

**File Ref.: SBCR 6/1/2716/80  
SBCR 50/22/581/87**

## **LEGISLATIVE COUNCIL BRIEF**

Fugitive Offenders Ordinance  
(Chapter 503)

Mutual Legal Assistance in Criminal Matters Ordinance  
(Chapter 525)

### **FUGITIVE OFFENDERS (FRANCE) ORDER**

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

#### **INTRODUCTION**

At the meeting of the Executive Council on 20 November 2018, the Council ADVISED and the Chief Executive ORDERED that –

A

- (a) the Fugitive Offenders (France) Order, at **Annex A**, should be made under section 3 of the Fugitive Offenders Ordinance (FOO) to implement the surrender of fugitive offenders (SFO) agreement with France; and

B

- (b) the Mutual Legal Assistance in Criminal Matters (Mongolia) Order, at **Annex B**, should be made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (MLAO) to implement the mutual legal assistance in criminal matters (MLA) agreement with Mongolia.

## JUSTIFICATIONS

2. Hong Kong is committed to playing an active role in international cooperation in law enforcement. Article 96 of the Basic Law provides that with the assistance or authorization of the Central People's Government, the Government of the Hong Kong Special Administrative Region may make appropriate arrangements with foreign states for reciprocal juridical assistance. In accordance with this article, Hong Kong has been building a wide network of bilateral agreements on SFO and MLA. The latest additions are the SFO agreement with France signed on 4 May 2017, and the MLA agreement with Mongolia signed on 26 March 2018.

3. The FOO and the MLAO respectively provide for the statutory frameworks for SFO and MLA arrangements. Specifically, the FOO provides for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence, and for the treatment of persons surrendered to Hong Kong. The MLAO regulates the provision to and obtaining from certain places outside Hong Kong 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.

4. Section 3(1) of the FOO provides that the Chief Executive in Council may, in relation to any SFO arrangements, by order direct that the procedures in the FOO shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications contained in the order. The Fugitive Offenders (France) Order to be made under this section will enable the FOO to be so applied as between Hong Kong and France. The Order is subject to negative vetting by the Legislative Council.

5. Section 4(1) of the MLAO provides that the Chief Executive in Council may, with the approval of the Legislative Council (i.e. positive vetting), in relation to any MLA arrangements, by order direct that the MLAO 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 Mutual Legal Assistance in Criminal Matters (Mongolia) Order to be made under this section will enable the MLAO to be so applied as between Hong Kong and Mongolia.

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

### **OTHER OPTIONS**

7. There is no non-legislative means to implement the two agreements with France and Mongolia.

### **THE FUGITIVE OFFENDERS (FRANCE) ORDER**

8. This Order will enable the SFO agreement with France to be brought into force. It contains the text of the agreement as a schedule.

### **THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (MONGOLIA) ORDER**

9. This Order will enable the MLA agreement with Mongolia to be brought into force. Schedule 1 to the Order contains the text of the agreement.

10. In applying the MLAO as between Hong Kong and Mongolia, certain provisions in the MLAO need to be modified. Such modifications are specified in Schedule 2 to the Order. The modifications are summarised in Schedule 3 to the Order in accordance with section 4(3) of the MLAO.

### **COMMENCEMENT**

11. The above two Orders provide that the Secretary for Security will appoint the commencement dates of the Orders by notice in the Gazette. Such dates will coincide with the dates on which the relevant agreements enter into force. The two agreements provide that they shall enter into force 30 days after the date on which the contracting parties have notified each other in writing that their respective requirements for the entry into force of the agreement have been complied with. The dates

of operation of the agreements will depend on when France and Mongolia complete their respective domestic procedures and notify Hong Kong.

## LEGISLATIVE TIMETABLE

12. The legislative timetable will be –

### **Fugitive Offenders (France) Order** (negative vetting)

Publication in the Gazette 30 November 2018

Tabling at the Legislative Council 5 December 2018

Commencement to be specified by the Secretary for Security

### **Mutual Legal Assistance in Criminal Matters (Mongolia) Order** (positive vetting)

Secretary for Security to give notice to the Legislative Council to move a motion 28 November 2018

Moving motion at the Legislative Council (subject to the House Committee's decision) 9 January 2019

Commencement to be specified by the Secretary for Security

## IMPLICATIONS OF THE ORDERS

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

## **PUBLIC CONSULTATION**

14. The two Orders will enable the agreements with France and Mongolia to be brought into force under Hong Kong laws. The legislative exercise is straight forward. As with similar exercises in the past, no public consultation is considered necessary.

