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SBCR 1/2716/89(98) Pt.24**

## **LEGISLATIVE COUNCIL BRIEF**

### **Fugitive Offenders Ordinance (Chapter 503)**

### **Mutual Legal Assistance in Criminal Matters Ordinance (Chapter 525)**

## **FUGITIVE OFFENDERS (IRELAND) ORDER**

## **MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (FINLAND) ORDER**

### **INTRODUCTION**

At the meeting of the Executive Council on 22 April 2008, the Council ADVISED and the Chief Executive ORDERED that –

- (a) the Fugitive Offenders (Ireland) Order, at **Annex A**, should be made under section 3 of the Fugitive Offenders Ordinance (Cap. 503) to implement the bilateral surrender of fugitive offenders (SFO) agreement signed with Ireland; and
  
- (b) the Mutual Legal Assistance in Criminal Matters (Finland) Order, at **Annex B**, should be made under section 4 of Cap. 525 (Cap. 525), subject to the approval of the Legislative Council, to implement the bilateral mutual legal assistance in criminal matters (MLA) agreement signed with Finland.

## **JUSTIFICATIONS**

2. Cap. 503 and Cap. 525 respectively provide for the statutory framework for SFO and MLA arrangements. Specifically, Cap. 503 provides for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence, and for the treatment of persons surrendered to Hong Kong. Cap. 525 regulates the provision and obtaining of assistance in the investigation and prosecution of criminal offences, which includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime.

### **The Fugitive Offenders (Ireland) Order**

3. Section 3(1) of Cap. 503 provides that the Chief Executive in Council may, in relation to any SFO arrangements, by order direct that the procedures in Cap. 503 shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications contained in the order. The SFO agreement with Ireland was signed on 5 October 2007. The Fugitive Offenders (Ireland) Order to be made under section 3 of Cap. 503, which includes the agreement as a schedule, will enable the agreement to be brought into force and provide that the procedures in Cap. 503 shall apply as between Hong Kong and Ireland, subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the agreement.

### **The Mutual Legal Assistance in Criminal Matters (Finland) Order**

4. Section 4(1) of Cap. 525 provides that the Chief Executive in Council may, with the approval of the Legislative Council, in relation to any MLA arrangements, by order direct that Cap. 525 shall, subject to such modifications as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate. The MLA agreement with Finland was signed on 4 October 2007. The Mutual Legal Assistance in Criminal Matters (Finland) Order to be made under section 4 of Cap. 525 will enable the agreement to be brought into force and Cap. 525 to be applicable as between Hong Kong and Finland. Schedule 1 to the Order contains a copy of the agreement.

5. There are certain variations between the agreement and Cap. 525, and we need to modify the Ordinance to accommodate such variations. Such modifications are specified in Schedule 2 to the Order in accordance with section 4(3) of the Ordinance. An explanatory statement in relation to the modifications is at **Annex C**.

### **Conformity and Commencement**

6. Section 3(9) of Cap. 503 and section 4(2) of Cap. 525 provide that the Chief Executive in Council shall not make an order under the respective Ordinances unless the arrangements for SFO or MLA, as the case may be, to which the order relates are substantially in conformity with the provisions of the relevant Ordinance. The two agreements do so conform.

7. The Secretary for Security will appoint the commencement date of each of the two Orders by notice in the Gazette. Such date will coincide with the date on which the relevant agreement enters into force and will depend on when the necessary domestic procedures of Ireland and Finland, as the case may be, are completed. We shall settle the date after consultation with the country concerned.

### **LEGISLATIVE TIMETABLE**

8. The legislative timetable for the two Orders will be -

#### **Fugitive Offenders (Ireland) Order**

Publication in the Gazette 2 May 2008

Tabling in the Legislative Council 7 May 2008

#### **Mutual Legal Assistance in Criminal Matters (Finland) Order**

Introduction into the Legislative Council 21 May 2008

## **IMPLICATIONS OF THE ORDERS**

9. The two Orders are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of Cap. 503 and Cap. 525. They have no sustainability, economic, financial or civil service implications.

## **PUBLIC CONSULTATION**

10. The two Orders will enable the above-mentioned bilateral agreements to be brought into force in accordance with the existing legal framework. Public consultation is considered not necessary.

## **PUBLICITY**

11. We have issued this Legislative Council brief. A spokesman will also be available to answer enquiries.

## **BACKGROUND**

12. Sixteen Orders in relation to bilateral SFO agreements signed with foreign jurisdictions have been made under section 3 of Cap. 503. Twenty-one Orders in relation to bilateral MLA agreements signed with foreign jurisdictions have been made under section 4 of Cap. 525.

## **ENQUIRES**

13. Enquires on this brief should be directed to –

	<u>Telephone No.</u>
Ms Manda Chan Principal Assistant Secretary for Security	2810 2329
Miss Jane Lee Assistant Secretary for Security	2810 3523

**Security Bureau**  
**30 April 2008**

## **FUGITIVE OFFENDERS (IRELAND) ORDER**

(Made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503))

### **1. Commencement**

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

### **2. Procedures in Ordinance to apply between Hong Kong and Ireland**

In relation to the arrangements for the surrender of fugitive offenders the terms of which are recited in the Schedule, it is directed that the procedures in the Ordinance shall apply as between Hong Kong and Ireland subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.

