

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

Title and Preamble

The title and the preamble are identical to the model text.

Article 1

Obligation to surrender

This article is substantially the same as the model text with some drafting changes. (Precedents in earlier agreements e.g. Australia, Canada, India, Indonesia, The Netherlands, New Zealand, The Philippines, UK, USA, Sri Lanka and Portugal).

Article 2

Offences

Article 2(1)

The chapeau of this article is substantially the same as the model text but has been expanded to highlight that the offence must be one for which surrender may be granted under the law of the requested Party. This provision was modelled on a precedent in Hong Kong's SFO agreement with New Zealand.

Significant variations of offences itemized under paragraph (1) of this Article from those in the model text are:-

- (1) The following items in the model text have been omitted:
 - Item (ii) (aiding, abetting, counselling or procuring suicide) has been omitted at the request of the Finnish side as this is

not an offence in Finland. It was also omitted in the HK / Singapore SFO agreement;

- Item (xvii) (an offence against the law relating to firearms); this was also omitted in Singapore and New Zealand SFO agreements;
- Item (xviii) (an offence against the law relating to explosives); this was also omitted in Singapore and New Zealand SFO agreements;
- Item (xix) (sinking or destroying a vessel at sea etc.); this was also omitted in Australia, New Zealand and Canada agreements;
- Item (xxxi) (genocide); this was also omitted in Canada, Indonesia, Malaysia, New Zealand and Singapore SFO agreements;
- Item (xxii) (unlawful seizure or exercise of control of an aircraft); this was also omitted in the New Zealand SFO agreement;
- item (xxiii) (impeding the arrest or prosecution of a person); this was also omitted in Australia, Canada, The Netherlands, New Zealand, Philippines and Singapore SFO agreements; and
- item (xxv) (smuggling); this was also omitted in the New Zealand SFO agreement.

- (2) The following new items have been added :
- Item (o) (stealing or abandoning a child); there are precedents in agreements with New Zealand, Australia, Portugal and Singapore;
 - Item (p) (procuring sexual intercourse); there is a precedent in the New Zealand SFO agreement;
 - Item (q) (offences relating to fiscal matters); precedents in earlier agreements include Australia, India, Indonesia, Malaysia, Philippines, UK, USA, Portugal and Sri Lanka;
 - Item (r) (offences relating to laundering of proceeds of crime); there are many precedents e.g. Australia, Portugal, Canada, India, Indonesia, Sri Lanka and USA;
 - Item (u) (any other offence for which surrender may be granted in accordance with the laws of both Parties); the wrap-up provision in sub-paragraph (u) is useful and can be found in earlier agreements with e.g. Australia, India, Indonesia, The Netherlands, New Zealand, Portugal, The Philippines, Singapore, UK, Sri Lanka and USA.
- (3) Items (iv), (v) and (vi) (rape, indecent assault and gross indecency with a child respectively) of the model text has been grouped under item (c) of this paragraph under a general heading “offences of a sexual nature”. (Precedents in SFO agreements with the Philippines, USA, Australia and New Zealand).

- (4) Items (ix) and (x) of the model text appear as items (f) and (g) in this Article into which certain suggestions by the Finnish side have been incorporated. There are also some drafting changes in these sub-paragraphs.

Article 2(2)

This paragraph is the same as the model text.

Article 2(3)

This paragraph spells out the conduct test for the “double criminality” requirement and was modelled on Article 2(3) of the HK / New Zealand SFO agreement. Similar formulations of the conduct test can be found in all signed SFO agreements.

Article 2(4)

This paragraph details the times at which double criminality is examined. There are precedents in earlier agreements with Australia, Canada, Indonesia, Malaysia, New Zealand, Philippines, Singapore, UK, Portugal and Sri Lanka.

Article 3

Surrender of nationals

Article 3(1) is the same as the model text. There are precedents for Article 3(2) in earlier agreements with New Zealand and Malaysia.

Article 4

Death penalty

The Finnish side requested that there be a bar to surrender in death penalty cases. According to the Finnish side, it was necessary to reflect their legal position clearly in the Agreement. There is a precedent in Article 4(1) of HK / Portugal SFO agreement. There is no objection.

Article 5

Basis for surrender

This Article is substantially the same as Article 12 (1) of the model text with some drafting changes.

