

LEGISLATIVE COUNCIL BRIEF

Mutual Legal Assistance
in Criminal Matters Ordinance
(Chapter 525)

Fugitive Offenders Ordinance
(Chapter 503)

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (SWEDEN) ORDER

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (ARGENTINA) ORDER

FUGITIVE OFFENDERS (NETHERLANDS)(AMENDMENT) ORDER

INTRODUCTION

At the meeting of the Executive Council on 16 February 2016, the Council ADVISED and the Chief Executive ORDERED that - :

A

- (a) the Mutual Legal Assistance in Criminal Matters (Sweden) Order (“the Sweden Order”), at **Annex A**, should be made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (“the MLAO”) to implement the Agreement between the Government of the Hong Kong Special Administrative Region of the People’s Republic of China (“HKSAR”) and the Government of the Kingdom of Sweden Concerning Mutual Legal Assistance in Criminal Matters (“MLA”)(“the Sweden Agreement”);

B

- (b) the Mutual Legal Assistance in Criminal Matters (Argentina) Order (“the Argentina Order”), at **Annex B**, should be made under section 4 of the MLAO to implement the Agreement between the HKSAR and the Argentine Republic on MLA (“ the Argentina Agreement”); and

C

- (c) the Fugitive Offenders (Netherlands) (Amendment) Order (“the Netherlands Amendment Order”), at **Annex C**, should be made under section 3 of the Fugitive Offenders Ordinance (Cap. 503) (“the FOO”) to implement the Protocol between the Government of the HKSAR and the Government of the Kingdom of the Netherlands Amending the Agreement for the Surrender of Fugitive Offenders (“SFO”) (“the Netherlands SFO Agreement”), done at Hong Kong on 2 November 1992 (“the Netherlands Protocol”).

JUSTIFICATIONS

2. Hong Kong is fully committed to international cooperation in combating crimes. Article 96 of the Basic Law provides that with the assistance or authorisation of the Central People's Government (“CPG”), the Government of the HKSAR may make appropriate arrangements with foreign states for reciprocal juridical assistance. In accordance with this article, Hong Kong has been building its network of bilateral agreements on MLA and SFO.

3. The MLAO and FOO respectively provide for the statutory frameworks for MLA and SFO arrangements. Specifically, the MLAO regulates the provision to and obtaining from certain places outside Hong Kong of assistance in the investigation and prosecution of criminal offences and in ancillary criminal matters. The assistance 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 FOO 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.

4. Section 4(1) of the MLAO provides that the Chief Executive in Council may, with the approval of the Legislative Council (i.e. positive vetting), in relation to any MLA arrangements, by order direct that the MLAO applies, subject to such modifications as may be specified in the order, as between Hong Kong and the place outside Hong Kong to which the arrangements relate. In relation to SFO arrangements, section 3(1) of the FOO provides that the Chief Executive in Council may by order direct that the procedures in the FOO 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 Sweden and Argentina Agreements

5. With the authorisation of CPG, Hong Kong signed the Sweden Agreement and Argentina Agreement with the Kingdom of Sweden on 28 November 2013 and the Argentine Republic on 29 October 2015 respectively. The Sweden Order and the Argentina Order, to be made under section 4 of the MLAO, will enable the Ordinance to be applied as between Hong Kong and the two jurisdictions, thus bringing the two MLA agreements into force. The two Orders are subject to positive vetting by the Legislative Council.

The Netherlands Protocol

6. The Netherlands SFO Agreement was signed in 1992. Back then, the Kingdom of the Netherlands consisted of three parts: the mainland in Europe (“the Netherlands”), a group of five islands in the Caribbean (“the Netherlands Antilles”), and another island in the Caribbean (“Aruba”). Article 17 of the agreement provides that in respect of the Kingdom of the Netherlands, the agreement shall apply to the part of the Kingdom in Europe only. The Fugitive Offender (Netherlands) Order (Cap.503A), which brought the Netherlands SFO Agreement into force, was enacted in 1997.

7. A constitutional reform in October 2010 led to the dissolution of the Netherlands Antilles. The islands of Bonaire, Sint Eustatius and Saba became an integrated part of the

Netherlands as special municipalities (“the Caribbean part of the Netherlands”). The other two islands (“Curacao and Sint Maarten”) would enjoy self-government within the Kingdom, as Aruba does.

8. In October 2011, the Kingdom of the Netherlands proposed to Hong Kong to extend the application of the Netherlands SFO Agreement to the Caribbean part of the Netherlands, i.e. the islands of Bonaire, Sint Eustatius and Saba, by amending Article 17 of the agreement. Since the agreement does not provide for a mechanism to vary the territorial application, there is a need for Hong Kong and the Kingdom of the Netherlands to sign a protocol to amend Article 17 of the agreement. With CPG’s authorisation, the Netherlands Protocol was signed on 17 February 2015.

9. The Netherlands Amendment Order, to be made under section 3(1) of the FOO, will amend the Fugitive Offender (Netherlands) Order (Cap.503A) to give legal effect to the Netherlands Protocol. The Netherlands Amendment Order is subject to negative vetting by the Legislative Council.

10. Section 4(2) of the MLAO and section 3(9) of the FOO provide that the Chief Executive in Council shall not make an order unless the MLA or SFO arrangements to which the order relates are substantially in conformity with the provisions of the relevant Ordinances. The two MLA agreements and the Protocol do so conform.

THE SWEDEN ORDER AND THE ARGENTINA ORDER

11. The two MLA Orders will bring the two MLA agreements into force. Schedule 1 to each of the two Orders contains the text of the respective agreement.