#### SCHEDULE

[s. 2]

#### AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF IRELAND CONCERNING SURRENDER OF FUGITIVE OFFENDERS

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region") having been duly authorised to conclude this agreement by the Central People's Government of the People's Republic of China and the Government of Ireland (hereinafter referred to as "the Parties"),

Desiring to make provision for the reciprocal surrender of fugitive offenders;

Having agreed as follows:

## ARTICLE 1

### OBLIGATION TO SURRENDER

- (1) The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement and in accordance with the law of the requested Party, 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 described in Article 2.
- (2) References in this Agreement to “surrender”, “surrender of a fugitive offender” or “surrender of fugitive offenders” shall for the purposes of the law of Ireland be interpreted as “extradition” or “extradite”.

## ARTICLE 2

### OFFENCES

- (1) Surrender shall be granted for an offence coming within any of the following descriptions of offences in so far as it is according to the laws of both Parties punishable by imprisonment or other form of detention for one year or more, or by a more severe penalty:
  - (i) murder (including attempted murder) or manslaughter, including criminal negligence causing death;
  - (ii) aiding, abetting, counselling or procuring suicide;

- (iii) maliciously wounding; maiming; inflicting grievous or actual bodily harm; assault causing harm or causing serious harm to another person, threats to kill; intentional or reckless endangering of life whether by means of a weapon, a dangerous substance or otherwise, offences relating to unlawful wounding or injuring;
- (iv) offences of a sexual nature including rape; sexual assault; indecent assault; unlawful sexual acts on children; child pornography; statutory sexual offences;
- (v) gross indecency with a child, a mental defective or an unconscious person;
- (vi) kidnapping; abduction; false imprisonment; unlawful confinement; dealing or trafficking in slaves or other persons; taking a hostage;
- (vii) criminal intimidation;
- (viii) offences against the law relating to illegal drugs including narcotics and psychotropic substances and precursors and essential chemicals used in the illegal manufacture of narcotic drugs and psychotropic substances and offences related to the proceeds of drug trafficking;
- (ix) obtaining property or pecuniary advantage by deception; theft; robbery; burglary (including breaking and entering); embezzlement; blackmail; extortion; unlawful handling or receiving of property; false accounting; any other offence in respect of property or fiscal matters involving fraud; any offence against the law relating to unlawful deprivation of property;
- (x) offences against bankruptcy law or insolvency;

- (xi) offences against the law relating to companies including offences committed by officers, directors, and promoters;
- (xii) offences relating to securities and futures trading;
- (xiii) any offence relating to counterfeiting; any offence against the law relating to forgery or uttering what is forged;
- (xiv) an offence against the laws relating to protection of intellectual property, copyrights, patents or trademarks;
- (xv) an offence against the law relating to bribery, corruption, secret commissions, and breach of trust;
- (xvi) perjury and subornation of perjury;
- (xvii) offences relating to the perversion or obstruction of the course of justice;
- (xviii) arson; criminal damage including offences in relation to computer data;
- (xix) an offence against the law relating to firearms;
- (xx) an offence against the law relating to explosives;
- (xxi) an offence against laws relating to environmental pollution or protection of public health;
- (xxii) mutiny or any mutinous act committed on board a vessel at sea;



- (xxiii) piracy involving ships or aircraft, according to international law;
- (xxiv) unlawful seizure or exercise of control of an aircraft or other means of transportation;
- (xxv) genocide or direct and public incitement to commit genocide;
- (xxvi) facilitating or permitting the escape of a person from lawful custody;
- (xxvii) an offence against the laws relating to the control of exportation or importation of goods of any type, or the international transfer of funds;
- (xxviii) smuggling; offences against the laws relating to import and export of prohibited items, including historical and archaeological items and wildlife and endangered species;
- (xxix) immigration offences including fraudulent acquisition or use of a passport or visa;
- (xxx) arranging or facilitating for financial gain, the illegal entry of persons into the jurisdiction of the requesting Party;
- (xxxi) an offence relating to gambling or lotteries;
- (xxxii) offences relating to the unlawful termination of pregnancy;
- (xxxiii) stealing, abandoning, neglecting or unlawfully detaining a child: any other offence involving the exploitation of children;

(xxxiv) offences against the laws relating to prostitution and premises kept for the purposes of prostitution;

(xxxv) offences involving the unlawful use of computers;

(xxxvi) revenue offences, including offences relating to fiscal matters, taxes or duties and customs;

(xxxvii) offences relating to the unlawful escape from custody;

(xxxviii) bigamy;

(xxxix) any offence against the law relating to false or misleading trade descriptions;

(xl) offences relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement;

(xli) impeding the arrest or prosecution of a person who has or is believed to have committed an offence for which surrender may be granted under this Agreement;

(xlii) offences for which fugitive offenders may be surrendered under international conventions binding on the Parties; offences created as a result of decisions of international organisations which are binding on the Parties;

(xliii) conspiracy to commit fraud or to defraud;

(xliv) torture;

(xlv) conspiracy to commit any offence for which surrender may be granted under this Agreement;

(xlvi) aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit any offence for which surrender may be granted under this Agreement;

(xlvii) any other offence for which surrender may be granted in accordance with the law of the requested Party.

