

L. N. 374 of 1998

MUTUAL LEGAL ASSISTANCE IN CRIMINAL
MATTERS (FRANCE) 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 in the Gazette.

2. Ordinance to apply between

Hong Kong and France

In relation to the arrangements for mutual legal assistance---

(a) which are applicable to the Government of Hong Kong and the Government of the
Republic of France; and

(b) a copy of which is annexed at Schedule 1,

it is hereby directed that the Ordinance shall, subject to the modifications to the
Ordinance summarized in Schedule 2, apply as between Hong Kong and the Republic of
France.

SCHEDULE 1 [s. 2]

Agreement Between

The Government of Hong Kong

and

The Government of the Republic of France

Concerning

Mutual Legal Assistance in

Criminal Matters

The Government of Hong Kong, having been duly authorised by the sovereign
government responsible for the foreign affairs relating to Hong Kong and the
Government of the Republic of France,

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

Have agreed as follows:

ARTICLE I

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; and
- (k) 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 may be granted in connection with criminal offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters.

(4) This Agreement does not apply either to the execution of arrests and enforcement of verdicts or to offences under military law which are not offences under the ordinary law.

ARTICLE II

Central Authority

(1) Each Party shall establish a Central Authority.

(2) The Central Authority of Hong Kong shall be the Attorney General or his duly authorised officer. The Central Authority for the Republic of France shall be the Ministry of Justice.

(3) Requests under this Agreement shall only be transmitted by the Central Authority of the Requesting Party to the Central Authority of the Requested Party. Requests shall be in writing.

In urgent cases the Central Authority may transmit requests by fax or through INTERPOL.

(4) The Central Authority of the Requested Party shall promptly comply with requests or, as appropriate, forward them to its competent authorities for them to carry out.

ARTICLE III

Other Assistance

The Parties may provide assistance pursuant to other agreements, arrangements

or practices.

ARTICLE IV

Limitations on Compliance

- (1) The Requested Party shall refuse assistance if:
 - (a) the request for assistance impairs the sovereignty, security or public order of the Republic of France or, in the case of Hong Kong, the State which is responsible for the foreign affairs relating to Hong Kong;
 - (b) if it is of the opinion that the granting of the request would seriously impair its essential interests;
 - (c) the request for assistance relates to an offence of a political character;
 - (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 Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided;
 - (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 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; and
 - (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.
- (2) The Requested Party may refuse assistance if the request relates to an offence which carries the death penalty in the Requesting Party but in respect of which the death penalty is either not provided for in the Requested Party or not normally carried out 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.
- (3) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
- (4) 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.
- (5) If the Requesting Party accepts assistance subject to the terms and conditions

referred to in paragraph (4) (b), it shall comply with those terms and conditions.

ARTICLE V

Requests

(1) Requests 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, offence or criminal matter;
- (d) a summary of the relevant fact and laws;

(e) any requirements for confidentiality;

(f) details of any particular procedure the Requesting Party wishes to be followed; and

(g) details of the period within which the request should be complied with.

(2) The Requested Party shall use its best efforts to keep confidential a request and its contents except when otherwise authorized by the Requesting Party.

(3) All documents submitted in support of a request shall be accompanied by a translation in an official language of the Requested Party to be specified by the Requested Party in each case.

ARTICLE VI

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.

ARTICLE VII

Representation and Expenses

(1) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:

- (a) fees of experts;
- (b) expenses of translation; and
- (c) travel expenses and allowances of witnesses, experts, persons being transferred

in custody and escorting officers.

(2) If during the execution of the request it becomes apparent that expenses of an 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.

ARTICLE VIII

Limitations of Use

(1) 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 it may specify.

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

ARTICLE IX

Attendance of Persons

For the purposes of requests under this Agreement the Requested Party may authorise persons affected by the relevant proceedings in the Requesting Party, their legal representatives and representatives of the Requesting Party to be present at the execution of the request.

ARTICLE X

Obtaining of Evidence, Articles or Documents

(1) Where a request is made that evidence be taken 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, records or other material.

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

(4) If necessary, any questions additional to those specified in paragraph (3) of this Article, may be put to the witness or person giving evidence by the competent authority of the Requested Party, either of its own volition or if requested by any of the persons referred to in Article IX.

