

## Legislative Council Panel on Security

### Bilateral Agreements on Surrender of Fugitive Offenders Article on Offences

#### Purpose

This note outlines an alternative formulation of the article in bilateral agreements on surrender of fugitive offenders (SFO) concerning offences in respect of which surrender can be granted.

#### Background

2. Hong Kong is committed to playing a full part in international cooperation in law enforcement and has embarked on a programme to establish a network of bilateral agreements on SFO. Implementation of these agreements is taken forward in accordance with the Fugitive Offenders Ordinance (the Ordinance) (Cap. 503). Each agreement has to be covered by an order made by the Chief Executive in Council and approved by the Legislative Council under section 3. Pursuant to section 4 of the Ordinance, a person in Hong Kong who is wanted in a place with which Hong Kong has an SFO agreement may be arrested and surrendered to that place for the prosecution or imposition of sentence in respect of a “relevant offence”. A “relevant offence” is conduct which, if it had occurred in Hong Kong would constitute an offence – (i) coming within any of the descriptions specified in Schedule 1 to the Ordinance and (ii) punishable in Hong Kong with imprisonment for more than 12 months, or any greater punishment. Schedule 1 to the Ordinance in turn lists 46 categories of offence.

3. Hitherto, for the purpose of negotiations with prospective SFO agreement partners, we have adopted the “list” approach by seeking to list in the agreements some or all of the 46 categories of offence in Schedule 1 to the Ordinance as offences for which surrender is to be granted. A copy of the relevant provisions in the model text is at **Annex A**.

4. As of end April 2005, Hong Kong has signed SFO Agreements with 13 foreign jurisdictions. These jurisdictions are Australia, Canada, India, Indonesia, Malaysia, The Netherlands, New Zealand, Philippines, Portugal, Singapore, Sri Lanka, United Kingdom and the United States of America. The “list” approach mentioned in paragraph 3 above has been adopted in each of these Agreements.

5. However, a number of our prospective partners, particularly the European countries such as France and Switzerland, have indicated difficulties in agreeing to adopt the “list” approach, as the approach is not compatible with their domestic law and practice which generally permit extradition in respect of all criminal offences with a penalty above a certain threshold. Negotiations with these countries have stalled as a result.

### **Proposed alternative formulation**

6. It is in Hong Kong’s interest to be able to establish a wider network of SFO partners for the purpose of combating crime. We consider that an alternative formulation should be possible to both address the concerns mentioned in paragraph 5 above and satisfy the requirements of the Ordinance. The proposed alternative formulation is set out at **Annex B** and explained below.

7. Paragraph (1) of the proposed article will oblige the Parties to the Agreement to grant surrender in respect of offences for which surrender is permitted under their domestic law. As far as Hong Kong is concerned, surrender of fugitives will only be permitted for “relevant offences” as defined in section 2(2) of the Ordinance, i.e. the categories of offence specified in Schedule 1 to the Ordinance which carry more than 12 months’ imprisonment. Paragraph (1) will therefore not change the categories of offence for which surrender may be granted under the Ordinance.

8. Paragraph (2) of the proposed article complements paragraph (1) by ensuring that the Parties to the Agreement shall provide each other with a list of the offences for which surrender will be granted. For Hong Kong’s part the list of categories of offence in Schedule 1 to the Ordinance will be provided to the other Party. It can therefore be seen that although such offences will not be listed in the SFO Agreements, both Hong Kong and its partners will be clearly aware of the list of offences for which SFO is permitted.

9. The proposed new formulation will not change Hong Kong’s obligation with respect to SFO. The requirements under the Ordinance will invariably continue to be complied with. It is a mere adjustment of the approach to facilitate our negotiations with foreign jurisdictions, for the purpose of extending our partnership in bringing fugitive offenders to justice. The list of categories of offences for which surrender may be granted under the Ordinance will be preserved, although it is not explicitly specified in the SFO Agreements.

## **Way Forward**

10. We intend to adopt either the list approach or the alternative approach set out in paragraphs 6 to 9 above in our future negotiations with prospective SFO agreement partners, depending on the circumstances of each individual case. Any future SFO Agreement concluded will only be implemented by an order made by the Chief Executive in Council and approved by the Legislative Council in accordance with section 3 of the Ordinance.