(2) A revenue offence is an extraditable offence. For the purposes of this Agreement, 'revenue offence' means an offence connected with taxes or duties even where the requested Party does not impose the same kind of tax or duty or its law does not contain the same type of rules as regards taxes, duties and customs as the requesting Party.

(3) Where surrender is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment or detention at least six months remain to be served.

(4) For the purposes of this Article, in determining whether an offence is an offence punishable under the laws of both Parties the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account.

(5) For the purposes of paragraph (1) of this Article, an offence shall be an offence according to the laws of both Parties if the conduct constituting the offence was an offence against the law of the requesting Party at the time it was

committed and is an offence against the law of both Parties at the time the request for surrender is received.

(6) Where the surrender of a fugitive offender is requested for the purpose of carrying out a sentence the requested Party may refuse to surrender him or her if it appears that the conviction was obtained in his or her absence, unless he or she has the opportunity to have his or her case retried in his or her presence, in which case he or she shall be considered as an accused person under this Agreement.

### ARTICLE 3

#### SURRENDER OF NATIONALS

(1) The Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of nationals of the People's Republic of China. The Government of Ireland reserves the right to refuse the surrender of its nationals.

(2) Where the requested Party exercises this right, the requesting Party may request that the case be submitted to the competent authorities of the requested Party in order that proceedings for prosecution of the person may be considered.

### ARTICLE 4

#### BASIS FOR SURRENDER

A fugitive offender shall be surrendered only if:

- (a) for an accused person, there is sufficient evidence provided, according to the law of the requested Party, to justify the committal for trial of the person sought if the offence of which he or she is accused were committed in the territory of the requested Party; or
- (b) in the case of a person already convicted, there is sufficient information provided showing that the sentence is enforceable and that he or she is the person convicted.

## ARTICLE 5

### MANDATORY REFUSAL OF SURRENDER

- (1) A fugitive offender shall not be surrendered if the requested Party has substantial grounds for believing:
  - (a) that the offence of which the person is accused or was convicted is a political offence or an offence of a political character in accordance with the law of the requested Party;
  - (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, religion, nationality, political opinions, sex, sexual orientation, language or ethnic origin;
  - (c) that the person might, if returned, be prejudiced at that person's trial or punished, detained or restricted in his or her personal liberty by reason of race, religion, nationality, political opinions, sex, sexual orientation, language or ethnic origin.

(2) A person shall not be surrendered if final judgement has been passed in the requested Party upon the person sought in respect of an offence for which his or her surrender has been requested.

(3) Surrender shall not be granted if the offence for which surrender is sought is an offence under military law which is not also an offence under ordinary criminal law.

(4) Surrender shall not be granted where the offence for which surrender is sought is punishable according to the law of the requesting Party by the death penalty.

## ARTICLE 6

### DISCRETIONARY REFUSAL OF SURRENDER

(1) Surrender may be refused if the requested Party considers that:

(a) there has been excessive delay, for reasons which cannot be imputed to the person sought, in bringing charges, in bringing the case to trial or in making the person serve his or her sentence or the remainder thereof;

(b) the offence for which surrender is sought was committed within the jurisdiction of its courts;

(c) the surrender might place that Party in breach of its obligations under international treaties; or

(d) in the circumstances of the case, the surrender would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought.

(2) Surrender may be refused if the offence for which surrender is sought was committed within the jurisdiction of the courts of the requested Party and proceedings for prosecution of the person for that offence are pending.

(3) Surrender may be refused where the person sought has been finally acquitted or convicted in a third country for the same offence for which surrender is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

## ARTICLE 7

### POSTPONEMENT OF SURRENDER

If the person sought is being proceeded against or is under punishment in the jurisdiction of the requested Party for any offence other than that for which surrender is requested, surrender may be granted or deferred until the conclusion of the proceedings and the execution of any punishment imposed.

## ARTICLE 8

### THE REQUEST AND SUPPORTING DOCUMENTS

(1) A request for surrender shall be in writing. A request and any related documents may be communicated directly between the competent authorities of the Parties.

(2) A request for surrender shall be made:

(a) in the case of Ireland, to the Minister for Justice, Equality and Law Reform;

(b) in the case of Hong Kong Special Administrative Region, to the Department of Justice,

and these shall be deemed to be the competent authorities of the Parties for the purposes of paragraph 1. Either Party may change its competent authority, in which case it shall notify the other Party of the change.

