

**AGREEMENT
BETWEEN
THE MACAO SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLE’S REPUBLIC OF CHINA
AND
THE REPUBLIC OF KOREA
FOR THE SURRENDER OF FUGITIVE OFFENDERS**

The Macao Special Administrative Region of the People's Republic of China (“Macao SAR”), having been duly authorized to conclude this Agreement by the Central People’s Government of the People’s Republic of China, and the Republic of Korea (hereinafter referred to as the “Parties”),

Desiring to make provisions for the reciprocal surrender of fugitive offenders,

Affirming their respect for each other’s legal system and judicial institutions,

Have agreed as follows:

**ARTICLE 1
Obligation to Surrender**

The Parties agree to surrender to each other, upon request and subject to the provisions of this Agreement, any person who is found in the jurisdiction of the Requested Party and who is wanted by the Requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence referred to in Article 2 of this Agreement.

**ARTICLE 2
Offences**

1. Surrender of fugitive offenders shall be granted only in respect of any act or omission that, at the time of the request, constitutes an offence punishable under the laws of both Parties by deprivation of liberty for a period of at least one (1) year or by a more severe penalty.

2. Where the surrender of a fugitive offender is requested for the purpose of carrying out a sentence, a further requirement shall be that a period of at least six (6) months of such sentence remains to be served.

3. In determining whether an offence is punishable under the laws of both Parties:

(a) it shall not matter whether the laws of the Parties place the acts or omissions constituting the offence within the same category of offences or denominate the offence by the same terminology;

(b) the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account and it shall not matter whether, under the laws of the Parties, the constituent elements of the offence differ.

4. If a request for surrender includes several acts or omissions each of which constitutes an offence punishable under the laws of both Parties by deprivation of liberty, but some of which do not fulfil the other conditions provided for in paragraphs 1 and 2 of this Article, surrender may also be granted for the latter offences, provided that the person is to be surrendered for at least one offence for which surrender may be granted.

5. Where an offence has been committed outside the territory of the Requesting Party, surrender shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances.

ARTICLE 3

Surrender of Nationals and Permanent Residents

1. The Macao SAR reserves the right to refuse the surrender of nationals of the People's Republic of China and of permanent residents of the Macao SAR, but not the residents of the Macao SAR who are nationals of Korea, and the Republic of Korea reserves the right to refuse the surrender of its nationals.

2. Nationality and permanent residency shall be determined at the time of the commission of the offence for which surrender is requested.

ARTICLE 4

Death Penalty

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 by death penalty and if in respect of such an offence such penalty is not provided for by the law of the Requested Party or is not normally carried out, surrender shall be refused unless the Requesting Party gives such assurances as the Requested Party considers sufficient that such penalty will not be imposed or, if imposed, will not be carried out.

ARTICLE 5

Mandatory Grounds for Refusal of Surrender

Surrender shall not be granted under this Agreement in any of the following circumstances:

(a) when the Requested Party has substantial grounds for believing that the offence for which surrender is requested is a political offence or an offence connected with a political offence. Reference to a political offence shall not include the following offences:

(i) the taking or attempted taking of the life or an attack on the person of a Head of State or Head of Government or a member of the person's immediate family;

(ii) any offence which, by reason of an international multilateral treaty applicable to both Parties, the Parties must not treat as a political offence or an offence connected with a political offence;

(b) when the request for surrender relates to an offence regarded by the law of the Requested Party as an offence only under military law, which is not also an offence under ordinary criminal law;

(c) when the person sought, under the law of either Party, has become immune from prosecution or execution of sentence for any reason including lapse of time. The lapse of time shall be determined in accordance with the law of the Requested Party. Upon request of the Requesting Party, acts or circumstances that would suspend the expiration of the statute of limitations of either Party may be given effect by the Requested Party;

(d) when the person sought has been finally acquitted or convicted by the Requested Party for the offence for which the surrender is requested;

