

LEGISLATIVE COUNCIL BRIEF

Fugitive Offenders Ordinance (Chapter 503)

Mutual Legal Assistance in Criminal Matters Ordinance (Chapter 525)

FUGITIVE OFFENDERS (FINLAND) ORDER

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (POLAND) ORDER

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (ISRAEL) ORDER

INTRODUCTION

At the meeting of the Executive Council on 7 February 2006, the Council ADVISED and the Chief Executive ORDERED that –

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

JUSTIFICATIONS

2. Hong Kong is fully committed to international cooperation in combating serious crimes. In this connection, we have been expanding our network of bilateral agreements with other jurisdictions on SFO and MLA. These agreements enhance international cooperation in the fight against transnational crimes and ensure reciprocal assistance between the contracting parties.

3. The Fugitive Offenders Ordinance (Cap. 503) and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) respectively provide for the necessary statutory framework for implementing the SFO and MLA arrangements. Specifically, Cap. 503 provides for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence. It also provides for the treatment of persons surrendered to Hong Kong. Cap. 525 regulates the provision and obtaining of assistance in the investigation and prosecution of criminal offences, which includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime.

The Fugitive Offenders (Finland) Order

4. Section 3(1) of Cap. 503 provides that the Chief Executive in Council may, in relation to any SFO arrangements, by order direct that the procedures in Cap. 503 shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications contained in the order. We signed the SFO agreement with Finland on 20 May 2005. The Fugitive Offenders (Finland) Order, which includes the agreement as a schedule, to be made under section 3(1) of Cap. 503 will enable the agreement to be brought into force and provide that the procedures in Cap. 503 shall apply as between Hong Kong and Finland, subject to the terms of the agreement.

The Mutual Legal Assistance in Criminal Matters (Poland) Order and the Mutual Legal Assistance in Criminal Matters (Israel) Order

5. Section 4(1) of Cap. 525 provides that the Chief Executive in Council may, with the approval of the Legislative Council, in relation to any arrangements for MLA, by order direct that Cap. 525 shall, subject to such modifications as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate. The MLA agreements with Poland and Israel were signed on 26 April and 26 July 2005 respectively. The Mutual Legal Assistance in Criminal Matters (Poland) Order and the Mutual Legal Assistance in

Criminal Matters (Israel) Order to be made under section 4(1) of Cap. 525 will enable these two agreements to be brought into force and enable Cap. 525 to be applicable as between Hong Kong and the two countries. Schedule 2 to each of the two Orders contains a copy of the relevant bilateral agreement.

6. There are certain variations between the agreements and Cap. 525 which necessitate modifications to Cap. 525 to enable Hong Kong to comply with the obligations in the agreements. Such modifications are summarized in Schedule 1 to each of the two Orders in accordance with section 4(3) of the Ordinance.

7. An explanatory statement in relation to the modifications to Cap. 525 is at **Annex D**.

Conformity and Commencement

8. Section 3(9) of Cap. 503 and section 4(2) of Cap. 525 provide that the Chief Executive in Council shall not make an order under the respective Ordinances unless the arrangements for SFO or MLA to which the order relates are substantially in conformity with the provisions of the respective Ordinances. The three agreements with Finland, Poland and Israel do so conform.

9. The commencement date of each of the three Orders will be appointed by the Secretary for Security by notice in the Gazette. This date will coincide with the date on which the relevant agreement enters into force. The commencement date will be settled after consultation with the countries concerned and will depend upon when the necessary domestic procedures of these countries are completed.

LEGISLATIVE TIMETABLE

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

Fugitive Offenders (Finland) Order

Publication in the Gazette 17 February 2006

Tabling in the Legislative Council 22 February 2006

Mutual Legal Assistance in Criminal Matters (Poland) Order and Mutual Legal Assistance in Criminal Matters (Israel) Order

Introduction into the Legislative Council 8 March 2006

IMPLICATIONS OF THE ORDERS

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

PUBLIC CONSULTATION

12. The Orders will permit the three agreements to be brought into force in accordance with the existing legal framework. Public consultation is, therefore, considered not necessary.

PUBLICITY

13. A Legislative Council brief has been issued. A spokesman will be available to answer enquiries.

BACKGROUND

14. Thirteen Orders in relation to bilateral SFO arrangements signed with foreign jurisdictions have been made under section 3(1) of Cap. 503. These jurisdictions are the Netherlands, Canada, Australia, Malaysia, the Philippines, the USA, Indonesia, India, the UK, Singapore, New Zealand, Sri Lanka and Portugal.

15. Seventeen Orders in relation to bilateral MLA arrangements signed with foreign jurisdictions have been made under section 4(1) of Cap. 525. These jurisdictions are Australia, the USA, France, the UK, New Zealand, Italy, South Korea, Switzerland, Canada, the Philippines, Portugal, Ireland, the Netherlands, Ukraine, Singapore, Belgium and Denmark.

ENQUIRES

16. Enquires on this brief should be directed to –

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

Security Bureau
15 February 2006

FUGITIVE OFFENDERS (FINLAND) ORDER

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

1. Commencement

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

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

(1) In relation to the arrangements mentioned in subsection (2), it is directed that the procedures in the Ordinance shall apply as between Hong Kong and the Republic of Finland subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.

(2) The arrangements referred to in subsection (1) are the arrangements for the surrender of fugitive offenders -

(a) which are applicable to the Government and the Government of the Republic of Finland;
and

(b) the terms of which are recited in the Schedule.

SCHEDULE

[s. 2]

AGREEMENT BETWEEN

**THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA**

AND

THE GOVERNMENT OF THE REPUBLIC OF FINLAND

CONCERNING

SURRENDER OF FUGITIVE OFFENDERS

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

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

Have agreed as follows:

ARTICLE 1

OBLIGATION TO SURRENDER

The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement,

any person who is found in the jurisdiction of the Requested Party and who is wanted by the Requesting Party for prosecution, or for the imposition or enforcement of a sentence in respect of an offence described in Article 2.