(3) The request shall be accompanied by:

(a) as accurate a description as possible of the person sought, together with any other information which would help to establish that person's identity, nationality and location;

(b) a statement of each offence for which surrender is sought and a statement of the acts and omissions which are alleged against the person in respect of each offence, including the place and date of commission; and

(c) the text or copies of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and any time limit on the institution of proceedings, or on the execution of any punishment for that offence.

(4) If the request relates to an accused person it shall also be accompanied by the original or a copy of the warrant of arrest issued by a judge, magistrate or



other competent authority of the requesting Party and by the evidence required under Article 4(a).

(5) If the request relates to a person already convicted or sentenced, it shall also be accompanied by:

(a) the original or a copy of the certificate of the conviction or sentence;  
and

(b) if the person was convicted but not sentenced, a statement to that effect by the appropriate court and a copy of the warrant of arrest; or

(c) if the person was sentenced, a statement indicating that the sentence is enforceable and how much of the sentence has still to be served.

## ARTICLE 9

### AUTHENTICATION

(1) Documents supporting a request for surrender shall be admitted in evidence as proof of the facts contained therein if duly authenticated. Documents are duly authenticated if they purport to be:

(a) signed or certified by a judge, magistrate or an official of the requesting Party, and

(b) sealed with the official seal of a competent authority of the requesting Party.

(2) Any certified translation of documents or any certified copy thereof submitted in support of a request for surrender provided by the requesting Party shall be admitted for all purposes in proceedings for surrender.

## ARTICLE 10

### LANGUAGE OF DOCUMENTATION

All documents submitted in accordance with this Agreement shall be in, or translated into, an official language of the requested Party.

## ARTICLE 11

### ADDITIONAL INFORMATION

(1) If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Agreement, the latter Party may request the necessary supplementary information and may fix a time-limit for receipt thereof.

(2) If the person whose surrender is sought is in custody 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 discharged. Such discharge shall not preclude the requesting Party from making a fresh request for the surrender of the person.

(3) Where the person is released from custody in accordance with paragraph (2), the requested Party shall notify the requesting Party as soon as possible of that fact.

## ARTICLE 12

### PROVISIONAL ARREST

(1) In urgent cases the person sought may, at the discretion of the requested Party and in accordance with its law, be provisionally arrested on the application of the requesting Party.

(2) The application for provisional arrest shall contain a statement as to why the matter is urgent, a statement of intention to request the surrender of the person sought, and the text of a warrant of arrest or a judgment of conviction against that person, a statement of the offence and the penalty for that offence, a statement of the brief facts of the case and details identifying that person.

(3) An application for provisional arrest may be transmitted by any means affording a record in writing. It may be made through the International Criminal Police Organisation (Interpol) or directly between the competent authorities specified in Article 8.

(4) The provisional arrest of the person sought shall be terminated if the request for surrender and supporting documents have not been received within the time periods laid down under the law of the requested Party. The release of a person pursuant to this paragraph shall not prevent the institution or continuation of surrender proceedings if the request and the supporting documents are received subsequently.

## ARTICLE 13

### CONCURRENT REQUESTS

If the surrender of a person is requested concurrently by one of the Parties and a State with whom the Hong Kong Special Administrative Region or Ireland, whichever is being requested, has agreements or arrangements for the surrender of accused and convicted persons, the requested Party shall make its decision having regard to all the circumstances including the provisions in this regard in any agreements in force between the requested Party and the requesting parties, the relative seriousness, date and place of commission of the offences, the respective dates of the requests, the nationality and ordinary place of residence of the person sought and the possibility of subsequent surrender to another state, and notify the other party of its decision in the event of surrender of the person to another jurisdiction.

#### ARTICLE 14

##### REPRESENTATION AND COSTS

- (1) The requested Party shall make all necessary arrangements for and meet the costs of any proceedings arising out of a request for surrender and shall otherwise represent the interests of the requesting Party.
- (2) If it becomes apparent that exceptional expenses may be incurred as a result of a request for surrender the Parties shall consult with a view to deciding how these expenses will be met.
- (3) The requested Party shall bear the expenses incurred in its territory arising out of the arrest and detention of the person whose surrender is sought until that person is surrendered. The requesting Party shall bear all subsequent expenses, including the expenses incurred in conveying the person from the jurisdiction of the requested Party.

## ARTICLE 15

### ARRANGEMENTS FOR SURRENDER

- (1) The requested Party shall, as soon as a decision on the request for surrender has been made, communicate that decision to the requesting Party.
- (2) Where surrender is granted, the requested Party shall surrender the person in accordance with arrangements agreed to between the competent authorities of the Parties.
- (3) Subject to the provisions of paragraph (4) of this Article, the requesting Party shall remove the person within the period specified by the requested Party and if the person is not removed within that period the requested Party may refuse to surrender that person for the same offence.
- (4) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be surrendered, it shall notify the other Party. In that case, the two Parties shall agree a new date for surrender and the provisions of paragraph (3) of this Article shall apply.