12. In applying the MLAO as between Hong Kong and the Kingdom of Sweden and between Hong Kong and the Argentine Republic, certain provisions in the MLAO need to be modified. Such modifications are specified in Schedule 2 and summarised in Schedule 3 to each of the two Orders in accordance with section 4(3) of the MLAO.

13. The two MLA Orders provide that the Secretary for Security will appoint the commencement dates by notice in the Gazette. Such dates will coincide with the dates on which the relevant agreements enter into force. The two MLA agreements provide that they shall enter into force on the thirtieth day after the day on which the Parties have notified each other in writing that their respective requirements for the entry into force of the agreements have been complied with. For both agreements, Hong Kong will likely be the first Party to complete the domestic procedures for bringing the agreements into force and give the required notifications. Therefore the dates of operation of the two agreements will depend on when the Kingdom of Sweden and the Argentine Republic complete their respective domestic procedures and notify Hong Kong.

THE NETHERLANDS AMENDMENT ORDER

14. The Netherlands Amendment Order will bring the Netherlands Protocol into force.

The text of the Protocol is reproduced in a schedule to the Order.

15. The Netherlands Protocol will, in accordance with its Article 3, enter into force thirty days after the date on which the HKSAR Government has notified the Government of the Kingdom of the Netherlands in writing that the requirements for the entry into force of the Protocol have been complied with¹. The Netherlands Amendment Order and the Netherlands Protocol should commence operation on the same date. Subject to Members' approval of the Netherlands Amendment Order and the negative vetting by the Legislative Council, we will give the above written notification to the Government of the Kingdom of the Netherlands on 21 April 2016. The Netherlands Amendment Order therefore specifies that it will commence operation on 21 May 2016, thirty days after the notification.

OTHER OPTIONS

16. There is no non-legislative means to implement the MLA agreements and Protocol in question.

LEGISLATIVE TIMETABLE

17. The legislative timetable for the three Orders will be -

Mutual Legal Assistance in Criminal Matters (Sweden) Order and Mutual Legal Assistance in Criminal Matters (Argentina) Order (positive vetting)

Secretary for Security to give notice to the Legislative Council to move a motion	24 February 2016
Commencement	to be specified by the Secretary for Security

Fugitive Offenders (Netherlands) (Amendment) Order (negative vetting)

Publication in the Gazette	26 February 2016
Tabling at the Legislative Council	2 March 2016
Commencement	21 May 2016

IMPLICATIONS OF THE ORDERS

¹ The Kingdom of the Netherlands has advised that it has no domestic requirement to comply with to bring the Netherlands Protocol into force.

18. The three Orders are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the MLAO and the FOO. They have no civil service, sustainability, environmental, economic, financial or family implications.

PUBLIC CONSULTATION

19. The three orders will bring the two MLA agreements and the Protocol into force under Hong Kong laws. The legislative exercise is straight forward. As with similar exercises in the past, public consultation is considered unnecessary.

PUBLICITY

20. A spokesman will be available to answer enquiries.

BACKGROUND

21. Including the Sweden and Argentina Agreements, Hong Kong has so far signed MLA agreements with 31 foreign jurisdictions. Hong Kong has also signed 19 bilateral SFO agreements. Apart from the Netherlands Protocol, there were two other occasions where Hong Kong entered into protocols with other jurisdictions to amend signed SFO agreements.

ENQUIRES

22. Enquires on this brief should be directed to –

Mr Vic YAU
Principal Assistant Secretary for Security

Telephone No.
2810 2329

Security Bureau
24 February 2016

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

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

1. Commencement

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

2. Ordinance applies between Hong Kong and Sweden

- (1) In relation to the arrangements for mutual legal assistance a copy of which is annexed at Schedule 1, it is directed that the Ordinance, subject to the modifications specified in Schedule 2, applies as between Hong Kong and the Kingdom of Sweden.
- (2) The modifications referred to in subsection (1) are summarized in Schedule 3.

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 Kingdom of
Sweden 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 Kingdom of Sweden, hereinafter referred to as the Parties;

Desiring to improve the effectiveness of their co-operation in criminal matters and in the confiscation of proceeds of crime;

Have agreed as follows:

ARTICLE 1

Note:[#] The Agreement between the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and the Government of the Kingdom of Sweden Concerning Mutual Legal Assistance in Criminal Matters was done in the Chinese, English and Swedish languages, each text being equally authentic. The Swedish text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.

SCOPE OF ASSISTANCE

- (1) The Parties shall provide each other, in accordance with the provisions of this Agreement, the widest measure of mutual assistance in the investigation and prosecution of criminal offences and in proceedings related to criminal matters.
- (2) Assistance shall include:
 - (a) identifying and locating persons;
 - (b) service of documents;
 - (c) taking the testimony or statements of persons;
 - (d) executing requests for search and seizure;
 - (e) facilitating the personal appearance of persons to give testimony or to provide other assistance in the Requesting Party;
 - (f) effecting the temporary transfer of persons in custody to give testimony or to provide other assistance;
 - (g) providing information, documents, objects and records, and transfer of exhibits;
 - (h) tracing, restraining, forfeiting and confiscating the proceeds of crime and instrumentalities of criminal activities;
 - (i) restitution of property; and

- (j) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.
- (3) Assistance under this Agreement shall include assistance in connection with offences against a law relating to taxes, duties or customs control, but not in connection with non-criminal investigations or proceedings relating thereto.
- (4) This Agreement is intended solely for mutual assistance between the Parties. The provisions of the Agreement shall not give rise to any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

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 Kingdom of Sweden is the Ministry of Justice. Either Party may change its Central Authority in which case it shall notify the other of the change in writing.
- (3) Requests for mutual legal assistance shall be made directly between the Central Authorities on behalf of authorities that by law are responsible for investigations, prosecutions or proceedings relating to criminal matters. For the Hong Kong Special Administrative Region these authorities are the Department of Justice, the Hong Kong Police Force, the Immigration Department, the Customs and Excise Department, the Independent

Commission Against Corruption and the Securities and Futures Commission. For Sweden, these authorities are courts, public prosecutors and the Enforcement Authority.

