

**Annex A**

**Article-by-article comparison of the  
HKSAR / France Agreement Concerning  
Surrender of Accused or Convicted Persons  
with the model agreement**

**Title**

The title of the Agreement was changed to “accused or convicted persons” at the suggestion of the French side. According to the French side, the terms “accused persons” and “convicted persons” are used in all its extradition treaties, and the term “and” in French having a conjunctive sense is not appropriate in the context. Similar title is used in the HKSAR’s Agreement with Australia, Philippines and New Zealand. The change does not affect the substance of the Agreement. There was no objection from the HKSAR. Corresponding amendments are made throughout the Agreement.

**Preamble**

2. The preamble is the same as the model text of the Agreement except with the replacement of the term “fugitive offenders” by “accused or convicted persons”.

**Article 1 – Obligation to Surrender**

3. This Article is substantially the same as Article 1 of the model Agreement.

**Article 2 – Offences**

4. Article 2.1 and 2.3 represent a departure from the model text where all extraditable offences are listed in the agreement (“the list approach”). The French side had difficulties under their law in

adopting the list approach. The French side also explained that France has not listed extraditable offences in its treaties for years. The alternative approach was adopted by both Parties exchanging the information on the offences for which surrender may be granted under their respective laws. The alternative approach was approved by CPG in relation to Hong Kong's agreement with Czech on surrender of fugitive offenders ("SFO").

### Paragraph 1

5. The paragraph corresponds to Article 2(1) of the model text and is substantially the same as the model insofar as the requirement for the offence to be punishable by imprisonment for more than one year under the laws of both Parties. Given the French side's difficulties with adopting the list approach, both sides agreed to omit the list of offences in items (i) to (xxvii) of paragraph (1) of Article 2 of the model text and to reflect the list by a general provision in sub-paragraph b). Both sides agreed to exchange information on the offences for which surrender may be granted under their respective laws and this requirement is provided for in paragraph 3 of this Article (see paragraph 7 below).

### Paragraph 2

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

### Paragraph 3

7. This paragraph is added to reflect the understanding of both sides under the alternative approach to the list approach as adopted in Article 2(1) of the model text. The French side indicated that they would provide written information by way of a general description of the offences in respect of which a person may be surrendered. The HKSAR side made clear that the information to be provided by the HKSAR would be in the form of a list of offences which is Schedule 1 to the Fugitive Offenders Ordinance, Cap. 503.

#### Paragraph 4

8. This paragraph is added by the agreement of both Party. It sets out the conduct test for the “double criminality” requirement under Article 2.1a). A similar provision is found in all other signed SFO agreements.

#### Paragraph 5

9. This paragraph was added at the request of the French side in order to meet the French legal requirement and was adapted from Article 2(2) of the European Convention on Extradition. The provision was included on both sides’ understanding that there would not be mutuality on the application of this provision as the HKSAR law does not provide for accessory extradition.

*Article 2(3) of the model text was moved to Article 5.5 at the suggestion of the French side.*

### **Article 3 – Surrender of nationals**

10. Article 3 is an elaborated version of Article 3 of the model text.

#### Paragraph 1

11. Paragraph 1 is substantially the same as Article 3 of the model text.

#### Paragraph 2

12. The paragraph was added at the request of the French side. Provisions on when nationality is determined can be found in some of the HKSAR’s agreements e.g. with Philippines, Singapore and South Korea. There was no objection.

#### Paragraph 3

13. This paragraph was also added at the suggestion of the French side. Similar provisions can be found in the HKSAR’s earlier agreements e.g. Australia, Canada, Finland, Germany, India, Indonesia, South Korea, Malaysia, New Zealand, Philippines, UK,

and the USA. The formulation in Article 3.3 is modelled on Article 3.2 of the HK / South Korea SFO agreement.

#### **Article 4 – Death penalty**

14. Article 4 is the same as Article 4 of the model text except with the replacement of the term “fugitive offender” by “person”.

#### **Article 5 – Mandatory grounds of refusal**

This Article corresponds to Article 6 of the model text.

##### Paragraph 1

###### *Sub-paragraph a)*

15. Sub-paragraph a) corresponds to Article 6(a) of the model text and was expanded at the request of the French side to provide for exceptions to political offences. Provisions similar to sub-paragraph a)(i) appear in the agreements with Indonesia, India and USA. Provisions similar to sub-paragraph a)(ii) appear in the agreements with Australia, Finland, India, South Korea, Sri Lanka and USA.