ARTICLE 2

OFFENCES

(1) Surrender shall be granted for an offence coming within any of the following categories of offences insofar as it is according to the laws of both Parties punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty and insofar as such offence is one for which surrender may be granted under the law of the Requested Party:

- (a) Murder or manslaughter;
- (b) Offences involving wounding, injuring, causing grievous bodily harm; endangering the life or safety of any person; threatening to kill or cause grievous bodily harm;
- (c) Offences of a sexual nature including sexual violation; rape; sexual assault; indecent assault; sexual offences against children;
- (d) Kidnapping; abduction; false imprisonment; taking a hostage; dealing or trafficking in slaves or other persons;

- (e) Offences against the laws relating to drugs including narcotics and psychotropic substances;
- (f) Offences against the laws relating to theft; robbery; burglary; blackmail and extortion; handling or receiving property;
- (g) Offences against the laws relating to fraud, embezzlement or other forms of dishonesty including fraud or dishonesty by a debtor; obtaining property, money, valuable securities or pecuniary advantage by false pretences; conspiracy to defraud;
- (h) Offences relating to counterfeiting, forgery or uttering;
- (i) Offences relating to companies including offences committed by officers, directors, and promoters;
- (j) Offences against bankruptcy law;
- (k) Offences against the laws relating to bribery and corruption;
- (l) Perjury and offences relating to obstructing or defeating the course of justice;
- (m) Arson; criminal damage to property;
- (n) Piracy;
- (o) Stealing or abandoning a child;

- (p) Procuring sexual intercourse;
- (q) Offences relating to fiscal matters, taxes or duties, notwithstanding that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty or customs regulation of the same kind as the Requesting Party;
- (r) Offences relating to the possession or laundering of the proceeds of crime;
- (s) Offences for which surrender may be granted under international conventions binding on the Parties; offences created as a result of decisions of international organisations which are binding on the Parties;
- (t) Aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting or conspiring to commit any offence for which surrender may be granted under this Agreement;
- (u) Any other offence for which surrender may be granted in accordance with the laws of both Parties.

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

(3) For the purposes of this Article, in determining whether an offence is an offence punishable under the law of the Requested Party it shall be sufficient if the conduct of the person, examined by reference to the totality of the acts or omissions alleged against the person, would constitute an offence against that law, notwithstanding that the elements of the offence prescribed by the law of the Requesting Party are not identical with the elements prescribed by the law of the Requested Party.

(4) For the purposes of Article 2(1), an offence shall be an offence according to the laws of both Parties if the conduct constituting the offence was an offence against the law of the Requesting Party at the time it was committed and an offence against the law of the Requested Party at the time the request for surrender is received.

ARTICLE 3

SURRENDER OF NATIONALS

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

(2) Where the Requested Party exercises this right, the Requesting Party may request that the case be submitted

to the competent authorities of the Requested Party in order that proceedings for prosecution of the person may be considered.

ARTICLE 4

DEATH PENALTY

If the offence for which surrender is requested under this Agreement is punishable according to the law of the Requesting Party with the death penalty, surrender shall be refused.

ARTICLE 5

BASIS FOR SURRENDER

A person sought by the Requesting Party shall be surrendered only if:

- (a) in the case of a person accused of a criminal offence, the evidence is sufficient according to the law of the Requested Party to justify the committal for trial of that person; or
- (b) in the case of a convicted person, there is sufficient evidence to establish that that person is the person convicted by a court of the Requesting Party.

ARTICLE 6

MANDATORY REFUSAL OF SURRENDER

(1) A person shall not be surrendered if the Requested Party has substantial grounds for believing:

- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
- (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, colour, ethnic origin, sex, religion, nationality or political opinions; or
- (c) that the person might, if returned -
 - (i) be prejudiced at that person's trial; or
 - (ii) be punished, detained or restricted in his or her personal libertyby reason of race, colour, ethnic origin, sex, religion, nationality or political opinions.

(2) For the purposes of Article 6(1)(a), an offence of a political character does not include any offence in respect of which both Parties have an obligation in accordance with a multilateral agreement either to surrender the person sought or to submit the case to

their competent authorities for decision as to prosecution.

(3) A person who has been finally acquitted, convicted or pardoned or whose prosecution is barred or whose conviction has been set aside under the law of the Requesting or Requested Party for any offence set out in the request shall not be surrendered for that offence.

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

(5) Where the surrender of a person is requested for the purpose of enforcement of sentence, the Requested Party shall refuse surrender if it appears that the conviction was obtained in the person's absence, unless the person has the opportunity to have the case retried in his or her presence, in which case the person shall be considered as an accused person under this Agreement.

ARTICLE 7

DISCRETIONARY REFUSAL OF SURRENDER

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

- (a) the offence is, having regard to all the circumstances, not sufficiently serious to warrant the surrender of the person sought;

- (b) there has been excessive delay, for reasons which cannot be imputed to the person sought, in bringing charges, in bringing the case to trial or in making the person serve his or her sentence or the remainder thereof;
- (c) the surrender of the person might place that Party in breach of its obligations under international treaties;
- (d) in the circumstances of the case, the surrender would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought; or
- (e) the person whose surrender is requested has been sentenced or would be liable to be tried or sentenced in the Requesting Party by an extraordinary or ad hoc court or tribunal.

(2) The Requested Party may refuse to surrender a person for an offence which is regarded by its law as having been committed within the jurisdiction of its courts. If the Requested Party so refuses, the Requesting Party may request that the case be submitted to its competent authorities in order that proceedings for prosecution be considered.

(3) The Requested Party may refuse surrender where the person sought has been finally acquitted, convicted or pardoned in a third jurisdiction for the same offence for

which surrender is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

(4) The Requested Party may refuse surrender if the request relates to:

(a) the prosecution of a person for an offence which, had it been committed within the jurisdiction of the Requested Party, could no longer be prosecuted by reason only of lapse of time; or

(b) the enforcement of a sentence which, had it been imposed within the jurisdiction of the Requested Party, could no longer be enforced.

ARTICLE 8

POSTPONEMENT OF SURRENDER

(1) If the person sought is being proceeded against or is under punishment or is detained in the jurisdiction of the Requested Party in connection with any offence other than that for which surrender is requested, surrender may be deferred until the conclusion of the proceedings, the enforcement of any punishment imposed or the release from detention, as the case may be.

(2) When the person whose surrender is requested was previously surrendered by a third jurisdiction for prosecution or enforcement of sentence, no action shall

be taken pursuant to such request until such time has elapsed as is required by any agreement with that third jurisdiction.

ARTICLE 9

THE REQUEST AND SUPPORTING DOCUMENTS

- (1) Requests for surrender and related documents shall -
 - (a) where Finland is the Requesting Party, be made by the Ministry of Justice of Finland to the Department of Justice of the Hong Kong Special Administrative Region;
 - (b) where the Hong Kong Special Administrative Region is the Requesting Party, be made by the Department of Justice of the Hong Kong Special Administrative Region to the Ministry of Justice of Finland,

or be made through such other appropriate authorities as may be agreed by the Parties.
- (2) The request shall be accompanied by:
 - (a) as accurate a description as possible of the person sought, together with any other information which would help to establish that person's identity, nationality and location;

- (b) a statement of each offence for which surrender is sought and a statement of the relevant acts and omissions in respect of each offence; and
- (c) a statement of the provisions of the law describing the offence for which surrender is requested and a statement of the punishment which can be imposed therefor and any time limit on the institution of proceedings or on the enforcement of any punishment for that offence.