ARTICLE 3

OTHER ASSISTANCE

The Parties may provide assistance pursuant to other agreements, arrangements or practices that are applicable to the Parties.

ARTICLE 4

GROUND FOR REFUSAL

- (1) The Requested Party may and, if required by its law, shall refuse assistance if:
- (a) the Requested Party being the Government of the Hong Kong Special Administrative Region, the execution of the request would impair:
 - (i) the sovereignty, security or public order of the People's Republic of China; or
 - (ii) the essential interests of the Hong Kong Special Administrative Region;
 - (b) the Requested Party being the Government of the Kingdom of Sweden, the execution of the request would impair the sovereignty, security, public order, general principles of

national law or other essential interests of the Kingdom of Sweden;

- (c) the request for assistance relates to an offence of a political character;
 - (d) the request for assistance relates to an offence under military law which is not also an offence under ordinary criminal law of the Requested Party;
 - (e) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;
 - (f) 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 a decision on waiver of prosecution concerning the act has been issued 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; or
 - (g) 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.
- (2) For the purposes of paragraph (1)(g), for offences relating to taxes, duties or customs control, it shall be immaterial that the law of the Requested Party does not impose the same kind of tax, duty or customs control or does not contain a tax, duty or customs regulation of the same kind as the law of the Requesting 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 information or evidence provided.

ARTICLE 5

REQUESTS

(1) Requests shall be made in writing or, where appropriate, through electronic means that are capable of leaving a written record.

(2) Requests for assistance shall include:

- (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including a statement of the facts and laws applicable to the specific criminal offences that relate to the matter;
- (c) a description of the evidence, information, or other assistance sought; and
- (d) a statement of the purpose for which the evidence, information, or other assistance is sought and its connection to the facts.

(3) To the extent necessary and possible, a request shall also include:

- (a) information on the identity and suspected location of a person to be located;

- (b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (c) information on the identity and location of any person from whom evidence is sought;
- (d) a precise description of the place or person to be searched and of the items to be seized;
- (e) a description of the testimony sought, which may include a list of questions to be asked of a witness;
- (f) a description of the manner in which any testimony or statement is to be taken and recorded;
- (g) a description of any particular procedure to be followed in executing the request;
- (h) any requirements for confidentiality and the reasons therefor;
- (i) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled; and
- (j) any other information that may be brought to the attention of the Requested Party to facilitate its execution of the request.

(4) A request and all documents submitted in support of a request shall be in, or accompanied by a translation into, an official language of the Requested Party unless agreed otherwise.

ARTICLE 6

EXECUTION OF REQUESTS

- (1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.
- (2) A request shall be executed in accordance with the law of the Requested Party and the provisions of this Agreement 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.
- (3) 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.
- (4) The Requested Party may postpone assistance if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
- (5) Before refusing or postponing assistance, the Requested Party shall promptly inform the Requesting Party of the reasons for considering refusal or postponement and consult with that Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.
- (6) The Requested Party shall inform the Requesting Party in writing of a decision to refuse assistance and the reasons therefor.

ARTICLE 7

REPRESENTATION AND EXPENSES

ARTICLE 8

CONFIDENTIALITY AND LIMITATIONS ON USE

- (1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
- (2) The Requested Party shall meet the cost of fulfilling the request for assistance except that the Requesting Party shall bear:
 - (a) fees of counsel retained at the request of the Requesting Party;
 - (b) fees of experts;
 - (c) expenses of translation;
 - (d) travel expenses and allowances of persons who travel between the Requesting and Requested Parties; and
 - (e) the cost in setting up a video conference in the Requested Party under Article 10, including the cost of establishing the videolink, costs related to the servicing of the videolink in the Requested Party, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the Requested Party.
- (3) If during the execution of the request it becomes apparent that expenses of a substantial or extraordinary 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.

(1) The Requested Party, to the extent permitted by its law and if so requested, shall keep the request for assistance, the contents of a request and its supporting documents, and the fact of granting of such assistance, confidential, except to the extent that disclosure is necessary to execute a request. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine whether the request should nevertheless be executed.

(2) The Requesting Party, to the extent permitted by its law and if so requested, shall keep confidential evidence and information provided by the Requested Party, including documents, objects or records, except to the extent that disclosure is necessary for the investigation, prosecution or proceeding described in the request.

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

ARTICLE 9

OBTAINING OF TESTIMONY AND EVIDENCE IN THE REQUESTED PARTY

(1) Where a request is made that testimony or 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 testimony or evidence taken.

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

(3) Where testimony or 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 testimony or 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 testimony or evidence.

(4) A person who is required to give testimony or 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 person to decline to give testimony or evidence in similar circumstances in proceedings which originated in the Requested Party; or
- (b) the law of the Requesting Party would permit that person to decline to give testimony or evidence in such proceedings in the Requesting Party.

(5) If any person claims that there is a right to decline to give testimony or 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 as evidence of the existence of that right.

ARTICLE 10

VIDEO CONFERENCE

Where possible and consistent with their laws, the Parties may agree on a case by case basis that the taking of testimony takes place by means of video conference under specific conditions.