## ARTICLE 16

### TRANSFER OF PROPERTY

- (1) To the extent permitted under the law of the requested Party, when a request for surrender of a fugitive offender is granted, the requested Party:
  - (a) shall, if the requesting Party so requests, hand over to the requesting Party all articles, including sums of money,

- (i) which may be required as evidence; or
- (ii) which have been acquired by the person sought as a result of the offence and are in that person's possession or are discovered subsequently,

and which have been specified by the requesting Party,

(b) may, if the articles in question are liable to seizure or confiscation within the jurisdiction of the requested Party in connection with pending proceedings, temporarily retain them or hand them over on condition they are returned.

(2) The rights of the requested Party or of third parties in the property shall be preserved. When such rights exist the articles shall on request be returned to the requested Party without charge as soon as practicable after the end of the proceedings.

(3) Subject to the terms of this Article, the articles in question shall, if the requesting Party so requests, be handed over to that Party even if the surrender cannot be carried out due to the death or escape of the person sought.

## ARTICLE 17

### SPECIALTY AND RESURRENDER

(1) A fugitive offender who has been surrendered shall not be proceeded against, sentenced, detained or subjected to any other restriction of personal liberty by the requesting Party for any offence committed prior to his or her

surrender other than:

- (a) the offence or offences in respect of which his or her surrender was granted;
- (b) an offence, however described, based on substantially the same facts in respect of which his or her surrender was granted, provided such offence is one for which he or she could be surrendered under this Agreement, and provided further such offence is punishable by a penalty no more severe than the penalty for the offence for which he or she was surrendered;
- (c) any other offence for which surrender may be granted under this Agreement in respect of which the requested Party may consent to his or her being dealt with;

unless he or she has first had an opportunity to exercise his or her right to leave the jurisdiction of the Party to which he or she has been surrendered and he or she has not done so within forty five days or has voluntarily returned to that jurisdiction having left it.

(2) A fugitive offender who has been surrendered shall not be surrendered or transferred beyond the jurisdiction of the requesting Party for an offence committed prior to his or her surrender unless:

- (a) the requested Party consents to that surrender; or
- (b) he or she has first had an opportunity to exercise his or her right to leave the jurisdiction of the Party to which he or she has been surrendered and has not done so within forty five days or has voluntarily returned to that jurisdiction having left it.

(3) A Party whose consent is requested under paragraphs (1)(c) or (2)(a) of this Article may require the submission of any document or statement referred to in Article 8, and any statement made by the surrendered person on the matter.

## ARTICLE 18

### SURRENDER BY CONSENT

(1) If the person sought consents to surrender to the requesting Party, the requested Party may, in accordance with its law, surrender the person as expeditiously as possible without further proceedings.

(2) The provisions of Article 17 shall apply to a person surrendered pursuant to this Article.

## ARTICLE 19

### TRANSIT

(1) To the extent permitted by its law, transit through the jurisdiction of a Party may be granted on a request in writing.

(2) The Party through whose jurisdiction transit will occur may request the information referred to in Article 8.

(3) Permission for the transit of a person shall, subject to the law of the Party of transit, include permission for the person to be held in custody during transit.



(4) In the case of an unscheduled landing, the request of an officer having custody of the person being surrendered while the person is being conveyed shall be sufficient to constitute a request under paragraph 1 of this Article.

(5) Where a person is being held in custody pursuant to paragraph 3, the Party in whose territory the person is being held may direct that the person be released if his or her transportation is not continued within a reasonable time.

(6) The Party who requested transit facilities shall reimburse the other Party for any exceptional expense incurred by that other Party in connection with the transit.

## ARTICLE 20

### ENTRY INTO FORCE SUSPENSION AND TERMINATION

(1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.

(2) The provisions of this Agreement shall apply to requests made after its entry into force regardless of the date of the commission of the offence or offences set out in the request.

(3) Each of the Parties may suspend or terminate this Agreement at any time by giving notice to the other through the channel notified under paragraph (1) of Article 8. Suspension shall take effect on receipt of the relevant notice. In the case of termination this Agreement shall cease to have effect six months after the receipt of notice to terminate.

In witness whereof the undersigned, being duly authorised by their respective governments have signed this Agreement.

Done in duplicate at Dublin this 5<sup>th</sup> day of October Two Thousand and Seven in the Chinese and English and Irish languages, each text being equally authentic.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

### **Explanatory Note**

This Order applies the procedures for the surrender of fugitive offenders set out in the Fugitive Offenders Ordinance (Cap. 503) as between Hong Kong and Ireland. The Order is made in consequence of the arrangements for the surrender of fugitive offenders entered into by the Government of the Hong Kong Special Administrative Region and the Government of Ireland and signed in Dublin on 5 October 2007. The terms of those arrangements are recited in the Schedule to the Order. Those procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms so recited.

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL  
MATTERS (FINLAND) ORDER**

(Made by the Chief Executive in Council under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) subject to the approval of the Legislative Council)

**1. Commencement**

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

**2. Ordinance to apply between Hong Kong and Finland**

In relation to the arrangements for mutual legal assistance a copy of which is annexed at Schedule 1, it is directed that the Ordinance shall, subject to the modifications specified in Schedule 2, apply as between Hong Kong and the Republic of Finland.