(3) If the request relates to an accused person, it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the Requesting Party and by such evidence as, according to the law of the Requested Party, would justify committal for trial if the offence had been committed within the jurisdiction of the Requested Party.

(4) If the request relates to a person already convicted or sentenced, it shall also be accompanied by a copy of the certificate of the conviction or sentence, and

- (a) if the person was convicted but not sentenced, a statement to that effect by the appropriate court and a copy of the warrant of arrest; or
- (b) if the person was sentenced, a statement indicating that the sentence is enforceable and how much of the sentence has still to be served.

ARTICLE 10

AUTHENTICATION

- (1) Any document that, in accordance with Article 9, accompanies a request for surrender shall, if duly authenticated, be admitted in evidence in proceedings relating to the examination of the request.
- (2) A document is duly authenticated if it purports to be:
 - (a) signed or certified by a judge, magistrate or an official of the Requesting Party; and
 - (b) sealed with the official seal of a competent authority of the Requesting Party.
- (3) Authenticated translations of documents submitted in support of a request for surrender shall be admitted for all purposes in proceedings for surrender.

ARTICLE 11

LANGUAGE OF DOCUMENTATION

All documents submitted in accordance with this Agreement shall be in or translated into Chinese or English where the Hong Kong Special Administrative Region is the Requested Party and in or translated into Finnish, Swedish or English where Finland is the Requested Party.

ARTICLE 12

PROVISIONAL ARREST

(1) In urgent cases the person sought may, in accordance with the law of the Requested Party, be provisionally arrested on the application of the Requesting Party.

(2) An application for provisional arrest shall contain:

- (a) a statement of intention to request the surrender of the person sought;
- (b) a statement of the existence of a warrant of arrest or a judgment of conviction against that person;
- (c) information concerning the person's identity, nationality and probable location;
- (d) a description of the person;
- (e) a brief description of the offence and the facts of the case;
- (f) a statement of the sentence that can be or has been imposed for the offence; and
- (g) where applicable, how much of that sentence remains to be served.

(3) An application for provisional arrest may be transmitted by any means affording a record in writing through the authorities specified under Article 9(1) or

through the International Criminal Police Organisation (Interpol).

(4) The provisional arrest of the person sought shall be terminated upon the expiration of 45 days from the date of arrest if the request for surrender and supporting documents have not been received. The release of a person pursuant to this paragraph shall not prevent the institution or continuation of surrender proceedings if the request and the supporting documents are received subsequently.

ARTICLE 13

ADDITIONAL INFORMATION

(1) If the information communicated by the Requesting Party is found to be insufficient to allow the Requested Party to make a decision under this Agreement, that Party shall request the necessary supplementary information and may fix a time-limit for its receipt.

(2) If the person whose surrender is sought is under arrest, and the additional information furnished is not sufficient in accordance with this Agreement or is not received within the time specified, the person may be discharged. Such discharge shall not preclude the Requesting Party from making a fresh request for the surrender of the person in respect of the same offence.

ARTICLE 14

CONCURRENT REQUESTS

(1) If the surrender of a person is requested concurrently by one of the Parties and a State with whom the Hong Kong Special Administrative Region or Finland, whichever is being requested, has agreements or arrangements for the surrender of fugitive offenders, or an international tribunal established in accordance with a multilateral international convention that applies to the Requested Party or as a result of a decision of an international organization binding on the Requested Party, the Requested Party shall make its decision having regard to all the circumstances including:

- (a) (i) the provisions in this regard in any such agreements or arrangements; or, as the case may be,
- (ii) any obligations under the relevant convention or statute or decision establishing the international tribunal;
- (b) the relative seriousness and place of commission of the offences;
- (c) the respective dates of the requests;
- (d) the nationality and ordinary place of residence of the person sought; and

(e) the possibility of subsequent surrender to another jurisdiction.

(2) In the event of surrender of the person to another jurisdiction, the Requested Party shall notify the other Party of its decision with reasons.

ARTICLE 15

REPRESENTATION AND COSTS

(1) The Requested Party shall make all necessary arrangements for legal representation and assistance in any proceedings in its jurisdiction arising out of a request for surrender.

(2) Subject to Article 15(3), the Requested Party shall meet the costs of any proceedings arising from the request in its jurisdiction and shall bear any expenses associated with the arrest and detention of the person whose surrender is sought until that person is surrendered. The Requesting Party shall bear all subsequent expenses including the costs of conveying the person from the jurisdiction of the Requested Party.

(3) If it becomes apparent that exceptional expenses may be incurred as a result of a request for surrender the Parties shall consult with a view to deciding how these expenses will be met.

ARTICLE 16

ARRANGEMENTS FOR SURRENDER

(1) The Requested Party shall, as soon as a decision on the request for surrender has been made, communicate that decision to the Requesting Party. Reasons shall be given for any complete or partial refusal of the request.

(2) When a person is to be surrendered, that person shall be sent by the authorities of the Requested Party to such convenient place of departure within that Party's jurisdiction as the Requesting Party shall indicate.

(3) Subject to Article 16(4), the Requesting Party shall remove the person within the period specified by the Requested Party and if the person is not removed within that period the Requested Party may refuse to surrender that person for the same offence.

(4) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be surrendered, it shall notify the other Party. In that case, the two Parties shall agree a new date for surrender and the provisions of Article 16(3) shall apply.

ARTICLE 17

SURRENDER OF PROPERTY

(1) When a request for surrender is granted, the Requested Party shall, so far as its law allows, hand

over, upon request, to the Requesting Party all articles, including sums of money:

- (a) which may serve as proof of the offence; or
- (b) which have been acquired by the person sought as a result of the offence and are in that person's possession or discovered subsequently.

(2) The Requested Party may temporarily retain any property mentioned in Article 17(1) if it is the subject of, or is required for, proceedings in that jurisdiction, or it may temporarily surrender it on condition that it be returned free of charge.

(3) Where the law of the Requested Party or the protection of the rights of third parties so require and the Requested Party so requests, the articles shall be returned to the Requested Party without charge as soon as practicable after the end of the proceedings.

(4) If permitted by the law of the Requested Party and the Requesting Party so requests, the articles shall be surrendered to that Party even though the person cannot be surrendered owing to death, disappearance or escape.