###### *Sub-paragraphs b) and c)*

16. The paragraphs are substantially the same as Article 6 (b) and (c) of the model text, except with the addition of ‘sex’ to the provisions. Similar addition was made in the HKSAR’s agreements with Czech, Finland, Germany, Ireland and New Zealand.

##### Paragraph 2

17. This paragraph corresponds to Article 5(3) of the model text and was modified at the request of the French side to refer to the previous acquittal, conviction and pardon in the requested Party only, and to include the concept of pardon. The formulation is adapted from Article 5(1) of the HKSAR/USA agreement. The modifications are not inconsistent with section 5(1)(e) of Cap. 503.

Similar provisions confining references of previous acquittals and convictions to those in the requested Party only are also found in the HKSAR's agreements with USA, South Korea and Ireland. The concept of pardon is also included in the HKSAR's agreements with Canada, Finland, Germany, New Zealand, Philippines, Portugal, Singapore, South Africa and Sri Lanka.

### Paragraph 3

18. This paragraph was added at the request of the French side to reflect France's constitutional safeguard under French law. Similar provision appears in the agreements with Finland, South Korea and New Zealand.

### Paragraph 4

19. This paragraph was added at the request of the French side. Similar provisions can be found in the agreements with Finland, Ireland, South Africa, New Zealand, United Kingdom and USA. There was no objection.

### Paragraph 5

20. This paragraph is substantially the same as Article 2(3) of the model text, except that provision is made in this paragraph to allow surrender in such circumstances if the person will have the opportunity of being re-tried in his presence which reflects section 5(1)(b) of the Fugitive Offenders Ordinance. A similar provision appears in the agreements with Czech, Indonesia, India, Ireland, the Netherlands, Singapore, Sri Lanka, Portugal and South Korea.

## **Article 6 – Discretionary grounds of refusal**

21. This Article corresponds to Article 15 of the model text.

### Paragraph 1

#### *Sub-paragraph a)*

22. Sub-paragraph a) corresponds to Article 5(1) of the model text. The paragraph was modified at the request of the French side in order to ensure that the ground is not widened to offences

committed outside the territory of France but over which France has extra-territorial jurisdiction under French law. There was no objection to the modification.

*Sub-paragraph b)*

23. The sub-paragraph was added by the agreement of both sides. There are a number of precedents e.g. Australia, Czech, Finland, Indonesia, the Philippines, New Zealand, Portugal, Singapore, Sri Lanka.

*Sub-paragraph c)*

24. The sub-paragraph corresponds to Article 15(d) of the model text. It was modified at the suggestion of the French side to confine to the age and health of the person sought. Precedents are found in the agreements with Singapore, United Kingdom and USA.

Paragraph 2

25. This paragraph was added by the agreement of both sides. For HKSAR, the provision reflects section 24(3) of Cap. 503.

Paragraph 3

26. The paragraph was added at the request of the French side and the formulation adopts that of Article 6(3) of the HK/Canada agreement. Similar provisions are also found in the agreements with New Zealand, Ireland and South Korea.

Paragraph 4

27. The paragraph was also added at the request of the French side and the HKSAR did not have any objection. A similar provision appears in the agreement with South Korea (Article 5(b)).

***Article 15(a), (b) and (c) of the model text***

28. *Article 15(a) and (b) of the model text were omitted at the suggestion of the French side as these grounds were never used in France's extradition treaties. The paragraphs were also omitted in the agreements with USA, Indonesia and Germany.*

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

## **Article 7 - Postponed or temporary surrender**

### Paragraph 1

30. This paragraph is substantially the same as Article 5(2) of the model text and relates to postponed surrender.

### Paragraph 2

31. This paragraph relates to temporary surrender and was added by agreement of both sides. There are many precedents for such a provision in Hong Kong's agreements e.g. the agreements with Germany, Malaysia, South Africa, South Korea and USA.

## **Article 8 – The request and supporting documents**

### Paragraph 1

32. This paragraph corresponds to Article 7(1) of the model text. It was modified at the request of the French side to specify the competent authorities which are authorized to make surrender requests. Please see similar approach adopted in the agreements with Czech, South Korea, Portugal and Germany.