(e) when the Requested Party has substantial grounds for believing that the

request for surrender has been made with a view to prosecuting or punishing the person sought by reason of his or her origin, race, gender, religion, nationality, language, political beliefs, ideological beliefs, educational level, economic status, social condition or belonging to a given social group, or that such person's position may be prejudiced for any of those reasons; or

(f) if the execution of the request for surrender impairs the sovereignty, security, public order or other essential public interest of the People's Republic of China or the security, public order or other essential public interest of the Macao SAR, or impairs the sovereignty, security, public order or other essential public interest of the Republic of Korea.

ARTICLE 6

Discretionary Grounds for Refusal of Surrender

Surrender may be refused under this Agreement in any of the following circumstances:

(a) when a prosecution in respect of the offence for which the surrender is requested is pending in the Requested Party against the person whose surrender is requested;

(b) when, in exceptional cases, the Requested Party, while also taking into account the seriousness of the offence and the interests of the Requesting Party, deems that, because of the personal circumstances of the person sought, the surrender would be incompatible with humanitarian considerations;

(c) when the offence for which surrender is requested is regarded by the law of the Requested Party as having been committed in whole or in part within the jurisdiction of the Requested Party;

(d) when the competent authorities of the Requested Party have decided either not to institute or to terminate criminal proceedings against the person for the offence in respect of which surrender is requested;

(e) if the offence for which surrender is requested was committed in a jurisdiction other than that of either Party and the law of the Requested Party does not enable it to assert its jurisdiction over that offence in similar circumstances;

(f) when the person sought has been finally acquitted or convicted in a third State for the same offence for which surrender is requested and, if convicted,

the sentence imposed has been fully enforced or is no longer enforceable; or

(g) When the offence for which surrender is requested has been committed outside the territory of the Requesting Party and the law of the Requested Party does not provide for the jurisdiction over such an offence in similar circumstances.

ARTICLE 7

Obligation to Prosecute by the Requested Party

1. Where the Requested Party exercises the right referred to in Article 3 or if it has refused to grant surrender on the ground specified in Article 4 or in subparagraph (c) of Article 6, when it has jurisdiction, it shall, if the other Party so requests, initiate the criminal proceedings for the offence in respect of which the surrender is requested.

2. Where the Requested Party has refused to grant surrender on the ground specified in subparagraph (b) of Article 6, it may, if the other Party so requests, initiate the criminal proceedings for the offence in respect of which the surrender is requested.

3. For this purpose, the Requesting Party shall provide the Requested Party with documents and evidence relating to the case.

ARTICLE 8

Postponed or Temporary Surrender

1. If the person sought is being proceeded against or undergoing punishment in the jurisdiction of the Requested Party for an offence other than that for which the person's surrender is requested, the person's surrender may be postponed until the conclusion of the proceedings or the execution of any punishment imposed on that person. The Requesting Party shall be informed of such postponement.

2. If the surrender of a person sought would, for reasons of health, endanger the life of that person, the Requested Party may also postpone such surrender.

3. If the request for surrender is granted in the case of a person who is being proceeded against or is undergoing punishment in the jurisdiction of the Requested Party for an offence other than that for which the person's surrender is requested, the Requested Party may, instead of postponing surrender, temporarily surrender the person sought to the Requesting Party for the purpose of prosecution.

4. The person temporarily surrendered under paragraph 3 of this Article shall be kept in custody in the Requesting Party and shall be returned unconditionally and immediately after the conclusion of the proceedings against that person, in accordance with conditions to be determined between the Parties.

5. To the extent permitted under the law of the Requested Party, the period spent in custody in the Requesting Party for temporary surrender may be deducted from the period remaining to be served in the Requested Party, whenever the Requesting Party did not take such period into consideration.

ARTICLE 9

Central Authorities

1. For the purposes of this Agreement, the Parties shall communicate with each other through the Consulate General of the Republic of Korea in the Hong Kong Special Administrative Region or through their respectively designated Central Authorities.