ARTICLE 18

RULE OF SPECIALTY

(1) A person who has been surrendered shall not be proceeded against, sentenced, detained or subjected to any other restriction of personal liberty by the

Requesting Party for any offence committed prior to the surrender other than:

- (a) the offence or offences in respect of which the surrender was ordered;
- (b) an equivalent or lesser offence, disclosed by the facts in respect of which the surrender was ordered, if the offence is one for which the person could have been surrendered under this Agreement; or
- (c) where permitted by the law of the Requested Party, any other offence being an offence for which surrender may be ordered under this Agreement in respect of which the Requested Party consents to the person being dealt with

unless the person has first had an opportunity to leave the jurisdiction of the Party to which he or she has been surrendered and has not done so within 45 days of having been free to do so or has voluntarily returned after having left.

(2) A Party whose consent is requested under Article 18(1)(c) may require the submission of any document or statement referred to in Article 9.

ARTICLE 19

RESURRENDER

(1) Where a person has been surrendered to the Requesting Party by the Requested Party, that person is not liable to be surrendered or transferred beyond the jurisdiction of the Requesting Party for an offence committed before the person's surrender unless:

(a) the person has first had an opportunity to leave the Hong Kong Special Administrative Region or Finland, as the case may be, and has not done so within 45 days of having been free to do so or has voluntarily returned after having left; or

(b) the Requested Party consents to that surrender.

(2) A Party whose consent is requested under Article 19(1)(b) may require the submission of any document or statement referred to in Article 9.

ARTICLE 20

SURRENDER BY CONSENT

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

(2) To the extent required under the law of the Requested Party, the provisions of Articles 18 and 19 shall apply to a person surrendered pursuant to this Article.

ARTICLE 21

TRANSIT

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

(2) The Party through whose jurisdiction transit will occur may request the information referred to in Article 9(2)(b).

ARTICLE 22

ENTRY INTO FORCE SUSPENSION AND TERMINATION

(1) This Agreement shall enter into force 30 days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.

(2) This Agreement shall apply to offences committed before as well as after it enters into force.

(3) Each of the Parties may suspend or terminate this Agreement at any time by giving notice to the other through the authorities specified under Article 9(1). Suspension shall take effect on receipt of the relevant notice. In the case of termination this Agreement shall cease to have effect six months after the receipt of notice to terminate.

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

Done in duplicate at Hong Kong this twentieth day of May, Two thousand and five in the Chinese, English and Finnish languages, each text being equally authentic. In case of divergence between the texts, the English text shall prevail.

Clerk to the Executive Council

COUNCIL CHAMBER

2006

Explanatory Note

This Order applies the procedures for the surrender of fugitive offenders set out in the Fugitive Offenders Ordinance (Cap. 503) as between Hong Kong and the Republic of Finland. The Order is made in consequence of the arrangements for the surrender of fugitive offenders entered into by Hong Kong and the Republic of Finland and signed in Hong Kong on 20 May 2005. The terms of those arrangements are recited in the Schedule to the Order. It should be noted that those procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms so recited.

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

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

1. Commencement

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

2. Ordinance to apply between Hong Kong and Poland

(1) In relation to the scheduled arrangements for mutual legal assistance, it is directed that the Ordinance shall, subject to the modifications summarized in Schedule 1, apply as between Hong Kong and the Republic of Poland.

(2) In subsection (1), "scheduled arrangements for mutual legal assistance" (列明的相互法律協助的安排) means arrangements which are applicable to the Government and the Government of the Republic of Poland, a copy of which is annexed at Schedule 2.

SCHEDULE 1

[s. 2]

MODIFICATIONS TO THE ORDINANCE

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

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

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

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

2. Section 17(1) of the Ordinance shall be modified by deleting paragraph (ii).

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

"(b) the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 days after being notified that his presence is no longer required for any of the following purposes* ~~has had an opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for~~^{**} -

- (i) the purpose to which the request relates; ~~or~~^{**}
- (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Secretary for Justice to be a

criminal matter in relation to which it is desirable that the person give assistance.".

4. Section 23(2)(a) of the Ordinance shall be modified -
- (a) by adding "or" at the end of subparagraph (i);
 - (b) by deleting subparagraph (ii).

* 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).

SCHEDULE 2

[s. 2]

AGREEMENT BETWEEN THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION OF
THE PEOPLE'S REPUBLIC OF CHINA AND THE
GOVERNMENT OF THE REPUBLIC OF POLAND
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 authorized by the Central People's Government of the People's Republic of China and the Government of the Republic of Poland, hereinafter referred to as "the Contracting Parties",

Desiring to improve the effectiveness of law enforcement of both Contracting Parties in the investigation, prosecution and

prevention of crime and the confiscation of the proceeds of crime through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

ARTICLE 1

SCOPE OF ASSISTANCE

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of this Agreement, in connection with the investigation, prosecution and prevention of offences. The Contracting Parties shall also provide such assistance in connection with the confiscation or forfeiture of the proceeds or instrumentalities of offences and other proceedings directly related to the commission of offences unless such assistance is not permitted by the laws of the Requested Party.

2. Assistance shall include:

- (a) taking testimony or statements;
- (b) providing items, including documents, records and articles of evidence;
- (c) locating or identifying persons or items;

- (d) serving documents;
- (e) facilitating the personal appearance of persons, including persons in custody;
- (f) executing requests for search and seizure;
- (g) assisting in proceedings related to immobilization and confiscation or forfeiture of the proceeds or instrumentalities of offences and restitution of those proceeds or instrumentalities to the victims of crime; and
- (h) any other forms of assistance not prohibited by the laws of the Requested Party.

3. This Agreement is intended solely for mutual legal assistance between the Contracting Parties. The provisions of this Agreement 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 the request.

ARTICLE 2

CENTRAL AUTHORITIES

1. Each Contracting Party shall have a Central Authority to make and receive requests pursuant to this Agreement.

2. For the Hong Kong Special Administrative Region, the Central Authority shall be the Secretary for Justice, or a person authorized by the Secretary for Justice. For the Republic of Poland, the Central Authority shall be the Minister of Justice - Prosecutor General, or a person authorized by the Minister of Justice - Prosecutor General. Either Contracting Party may change its Central Authority in which case it shall notify the other of the change.

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

ARTICLE 3

LIMITATIONS ON PROVIDING ASSISTANCE

1. The Central Authority of the Requested Party shall refuse assistance if:

(a) the execution of the request for assistance would impair the sovereignty, security or public order of the Republic of Poland or, in the case of the Hong Kong Special Administrative Region, the People's Republic of China;

(b) the request for assistance relates to an offence of a political character;

- (c) the request for assistance relates to an offence under military law which would not be an offence under ordinary criminal law;
- (d) there are substantial grounds for believing that the request for assistance was made for the purpose of prosecuting, punishing or otherwise proceeding against a person on account of his race, religion, nationality or political opinions;
- (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted or acquitted in the Requested Party;
- (f) it is of the opinion that the execution of the request for assistance would impair the essential interests of the Requested Party;
- (g) the acts or omissions which constitute the criminal conduct in respect of which assistance is sought do not constitute an offence under the law of the Requested Party, or would not constitute an offence if committed within the Requested Party;
- (h) the primary purpose of the request for assistance is the assessment or collection of tax;

(i) the request for assistance relates to an offence which carries the death penalty under the law of the Requesting Party;

(j) the request for assistance is not made in conformity with this Agreement.