ARTICLE 11

SERVICE OF DOCUMENTS

- (1) The Requested Party shall serve any document transmitted to it for the purpose of service.
- (2) The Requesting Party shall transmit a request for the service of a document that requires a response in the Requesting Party within a reasonable time before the time-limit of the scheduled response.
- (3) A request for the service of document requiring a person to appear in the territory of the Requesting Party shall have been received by the Requested Party at least 30 days before the scheduled appearance.
- (4) The Requested Party shall give proof of service:
 - (a) by means of a receipt dated and signed by the person served;
or
 - (b) by means of a declaration made by the Requested Party consistent with its domestic law that service has been effected and stating the form and date of such service.
- (5) A person who fails to answer a summons to appear in the territory of the Requesting Party pursuant to this Article shall not thereby be liable to any penalty or coercive measure pursuant to the law of either Party.

ARTICLE 12

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

(1) Subject to its law, the Requested Party shall, upon request, provide copies of publicly available documents.

(2) The Requested Party may, to the extent permitted by its law, provide copies of any official 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 13

CERTIFICATION

Evidence, documents, transcripts, records, statements or other material which are to be transmitted to the Requesting Party shall only be certified if the Requesting Party so requests.

ARTICLE 14

TRANSFER OF PERSONS IN CUSTODY

(1) A person in custody in the Requested Party whose presence is required in the territory of the Requesting Party for the purpose of providing testimony or statements or identification or providing such assistance as permitted by the law of the Requested Party shall, if the Requested Party consents, be temporarily transferred from the Requested Party to the territory of the Requesting Party for that purpose provided that the assistance is not for the investigation or determination of any criminal liability of that person. While the person is required to be held in custody under the law of the Requested Party, the Requesting Party shall guarantee the maintenance in custody of the person. The Requesting Party shall also

guarantee the person's subsequent return as soon as his or her presence is no longer required, but no later than the time specified by the Requested Party.

- (2) Transfer may be refused if:
 - (a) the person concerned does not consent;
 - (b) the person's presence is required for an investigation or proceeding pending in the Requested Party; or
 - (c) there are other overriding grounds against transfer.
- (3) Where a person in custody who is transferred, becomes entitled under the law of the Requested Party to be released from custody whilst he or she is in the territory of the Requesting Party, the Requested Party shall inform the Requesting Party which shall ensure the person's release and thereafter treat the person as a person referred to in Article 15.
- (4) The person transferred shall receive credit for service of the sentence imposed in the Requested Party for time served in the custody of the Requesting Party.
- (5) A person who does not consent to be transferred shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of either Party.

ARTICLE 15

APPEARANCE IN THE REQUESTING PARTY

- (1) The Requesting Party may request the assistance of the Requested Party in inviting a person to appear in the territory of the Requesting Party to provide assistance pursuant to this Agreement.
- (2) The Requested Party shall, upon receipt of such a request, invite the person to appear in the territory of the Requesting Party and seek that person's concurrence thereto.
- (3) A person who does not consent to appear in the territory of the Requesting Party shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of either Party.

ARTICLE 16

SAFE CONDUCT

- (1) A person in custody who is transferred to the Requesting Party pursuant to Article 14 or a person who provides assistance pursuant to Article 15 shall not be prosecuted, detained, or subject to any other restrictions in his or her personal liberty in the Requesting Party by reason of an act, omission or judgment that relates to the time prior to his or her departure from the Requested Party, except the maintenance in custody of the person as guaranteed under Article 14(1).
- (2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article 14, and being free to leave, has not left the Requesting Party within a period of 15 days after being notified that his or her presence is no longer required, or having left the Requesting Party, has returned.
- (3) A person in custody who is transferred to the Requesting Party pursuant to Article 14 or a person who provides assistance pursuant to

Article 15 shall not be subject to prosecution based on his or her testimony, except for perjury.

(4) A person in custody who is transferred to the Requesting Party pursuant to Article 14 or a person who provides assistance pursuant to Article 15 shall not be required to provide assistance in any proceedings other than the proceedings to which the request relates.

ARTICLE 17

SEARCH AND SEIZURE

(1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any material that the Requesting Party considers 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 material seized.

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

ARTICLE 18

PROCEEDS OF CRIME

(1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime 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, upon request, 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.

(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 19

SETTLEMENT OF DISPUTES

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

ARTICLE 20

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) Each of the Parties may terminate this Agreement at any time by giving written 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 Hong Kong, this Twenty Eighth day of November, Two thousand and Thirteen, in the Chinese, English and Swedish languages, each text being equally authentic. In case of divergence in interpretation, the English text shall prevail.

Schedule 2

[s. 2 & Sch. 3]

Modifications to the Ordinance

1. Section 5(1)(d) of the Ordinance is modified to read as follows—
 - “(d) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s race, sex,* religion, nationality, ethnic origin* or political opinions;”.
2. Section 5(1)(e) of the Ordinance is 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;”.
3. Section 5(1) of the Ordinance is 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;

(eb) the request relates to the prosecution of a person for an external offence in respect of which a decision on waiver of prosecution concerning the act or omission has been issued in Hong Kong;*”.

4. Section 17(1) of the Ordinance is modified by deleting paragraph (ii).
5. Section 17(3)(b) of the Ordinance is 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 the person’s 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.”.
6. Section 23(2)(a) of the Ordinance is modified—
 - (a) by adding “or” at the end of subparagraph (i);
 - (b) by deleting subparagraph (ii).

* The text underlined is added. (The underlining is for ease of identifying the modification).