2. The Central Authority for the Macao SAR shall be the Public Prosecutions Office of the Macao SAR. The Central Authority for the Republic of Korea shall be the Ministry of Justice.

3. Each Party may change its Central Authority in which case it shall promptly notify the other Party of such change in writing.

ARTICLE 10

Request and Supporting Documents

1. A request for surrender shall be made in writing through the Consulate General of the Republic of Korea in the Hong Kong Special Administrative Region or directly between the Central Authorities of the Parties.

2. The request for surrender shall in all cases be accompanied by:

(a) documents, statements or other types of information which describe the identity of the person sought, including, if possible, a physical description, photograph and/or fingerprints and the person's nationality and probable location;

(b) a statement of the facts of the case, including the time and place of the commission of the offence, and the procedural history of the case;

(c) a statement of the law describing the essential elements and the designation of the offence;

(d) a statement of the law describing the punishment for the offence;

(e) a statement of the law relating to the time limit on the prosecution or the execution of punishment for the offence; and

(f) the documents, statements or other types of information specified in paragraph 3 or 4 of this Article, as applicable.

3. When the request for surrender relates to a person who has not yet been found guilty, it shall also be accompanied by:

(a) a copy of the warrant of arrest or detention issued by a judge or other competent judicial authority of the Requesting Party;

(b) information establishing that the person sought is the person to whom the warrant of arrest or detention refers; and

(c) a statement of the acts or omissions alleged to constitute the offence and supporting evidence thereto such as would provide a reasonable ground to suspect that the person sought has committed the offence for which surrender is requested.

4. When the request for surrender relates to a person who has been found guilty, it shall also be accompanied by:

(a) a copy of the judgment rendered by a court of the Requesting Party, setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

(b) a copy of the warrant of arrest, or a statement that the person is subject to detention on the basis of the judgment setting out the conviction;

(c) information establishing that the person sought is the person found guilty; and

(d) a statement of the acts or omissions constituting the offence for which the person was found guilty.

5. All the documents to be submitted by the Requesting Party in support of the request for surrender shall be certified and accompanied by a translation into the official language of the Requested Party or into the English language.

6. A document is certified for the purposes of this Agreement if it has been:
- (a) signed by a judge or other competent officer of the Requesting Party;
- and
- (b) sealed by the competent authorities of the Requesting Party.

ARTICLE 11

Provisional Arrest

1. In urgent cases, the person sought may, in accordance with the law of the Requested Party, be provisionally arrested upon request of the Requesting Party pending the presentation of a request for surrender. A request for provisional arrest shall be transmitted in writing through the Consulate General of the Republic of Korea in the Hong Kong Special Administrative Region or directly between the Central Authorities of the Parties.

2. The request for provisional arrest shall contain:

- (a) a description of the person sought, including information about the nationality and a statement of the location, if known, of the person sought;
- (b) a brief statement of the facts of the case, including, if possible, the time and place of the commission of the offence;
- (c) a description of the laws violated;
- (d) a statement of the existence of a warrant of arrest or detention, or the judgment setting out the conviction of the person sought; and
- (e) a statement that a request for surrender for the person sought will follow.

3. The Requested Party shall, in accordance with its law, promptly take the necessary steps and the Requesting Party shall be notified of the Requested Party's decision regarding the request.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of thirty (30) days from the date of arrest if the request for surrender and the supporting documents have not been received, unless the Requesting Party can justify continued provisional custody of the person sought, in which case the period of provisional custody may then be extended for a further fifteen (15) days.

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and surrender of that person if the request and supporting documents are delivered at a later date.

ARTICLE 12

Surrender by Consent

1. If the person sought consents to be surrendered to the Requesting Party, the Requested Party may, subject to the procedures under its law, surrender the person as expeditiously as possible.

