

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.:

來函檔號 Your Ref.:

電話 Telephone: 2810 3523

圖文傳真 Facsimile: 2524 3762

3 January 2019

Miss Betty Ma
Clerk to Subcommittee on
Fugitive Offenders (France) Order
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss Ma,

**Re: First Meeting of the Legislative Council Subcommittee on
Fugitive Offenders (France) Order**

At the captioned meeting held on 19 December 2018, the Administration was requested to provide supplementary information on some relevant issues. Our reply is set out below.

General

2. The agreement on surrender of fugitive offenders (SFO) between Hong Kong and France (the agreement) shall apply to the entire territory of the French Republic, including its overseas territories.

Article 2

3. According to Article 2.3 of the agreement –

“Each Party shall inform the other in writing of the offences for which surrender may be granted under its law.”

4. As explained in our earlier reply to the Assistant Legal Adviser of the Legislative Council (LegCo)¹, the list of offences set out in Schedule 1 of the Fugitive Offenders Ordinance (FOO) (Cap. 503) will be provided to France. A list of offences for which surrender may be granted under the law of France has been provided by the French side to the Department of Justice (DoJ) (at Annex). As France is now conducting its legislative exercise of the agreement, the list of offences may be subject to further amendment.

5. We plan to follow the approach as agreed by the LegCo Subcommittee on Fugitive Offenders (Czech Republic) Order and publish the final lists of offences to be exchanged with France in DoJ's website (under "Treaties and International Agreements") and as Government notice in the Gazette when the Fugitive Offenders (France) Order (the Order) is about to commence. Having considered the suggestion to include a hyperlink in the Hong Kong e-Legislation, we will include an editorial note to the Order with an embedded link to the "Treaties and International Agreements" in DoJ's website for ease of reference of the users.

Article 3

6. According to Article 3(2) of the agreement –

"Nationality shall be determined at the time of the commission of the offence for which surrender is requested".

7. In determining the nationality of the wanted person under the agreement with other jurisdictions, the requested party will consider available information in relation to the wanted person's nationality and make enquiries with the appropriate authorities when necessary.

Article 6

8. On receipt of a surrender request from another jurisdiction, the Chief Executive (CE) would first consider whether to issue an authority to proceed (ATP) in accordance with section 6 of the FOO before the request can be processed further. Where an ATP has been issued, committal proceedings will be conducted in accordance with section 10 of the FOO. The court will determine whether to commit the wanted person to custody to await the CE's decision to make an order for surrender under section 13 of the FOO. The CE's decisions are made after taking into full account the

¹ LC Paper No. CB(2)474/18-19(02)

relevant facts and circumstances of each case for the purpose of complying with the FOO and the applicable agreement. DoJ will then follow the established practice and inform the requesting jurisdiction of the CE's decision in writing.

9. In the past ten years from 2008 to 2017, pursuant to its signed SFO agreements with other jurisdictions, Hong Kong made 24 surrender requests to other jurisdictions; while other jurisdictions, pursuant to their signed SFO agreements with Hong Kong, made 66 surrender requests to Hong Kong. Pursuant to these requests, other jurisdictions surrendered 11 persons to Hong Kong and refused four requests from Hong Kong; while Hong Kong surrendered 23 persons to other jurisdictions and refused five requests from other jurisdictions. For the remaining requests, some are being processed, some cannot be implemented due to failure in locating the fugitives, and some have been withdrawn due to arrest of the fugitives in another place, etc.

Article 13

10. Article 13 of the agreement stipulates how concurrent requests received from the other party and a third jurisdiction are dealt with. According to Article 13.3 of the agreement –

“For the Hong Kong Special Administrative Region, the provisions of this Article shall not affect the arrangements for the surrender of accused or convicted persons between the Hong Kong Special Administrative Region and any other part of the People’s Republic of China.”