2. Before refusing assistance pursuant to this Article, the Central Authorities shall consult with each other to consider whether assistance can be given subject to conditions. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested Party refuses assistance, it shall inform the Central Authority of the Requesting Party of the reasons for the refusal.

ARTICLE 4

FORM AND CONTENTS OF REQUESTS

1. A request for assistance shall be made in writing except that the Central Authority of the Requested Party may accept a request in another form in emergency situations. In any such case, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested Party indicates otherwise. The request shall be in the language of the Requesting

Party, with an attached translation into the language of the Requested Party, unless otherwise agreed.

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 nature of the criminal matter and a summary of the relevant facts and laws;
- (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.

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 or information is sought;
- (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 whereabouts of a person or an item to be located;
- (d) a precise description of the place or person to be searched and of the items to be seized;
- (e) a description of the manner in which any testimony, evidence or statement is to be taken and recorded;
- (f) a list of questions to be asked of a person or a description of the subject matter about which a person is to be examined or both;
- (g) a description of any particular procedure to be followed in executing the request;
- (h) any requirement for persons designated in the request to be present during the execution of the request;
- (i) information as to the allowances and expenses to which a person asked to appear in the Requesting Party will be entitled;
- (j) any time limits relevant to the request;
- (k) any requirements for confidentiality; and

- (1) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.

ARTICLE 5

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. The competent authorities of the Requested Party shall use their best efforts to execute the request. The judicial authorities or other competent authorities of the Requested Party shall issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested Party shall make all necessary arrangements for representation of the Requesting Party in any proceedings in the Requested Party arising out of a request for assistance.

3. Requests shall be executed in accordance with this Agreement. As regards matters not governed by this Agreement, requests shall be dealt with in accordance with the laws of the Requested Party. The method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested Party.

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

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

6. The Central Authority of the Requested Party shall respond to reasonable enquiries by the Central Authority of the Requesting Party about progress toward execution of the request.

7. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the execution of the request is delayed or postponed or cannot be executed in whole or

in part, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons therefor.

ARTICLE 6

COSTS

1. The Requested Party shall pay all costs relating to the execution of the request, except for:

- (a) the fees of counsel retained at the request of the Requesting Party;
- (b) the fees for experts;
- (c) the cost of oral and written translations;
- (d) the cost incurred for transcription by private persons of testimony or statements, or the cost incurred for the preparation by private persons of written records or video records of testimony or statements;
- (e) the allowances and expenses related to travel of persons to a place in the Requested Party upon the request of the Requesting Party, or pursuant to Articles 10 or 11.

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

ARTICLE 7

LIMITATIONS ON USE

1. The Central Authority of the Requested Party may require that the Requesting Party not use any information or evidence obtained under this Agreement in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested Party. In such cases, the Requesting Party shall comply with the requirement.

2. The Central Authority of the Requested Party may require that information or evidence furnished under this Agreement be kept confidential or be used in accordance with any conditions which the Central Authority shall specify. If the Requesting Party accepts the information or evidence subject to such conditions, the Requesting Party shall use its best efforts to comply with the conditions.

3. Nothing in this Article shall preclude the use or disclosure of information to the extent that such information is exculpatory

to the defendant in a criminal prosecution. The Requesting Party shall notify the Requested Party in advance of any such proposed disclosure.

4. Information or evidence which has been made public in the Requesting Party in accordance with paragraph 1 or 2 may thereafter be used for any purpose.

ARTICLE 8

EVIDENCE IN THE REQUESTED PARTY

1. A person in the Requested Party from whom evidence is requested pursuant to this Agreement shall be compelled, if necessary, to appear and testify or produce items, including documents, records and articles of evidence. A person who gives false testimony, either orally or in writing, in execution of a request shall be subject to prosecution and punishment in the Requested Party in accordance with the criminal law of that Party.

2. Upon the request of the Requesting Party, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the evidence pursuant to this Article.

3. The Requested Party shall permit the presence of persons specified in the request during the execution of the request, and

to the extent permitted by its law shall allow such persons to question the person giving the evidence.

4. The person referred to in paragraph 1 may refuse to give evidence if such person is entitled to do so according to the laws of the Requesting Party or the Requested Party.

5. If the person from whom evidence is sought asserts the right to decline to give evidence under the law of the Requested Party, the Requested Party shall resolve the matter in accordance with its own law. If the person from whom evidence is sought asserts the right to decline to give evidence under the law of the Requesting Party, the Requested Party shall resolve the matter on the basis of a certificate of the Central Authority of the Requesting Party.

6. The Requesting Party may request that items, including documents, records and articles produced in the Requested Party pursuant to this Article be certified in accordance with forms attached to the request. The absence or non-existence of items, including documents, records and articles may also be certified by forms attached to the request.

ARTICLE 9

DOCUMENTS AND OFFICIAL RECORDS

1. The Requested Party shall provide the Requesting Party with copies of documents or records in any form publicly available in the Requested Party, in the possession of the authorities of the Requested Party.

2. The Requested Party may provide copies of any documents or records in the possession of the authorities of that Party, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities.

3. The Requesting Party may request that documents or records provided pursuant to this Article be certified in accordance with forms attached to the request. The absence or non-existence of documents or records may also be certified by forms specified in the request.

ARTICLE 10

APPEARANCE IN THE REQUESTING PARTY

When the Requesting Party requests the appearance of a person not in custody in that Party, the Requested Party shall invite the person to appear before the appropriate authority in the Requesting Party. The Requesting Party shall indicate the extent to which the expenses of that person will be paid. The Central Authority of Requested Party shall promptly inform the Central Authority of the Requesting Party of the person's response.

ARTICLE 11

TRANSFER OF PERSONS IN CUSTODY

1. A person in the custody of the Requested Party whose presence in the Requesting Party is sought for purposes of assistance under this Agreement shall be temporarily transferred from the Requested Party to the Requesting Party for that purpose if the person consents and if the Central Authorities of both Parties agree.

2. A person in the custody of the Requesting Party whose presence in the Requested Party is sought for the purposes of assistance under this Agreement shall be temporarily transferred from the Requesting Party to the Requested Party if the person consents and if the Central Authorities of both Parties agree.