2. To the extent established under the law of the Requested Party, the provisions of Article 18 shall apply to a person surrendered pursuant to this Article.

ARTICLE 13

Additional Information

1. If the information furnished by the Requesting Party is found to be insufficient, the Requested Party may request additional information and specify a time limit for the receipt thereof; such time limit may be extended if the Requesting Party provides suitable justification thereof.

2. If the person whose surrender is sought is under arrest and the additional information furnished is not sufficient in accordance with this Agreement or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a fresh request for the surrender of that person.

3. Where the person is released from custody in accordance with paragraph 2 of this Article, the Requested Party shall notify the Requesting Party as soon as possible.

ARTICLE 14

Concurrent Requests

1. If the Requested Party receives requests from the Requesting Party and from any other jurisdiction for the surrender of the same person, either for the same offence or for different offences, the Requested Party shall determine, in accordance with its law, to which jurisdiction the person is to be surrendered and shall notify each requesting jurisdiction of its decision.

2. In determining to which jurisdiction a person is to be surrendered, the Requested Party shall have regard to all the circumstances including but not limited to:

- (a) whether there is any related agreement in force between the Requested Party and the Requesting Party or the other jurisdiction;
- (b) the seriousness and place of the commission of the offences;
- (c) the respective dates of the requests;
- (d) the nationality and the residence of the person sought;
- (e) the possibility of subsequent surrender to another jurisdiction.

3. In the case of the Macao SAR, the provisions of this Agreement shall not affect the arrangements of surrender of fugitive offenders between the Macao SAR and other jurisdictions of the People's Republic of China.

ARTICLE 15

Representation and Expenses

1. The Requested Party may, if asked by the Requesting Party, make the necessary arrangements for the Requesting Party's legal representation and assistance in any proceedings arising out of a request for the surrender of a fugitive offender. In the event that the Requesting Party arranges its own legal representation and assistance, it shall bear any costs incurred.

2. The Requesting Party shall bear the expenses incurred in connection with the translation of documents and the conveying of the person surrendered from the Requested Party to the Requesting Party, including transit costs and any other expenses of an extraordinary nature.

3. The Requested Party shall meet all other expenses incurred in its jurisdiction by reason of the proceedings related to a request for surrender.

ARTICLE 16

Surrender of the Person

1. The Requested Party shall, as soon as a decision on a request for surrender has been made, inform the Requesting Party of that decision through the Consulate General of the Republic of Korea in the Hong Kong Special Administrative Region or

directly between the Central Authorities of the Parties. The Requested Party shall notify the reasons for refusal to the Requesting Party if the request for surrender is refused in whole or in part.

2. The Requested Party shall surrender the person sought to the competent authorities of the Requesting Party at a mutually convenient time and location in the jurisdiction of the Requested Party.

3. The Requested Party shall inform the Requesting Party of the length of time for which the person sought was detained with a view to surrender, as well as specify the period within which the person sought has to be removed from its jurisdiction.

4. Subject to the provisions of paragraph 5 of this Article, if the Requesting Party does not remove the person sought from the jurisdiction of the Requested Party within the period specified in paragraph 3 of this Article, the person may be released and the Requested Party may subsequently refuse to surrender the person for the same offence.

5. If circumstances beyond its control prevent a Party from surrendering or removing the person to be surrendered, it shall immediately notify the other Party. In that case, the two Parties shall agree upon another date for surrender.

ARTICLE 17

Surrender of Property

1. If the Requesting Party so requests, the Requested Party shall, to the extent permitted by its law, seize the proceeds and instrumentality of the offence and other property which may serve as evidence found in its territory, and when surrender is granted, shall surrender this property to the Requesting Party.

2. The Requested Party may postpone the handing over of the property mentioned in paragraph 1 of this Article if it is required for proceedings instituted in connection with other criminal cases until the conclusion of such proceedings, or may temporarily hand it over to the Requesting Party on the condition that it shall be returned.

