

campjustice
briefing r/B

**BRIEFING NOTE FOR THE JUSTICE AND CONSTITUTIONAL DEVELOPMENT
PORTFOLIO COMMITTEE ON THE EXTRADITION AND MUTUAL LEGAL
ASSISTANCE IN CRIMINAL MATTERS TREATIES BETWEEN THE
GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
(HKSAR) OF THE PEOPLE'S REPUBLIC OF CHINA AND THE
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (SA REPUBLIC):
CAPE TOWN, 28 OCTOBER 2009**

INTRODUCTION

1. The Government of HKSAR has authority to conclude agreements in terms of its Basic Law, article 151 in particular.
2. The Government of South Africa Republic has authority to conclude agreements in terms of Section 231 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)
3. Given the fact that criminality knows no borders in the world of today, it was felt desirable to conclude the above treaties, with a view to assisting the HKSAR and South Africa in extraditing fugitives of law and investigations and obtaining of evidence.

TREATIES

Extradition Treaty

4. What is unusual about this treaty, as compared with other treaties concluded by the Government of South Africa Republic, is the listing of crimes as proposed by the Government of the HKSAR. The modern trend is to conclude Extradition Treaties without the list of crimes (we use the

extraditable offences clause with a minimum of sentence, ranging from three months, six months and one year).

5. Article 4 provides for non-surrender if a fugitive of the committed offence is punishable by death unless there is an undertaking that such penalty will not be carried out, or if is imposed, it will not be carried out.

Article 6 also provides for a number of grounds for refusal of surrender.

6. Article 17 provides for surrender of property, as instrumentalities or proceeds of crime. Normally this provision will be in Mutual Legal Assistance Treaties. However, it is in line with Criminal Law.

Treaty on Mutual Legal Assistance in Criminal Matters

7. This treaty is in keeping with modern treaties concluded by the Government of South Africa Republic (not unique).

OBLIGATIONS AND IMPLICATIONS

8. South Africa has the required legislative and administrative measures.
9. The requested State, in terms of international practice, has the responsibility to incur costs.
10. Extraordinary costs are normally shared between parties.