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

Schedule 3

[s. 2]

Summary of Modifications to the Ordinance

- I. Sections 1, 2 and 3 of Schedule 2 specify modifications to section 5(1) of the Ordinance so that a request by a place outside Hong Kong for assistance under the Ordinance must also be refused if, in the opinion of the Secretary for Justice—
 - (a) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s sex or ethnic origin;
 - (b) the request relates to the prosecution of a person for an external offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in Hong Kong, or has undergone the punishment provided by the law of Hong Kong, in respect of that offence or of another external offence constituted by the same act or omission as that offence;
 - (c) 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; or
 - (d) the request relates to the prosecution of a person for an external offence in respect of which a decision on waiver of prosecution concerning the act or omission has been issued in Hong Kong.

2. Section 4 of Schedule 2 specifies a modification to section 17(1) of the Ordinance to limit the extent of immunities granted to a person who is in Hong Kong to give assistance in relation to a criminal matter pursuant to a request referred to in section 17(1)(a) or (b) of the Ordinance.
3. Section 5 of Schedule 2 specifies modifications to section 17(3)(b) of the Ordinance to more precisely delineate the circumstances under which a person who is in Hong Kong to give assistance in relation to a criminal matter, pursuant to a request made by the Secretary for Justice, ceases to have immunities under section 17(1) of the Ordinance.
4. Section 6 of Schedule 2 specifies modifications to section 23(2)(a) of the Ordinance to limit the extent of undertakings to be given by a place outside Hong Kong for the purpose of a request that a person give assistance referred to in section 23(1) of the Ordinance in the place.

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (*Ordinance*) applies as between Hong Kong and the Kingdom of Sweden. 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 Kingdom of Sweden and signed in Hong Kong on 28 November 2013. 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. The modifications are summarized in Schedule 3 to the Order.

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

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

1. Commencement

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

2. Ordinance applies between Hong Kong and Argentina

- (1) In relation to the arrangements for mutual legal assistance a copy of which is annexed at Schedule 1, it is directed that the Ordinance, subject to the modifications specified in Schedule 2, applies as between Hong Kong and the Argentine Republic.
- (2) The modifications referred to in subsection (1) are summarized in Schedule 3.

Schedule 1

[s. 2]

Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Argentine Republic on Mutual Legal Assistance in Criminal Matters[#]

The Hong Kong Special Administrative Region of the People's Republic of China having been duly authorised by the Central People's Government of the People's Republic of China, and the Argentine Republic, hereinafter referred to as "the Parties";

CONSIDERING the ties of friendship and co-operation that unite them;

ENCOURAGED by the purpose of enhancing mutual legal assistance and co-operation in criminal matters;

CONVINCED of the need of developing joint action for the prevention, control and suppression of crime;

AWARE that the increase in criminal activity makes it necessary to strengthen the mechanisms of co-operation in criminal matters.

Note: [#] The Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Argentine Republic on Mutual Legal Assistance in Criminal Matters was done in the Chinese, English and Spanish languages, each text being equally authentic. The Spanish text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

SCOPE OF ASSISTANCE

1. The Parties shall provide mutual assistance in accordance with the provisions of this Agreement, in connection with the prevention, investigation, and prosecution of offences, and in proceedings related to criminal matters.
2. Assistance shall include:
 - (a) taking testimony or statements;
 - (b) providing documents, records, and articles of evidence;
 - (c) serving documents;
 - (d) locating or identifying persons;
 - (e) transferring persons for testimony and other assistance related to criminal matters;
 - (f) executing requests for search and seizure;
 - (g) immobilizing assets;
 - (h) assisting in proceedings related to forfeiting the proceeds and instruments of criminal activities; and

- (i) any other form of assistance not inconsistent with the law of the Requested Party.

3. The Parties shall, in accordance with the provisions of this Agreement, provide assistance in connection with criminal offences against a law relating to taxation, customs duties and other revenue matters.

4. This Agreement is intended solely for mutual legal assistance between the Parties. Its provisions shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

5. This Agreement shall not apply to:

- (a) the arrest of persons in order to be surrendered, nor to requests for the surrender of fugitive offenders;
- (b) the transfer of sentenced persons for the execution of criminal judgements;
- (c) assistance to individuals or third jurisdictions.

ARTICLE 2

CENTRAL AUTHORITIES

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Agreement. The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or his duly authorized officer. The Central Authority for the Argentine Republic is the Ministry of Foreign Affairs and Worship. Either party may change its Central Authority in which case it shall notify the other of the change.

2. The Central Authorities shall communicate directly with one another for the purposes of this Agreement.

3. The Central Authorities of the Parties shall consult to make the present Agreement as effective as possible.

ARTICLE 3

LIMITATIONS ON USE

1. The Requesting Party shall not use any information or evidence obtained under this Agreement for purposes different from those stated in the request, except when the Requested Party has previously so authorized.

2. The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished be kept confidential or be disclosed or used only subject to such terms and conditions as the Requested Party may specify.

ARTICLE 4

FORM AND CONTENT OF REQUESTS

1. A request for assistance shall be made in writing. In urgent cases, the Requesting Party may transmit a request by facsimile, electronic mail or other means of communication that provides a written record of the transmission, and shall submit the original of the request promptly thereafter.

2. The request shall include the following:

(a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

(b) a description of the facts constituting the subject matter of the investigation, prosecution, or proceeding and of the relevant law, including the specific criminal offences which relate to the matters;

(c) a description of the assistance sought; and

(d) a statement of the purpose for which the assistance is sought and a description of the connection between the request and the criminal matter.