Article 6

Mandatory Refusal of surrender

Article 6(1)

Paragraphs (1)(a), (b) and (c) are identical to the corresponding paragraphs in Article 6 of the model text save that colour, ethnic origin and sex have been added in sub-paragraphs (b) and (c) at the request of the Finnish side. There is no objection. A similar formulation can be found in the HK/New Zealand SFO agreement.

Article 6(2)

This paragraph has been added by agreement of both sides to reflect international obligations to exclude consideration of certain offences as political offences. Similar clauses can be found in Hong Kong's agreements with Australia, India, Malaysia, Philippines, US and Sri Lanka.

Article 6(3)

This is equivalent to Article 5(3) of the model text.

Article 6(4)

This was included as an additional ground for mandatory refusal in response to a proposal from the Finnish side. The inclusion is not strictly necessary since the agreement prescribes a list of offences for which surrender may be granted (which do not include military offences). But there is no objection to its inclusion. There are precedents in agreements with New Zealand, UK and USA.

Article 6(5)

This paragraph was derived from Article 2(3) of the model text but it has become a mandatory ground and the provision has been expanded to provide that the fugitive shall be treated as an accused person under the Agreement. Similar provisions (albeit as a discretionary ground) can be found in agreements with India, Article 2(4); Indonesia, Article 2(5), New Zealand, Article 7(4); The Netherlands, Article 2(4); Sri Lanka, Article 2(5); Singapore, Article 2(5); and Portugal, Article 2(5).

Article 7

Discretionary refusal of surrender

Article 7(1)

Articles 7(1)(a) and (b) are substantially the same as Articles 15(a) and (b) of the model text.

Paragraph (c) was added as it was considered a useful provision by the two sides. There are many precedents e.g. Australia, Indonesia, Netherlands, New Zealand, Philippines, Singapore, Sri Lanka and Portugal.

Article 7(1)(d) is substantially the same as Article 15(d) of the model text.

Please note that paragraph (c) of Article 15 of the model text was not included. The same ground was also omitted in Hong Kong's agreements with Australia, Indonesia, Netherlands, New Zealand, Philippines, US, Sri Lanka and Portugal.

Paragraph 1(e) was added at the request of the Finnish side to cater for an eventuality that there might be some sort of ad hoc tribunals or courts in the future. There is no objection as it is only a discretionary ground for refusal. There is a precedent in the HK/New Zealand SFO agreement.

Article 7(2)

The first part of Article 7(2) is the equivalent of Article 5(1) of the model text. The second part was added at the request of the Finnish side. There is no objection. There are precedents in earlier agreements with Canada and New Zealand.

Article 7(3)

This concerns a discretionary ground of refusal based on *autrefois acquit* or *autrefois convict* in a third jurisdiction. It was added at the request of the Finnish side. There is no objection. Precedents can be found in Hong Kong's agreements with Canada and New Zealand.

Article 7(4)

This was added at the request of the Finnish side. There is no objection. There is a precedent of Article 7(4)(a) in the HK/New Zealand SFO agreement, Article 7(5). Article 7(4)(b) was added to meet the requirements of Finnish law.

Article 8

Postponement of surrender

Article 8(1)

This is the equivalent of Article 5(2) of the model text.

Article 8(2)

This was added at the request of the Finnish side to enable the Parties to fulfil their obligations under a bilateral agreement on surrender of fugitives with a third jurisdiction. There is no objection. A similar formulation can be found in Article 8(2) of the HK/New Zealand agreement.

Article 9

The Request and Supporting Documents

Article 9(1)

This paragraph was developed from Article 7(1) of the model text. It identifies the authority of each Party from whom requests for surrender should be originated and to whom requests should be sent. There is a similar formulation in the HK/Portugal SFO agreement, Article 9(1).

Article 9(2)

This paragraph is substantially the same as the model text, Article 7(2).

Article 9(3)

This paragraph is substantially the same as Article 7(3) of the model text.

Article 9(4)

This paragraph is substantially the same as Article 7(4) of the model text although it has been expanded to achieve greater clarity.

Article 10

Authentication

This is equivalent to Article 10 of the model text but its wording has been refined to align with the wording in section 23 of the Fugitive Offenders Ordinance Cap.503. Precedents for paras.(1) and (2) are found in SFO agreements with Portugal, Australia, Canada, India, Indonesia, New Zealand, Netherlands, Philippines, Sri Lanka, Singapore and UK.

Formulations similar to para. 3 of this Article can be found in earlier agreements with Canada, Indonesia, Sri Lanka, Portugal and Singapore.

