Cap.503. The Fugitive Offenders (Czech Republic) Order does so conform. The model agreement and an article-by-article comparison of the Fugitive Offenders (Czech Republic) Order with the model agreement are enclosed at Annex A and Annex B respectively for your reference.

Yours sincerely,



(Huggin Tang)
for Secretary for Security

c.c.: Department of Justice (attn.: Ms. Elizabeth LIU, SGC/ILD)

Annex A to LC Paper No. CB(2)339/13-14(03)

AGREEMENT FOR THE SURRENDER OF FUGITIVE OFFENDERS

The Government of Hong Kong,
 having been duly authorised to conclude
 this agreement by the sovereign government
 which is responsible for its foreign affairs,
 and the Government of,
 Desiring to make provisions
 for the reciprocal surrender of fugitive offenders;
 Have agreed as follows:-

ARTICLE 1

The Parties agree to surrender to each other,
 subject to the provisions laid down in this Agreement, any
 person who, being accused or convicted of an offence under
 Article 2 committed within the jurisdiction of the one
 Party, is found within the jurisdiction of the other Party.

ARTICLE 2

(1) Surrender of fugitive offenders shall be granted for an offence coming within any of the following descriptions of offences in so far as it 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 :

- (i) Murder or manslaughter
- (ii) Aiding, abetting, counselling or procuring suicide
- (iii) Maliciously wounding; inflicting grievous bodily harm; assault occasioning actual bodily harm
- (iv) Rape
- (v) Indecent assault
- (vi) Gross indecency with a child
- (vii) Kidnapping; abduction; false imprisonment
- (viii) Offences against the law relating to dangerous drugs

- (ix) Obtaining property or pecuniary advantage by deception; theft; robbery; burglary; blackmail; handling stolen goods
- (x) Offences against bankruptcy law
- (xi) False statements by company directors and other officers
- (xii) Any offence relating to counterfeiting of coins; any offence against the law relating to forgery; false accounting
- (xiii) Bribery
- (xiv) Perjury and subornation of perjury; attempting to pervert the course of justice
- (xv) Criminal damage, including arson
- (xvi) An offence against the law relating to firearms
- (xvii) An offence against the law relating to explosives
- (xviii) Sinking or destroying a vessel at sea; assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm;

revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

- (xix) Piracy, involving ships or aircraft, according to international law
- (xx) Dealing in slaves
- (xxi) Genocide or conspiracy or direct and public incitement to commit genocide
- (xxii) Unlawful seizure or exercise of control of an aircraft
- (xxiii) 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 and which is punishable according to the laws of both Parties by imprisonment or other form of detention of a period of five years or more
- (xxiv) An attempt or conspiracy to commit, or participation in, any offence for which surrender may be granted under this Agreement
- (xxv) Conspiracy to commit fraud or to defraud

(xxvi) Smuggling

(xxvii) Offences for which fugitive offenders may be surrendered under International Conventions currently applied

(2) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment or detention at least six months remain to be served.

(3) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence on the grounds that the person sought has been convicted of an offence for which surrender may be granted under this Agreement the appropriate authority of the requested Party may refuse to return or to keep such person in custody for such a purpose if it appears to the appropriate authority that the conviction was obtained in his absence.

ARTICLE 3

The Government of X reserves the right to refuse the surrender of its nationals. The Government of Hong Kong reserves the right to refuse the surrender of nationals of the state whose Government is responsible for its foreign affairs.

ARTICLE 4

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 this penalty will not be imposed or if imposed will not be carried out.

ARTICLE 5

(1) The requested Party may refuse to surrender a fugitive offender for an offence which is regarded by its law as having been committed within the jurisdiction of its courts

(2) If the person sought is being proceeded against or under punishment in the jurisdiction of the requested Party for any other offence, his surrender shall be deferred until the conclusion of the proceedings and the execution of any punishment awarded to him.

(3) A fugitive offender shall not be surrendered if a prosecution is barred or a conviction set aside for any reason provided for under the law of the requesting Party or the requested Party.

ARTICLE 6

A fugitive offender shall not be surrendered if the requested Party has substantial grounds for believing :

- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
- (b) that the request for his return (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
- (c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

ARTICLE 7

(1) In Hong Kong the request for surrender of a fugitive offender shall be made to the appropriate authority, as may be notified from time to time by one 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 his identity and nationality including, if known, his place of residence;
- (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 therefor and whether any time limit is imposed on the institution of proceedings, or on the execution of any punishment imposed, for that offence;

(3) If the request relates to the accused person, it shall also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority of the requesting Party and by such evidence as, according to the law of the requested Party, would justify his committal for trial if the offence had been committed within the jurisdiction of the requested Party.