3. To the extent necessary and possible, a request shall also include:

(a) information on the identity and location of any person from whom evidence is sought;

(b) information on the identity and location of any person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(c) information on the identity and whereabouts of any person to be located;

(d) a precise description of the place or identification of any person to be searched and of the articles to be seized;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a list of questions to be asked;

- (g) a description of any particular procedure to be followed in executing the request;
 - (h) information as to the fees, allowances and expenses to which a person asked to appear in the Requesting Party will be entitled;
 - (i) any requirements for confidentiality;
 - (j) any time limits relevant to the request;
 - (k) a certified copy of any court order sought to be enforced, and a statement to the effect that it is not subject to appeal; or
 - (l) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.
4. If the Requested Party considers the contents of the request to be insufficient to enable it to execute the request, it may request additional information.
5. Requests and supporting documents made under this Agreement shall be accompanied by a translation into an official language of the Requested Party.

ARTICLE 5

EXECUTION OF REQUESTS

1. Requests shall be promptly executed in accordance with the laws of the Requested Party. Requests shall be executed in accordance with the

procedure specified therein except insofar as prohibited by the laws of the Requested Party.

2. If the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation or proceeding in that Party, it may postpone execution, or make execution subject to conditions determined to be necessary, after consultations with the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

3. The Requested Party shall promptly inform the Requesting Party of any circumstances that are likely to cause a significant delay in responding to the request.

4. The Requested Party shall use its best efforts to keep confidential a request and its contents, if such confidentiality is requested by the Requesting Party. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

5. The Requested Party shall respond to inquiries by the Requesting Party concerning progress toward execution of the request.

6. The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request. If the request is not executed, the Requested Party shall inform the Requesting Party of the reasons for the failure to execute.

ARTICLE 6

DENIAL OF THE REQUEST

1. The Requested Party shall deny the assistance if:
 - (a) the request is related to 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;
 - (b) the request for assistance has been made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on the grounds of race, sex, social condition, nationality, religion, or political opinions;
 - (c) the granting of the request would, in the case of the Hong Kong Special Administrative Region, impair the sovereignty of the People's Republic of China or the security or public order of the People's Republic of China or any part thereof, or, in the case of the Argentine Republic, impair the sovereignty, security or public order of the Argentine Republic;
 - (d) the request relates to a political or military offence;
 - (e) the granting of the request would seriously impair its essential interests.
2. The Requested Party may, and if required by its law shall, deny assistance if 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.
3. The Requested Party may refuse assistance if the request relates to an offence which carries the death penalty in the Requesting Party unless

the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be imposed or, if imposed, not carried out.

4. 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.

ARTICLE 7

TAKING OF TESTIMONY OR EVIDENCE

1. If the request has been made for the purpose of taking testimony or evidence from a person in the Requested Party, the Requested Party shall give notice to the person to appear in accordance with its domestic law. The Requested Party shall take the testimony or evidence in accordance with the terms of the request including any questions transmitted by the Requesting Party.
2. The Requested Party shall authorize the persons specified in the request to be present during the execution thereof and shall allow them to propose questions to the extent permitted by the laws of the Requested Party.
3. 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 case, the evidence shall nonetheless

be taken and the claim made known to the Requesting Party for subsequent resolution by the authorities of the Requesting Party.

ARTICLE 8

OBTAINING OF OFFICIAL RECORDS

The Requested Party may provide, upon request, copies of official documents, records or information kept in any governmental organization or agency but not publicly available, to the same extent and under the same conditions as such documents, records or information would be available to its own authorities.

ARTICLE 9

TRANSMISSION AND RETURN OF MATERIAL

1. The evidence, documents, articles or records obtained pursuant to this Agreement shall be transmitted as originals or certified copies through the Central Authorities.
2. Original documents or records, as well as any articles, which have been transmitted must be returned as soon as possible by the Requesting Party, except when the Requested Party has waived that requirement.

ARTICLE 10

SEARCH AND SEIZURE

1. The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any property 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 property shall be transmitted through the Central Authorities.
4. 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 11

HEARING BY VIDEO CONFERENCE

1. Where possible and consistent with their laws, the Parties may agree on a case by case basis that the taking of the testimony takes place by means of video conference under specific conditions.
2. The competent authority of the Requested Party shall provide a written record certifying the taking of the testimony.

ARTICLE 12

TRANSFER OF PERSONS TO PROVIDE TESTIMONY OR OTHER ASSISTANCE

1. When the Requesting Party requests the appearance of a person to provide testimony or other assistance, the Requested Party shall invite the person to appear before the appropriate authority in the Requesting Party.
2. The Requesting Party shall indicate the extent to which expenses will be paid. The Requested Party shall promptly inform the Requesting Party of the response of the person.

ARTICLE 13

TRANSFER OF PERSONS IN CUSTODY

1. A person in the custody of the Requested Party whose presence in the Requesting Party is needed for the purpose of providing assistance under this Agreement shall be transferred from the Requested Party to the Requesting Party if both the person and the Requested Party consent to the transfer.
2. For the purposes of this Article:
 - (a) the Requesting Party shall keep the person transferred in custody unless otherwise authorized by the Requested Party;
 - (b) the Requesting Party shall return the person transferred to the custody of the Requested Party as soon as circumstances permit or as otherwise agreed by the Parties;
 - (c) the Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred; and

- (d) the person transferred shall receive credit for service of any sentence imposed in the Requested Party for time served in the custody of the Requesting Party.

ARTICLE 14

SAFE CONDUCT

1. The person who appears before the competent authority of the Requesting Party for the purpose of providing the requested assistance may not be prosecuted or arrested for any criminal offence which preceded his or her departure from the Requested Party.
2. A person, whatever his or her nationality, who gives his or her written consent to appear before the competent authorities of the Requesting Party to answer for acts that are the subject of proceedings against him or her, shall not be prosecuted, arrested or subject to any other restriction of his or her personal liberty in respect of acts or omissions or judicial decisions previous to his or her departure from the Requested Party, and not specified in the summons.
3. A person who consents to give evidence under Articles 12 or 13 shall not be subject to prosecution based on his or her testimony, except for giving false evidence.
4. A person who consents to provide assistance pursuant to Articles 12 or 13 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 Articles 12 or 13 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

6. The safe conduct provided for in paragraphs 1 and 2 shall cease to have effect when the person, on a voluntary basis, extends his or her stay in the Requesting Party for a period of more than ten days from the date when his presence is no longer required in that Party or, having left it, has returned.