(5) A person who is required to give evidence as a witness in the Requested Party pursuant to a request for assistance may decline to give evidence if the law of the Requested Party would permit the person to decline to give evidence in similar circumstances in proceedings which originated in the Requested Party. If the witness claims that there is a right to decline to give evidence under the law of the Requesting Party the evidence shall nonetheless be taken and the making of the claim recorded

and transmitted to the Central Authority of the Requesting Party for resolution by the authorities of that Party.

ARTICLE XI

Service of Documents

(1) The Requested Party shall effect service of writs, judicial verdicts and other documents which are transmitted to it for this purpose by the Requesting Party.

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

(3) The Requesting Party shall transmit a request for the service of a document pertaining to an appearance in the Requesting Party at least 40 days before the scheduled appearance.

(4) 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 a special manner consistent with such law.

(5) The Requested Party shall, insofar as its law permits, 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.

ARTICLE XII

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 competent authorities.

ARTICLE XIII

Certification and Authentication

Evidence, documents, records or other material transmitted pursuant to this Agreement shall not require any form of certification or authentication unless expressly requested by the Central Authority of the Requesting Party. Material shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

ARTICLE XIV

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 be transferred from the Requested Party to the Requesting Party, provided the Requested Party and the person consent and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.

(2) 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 XV

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) 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 XVI

Safe Conduct

(1) A person who consents to transfer pursuant Articles XIV or XV shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence or be subject to civil suit being a civil suit to which the person could not be subjected if the person were not in the Requesting Party for any act or omission which preceded his departure from the Requested Party.

(2) A person who consents to transfer pursuant to Articles XIV or XV shall not be subject to prosecution based on his testimony, except for perjury.

(3) A person who consents to transfer pursuant to Articles XIV or XV shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.

(4) A person who does not consent to transfer pursuant to Articles XIV or XV shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

(5) A person who responds to a summons from the Requesting Party to answer for acts forming the subject of proceedings against him shall not be prosecuted or detained or restricted in his personal liberty in the Requesting Party for acts or omissions which preceded his departure from the Requested Party and which are not specified in the summons.

(6) Paragraphs (1) and (5) shall not apply if the person, being free to leave, has not left the Requesting Party within a period of 30 days after being notified that his presence is no longer required, or having left the Requesting Party, has returned.

ARTICLE XVII

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 a proceeding or investigation 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 XVIII

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 of crime such request shall be executed pursuant to the laws of the Requested Party.

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

(5) Proceeds of crime include instruments used in connection with the commission of an offence.

ARTICLE XIX

Provision of Other Information in Connection with Proceedings

Where an offence has been committed within the area of a Party and that offence may also be prosecuted by the other Party the former Party may inform the latter Party if it decides not to prosecute the offence. Upon request, the former Party may provide information and evidence in relation to that offence.

ARTICLE XX

Exchange of Information from Criminal Records

Each Party shall, subject to the requirements of its law, inform the other Party of all sentences of imprisonment imposed in respect of persons who are, in the case of France, nationals or, in the case of Hong Kong, permanent residents. Such information shall be communicated through the Central Authority at least once per year.

ARTICLE XXI

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 XXII

Entry into Force 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) Each of the Parties may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect on receipt of that notice. 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, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Hong Kong this twenty-fifth day of June one thousand nine hundred and ninety seven in the Chinese, English and French languages, each text being equally authentic.

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---

(i)* for an external offence in a case where the person---

(A) has been convicted, acquitted or pardoned by a competent court or other authority in the place or Hong Kong*; or

(B) 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;

(ii) 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 17(3)(b) of the Ordinance shall be modified to read as follows---

"(b) the person has had an opportunity of leaving Hong Kong, 30 days have expired since that opportunity* and the person* 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 Attorney General** 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).

Mable CHAN

Clerk to the Executive Council

Council Chamber

13 October 1998

Explanatory Note

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) shall apply as between Hong Kong and the Republic of France. The Order is made in consequence of the arrangements for mutual legal assistance entered into by Hong Kong and the Republic of France and signed in Hong Kong on 25 June 1997. A copy of those arrangements is annexed at Schedule 1 to the Order. It should be noted that the Ordinance is subject to the modifications summarized in Schedule 2 to the Order.