3. For the purposes of this Article:

(a) the receiving Party shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the sending Party;

(b) the receiving Party shall return the person transferred to the custody of the sending Party as soon as circumstances permit or as otherwise agreed by both Central Authorities;

- (c) the receiving Party shall not require the sending Party to initiate extradition proceedings or any other proceedings for the return of the person transferred; and
- (d) the person transferred shall receive credit for service of the sentence imposed in the sending Party for the time served in the custody of the receiving Party.

ARTICLE 12

SAFE CONDUCT

1. A person referred to in Article 10 or 11 who upon request appears in the Requesting Party shall not, subject to Article 11.3(a), be prosecuted, detained or restricted in his personal liberty in that Party for any acts committed before his departure from the Requested Party. That person shall not be required to give testimony in any proceedings other than the proceedings to which the request relates.

2. A person referred to in Article 10 or 11 who upon request appears in the Requesting Party shall not be prosecuted, detained or restricted in his personal liberty in that Party by reason of the content of testimony provided by him, unless he gives false testimony as a witness.

3. The provisions of paragraph 1 shall not apply if the person who appears, being free to leave the Requesting Party, has not left it within fifteen consecutive days after being notified by a competent authority that his presence is no longer required, or having left, has voluntarily returned.

4. A person who has not appeared in the Requesting Party when invited to do so under Article 10 or 11 shall not be liable to any penalty or coercive measure in the Requested Party.

ARTICLE 13

LOCATION OR IDENTIFICATION OF PERSONS OR ITEMS

If the Requesting Party seeks the location or identity of persons or items in the Requested Party, the Requested Party shall use its best efforts to establish the location or identity.

ARTICLE 14

SERVICE OF DOCUMENTS

1. The Requested Party shall use its best efforts to effect service of any document transmitted to it by the Requesting Party for the purposes of service.

2. The Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting Party a reasonable time before the

scheduled appearance. This principle shall apply equally to a request for the service of a document requiring the recipient to take any other specific steps or giving the recipient the opportunity to do so.

3. The Requested Party shall return a proof of service in the manner specified in the request.

4. A person who fails to comply with any process served on him shall not thereby be liable to any penalty or coercive measure in the Requested Party.

ARTICLE 15

SEARCH AND SEIZURE

1. The Requested Party shall execute a request for the search, seizure, and delivery of any item to the Requesting Party if the request includes information justifying such action under the law of the Requested Party.

2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the circumstances of any search, seizure and custody of the item seized. In particular the Requesting Party may request that each official who has had custody of a seized item certify the identity of the item, the continuity of custody and the integrity of its condition in accordance with forms attached to the request. Such certificates

shall be admissible as evidence in the Requesting Party as proof of the matters set forth therein.

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

ARTICLE 16

RETURN OF ITEMS

If required by the Central Authority of the Requested Party the Central Authority of Requesting Party shall return as soon as possible any item furnished to it in execution of a request under this Agreement.

ARTICLE 17

ASSISTANCE IN CONFISCATION AND FORFEITURE PROCEEDINGS

1. If the Central Authority of one Contracting Party becomes aware that proceeds or instrumentalities of offences are located in the other Contracting Party, it may so inform the Central Authority of the other Contracting Party. If that other Party has jurisdiction to forfeit or temporarily immobilize those proceeds or instrumentalities, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with

law, and shall, through their Central Authority, inform the Party which has made the initial notification of the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the confiscation or forfeiture of the proceeds or instrumentalities of offences and restitution to the victims of crime. The assistance may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

3. The Contracting Party that has custody of the proceeds or instrumentalities of offences shall dispose of them in accordance with its law. Either Party may transfer all or part of such assets or the proceeds of their sale to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as may be agreed.

ARTICLE 18

AUTHENTICATION

Evidence or documents transmitted pursuant to this Agreement shall not require any form of authentication, unless expressly requested by either of the Contracting Parties in accordance with its law.

ARTICLE 19

COMPATIBILITY WITH OTHER AGREEMENTS

The provisions of this Agreement shall not prevent either of the Contracting Parties from granting assistance to the other Party through the provisions of other applicable international agreements or practices.

ARTICLE 20

CONSULTATION

1. The Central Authorities of the Contracting Parties shall consult, whenever necessary, to promote the most effective use of this Agreement. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Agreement.

2. Any differences arising out of the interpretation or application of this Agreement shall be resolved through diplomatic channels if the Central Authorities of the Contracting Parties are themselves unable to reach agreement.

ARTICLE 21

ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall be adopted by each Contracting Party in accordance with its laws.

2. This Agreement shall enter into force thirty days after the date of receipt of the later of the notifications by which the Contracting Parties notify each other that their respective legal requirements for entry into force of the Agreement have been complied with.

3. This Agreement has not been concluded for a predetermined period of time. It may be terminated by means of notification of either of the Contracting Parties; in such case it shall cease to be in force after the expiry of three months from the date of receipt of the notification.

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

DONE at Hong Kong this twenty-sixth day of April 2005 in duplicate, in the Chinese, English and Polish languages, all texts being equally authentic; in case of a dispute as to their interpretation, the English text shall prevail.

Clerk to the Executive Council

COUNCIL CHAMBER

2006

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 Poland. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the Government of the Hong Kong Special Administrative Region and the Government of the Republic of Poland and signed in Hong Kong on 26 April 2005. A copy of those arrangements is annexed at Schedule 2 to the Order. It should be noted that the Ordinance is subject to the modifications summarized in Schedule 1 to the Order.

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

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

1. Commencement

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

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

(1) In relation to the scheduled arrangements for mutual
legal assistance, it is directed that the Ordinance shall, subject
to the modifications summarized in Schedule 1, apply as between
Hong Kong and the State of Israel.

(2) In subsection (1), "scheduled arrangements for mutual
legal assistance" (列明的相互法律協助的安排) means arrangements which
are applicable to the Government and the Government of the State
of Israel, a copy of which is annexed at Schedule 2.

SCHEDULE 1

[s. 2]

MODIFICATIONS TO THE ORDINANCE

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

"(e) the request relates to the prosecution of a person for
an external offence in a case where the person -*

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

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

2. Section 17(1) of the Ordinance shall be modified by deleting paragraph (ii).

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

"(b) the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 days after being notified that his presence is no longer required for any of the following purposes* ~~has had an opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for~~^{**} -

- (i) the purpose to which the request relates; ~~or~~^{**}
- (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Secretary for Justice to be a

criminal matter in relation to which it is desirable that the person give assistance.".