ARTICLE 15

PROCEEDS AND INSTRUMENTS OF CRIME

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds from criminal activities or instruments of crime are located within its jurisdiction and shall notify the Requesting Party of the result. In making the request, the Requesting Party shall give reasons for believing that the proceeds or instruments may be located in the Requested Party.

2. If suspected proceeds or instruments of crime are found in accordance with paragraph 1 of this Article, the Requested Party shall take measures to freeze, seize and forfeit such proceeds or instruments according to its domestic law.

3. The Requested Party may, to the extent permitted by its domestic law and under the terms and conditions agreed to by the Parties, transfer all or part of the proceeds or instruments of crime forfeited pursuant to this Agreement.

ARTICLE 16

PROPERTY OF BONA FIDE THIRD PERSONS

1. In accordance with the provisions of this Agreement, the competent authorities of the Requested Party shall, pursuant to their domestic law, protect the interests and rights of bona fide third persons in the property affected by the execution of requests.

2. Any person affected by an attachment, seizure, impoundment or forfeiture order may claim redress in accordance with the domestic law of the Requested Party.

ARTICLE 17

SERVICE OF DOCUMENTS

1. The Requested Party shall serve any document transmitted to it for the purpose of service in accordance with and subject to its laws.

2. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting Party within a reasonable time before the scheduled response or appearance.

3. The Requested Party shall, subject to its laws, return a proof of service in the manner required by the Requesting Party.

ARTICLE 18

EXPENSES

1. The ordinary expenses arising from the execution of a request shall be paid by the Requested Party except—

- (a) fees of experts or other professionals;

- (b) expenses of translation; and
- (c) travel expenses and allowances of persons.

2. If expenses of an extraordinary nature are required to fulfil the request, the Parties shall consult each other in order to determine the terms and conditions under which the execution of the request may continue.

ARTICLE 19

FORWARDING INFORMATION WITH A VIEW TO PROCEEDINGS

1. Either Party may, without prior request, submit information or evidence to the other Party with a view to proceedings being instituted in that Party.
2. The Party to whom such information or evidence is submitted shall notify the other Party of any action taken and shall forward a copy of any decision made.

ARTICLE 20

LEGALIZATION, CERTIFICATION AND AUTHENTICATION

1. A request and any supporting documents shall be exempted from legalization or analogous formality.
2. Documents, transcripts, records, statements or other material which are to be transmitted to either Party shall only be certified or authenticated if the other Party so requests.

ARTICLE 21

SETTLEMENT OF DISPUTES

Any dispute arising between the Parties related to the interpretation and application of this Agreement shall be resolved by the Central Authorities. If the Central Authorities are unable to reach agreement the dispute shall be resolved through diplomatic channels.

ARTICLE 22

ENTRY INTO FORCE AMENDMENT AND TERMINATION

1. The Parties shall notify each other in writing when their respective requirements for entry into force of this Agreement have been complied with, and it shall enter into force thirty (30) days after the date of the second notification.
2. Upon the mutual agreement of the Parties, this Agreement may be amended. Such amendment shall enter into force in accordance with the provisions set forth in Paragraph 1 of this Article.
3. This Agreement shall be in force for an indefinite period. Either of the Parties may terminate it by giving a written notice to the other. The termination shall take effect one hundred and eighty (180) days after such notification was given. Requests for assistance which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

IN WITNESS WHEREOF, the undersigned have signed this Agreement.

DONE at Hong Kong on the Twenty-ninth day of October of Two thousand and Fifteen in two (2) originals in the Chinese, English and Spanish languages, each text being equally authentic. In case there is any divergence of interpretation of this Agreement, the English text shall prevail.

Schedule 2

[s. 2 & Sch. 3]

Modifications to the Ordinance

1. Section 5(1)(d) of the Ordinance is modified to read as follows—
 - “(d) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s race, sex, social condition,* religion, nationality or political opinions;”.
2. Section 5(1)(e) of the Ordinance is 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;”.
3. Section 5(1) of the Ordinance is 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;*”.

4. Section 17(1) of the Ordinance is modified by deleting paragraph (ii).
5. Section 17(3)(b) of the Ordinance is modified to read as follows—
 - “(b) the person, being free to leave Hong Kong, has not left Hong Kong within a period of 10 days after being notified that the person’s 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.”
6. Section 23(2)(a) of the Ordinance is modified—
 - (a) by adding “or” at the end of subparagraph (i);
 - (b) by deleting subparagraph (ii).

* The text underlined is added. (The underlining is for ease of identifying the modification).

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

Schedule 3

[s. 2]

Summary of Modifications to the Ordinance

1. Sections 1, 2 and 3 of Schedule 2 specify modifications to section 5(1) of the Ordinance so that a request by a place outside Hong Kong for assistance under the Ordinance must also be refused if, in the opinion of the Secretary for Justice—
 - (a) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s sex or social condition;
 - (b) the request relates to the prosecution of a person for an external offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in Hong Kong, or has undergone the punishment provided by the law of Hong Kong, in respect of that offence or of another external offence constituted by the same act or omission as that offence; or
 - (c) 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.
2. Section 4 of Schedule 2 specifies a modification to section 17(1) of the Ordinance to limit the extent of immunities granted to a person who is in Hong Kong to give assistance in relation to a criminal

matter pursuant to a request referred to in section 17(1)(a) or (b) of the Ordinance.