Article 11

Language of documentation

This is a new article. It specifies the languages in which requests and documents may be submitted to the respective Parties.

Article 12

Provisional Arrest

Article 12(1)

This paragraph is substantially the same as the first part of Article 8(1) of the model text.

Article 12(2)

This is the equivalent of the second part of Article 8(1) of the model text.

Article 12(3)

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

Article 12(4)

This is the same as Article 8(3) of the model text except that the reference to the 15-day extension in the model text has been omitted. There are similar omissions in Hong Kong's agreement with Malaysia, Article 8(3).

Article 13

Additional Information

Article 13(1)

This is the same as Article 9(1) of the model text.

Article 13(2)

This paragraph has been added to ensure release of the fugitives if additional information is not received. Similar clauses can be found in the agreements with Australia, Indonesia, Malaysia, New Zealand, Philippines, Singapore, Portugal, UK and Sri Lanka.

Article 14

Concurrent Requests

This article is similar to Article 9(2) of the model text and has been expanded to include a reference to requests by international tribunals, at the request of the Finnish side. There is no objection.

Article 15

Representation and costs

Article 15(1)

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

Article 15(2)

This paragraph is substantially the same as Article 11(2) of the model text.

Article 15(3)

Paragraph (3) 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, Canada, India, Indonesia, Malaysia, New Zealand, Philippines, Singapore, UK, Portugal and Sri Lanka.

Article 16

Arrangements for surrender

Article 16(1)

This has been added to require communication of the decision on a request to the Requesting Party and the giving of reasons for refusal. There are similar formulations in earlier agreements with Canada, the Netherlands and New Zealand, UK and the USA.

Article 16(2) to (4)

These paragraphs are substantially same as Article 12(2) to (4) of the model text with the provisions regarding continued detention for 30 days more specified in Article 12(3) of the model text omitted. Precedents can be found in agreements with Portugal, Australia, Indonesia, New Zealand, Malaysia, Philippines, Singapore, UK, USA and Sri Lanka.

Article 17

Surrender of property

Article 17(1)

This is the same as Article 13(1) of the model text.

Article 17(2)

Paragraph (2) of this article is substantially the same as Article 13(2) of the model text. The present formulation was modelled on Article 17(2) of the HK / Australia SFO Agreement.

Article 17(3)

Paragraph (3) of this article is the substantially same as Article 13(3) of the model text with some drafting changes.

Article 17(4)

This 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, Portugal, New Zealand, Canada, Indonesia, the Philippines and Sri Lanka.

Article 18

Rule of Specialty

Article 18(1)

This is substantially the same as Article 14 of the model text with some drafting changes. The 40 day period specified in the model text has been modified to 45 days at the request of the Finnish side to reflect their requirements under the Extradition Act.

Article 18(2)

This 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, Portugal, Australia, Canada, India, Indonesia, the Netherlands, Philippines, Sri Lanka and Portugal.

Article 19

Resurrender

This provision 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. The period of 45 days was specified at the request of the Finnish side to reflect their requirement under the Finnish legislation on extradition. Resurrender provisions have been included in all signed agreements with Hong Kong.

Article 20

Surrender by consent

This is a useful clause and was included by agreement of both sides. There are precedents in agreements with Singapore, US and Malaysia.

Article 21

Transit

This was added at the request of the Finnish side. Hong Kong agrees that it is a useful clause. Precedents can be found in SFO agreements with Australia, Canada, Indonesia, Malaysia, New Zealand, Philippines, US and Sri Lanka.

Article 22

Entry into force suspension and termination

Articles 22(1)

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

Article 22(2)

This was added to elaborate on the temporal application of the agreement (see precedents in agreements with Portugal, Australia, Canada, Indonesia, New Zealand, Philippines, Singapore, USA and Sri Lanka.)

Article 22(3)

This is the same as the model text, Article 16(2) save that a provision on suspension of the agreement has been added to cater for such eventuality. Similar formulations can be found in agreements with Portugal, Canada, India, Indonesia, New Zealand, Netherlands, UK and Sri Lanka.

Authentic texts

As the negotiation was conducted in English, it was agreed that in case of divergence over different language texts of the Agreement, English text shall prevail. There are precedents in other agreements on legal co-operation entered into by Hong Kong (see agreements on mutual legal assistance in criminal matters between Hong Kong and Singapore and between Hong Kong and Ukraine).

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