SCHEDULE 1

[s. 2]

AGREEMENT BETWEEN THE GOVERNMENT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
OF THE PEOPLE'S REPUBLIC OF CHINA AND THE  
GOVERNMENT OF THE REPUBLIC OF FINLAND  
CONCERNING MUTUAL LEGAL ASSISTANCE  
IN CRIMINAL MATTERS

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region") having been duly authorised by the Central People's Government of the People's Republic of China to conclude this Agreement, and the Government of the Republic of Finland,

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution and prevention of crime and the confiscation of criminal proceeds;

Have agreed as follows:

## ARTICLE 1

### SCOPE OF ASSISTANCE

(1) The Parties shall provide, in accordance with the provisions of this Agreement, the widest measure of mutual legal assistance in the investigation and prosecution of criminal offences falling within the jurisdiction of the Requesting Party and in proceedings related thereto.

(2) Assistance shall include:

- (a) identifying and locating persons;
- (b) serving of documents;
- (c) the obtaining of evidence, articles or documents;
- (d) executing requests for search and seizure;
- (e) facilitating the personal appearance of witnesses or experts;
- (f) effecting the temporary transfer of persons in custody to appear as witnesses;

- (g) obtaining production of judicial or official records;
- (h) tracing, restraining, forfeiting and confiscating the proceeds and instruments of crime;
- (i) providing information, documents and records;
- (j) delivery of property, including lending of exhibits;
- (k) assistance in connection with criminal offences related to taxation, customs duties, foreign exchange control or other revenue matters; and
- (l) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.

## ARTICLE 2

### CENTRAL AUTHORITY

- (1) The Central Authorities of the Parties shall process requests for mutual legal assistance in accordance with the provisions of this Agreement.
- (2) The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or his duly authorised officer. The Central Authority for the Republic of Finland is the Ministry of Justice. Either Party may change its Central Authority in which case it shall notify the other of the change.

(3) Requests under this Agreement shall be transmitted by the Central Authority of the Requesting Party to the Central Authority of the Requested Party. In urgent cases requests may be transmitted by fax.

### ARTICLE 3

#### OTHER ASSISTANCE

The Parties may provide assistance pursuant to other agreements, arrangements or practices.

### ARTICLE 4

#### LIMITATIONS ON COMPLIANCE

- (1) The Requested Party shall refuse assistance if:
  - (a) the granting of the request would impair the sovereignty, security or public order of the People's Republic of China in the case of the Hong Kong Special Administrative Region, or, of the Republic of Finland;
  - (b) the request for assistance relates to an offence of a political character;
  - (c) the request for assistance relates to an offence only under military law;

- (d) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, religion, nationality or political opinions;
- (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party or for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the Requested Party;
- (f) it is of the opinion that the granting of the request would seriously impair its essential interests;
- (g) in the case of requests involving compulsory measures the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence for which compulsory measures are allowed;
- (h) the request relates to an offence which carries the death penalty in the Requesting Party.

(2) For the purpose of paragraph (1)(f), the Requested Party may include in its consideration of essential interests whether the provision of assistance could prejudice the safety of any person or impose an excessive burden on the resources of the Requested Party.

(3) The Requested Party may refuse assistance if the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided.

(4) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.

(5) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority:

- (a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and
- (b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

(6) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (5)(b), it shall comply with those terms and conditions.

## ARTICLE 5

### REQUESTS

- (1) Requests shall be made in writing.
- (2) Requests for assistance shall include:
  - (a) the name of the authority on behalf of which the request is made;



- (b) a description of the purpose of the request and the nature of the assistance requested;
- (c) a description of the nature of the investigation, prosecution, or proceedings;
- (d) a summary of the relevant facts and laws;
- (e) any requirements for confidentiality;
- (f) details of any particular procedure the Requesting Party wishes to be followed;
- (g) details of the period within which the request should be complied with; and
- (h) any other information which is required to facilitate execution of the request.

(3) The request and all documents submitted in support of a request shall be translated into Chinese or English where the Hong Kong Special Administrative Region is the Requested Party and in or translated into Finnish, Swedish or English where Finland is the Requested Party.

## ARTICLE 6

### EXECUTION OF REQUESTS

- (1) A request shall be executed in accordance with the law of the Requested Party and, to the extent not prohibited by the law of the Requested Party, in accordance with the directions stated in the request so far as practicable.
- (2) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.
- (3) The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.
- (4) The Requested Party shall use its best efforts to keep confidential a request and its contents except to the extent necessary to execute it.

## ARTICLE 7

### REPRESENTATION AND EXPENSES

- (1) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:
  - (a) fees of counsel retained at the request of the Requesting Party;
  - (b) fees of experts;

- (c) expenses of translation; and
- (d) travel expenses and allowances of persons who travel between the Requesting and Requested Parties.