11. Currently, there is no SFO arrangement between Hong Kong and other part of the People’s Republic of China (PRC). Such an arrangement is still under discussion. The above provision aims to make clear that the operation of Article 13 of the SFO agreement between Hong Kong and France on dealing with concurrent requests will not affect the future SFO arrangement between Hong Kong and any other part of the PRC.

Yours sincerely,



(Percy Leung)
for Secretary for Security

c.c. Department of Justice
(Attention:
International Law Division
Ms Anthea LI, Deputy Principal Government Counsel
Mr Felix HOE, Senior Government Counsel
Ms Cathy SZETO, Senior Government Counsel

Law Drafting Division
Ms Phyllis POON, Senior Government Counsel)

**List of offences
for which surrender may be granted under the law of France²**

1. genocide or direct and public incitement to commit genocide;
2. assassination, murder, poisoning, violence leading to unintentional death, involuntary homicide;
3. sexual assault or rape, especially when committed against minors, indecent exposure, sexual harassment, offences relating to the dissemination, printing, saving or transmission of an image or representation of a minor of pornographic nature;
4. deliberate violence, torture and barbaric acts, death threats, endangering others by manifestly deliberate breach of a duty of safety or care;
5. breaches of legislation on narcotics, psychotropic substances and precursor compounds and basic chemical substances used for illegal manufacturing of narcotic and psychotropic drugs; drug trafficking offences;
6. offenses regarding firearm legislation;
7. abortion offences;
8. incitement to suicide followed by effects;
9. enforced disappearances, abduction, deprivation of liberty, arbitrary detention, including as regards hostages; enslavement; human trafficking;
10. hijacking of aircraft, ships or any other means of transport;
11. procuring;
12. corruption of minors;
13. violence or harassment by a person who is or was the spouse, cohabitee or civil partner of the victim, neglect of a minor, family abandonment, non-representation of children, abduction of minors, putting children at risk, incest on minors; bigamy;
14. theft, especially when aggravated by circumstances of violence or breaking and entering; extortion; blackmail; fraud; breach of trust; concealment of property; fraudulent conversion of securities or pledges, money-laundering, presentation of incorrect accounts to hide the situation of stock companies or limited companies;
15. bankruptcy, fraudulent conveyance;

² Prepared on the basis of a list provided by France on 10 December 2018.

16. serious or dangerous destruction, especially when committed by fire or dangerous means;
17. attacks on automated data processing systems;
18. breaches of legislation regarding active and passive corruption, active and passive trading in influence and misappropriation of public funds;
19. unlawful taking of interest and favouritism, misappropriation of corporate assets, bankruptcy;
20. offences against the administration of justice;
21. offences of forgery and use of forgeries;
22. offences regarding evasion of authorities and rebellion;
23. breaches of legislation regarding intellectual property rights, copyright and related rights, patents, designs, models and trademarks;
24. breaches of legislation on explosives;
25. breaches of legislation on air, soil or water pollution, legislation on classified facilities, trafficking of waste or protection of public health punishable by sentences of imprisonment;
26. mutiny;
27. smuggling of prohibited goods; breaches of legislation regarding import and export bans; trafficking of historical and archaeological artefacts;
28. offences regarding irregular immigration;
29. gambling or lottery offences;
30. tax offences, regardless of whether the Requesting Party has or does not have a direct or indirect tax or customs law of the same nature as that of the Requested Party;
31. deceptive marketing practices;
32. offences undermining the transparency of calls for tender;
33. where they are provided for by law, offences regarding concealment or laundering of the product of any offence subject to surrender under this Agreement;
34. offences for which individuals may be surrendered under international conventions of which the provisions apply to the Parties; offences which result from decisions by international organizations which are legally binding for the Parties;
35. where it is provided for by law, criminal association with a view to committing an offence for which individuals may be surrendered under this Agreement, or attempts to commit any such offence;
36. collusion in an offence for which individuals may be surrendered under this Agreement;
37. any other offence for which individuals may be surrendered pursuant to the legislation of the two Parties.