33. It should be noted that the competent authorities of France to make surrender requests are the judicial authorities. The French side explained that there is no central authority as such for France for making surrender requests, and that the term “judicial authorities” is a specific term under the French Constitution and includes courts, judges, magistrates and prosecutors but does not include police and administrative authorities.

### Paragraph 2

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

### Paragraph 3

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

### Paragraph 4

36. This paragraph is substantially the same as Article 7(4) of the model text. Sub-paragraph a) has been added to provide greater clarity. Similar provisions appear in the agreements with Czech, Finland, Portugal and South Korea. A reference to “judgment” was added to the chapeau at the request of the French side because France does not have certificates of conviction. This is not objectionable.

## **Article 9 - Authentication**

### Paragraph 1

37. This paragraph is equivalent to Article 10 of the model text but its wording has been refined to realign with the wording of section 23 of the Fugitive Offenders Ordinance.

### Paragraph 2

38. This paragraph was added as it was considered a useful provision by both sides. A similar provision appears in the agreements with Canada, Czech, Finland, Indonesia, Ireland and Singapore.

## **Article 10 – Language of documentation**

39. This Article is a new article specifying the languages in which requests and documents may be submitted to the respective Parties. It was added by agreement. Similar formulation can be

found in the agreements with Czech and Finland.

### **Article 11 – Additional information**

#### **Paragraph 1**

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

#### **Paragraph 2**

41. This paragraph was added by agreement of both sides. This is a useful provision to ensure release of the person if additional information is not received. Similar provisions can be found in the agreements with Australia, Czech, Finland, Indonesia, Ireland, Malaysia, New Zealand, the Philippines, Portugal, Singapore, South Africa, South Korea, Sri Lanka and UK.

### **Article 12 – Provisional arrest**

#### **Paragraphs 1 and 2**

42. These paragraphs are substantially the same as Article 8(1) of the model text.

#### **Paragraph 3**

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

#### **Paragraph 4**

44. This paragraph is the same as Article 8(3) of the model text, except that the period for the provisional arrest (45 days period with a 15 days extension) was replaced by 60 days by agreement of both sides. There are precedents for the 60 days period in our other SFO agreements, e.g. with Canada, Czech, Germany, India, Indonesia, the Netherlands, Portugal, Singapore, Sri Lanka, UK and USA.

### **Article 13 – Concurrent requests**

45. Paragraphs 1 and 2 are substantially the same as Article 9(2) of the model text.

46. Paragraph 3 was added to expressly provide in the Agreement both sides' understanding that requests to the HKSAR from the People's Republic of China will take precedence over French requests for surrender.

### **Article 14 – Representation and costs**

#### **Paragraph 1**

47. This paragraph is substantially the same as Article 11(1) of the model text save that the obligation becomes a standing one. It was further modified at the request of the French side to cater for the different legal systems in respect of the representation of the requesting Party in the requested Party. There was no objection to the modification.

#### **Paragraph 2**

48. This paragraph was added to enable the Parties to consult on how extraordinary expenses should be met. This is a useful provision and accords with Hong Kong's existing practice of processing of surrender requests. There are precedents in agreements with Australia, Canada, Czech, Finland Indonesia, Malaysia, New Zealand, Philippines, Portugal, Singapore, South Korea, Sri Lanka and UK.

#### **Paragraph 3**

49. This paragraph is an elaborated formulation of Article 11(2) of the model text, and accords with Hong Kong's current practice of processing of surrender requests. Similar provisions can be found in the agreements with Australia, Czech, Finland, India, Indonesia, Ireland, Philippines, Portugal, New Zealand, South Africa, Sri

Lanka and UK.

## **Article 15 – Arrangements for surrender**

50. This Article corresponds to Article 12 of the model text.

### **Paragraph 1**

51. Paragraph 1 was added to require communication of the decision on a request to the requesting Party. Similar provisions are found in the agreements with Australia, Czech, Indonesia, the Philippines, Portugal, Singapore and Sri Lanka.

### **Paragraph 2**

52. This paragraph is substantially the same as Article 12(2) of the model text, save by providing that the place of departure shall be agreed by both Parties. Similar provisions are found in the agreements with the Netherlands, UK and USA.