4. Section 23(2)(a) of the Ordinance shall be modified -
- (a) by adding "or" at the end of subparagraph (i);
 - (b) by deleting subparagraph (ii).

* 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).

SCHEDULE 2

[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 STATE OF ISRAEL
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 authorized by the Central People's Government of the People's Republic of China and the Government of the State of Israel,

DESIRING to improve, through co-operation and mutual legal assistance in criminal matters, the effectiveness of law

enforcement of both Parties in the investigation, prosecution and prevention of crime and the forfeiture of criminal proceeds,

HAVE AGREED as follows:

ARTICLE 1

SCOPE OF ASSISTANCE

(1) The Parties shall provide, in accordance with the provisions of this Agreement, mutual assistance in the investigation, prosecution and prevention of offences and in proceedings related to criminal matters.

(2) Assistance shall include:

- (a) identifying and locating persons;
- (b) serving of documents;
- (c) obtaining of evidence, articles or documents, including execution of letters rogatory;
- (d) executing requests for search and seizure;
- (e) facilitating the personal appearance of witnesses;

- (f) effecting the temporary transfer of persons in custody to appear as witnesses or for other assistance under this Agreement;
- (g) obtaining the production of judicial or official records;
- (h) tracing, restraining and forfeiting the proceeds and instrumentalities of criminal activities;
- (i) providing information, documents and records;
- (j) delivery of material, including lending of exhibits; and
- (k) providing any other form of assistance not inconsistent with the laws of the Requested Party.

(3) The Parties may, in accordance with their laws, grant assistance in fiscal offences, but shall refuse assistance if the primary purpose of the request is the assessment or collection of taxes.

(4) This Agreement is intended solely for mutual assistance between the Parties. The provisions of this 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) Each party shall establish a Central Authority for the purposes of the Agreement.

(2)(a) The Central Authority for Israel for the purpose of submitting requests under this Agreement shall be the Attorney General or an official designated by the Attorney General; the Central Authority for Israel for the purpose of accepting requests under this Agreement shall be the Minister of Justice, or an official designated by the Minister of Justice;

(b) The Central Authority for the Hong Kong Special Administrative Region shall be the Secretary for Justice or his or her duly authorised officer.

(3) Either Party may change its Central Authority in which case it shall notify the other of the change.

(4) Requests under this Agreement shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

ARTICLE 3

OTHER ASSISTANCE

The Parties may provide assistance to each other pursuant to other applicable International Agreements or through the provisions of their domestic laws. The Parties may also provide assistance pursuant to any applicable bilateral arrangement or agreement, provided such assistance is consistent with the laws of the Requested Party.

ARTICLE 4

LIMITATIONS ON ASSISTANCE

(1) The Requested Party may, or if so required by its laws shall, deny assistance if it determines that:

- (a) the request for assistance impairs the sovereignty, security or public order of the State of Israel or, in the case of the Government of the Hong Kong Special Administrative Region, the People's Republic of China;
- (b) granting the request would seriously impair its essential interests;
- (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 would not be an offence under ordinary criminal law;
- (e) 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, sex, social origin or political opinions;
- (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 either Party;
- (g) the Requesting Party cannot comply with any conditions of the Requested Party in relation to confidentiality or limitation as to use of the material provided;
- (h) 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;

(i) the request is not made in conformity with this Agreement; or

(j) the request will impose an excessive burden on the resources of the Requested Party.

(2) For the purpose of paragraph (1)(b), the Requested Party may include in its consideration of essential interests whether the provision of assistance could endanger the safety of any person.

(3) 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, will not be carried out.

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

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

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

ARTICLE 5

REQUESTS

- (1) Requests for assistance shall be made in writing and shall include the following:
 - (a) the name of the authority on behalf of which the request is made;
 - (b) a description of the purpose of the request, the nature of the assistance requested, and the connection between the assistance sought and the criminal matter to which it relates;
 - (c) a description of the nature of the investigation, prosecution, offence or criminal matter, including the criminal laws which relate to the offence;

- (d) a statement of whether criminal proceedings have been instituted in the matter, and if so, details of the proceedings;
- (e) a summary of the relevant facts and laws;
- (f) any requirements for confidentiality;
- (g) details of any particular procedure that the Requesting Party wishes to be followed; and
- (h) details of the period within which the request should be complied with.

(2) The Requested Party shall use its best efforts, in accordance with its law, to keep confidential a request and its contents except where otherwise authorized by the Requesting Party.

(3) The request and all documents submitted in support of a request shall be in English or shall be accompanied by a translation into English.

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, 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 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.

(5) Each Party shall respond promptly to reasonable inquiries from the other Party concerning the execution of the request or the proceedings in the Requesting Party to which the request relates.

ARTICLE 7

REPRESENTATION AND EXPENSES

(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 bear all ordinary expenses relating to the execution of a request, except for the following:

(a) fees of legal counsel retained at the request of the Requesting Party;

(b) fees of experts;

(c) expenses of translation, interpretation and transcription; and

(d) travel expenses and allowances of persons transferred pursuant to Articles 14 or 15 of this Agreement.

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

(4) In the case of requests for seizure, immobilization or forfeiture of assets or restraining orders pursuant to this Agreement, in which a court of the Requested Party, in accordance

with its laws, issues an order to compensate an injured party or requires the furnishing of a bond or other security, those costs shall be borne by the Requesting Party unless otherwise agreed by the Parties.

ARTICLE 8

LIMITATIONS ON USE

(1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished to the Requesting Party 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 to it for purposes other than those stated in the request without the prior consent of the Requested Party.

ARTICLE 9

OBTAINING OF EVIDENCE

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

(2) For the purposes of this Agreement:

(a) the giving or taking of evidence shall include the taking of statements and testimony, and the production of documents, records or other material; and

(b) proceedings shall include investigations and prosecutions.

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

(4) Where, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting Party, the parties to the relevant proceedings in the Requesting Party, their legal representatives or representatives of the Requesting Party may, subject to the laws of the Requested Party, appear and question the person giving that evidence.

(5) A person who is required to give evidence in the Requested Party pursuant to a request for assistance may decline to give evidence if 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.

(6) If such person asserts a claim of immunity, incapacity or privilege under the laws of the Requesting Party, the evidence shall nonetheless be taken and the claim be made known to the Central Authority of the Requesting Party for resolution by the authorities of that Party.

(7) Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the evidence pursuant to this Article.

(8) The Central Authority of the Requested Party may require that the Central Authority of the Requesting Party return any documents, records, or articles of evidence furnished to it in the execution of a request under this Agreement as soon as possible.

(9) If permitted by their laws, the Parties may agree in specific cases that the taking of evidence of a witness in accordance with this Article may take place by means of video conference or other technological means.

