

Annex

Under the Agreement between the Government of Hong Kong and the Government of the United States of America for the Surrender of Fugitive Offenders, a fugitive offender shall/may not be surrendered under the following circumstances:

- (a) The executive authority of the Government of Hong Kong reserves the right to refuse the surrender of nationals of the State whose government is responsible for the foreign affairs relating to Hong Kong in cases in which:
 - (i) The requested surrender relates to the defence, foreign affairs or essential public interest or policy of the State whose government is responsible for the foreign affairs relating to Hong Kong, or
 - (ii) The person sought neither has the right of abode in Hong Kong nor has entered Hong Kong for the purpose of settlement, and the State whose government is responsible for the foreign affairs relating to Hong Kong has jurisdiction over the offence relating to the requested surrender and has commenced or completed proceedings for the prosecution of that person; [Article 3(3)]

- (b) When the offence for which surrender is sought is punishable by death under the laws of the requesting Party and is not punishable by death under the laws of the requested Party, the requested Party may refuse surrender unless the requesting Party provides assurances that

the death penalty will not be imposed or, if imposed, will not be carried out; [Article 4(1)]

(c) Surrender shall not be granted when the person sought has been convicted or acquitted in the requested Party for the offence for which surrender is requested; [Article 5(1)]

(d) A fugitive offender shall not be surrendered if the offence of which that person is accused or was convicted is an offence of a political character; [Article 6(1)]

(e) Surrender shall not be granted if the competent authority of the requested Party, which for the United States shall be the executive authority, determines:

(i) that the request was politically motivated;

(ii) that the request for surrender, though purporting to be made on account of an offence for which surrender may be granted, was in fact made for the primary purpose of prosecuting or punishing the person sought on account of his race, religion, nationality or political opinion; or

(iii) that the person sought is likely to be denied a fair trial or punished on account of his race, religion, nationality, or political opinions; [Article 6(3)]

- (f) The competent authority of the requested Party, which for the United States shall be the executive authority, may refuse the surrender of a fugitive when such surrender is likely to entail exceptionally serious consequences related to age or health;[Article 7]

- (g) If the surrender of a fugitive offender is requested concurrently by one of the Parties and a State or States with which the United States of America or Hong Kong, whichever is being requested, has arrangements for the surrender of fugitive offenders, the executive authority of the requested Party shall make its decision having regard to all the circumstances, including the relevant provisions of such arrangements, the place of commission of the offences, their relative seriousness, the respective dates of the requests, the nationality of the fugitive offender, the nationality of the victim, and the possibility of subsequent surrender to another jurisdiction. [Article 11]