(2) If during the execution of the request it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

## ARTICLE 8

### LIMITATIONS ON USE

(1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished, including documents, articles or records, be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

(2) The Requesting Party shall not disclose or use information or evidence furnished, including documents, articles or records, for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.

ARTICLE 9

OBTAINING OF EVIDENCE, DOCUMENTS  
ARTICLES OR RECORDS

(1) Where a request is made that evidence be taken for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter in the jurisdiction of the Requesting Party, the Requested Party shall arrange to have such evidence taken.

(2) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, articles or records.

(3) For the purposes of requests under this Article, the Requesting Party shall specify the questions to be put to the witnesses or the subject matter about which they are to be examined.

(4) Where evidence is to be taken, pursuant to a request for assistance under this Article, the person to whom the investigation, prosecution or proceeding in the Requesting Party relates, the person who is to give evidence and representatives of the Requesting party may, subject to the law of the Requested Party, appear or have legal representation or both for the purpose of questioning the person giving the evidence.

(5) A person who is required to give evidence in the Requested Party pursuant to a request for assistance may decline to do so where either:

- (a) the law of the Requested Party would permit that witness to decline to give evidence in similar circumstances in proceedings which originated in the Requested Party; or

(b) the law of the Requesting Party would permit him to decline to give evidence in such proceedings in the Requesting Party.

(6) If any person claims that there is a right to decline to give evidence under the law of the Requesting Party, the Requested Party shall with respect thereto rely on a certificate of the Central Authority of the Requesting Party.

#### ARTICLE 10

#### OBTAINING STATEMENTS OF PERSONS

Where a request is made to obtain the statement of a person for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter in the Requesting Party, the Requested Party shall endeavour to obtain such statement.

#### ARTICLE 11

#### LOCATION OR IDENTITY OF PERSONS

The Requested Party shall, if requested, endeavour to ascertain the location or identity of any person specified in the request.

## ARTICLE 12

### SERVICE OF DOCUMENTS

(1) The Requested Party shall serve any document transmitted to it for the purpose of service.

(2) Service may be effected by simple transmission of the document to the person to be served. If the Requesting Party expressly so requests service shall be effected by the Requested Party in the manner provided for the service of analogous documents under its own law or in the manner specified in the request provided that such manner is not inconsistent with the law of the Requested Party.

(3) The Requesting Party shall transmit a request for the service of a document that requires a response or appearance in the Requesting Party within a reasonable time before the scheduled response or appearance.

(4) A request for the service of a document pertaining to an appearance in the Requesting Party shall include such notice as the Central Authority of the Requesting Party is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.

(5) The Requested Party shall, subject to its law, return a proof of service in the manner required by the Requesting Party.

(6) A person who fails to comply with any process served on him shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or Requested Party unless he subsequently voluntarily enters the territory of the Requesting Party and is there again duly summoned.

### ARTICLE 13

#### PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

- (1) Subject to its law, the Requested Party shall provide copies of publicly available documents.
  
- (2) The Requested Party may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own law enforcement and judicial authorities.

### ARTICLE 14

#### CERTIFICATION AND AUTHENTICATION

Documents, transcripts, records, statements or other material which are to be transmitted to the Requesting Party shall only be certified or authenticated if the Requesting Party so requests. Material shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

## ARTICLE 15

### TRANSFER OF PERSONS IN CUSTODY

(1) A person in custody in the Requested Party whose presence is requested in the Requesting Party as a witness pursuant to this Agreement shall, if the Requested Party consents, be transferred from the Requested Party to the Requesting Party for that purpose, provided the person consents and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.

(2) A witness may decline to give evidence where he would be permitted to do so on the basis of either the law of the Requesting or Requested Party.

(3) Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst the person is in the Requesting Party, the Requested Party shall so advise the Requesting Party which shall ensure the person's release from custody.

## ARTICLE 16

### TRANSFER OF OTHER PERSONS

(1) If the Requesting Party considers the personal appearance of a witness or expert for the purpose of providing assistance necessary it shall so inform the Requested Party. The Requested Party shall invite the witness or expert to appear and advise the Requesting Party of the reply from the witness or expert.



(2) A witness or an expert may decline to give evidence where he would be permitted to do so on the basis of either the law of the Requesting or Requested Party.

(3) Where a request is made pursuant to this Article the Requesting Party shall advise the approximate amounts of allowances payable, including travelling and accommodation expenses.

## ARTICLE 17

### SAFE CONDUCT

(1) A person who consents to provide assistance pursuant to Article 15 or 16:

(a) shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence which preceded his departure from the Requested Party;

(b) shall not be subject to civil suit to which the person could not be subject if he were not in the Requesting Party.

(2) Paragraph (1) shall not apply if the person, being free to leave, has not left the Requesting Party within a period of 15 days after being notified that his presence is no longer required, or having left the Requesting Party, has returned.

(3) A person who consents to give evidence under Article 15 or 16 shall not be subject to prosecution based on his testimony, except for perjury.

(4) A person who consents to provide assistance pursuant to Article 15 or 16 shall not be required to provide assistance in any proceedings other than the proceedings to which the request relates.