### **Paragraph 3**

53. This paragraph is substantially the same as Article 12(3) of the model text, save that the requested Party may refuse surrender upon the requesting Party's failure to take custody of the person within the specified period. There are a number of precedents, e.g. the agreements with Finland, Indonesia, New Zealand, the Philippines, Singapore and Sri Lanka.

### **Paragraph 4**

54. This paragraph is substantially the same as Article 12(4) of the model text.

### ***Article 12(1) of the model text***

55. *Article 12(1) of the model text in relation to the evidential requirements justifying surrender was omitted by the agreement of both sides as the requirements are covered by Article 8.*

## **Article 16 – Surrender of property**

### Paragraph 1

56. Sub-paragraph a) is the same as Article 13(1) of the model text, except that sub-paragraph b) was modified at the suggestion of the French side to reflect the French legal position that articles acquired by the person as a result of the offence are liable to be surrendered whether or not they are found in the person's possession. The modification is consistent with section 9 of Cap. 503. There was no objection to the modification.

57. Sub-paragraph b) is substantially the same as Article 13(2) of the model text.

### Paragraph 2

58. This paragraph is substantially the same as Article 13 (3) of the model text.

### Paragraph 3

59. This paragraph was added to cater for a situation where a fugitive has escaped or died. This is a useful provision. Similar provisions are found in the agreements with Australia, Canada, Czech, Finland, Indonesia, New Zealand, the Philippines, Portugal, South Korea and Sri Lanka.

## **Article 17 - Specialty**

### Paragraph 1

60. Paragraph 1 is substantially the same as Article 14(1) of the model text. Sub-paragraph b) was modified to make reference to the severity of the penalty for the offence. Similar formulation is found in the agreements with Indonesia, Portugal, Singapore and South Africa.

### Paragraph 2

61. Paragraph 2 was added to clarify that the requested Party may request additional information in deciding whether to give consent. This is no objection. There are precedents in agreements with Australia, Czech, Finland, Germany, New Zealand, Portugal and South Korea.

### Paragraph 3

62. Paragraph 3 was added at the request of the French side and is adopted from Article 14(2) of the European Convention on Extradition. The French side explained that the provision is essential for the French side in compliance with the French law. The provision allows the requesting Party to take such measures as may be necessary to interrupt the lapse of time in urgent cases where there is insufficient time to seek the consent of the requested Party under paragraph 1 to the taking of such measures. Under the French law, all offences are subject to statute bar.

63. On the basis that the operation of this paragraph does not prejudice the provision of paragraph 1, the HKSAR side agreed to include the provision.

### **Article 18 - Resurrender**

64. This Article was added to reflect the legal requirements under Hong Kong law, namely, sections 5(5) and 17(2) of the Fugitive Offenders Ordinance. 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 19 - Transit**

65. This Article was added to cater for cases of transit. It is a

useful provision. Section 20 of the Fugitive Offenders Ordinance makes provision for processing of requests for transit to Hong Kong. Precedents can be found in SFO agreements with Australia, Canada, Czech, Germany, Finland, Indonesia, Malaysia, New Zealand, the Philippines, South Korea, Sri Lanka and USA.

66. The formulation of this Article follows that of Article 18 of the HKSAR / South Korea agreement except that:-

- (a) The reference to 'jurisdiction' was deleted;
- (b) The channels for communicating the requests for transit are specified;
- (c) The requirement for making of requests for unscheduled landing within 96 hours was deleted; and
- (d) Paragraph 5 was added at the request of the French side to allow for refusal of requests for transit based on the grounds set out in Article 5. There was no objection to this provision.

### **Article 20 – Entry into force and termination**

67. This Article corresponds to Article 16 of the model text.

#### Paragraph 1

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

#### Paragraph 2

69. This paragraph was added to make clear the application of the Agreement to requests made after the operation of the Agreement irrespective of the date of commission of the offence. Similar provisions can be found in the agreements with Australia, Canada, Czech, Finland, Germany, Indonesia, New Zealand, Portugal, the Philippines, Singapore, South Korea and USA.

#### Paragraph 3

70. This paragraph is substantially the same as Article 16(2) of the model text.

**Testimonium**

71. The same as the model text.

**Authentic texts**

72. Substantially the same as the model text.

**Signature Block**

73. The Government of the HKSAR will take precedence in the copy of the Agreement to be kept by Hong Kong.