3. Section 5 of Schedule 2 specifies modifications to section 17(3)(b) of the Ordinance to more precisely delineate the circumstances under which a person who is in Hong Kong to give assistance in relation to a criminal matter, pursuant to a request made by the Secretary for Justice, ceases to have immunities under section 17(1) of the Ordinance.
4. Section 6 of Schedule 2 specifies modifications to section 23(2)(a) of the Ordinance to limit the extent of undertakings to be given by a place outside Hong Kong for the purpose of a request that a person give assistance referred to in section 23(1) of the Ordinance in the place.

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (*Ordinance*) applies as between Hong Kong and the Argentine Republic. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the Hong Kong Special Administrative Region and the Argentine Republic and signed in Hong Kong on 29 October 2015. 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. The modifications are summarized in Schedule 3 to the Order.

**Fugitive Offenders (Netherlands) (Amendment) Order
2016**

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

1. Commencement

This Order comes into operation on 21 May 2016.

2. Fugitive Offenders (Netherlands) Order amended

The Fugitive Offenders (Netherlands) Order (Cap. 503 sub. leg. A) is amended as set out in sections 3, 4 and 5.

3. Section 2 substituted

Section 2—

Repeal the section

Substitute

“2. Procedures in Ordinance to apply between Hong Kong and Netherlands

In relation to the arrangements for the surrender of fugitive offenders the terms of which are recited in Schedules 1 and 2, it is directed that the procedures in the Ordinance apply as between Hong Kong and the Kingdom of the Netherlands subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.”

4. Schedule amended (Agreement between the Government of the Kingdom of the Netherlands and the Government of Hong Kong for the Surrender of Fugitive Offenders)

(1) The Schedule, heading—

Repeal

“SCHEDULE”

Substitute

“Schedule 1”.

(2) Schedule 1, heading—

Repeal

“OFFENDERS”

Substitute

“OFFENDERS[#]”.

(3) Schedule 1—

Add

“_____”

Note:[#] The Agreement between the Government of the Kingdom of the Netherlands and the Government of Hong Kong for the Surrender of Fugitive Offenders was done in the Chinese, English and Dutch languages, each text being equally authentic. The Dutch text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.”

5. Schedule 2 added

After Schedule 1—

Add

“Schedule 2

[s. 2]

**Protocol between the Government of the Hong
Kong Special Administrative Region of the
People’s Republic of China and the Government
of the Kingdom of the Netherlands Amending the
Agreement for the Surrender of Fugitive
Offenders, Done at Hong Kong on 2 November
1992[#]**

The Government of the Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong Special Administrative Region”) having been authorised by the Central People’s Government of the People’s Republic of China to conclude this Protocol with the Government of the Kingdom of the Netherlands,

and

Note: [#] The Protocol between the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and the Government of the Kingdom of the Netherlands Amending the Agreement for the Surrender of Fugitive Offenders, Done at Hong Kong on 2 November 1992 was done in the Chinese, English and Dutch languages, each text being equally authentic. The Dutch text of the Protocol is available for inspection at the Security Bureau of the Government of the HKSAR.

the Government of the Kingdom of the Netherlands (hereinafter referred to as “the Parties”),

Recalling the Agreement between the Government of Hong Kong and the Government of the Kingdom of the Netherlands for the surrender of fugitive offenders, done at Hong Kong on 2 November 1992 (hereinafter referred to as “the Agreement”),

Recognizing that the People’s Republic of China resumed the exercise of sovereignty over Hong Kong with effect from 1 July 1997 and in accordance with its constitution has on that date established the Hong Kong Special Administrative Region of the People’s Republic of China,

Noting that the Government of the People’s Republic of China has confirmed the continued application of the Agreement to the Hong Kong Special Administrative Region and its recognition as an agreement entered into between the Government of the Hong Kong Special Administrative Region under the authorisation of the Government of the People’s Republic of China and the Government of the Kingdom of the Netherlands,

Desiring to amend the Agreement,

Have agreed as follows:

Article 1

This Protocol amends the Agreement and the Agreement and this Protocol shall be read and interpreted together as one single instrument.

Article 2

The text of Article 17 of the Agreement shall be replaced by the following:

“With respect to the Kingdom of the Netherlands this Agreement shall apply to the European part of the Netherlands and to the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba).”

Article 3

(1) This Protocol shall enter into force thirty days after the date on which the Government of the Hong Kong Special Administrative Region has notified the Government of the Kingdom of the Netherlands in writing that the requirements for the entry into force of the Protocol have been complied with.

(2) This Protocol shall remain in force so long as the Agreement remains in force.

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

DONE in duplicate at Hong Kong this Seventeenth day of February, Two Thousand and Fifteen in the Chinese, Dutch and English languages, each text being equally authentic.”

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

This Order amends the Fugitive Offenders (Netherlands) Order (Cap. 503 sub. leg. A) (*principal Order*) in order to implement in Hong Kong the protocol entered into by the Government of the Hong Kong Special Administrative Region and the Government of the Kingdom of the Netherlands and signed in Hong Kong on 17 February 2015 (*Protocol*). The Protocol amends the agreement entered into by the Government of Hong Kong and the Government of the Kingdom of the Netherlands and signed in Hong Kong on 2 November 1992 (*Agreement*), as set out in the existing Schedule to the principal Order. Section 5 of this Order adds a new Schedule to the principal Order in order to set out the terms of the Protocol.

2. This Order also amends section 2 of the principal Order in order to enhance its readability.
3. This Order further amends the existing Schedule to the principal Order in order to add a note that provides the public with more information on the Agreement.