(5) A person who does not consent to provide assistance pursuant to Article 15 or 16 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

## ARTICLE 18

### SEARCH AND SEIZURE

(1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any material to the Requesting Party which is relevant to an investigation, prosecution or proceeding in relation to a criminal matter.

(2) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.

(3) The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

## ARTICLE 19

### PROCEEDS OF CRIME

(1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime against the law of the Requesting Party are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.

(2) Where pursuant to paragraph (1), suspected proceeds of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the Requesting Party.

(3) Where a request is made for assistance in securing the confiscation of proceeds, such request shall be executed pursuant to the law of the Requested Party. This may include enforcing an order made by a court in the Requesting Party and initiating or assisting in proceedings in relation to the proceeds to which the request relates.

(4) Proceeds confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.

(5) For the purposes of this Agreement, “proceeds of crime” includes –

- (a) property which represents the value of property and other benefits derived from the commission of an offence;

- (b) property derived or realized directly or indirectly from the commission of an offence; and
- (c) property used or intended to be used in connection with an offence or the value of such property.

## ARTICLE 20

### SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

## ARTICLE 21

### ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force 30 days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.
- (2) This Agreement shall apply to offences committed before as well as after its entry into force.
- (3) Each of the Parties may terminate this Agreement at any time by giving notice to the other. In that event this Agreement shall cease to have effect on receipt of that notice. Requests for assistance which have been received prior to

termination of this Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement were still in force.

In witness whereof the undersigned, being duly authorised by their respective governments have signed this Agreement.

Done in duplicate at Helsinki, this fourth day of October, Two thousand and seven in the Chinese, English and Finnish languages, each text being equally authentic. In case of divergence between the texts, the English text shall prevail.

## SCHEDULE 2

[s. 2]

### MODIFICATIONS TO THE ORDINANCE

1. Section 5(1)(e) of the Ordinance shall be modified to read as follows –

“(e) the request relates to the prosecution of a person for an external offence in a case where the person –\*

(i)\* has been convicted, acquitted or pardoned by a competent court or other authority in the place,\*\* or Hong Kong in respect of that offence or of another external offence constituted by the same act or omission as that offence;\*  
or

(ii)\* has undergone the punishment provided by the law of that place or Hong Kong\*\*;\*\* in respect of that offence or of another external offence constituted by the same act or omission as that offence;”.

2. Section 5(1) of the Ordinance shall be modified by adding –

“(ea) the request relates to the prosecution of a person in respect of an act or omission that, if it had occurred in Hong Kong, could no longer be prosecuted in Hong Kong by reason of lapse of time;”\*

3. Section 17(3)(b) of the Ordinance shall be modified to read as follows –
- “(b) the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 days after being notified that his presence is no longer required for any of the following purposes\* ~~has had an opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for\*\*~~ –
- (i) the purpose to which the request relates; ~~or\*\*~~
  - (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Secretary for Justice to be a criminal matter in relation to which it is desirable that the person give assistance.”.

\* The words underlined are added. (The underlining is for ease of identifying the modification).

\*\* The words crossed out are deleted. (The crossing out is for ease of identifying the modification).

Clerk to the Executive Council

COUNCIL CHAMBER

2008

### **Explanatory Note**

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (“the Ordinance”) shall apply as between Hong Kong and

the Republic of Finland. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the Government of the Hong Kong Special Administrative Region and the Government of the Republic of Finland and signed in Helsinki on 4 October 2007. A copy of those arrangements is annexed at Schedule 1 to the Order. The Ordinance is to apply subject to the modifications specified in Schedule 2 to the Order.

**Explanatory Statement on the Modifications to the Mutual Legal Assistance in Criminal Matters Ordinance**

**Mutual Legal Assistance in Criminal Matters (Finland) Order**

**Previous Convictions etc**

Section 5(1)(e) of the Ordinance provides that the Secretary for Justice shall refuse assistance if the request relates to the prosecution of a person for an offence in respect of which he has been convicted, acquitted, pardoned or punished in the requesting jurisdiction. Article 4(1)(e) of the Hong Kong / Finland Agreement provides for this protection in relation to conviction etc in the requested jurisdiction. The modification to section 5(1)(e) reflects the provision in the Agreement by extending the protection to cover convictions etc in the requested jurisdiction.

**Lapse of Time**

2. Article 4(1)(e) of the Hong Kong/Finland Agreement provides that a requested party shall refuse assistance if the request relates to the prosecution of a person for an offence for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the requested party. The addition of sub-section (ea) to section 5(1) reflects such protection.

**Immunities**

3. Section 17 of the Ordinance gives certain immunities to a person who comes to Hong Kong from another jurisdiction to render assistance. These immunities cease to apply if the person has had the opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for the purpose of rendering assistance. Article 17(2) of the Hong Kong / Finland Agreement provides that the immunities will continue to be applicable within a period of 15 days after the person has been notified that his presence is no longer required. The modification reflects the additional protection in the Agreement by providing for a period of 15 days in section 17(3)(b).