## **PUBLICITY**

15. A spokesman will be available to respond to media and public enquiries.

## **BACKGROUND**

16. Including the above-mentioned two agreements with France and Mongolia, Hong Kong has so far signed SFO agreements with 20 jurisdictions and MLA agreements with 32 jurisdictions. The earlier agreements have all undergone similar legislative procedures.

## **ENQUIRIES**

17. Enquires on this brief should be directed to –

	<u>Telephone No.</u>
Ms Iris LEE Principal Assistant Secretary for Security	2810 2329
Mr Percy LEUNG Assistant Secretary for Security	2810 3523

**Security Bureau**  
**November 2018**

## Fugitive Offenders (France) Order

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

### 1. Commencement

This Order comes into operation on 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 France

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

---

## Schedule

[s. 2]

### **Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the French Republic Concerning Surrender of Accused or Convicted Persons<sup>#</sup>**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as "the 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 French Republic

Desiring to make provision for the reciprocal surrender of accused or convicted persons,

Have agreed as follows:

#### Article 1

Note:<sup>#</sup> The Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the French Republic Concerning Surrender of Accused or Convicted Persons was done in the Chinese, English and French languages, each text being equally authentic. The French text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.

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 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 as provided in Article 2.

Article 2

Offences

1. Surrender shall be granted for an offence:
  - a) which is punishable under the laws of both Parties by imprisonment for more than one year or a more severe penalty; and
  - b) for which surrender is permitted by the law of the requested Party.
2. Where surrender is requested for the purpose of carrying out a sentence, a further requirement shall be that at least six months of the sentence remain to be served.
3. Each Party shall inform the other in writing of the offences for which surrender may be granted under its law. Each Party shall provide such information no later than the date on which it notifies the other Party under paragraph 1 of Article 20 that its requirements for the entry into force of this Agreement have been complied with. Each Party shall promptly

advise the other in writing of any subsequent changes to the information previously provided according to this paragraph.

4. For the purpose of this Article, in determining whether an offence is an offence punishable under the laws of both Parties, the totality of the acts or omissions alleged against the person sought shall be taken into account.
5. If the request for surrender relates to a number of offences each of which is punishable under the laws of both Parties by imprisonment but some of which do not meet the requirements of paragraphs 1 and 2 of this Article, the requested Party may, if its law so permits, also grant surrender for such offences.

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 French Republic reserves the right to refuse the surrender of its nationals.
2. Nationality shall be determined at the time of the commission of the offence for which surrender is requested.
3. Where the requested Party exercises its right to refuse surrender under paragraph 1 of this Article, the requesting Party may request that the case be submitted to the authorities of the requested Party in order that proceedings for prosecution of the person may be considered. That Party shall inform the requesting Party of any action taken and the outcome of any prosecution.

Article 4

## Death penalty

If the offence for which surrender of a person is requested under this Agreement is punishable according to the law of the requesting Party with the death penalty, and if in respect of such an offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, surrender may be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that this penalty will not be imposed or, if imposed, will not be carried out.

Article 5

## Mandatory grounds of refusal

1. A person shall not be surrendered if the requested Party has substantial grounds for believing:
  - a) that the offence for which surrender is requested is a political offence or an offence connected with a political offence. Reference to a political offence shall not include the following offences:
    - (i) the taking or attempted taking of the life of, in the case of the Hong Kong Special Administrative Region, the Head of State of the People's Republic of China, or in the case of the French Republic, the Head of State, or in either case a member of the Head of State's family;

- (ii) any offence which, by reason of a multilateral international agreement, both Parties must not treat as a political offence or an offence connected with a political offence;
  - b) that the request for surrender, though purporting to be made on account of an offence for which surrender may be granted, is in fact made for the purpose of prosecution or punishment on account of race, religion, sex, nationality or political opinions; or
  - c) that the person might, if returned, be prejudiced at that person's trial or punished, detained or restricted in his or her personal liberty by reason of race, religion, sex, nationality or political opinions.
2. A person shall not be surrendered for an offence if that person has been finally acquitted or convicted or pardoned for the same offence by the requested Party.
3. Surrender shall not be granted under this Agreement when the prosecution or the punishment for the offence for which surrender is requested would be barred by reasons relating to lapse of time under the law of either Party.
4. Surrender shall not be granted if the offence for which it is sought is considered by the requested Party as an offence solely under military law.
5. Where the surrender of a person is requested for the purpose of carrying out a sentence the requested Party shall refuse to surrender him if it appears that the conviction was obtained in his absence, unless he has the opportunity to have his case retried in his presence. In these circumstances, the person shall be considered as an accused person under this Agreement.