ARTICLE 10

LOCATION OR IDENTIFICATION OF PERSONS OR ITEMS

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

ARTICLE 11

SERVICE OF DOCUMENTS

(1) The Requested Party shall use its best efforts to serve any document transmitted to it for the purpose of service, and to the extent possible, shall effect such service in the manner specified by the Requesting Party.

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

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

(4) The Requested Party shall, subject to its law, return a proof of service in the manner required by the Requesting Party. If service cannot be effected, or cannot be effected in the manner specified, the Requesting Party shall be so informed and shall be advised of the reasons.

(5) A person who fails to comply with any process served on him shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or Requested Party.

ARTICLE 12

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

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

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

ARTICLE 13

CERTIFICATION AND AUTHENTICATION

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

ARTICLE 14

TRANSFER OF PERSONS IN CUSTODY

(1) A person in custody in the Requested Party, whose presence is requested in the Requesting Party for the purpose of providing assistance pursuant to this Agreement shall, if the Requested Party consents, be transferred from the Requested Party to the Requesting Party for that purpose, provided the person consents and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party without the need for extradition proceedings.

(2) Where the sentence of imprisonment of a person transferred pursuant to this Article expires while 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. Such person shall be entitled to receive from the Requesting Party an allowance and travel expenses for his return travel to the Requested Party, if he returns to that Party.

ARTICLE 15

APPEARANCE OF OTHER PERSONS

(1) The Requesting Party may request the assistance of the Requested Party in inviting a person to travel to the Requesting Party for the purpose of providing assistance pursuant to this Agreement.

(2) The Requested Party shall, if satisfied that satisfactory arrangements have been made by the Requesting Party, request the person to travel to the Requesting Party to provide assistance. Such arrangements will include, but need not be limited to, ensuring the security of the person and providing travel expenses and living allowances; the person shall be under no compulsion to accept such invitation.

(3) The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the response of the person.

ARTICLE 16

SAFE CONDUCT

(1) A person who consents to provide assistance pursuant to Articles 14 or 15 shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence which preceded his departure from the Requested Party, except as provided in Article 14.

(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 presence is no longer required, or having left the Requesting Party, has returned.

(3) A person who consents to give evidence under Articles 14 or 15 shall not be subject to prosecution based on his testimony, except for perjury.

(4) A person who consents to provide assistance pursuant to Articles 14 or 15 shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.

(5) A person who does not consent to give evidence pursuant to Articles 14 or 15 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

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 to the Requesting Party which is relevant to a proceeding or investigation in relation to a criminal matter if the request includes information justifying such action under the laws of the Requested Party.

(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 including conditions deemed necessary to protect third party interests in the property delivered to the Requesting Party.

ARTICLE 18

PROCEEDS OF CRIME

(1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instrumentalities of a crime against the laws 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 or instrumentalities may be located in its jurisdiction.

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

determination in respect thereof by a court of the Requesting Party.

(3) Where a request is made for assistance in securing the forfeiture of proceeds or instrumentalities of crime, such assistance may be given by whatever means are appropriate under the laws of the Requested Party. This may include enforcing an order made by a court in the Requesting Party and initiating or assisting in proceedings in relation to the proceeds or instrumentalities to which the request relates.

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

ARTICLE 19

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 have not succeeded in reaching an agreement.

ARTICLE 20

ENTRY INTO FORCE AND TERMINATION

(1) Each Contracting Party shall notify the other Contracting Party in writing of the completion of its internal legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force thirty days after the date of the later of the two notifications.

(2) This Agreement shall apply to any request presented after its entry into force, even if the request relates to offences which occurred before that date.

(3) Either Party may terminate this Agreement by means of written notice to the other Party. In that event the Agreement shall cease to have effect on the receipt of such 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 by their respective governments, have signed this Agreement.

DONE at Hong Kong this twenty-sixth day of July two thousand and five, in duplicate, in the Chinese, English and Hebrew languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Clerk to the Executive Council

COUNCIL CHAMBER

2006

Explanatory Note

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) shall apply as between Hong Kong and the State of Israel. 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 State of Israel and signed in Hong Kong on 26 July 2005. A copy of those arrangements is annexed at Schedule 2 to the Order. It should be noted that the Ordinance which is applicable to Hong Kong and the State of Israel is subject to the specified modifications summarized in Schedule 1 to the Order.

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

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

Previous Convictions etc

Section 5(1)(e) of the Ordinance provides that the Secretary for Justice shall refuse assistance if the request relates to the prosecution of a person for an offence in respect of which he has been convicted, acquitted, pardoned or punished in the requesting jurisdiction. Article 3(1)(e) of the Hong Kong/Poland Agreement provides for this protection in relation to convictions etc. in the requested jurisdiction. The modification to section 5(1)(e) reflects the provision in the Agreement by extending the protection to cover convictions etc in the requested jurisdiction.

Immunities

2. Section 17 of the Ordinance gives certain immunities to a person who comes to Hong Kong from another jurisdiction to render assistance. These immunities cease to apply if the person has had the opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for the purpose of rendering assistance. Article 12(3) of the Hong Kong/Poland Agreement provides that the immunities will continue to be applicable for a period of 15 days after the person, being free to leave Hong Kong, has been notified that his presence is no longer required. The modification reflects the additional protection in the Agreement by providing for a 15 day period in section 17(3)(b).

3. Sections 17(1)(ii) and 23(2)(a)(ii) of the Ordinance relate to immunity from civil suit where a person is rendering assistance in Hong Kong (section 17) or in a place outside Hong Kong (section 23). Such immunity is omitted from the Agreement as the immunity is not available under Polish law. The modifications to sections 17(1) and 23(2)(a) reflect the omission of this immunity.

Mutual Legal Assistance in Criminal Matters (Israel) Order

Previous Convictions etc

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

Immunities

2. Section 17 of the Ordinance gives certain immunities to a person who comes to Hong Kong from another jurisdiction to render assistance. These immunities cease to apply if the person has had the opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for the purpose of rendering assistance. Article 16(2) of the Hong Kong/Israel Agreement provides that the immunities will continue to be applicable for a period of 15 days after the person, being free to leave Hong Kong, has been notified that his presence is no longer required. The modification reflects the additional protection in the Agreement by providing for a 15 day period in section 17(3)(b).

3. Sections 17(1)(ii) and 23(2)(a)(ii) of the Ordinance relate to immunity from civil suit where a person is rendering assistance in Hong Kong (section 17) or in a place outside Hong Kong (section 23). Such immunity is omitted from the Agreement as the immunity is not available under Israeli law. The modifications to sections 17(1) and 23(2)(a) reflect the omission of this immunity.