3. The property mentioned in paragraph 1 of this Article may be handed over to the Requesting Party even if the surrender of the person sought cannot be carried out, especially due to the death or escape of that person.

4. Where the law of the Requested Party or the protection of the rights of third parties so request, the Requesting Party shall, at the request of the Requested Party,

return the handed-over property without charge as soon as possible after the conclusion of the proceedings.

ARTICLE 18

Rule of Specialty

1. A person surrendered pursuant to this Agreement shall not be proceeded against, detained, sentenced, re-surrendered to a third jurisdiction or subjected to any restriction of personal liberty by the Requesting Party for any offence committed prior to the surrender other than:

- (a) an offence for which surrender was granted;
- (b) an offence, however denominated it is, based on the same facts on which surrender was granted, provided that surrender for such offence may be granted, or such offence is a lesser included offence;
- (c) any other offence in respect of which the Requested Party consents; or
- (d) an offence committed after the surrender of the person.

2. For the purpose of subparagraph 1(c) of this Article, the Requested Party may require that any document referred to in Article 10 and a legal record of statements made by the surrendered person with respect to the offence, if any, shall be submitted to the Requested Party.

3. Paragraph 1 of this Article shall not apply if the person has had an opportunity to leave the Requesting Party and has not done so within forty-five (45) days from the date on which that person is free to leave except under conditions beyond his or her control or if the person has voluntarily returned to the territory of the Requesting Party.

ARTICLE 19

Transit

1. To the extent permitted by the law of either Party, transit through the jurisdiction of one of the Parties of a person surrendered to the other Party by a third jurisdiction may be granted on request in writing made through the Consulate General of the Republic of Korea in the Hong Kong Special Administrative Region or directly between the Central Authorities of the Parties.

2. The request for transit shall indicate a description of the person being transported, including the warrant or conviction against that person or official certificate of the competent authority, his or her nationality, and a brief statement of the facts of the case.

3. If permitting transit in accordance with paragraph 1 of this Article, the Requested Party shall ensure that the person will be held in custody during transit in accordance with its law.

4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Requested Party may release the person if transit is not completed within a reasonable time.

5. Transit may be refused if the essential interests of the Requested Party would be prejudiced thereby.

6. Permission for transit shall not be required when air transport is to be used and no landing is scheduled in the jurisdiction of either Party. If an unscheduled landing occurs in the jurisdiction of one of the Parties, it may require the other Party to furnish a request for transit as provided in paragraph 1 of this Article. The Party to be requested to permit transit shall, upon request, detain the person to be transported until the transportation is continued, provided that the request is received within ninety-six (96) hours of the unscheduled landing.

ARTICLE 20

Notifications of the Results

The Requesting Party shall, upon the request of the Requested party, provide the Requested Party with the information relating to the proceedings against or the execution of punishment or the parole of a surrendered person or the re-surrender of the person to a third jurisdiction.

ARTICLE 21

Consultations

The Parties shall, at the request of either Party, promptly hold consultations concerning the interpretation, application or implementation of this Agreement.

ARTICLE 22

Entry into Force and Termination

1. This Agreement shall enter into force on the thirtieth (30th) day after the date of the later notification by the Parties in writing that their respective requirements for the entry into force of this Agreement have been complied with.

2. This Agreement shall apply to requests made after its entry into force regardless of the date of the commission of the offences.

3. Either Party may terminate this Agreement at any time by giving notice in writing to the other Party. In that event, this Agreement shall cease to have effect six (6) months after the receipt of the notice.

4. Upon termination of this Agreement in accordance with paragraph 3 of this Article, surrender procedures already initiated shall nevertheless continue to be governed by this Agreement until their conclusion.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at the Macao SAR, on this 23rd day of October 2019, in the Chinese, Korean and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

**FOR THE MACAO SPECIAL
ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA**

FOR THE REPUBLIC OF KOREA