**Security Bureau  
Department of Justice**

**April 2005**

**Provisions in the Model Text regarding  
Offences for which Surrender is to be granted**

OFFENCES

(1) Surrender 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 :

1. Murder or manslaughter, including criminal negligence causing death; culpable homicide; assault with intent to commit murder
2. Aiding, abetting, counselling or procuring suicide
3. Maliciously wounding; maiming; inflicting grievous or actual bodily harm; assault occasioning actual bodily harm; threats to kill; intentional or reckless endangering of life whether by means of a weapon, a dangerous substance or otherwise; offences relating to unlawful wounding or injuring
4. Offences of a sexual nature including rape; sexual assault; indecent assault; unlawful sexual acts on children; statutory sexual offences
5. Gross indecency with a child, a mental defective or an unconscious person
6. Kidnapping; abduction; false imprisonment; unlawful confinement; dealing or trafficking in slaves or other persons; taking a hostage
7. Criminal intimidation
8. Offences against the law relating to dangerous drugs including narcotics, psychotropic substances, precursors and essential chemicals used in the illegal manufacture of narcotics and psychotropic substances; offences relating to the proceeds of drug trafficking
9. Obtaining property or pecuniary advantage by deception; theft; robbery; burglary (including breaking and entering); embezzlement; blackmail; extortion; unlawful handling or receiving of property; false accounting; any other offence in respect of property or fiscal matters involving

fraud; any offence against the law relating to unlawful deprivation of property

10. Offences against bankruptcy law or insolvency law
11. Offences against the law relating to companies including offences committed by officers, directors and promoters
12. Offences relating to securities and futures trading
13. Offences relating to counterfeiting; offences against the law relating to forgery or uttering what is forged
14. Offences against the law relating to protection of intellectual property, copyrights, patents or trademarks
15. Offences against the law relating to bribery, corruption, secret commissions and breach of trust
16. Perjury and subornation of perjury
17. Offence relating to the perversion or obstruction of the course of justice
18. Arson; criminal damage or mischief including mischief in relation to computer data
19. Offences against the law relating to firearms
20. Offences against the law relating to explosives
21. Offences against the law relating to environmental pollution or protection of public health
22. Mutiny or any mutinous act committed on board a vessel at sea
23. Piracy involving ships or aircraft
24. Unlawful seizure or exercise of control of an aircraft or other means of transportation
25. Genocide or direct and public incitement to commit genocide
26. Facilitating or permitting the escape of a person from custody

27. Offences against the law relating to the control of exportation or importation of goods of any type, or the international transfer of funds
28. Smuggling; offences against the law relating to import and export of prohibited items, including historical and archaeological items
29. Immigration offences including fraudulent acquisition or use of a passport or visa
30. Arranging or facilitating for financial gain, the illegal entry of persons into a jurisdiction
31. Offences relating to gambling or lotteries
32. Offences relating to the unlawful termination of pregnancy
33. Stealing, abandoning, exposing or unlawfully detaining a child; any other offences involving the exploitation of children
34. Offences against the law relating to prostitution and premises kept for the purposes of prostitution
35. Offences involving the unlawful use of computers
36. Offences relating to fiscal matters, taxes or duties
37. Offences relating to unlawful escape from custody; mutiny in prison
38. Bigamy
39. Offences relating to women and girls
40. Offences against the law relating to false or misleading trade descriptions
41. Offences relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement
42. 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

43. Offences for which persons may be surrendered under multi-lateral international conventions; offences created as a result of decisions of international organizations
44. Conspiracy to commit fraud or to defraud
45. Conspiracy to commit, or any type of association to commit, any offence for which surrender may be granted under this Agreement
46. Aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit any offence for which surrender may be granted under this Agreement

**The Proposed Alternative Formulation**

OFFENCES

- (1) Surrender shall be granted for an offence:
  - (a) which is punishable under the laws of both Contracting Parties by imprisonment or other form of detention for more than one year or a more severe penalty, and
  - (b) for which surrender is permitted by the law of the Requested Party.
- (2) Each Contracting Party shall provide to the other a list of the offences for which surrender may be granted under its law. Each Contracting Party shall provide such a list no later than the date on which it notifies the other Contracting Party that its requirements for the entry into force of this Agreement have been complied with. Each Contracting Party shall promptly inform the other of any subsequent changes to its list.