(4) If the request relates to a person already convicted and sentenced, it shall also be accompanied by :

- (a) a certificate of the conviction and sentence; and
- (b) a statement showing how much of the sentence has not been carried out.

ARTICLE 8

(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 authorities of the requesting Party. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, within the jurisdiction of the requested Party.

(2) An application for provisional arrest may be forwarded through the same channels as a request for surrender or through the International Criminal Police Organisation (Interpol).

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

ARTICLE 9

(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 surrender of a fugitive offender is requested concurrently by one of the Parties and a State or States with whom x or Hong Kong, whichever is being requested, has arrangements for the surrender of fugitive offenders, the requested Party shall make its decision in so far as its law allows having regard to all the circumstances including the provisions in this regard in any Agreements in force between the requested Party and the requesting Parties, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person sought and the possibility of subsequent surrender to another State, and furnish the other Party with information justifying its decision in the event of surrender of the fugitive to another jurisdiction.

ARTICLE 10

(1) The authorities of the requested Party shall admit as evidence, in any proceedings for the surrender of a fugitive offender, a sworn deposition or affirmation taken in the jurisdiction of the requesting Party, any warrant, any copy of any such deposition, affirmation or warrant, and any certificate of a conviction or sentence if it is authenticated :

(a) in the case of a warrant by being signed, or in the case of any other original document by being certified, by a judge, magistrate or other competent authority of the requesting Party, or in the case of a copy by being so certified to be a true copy of the original; and

(b) either by the oath of some witness or by being sealed with the official seal of the competent authority of the requesting Party;

or in any such other manner as may be permitted by the law of the requested Party.

(2) If in a particular case the requested Party should so request the requesting Party shall make available a duly authenticated translation of any document which has been submitted together with the request for surrender of a fugitive offender. This provision shall not affect the admissibility of an untranslated document furnished by the requesting Party.

ARTICLE 11

(1)(a) The requested Party shall, if asked by the requesting Party, make the necessary arrangements for that Party's legal representation and assistance in any proceedings arising out of a request for the surrender of a fugitive offender.

(b) In the event that the requesting Party arranges its own legal representation and assistance, it shall bear any costs incurred.

(2) Subject to the provisions of paragraph (1)(b) of this Article, expenses incurred in the jurisdiction of the requested Party by reason of surrender shall be borne by that Party.

ARTICLE 12

(1) A fugitive offender shall be surrendered only if the evidence be found sufficient according to the law of the requested Party either to justify the committal for trial of the person sought if the offence of which he is accused had been committed in the territory of the requested Party or to prove that he is the identical person convicted by the courts of the requesting Party.

(2) If a fugitive offender is to be surrendered, the person sought shall be sent by the authorities of the requested Party to such convenient place of departure within that Party's jurisdiction as the requesting Party shall indicate.

(3) Subject to the provisions of paragraph (4) of this Article, if the requesting Party does not take custody of the person claimed on the date agreed by the two Parties, he shall be released on the expiry of thirty days thereafter and the requested Party may subsequently refuse to surrender him 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 a new date for surrender and the provisions of paragraph (3) of this Article shall apply.

ARTICLE 13

(1) When a request for surrender of a fugitive offender is granted the requested Party shall so far as its law allows hand over to the requesting Party all articles, 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 his possession or discovered subsequently.

(2) If the articles in question are liable to seizure or confiscation within the jurisdiction of the requested Party the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition they are 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 articles shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

ARTICLE 14

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 his surrender other than :

- (a) the offence in respect of which his return is ordered;
- (b) any lesser offence however described disclosed by the facts in respect of which his return was ordered;
- (c) any other offence being an offence for which surrender may be granted under this Agreement in respect of which the requested Party may consent to his being dealt with;

unless he has first had an opportunity to leave the jurisdiction of the Party to which he has been surrendered or he has not done so within forty days of his having been free to leave the jurisdiction or has returned to that jurisdiction having left it.

ARTICLE 15

The surrender of any person sought under the terms of this Agreement will be refused if it appears to the appropriate authority of the requested Party that :

- (a) by reason of the trivial nature of the offence of which he is accused or was convicted or
- (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large as the case may be or
- (c) because the accusation against him is not made in good faith in the interests of justice or
- (d) because there exist valid humanitarian grounds

it would, having regard to all the circumstances, be unjust or oppressive to return him.

ARTICLE 16

(1) This agreement shall enter into force thirty 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) Each of the Parties may terminate the Agreement at any time by giving notice to the other through the same channels as a request for the surrender of a fugitive offender. In that event the Agreement shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned, being duly authorised by their respective governments, have signed this Agreement.

Done at, this day of one thousand nine hundred and ninety, in the English, Chinese and languages, each text being equally authentic.

**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.