Article 6

Discretionary grounds of refusal

1. Surrender may be refused if the requested Party considers that:
  - a) the offence was committed fully or partly in a place where its law applies;
  - b) the surrender might place that Party in breach of its obligations under an international convention applicable to that Party;
  - c) in the circumstances of the case, the surrender would be likely to entail exceptionally serious consequences related to the age or health of the person sought.
2. Surrender may also be refused if:
  - a) in the case of a request to the Government of the Hong Kong Special Administrative Region, the surrender would significantly affect the interests of the People's Republic of China in matters of defence or foreign affairs; or
  - b) in the case of a request to the Government of the French Republic, the request would significantly affect the interests of France in matters of defence or foreign affairs.
3. The requested Party may refuse surrender where the person sought has been finally acquitted or convicted in a third party 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. Surrender may be refused if the person sought is being proceeded against in the requested Party in respect of the offence or offences for which surrender is requested.

Article 7

Postponed or temporary surrender

1. If the accused or convicted person is being proceeded against or is under punishment in the requested Party for any offence other than the offence for which surrender is requested, his surrender may be postponed until the conclusion of the proceedings and the execution of any punishment awarded to him.
2. Alternatively, the requested Party may temporarily surrender the person sought to the requesting Party for the purpose of prosecution. The person so surrendered shall be kept in custody by the requesting Party and shall be returned to the requested Party after conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Parties.

Article 8

The request and supporting documents

1. Requests for surrender shall be made in writing by the competent authorities of each Party and transmitted through the Consulate General of France in the Hong Kong Special Administrative Region unless the Parties otherwise agree. In the case of the Hong Kong Special Administrative Region, the competent authority shall be the Department of Justice. In the case of the French Republic, the competent authorities shall be the judicial authorities.

2. In all cases, 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 the person's identity, nationality and location;
- b) a statement of each offence and a statement of the acts and omissions which are alleged against the person in respect of each offence; and
- c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and any time limit on the institution of proceedings, or on the execution of any punishment for that offence.

3. In the case of a request relating to an accused person, it shall also be accompanied by an original or certified copy of the warrant of arrest issued by a judge or magistrate 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. In the case of a request relating to a person already convicted or sentenced, it shall also be accompanied by an original or certified copy of

the judgment or certificate of the conviction or sentence issued by a judicial authority, 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 9

#### Authentication

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

- a) signed or certified by a judge, magistrate or an official of the requesting Party, and
- b) sealed with the official seal of a competent authority of the requesting Party.

2. An authenticated translation of documents submitted in support of a request for surrender provided by the requesting Party shall be admitted for all purposes in surrender proceedings.

#### Article 10

## Language of documentation

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

Article 11

## Additional information

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

Article 12

## Provisional arrest

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

2. The application for provisional arrest shall contain an indication of intention to request the surrender of the person, a statement of the existence of a warrant of arrest or a judgment of conviction against the person, information concerning identity, nationality and probable location, a description of the person, a brief description of the offence and the facts of the case and a statement of the sentence that can be or has been imposed for the offence and, 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 channel notified under paragraph 1 of Article 8 or through the International Criminal Police Organisation (Interpol).

4. The provisional arrest of the person sought shall be terminated upon the expiration of sixty 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

## Concurrent requests

1. If a Party receives requests for surrender for the same person from the other Party and a third State, and that third State also has an agreement or arrangement for the surrender of accused or convicted persons with the requested Party, the requested Party shall make its decision having regard to all the circumstances, including the provisions in this regard in any agreements or arrangements in force between the requested Party and the

requesting Parties, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality and ordinary place of residence of the person and the possibility of subsequent surrender to another place.

2. In the event of surrender of the person to that third State, the requested Party shall notify the other Party of its decision with reasons.
3. 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.

#### Article 14

##### Representation and costs

1. The requested Party shall make all necessary arrangements for and meet the costs of the surrender proceedings and shall represent the interests of the requesting Party in all other respects in accordance with its domestic law.
2. If it becomes apparent that exceptional expenses may be incurred as a result of a request for surrender, the Parties shall consult with a view to deciding how these expenses will be met.
3. The requested Party shall bear the expenses arising out of the arrest and detention of the person sought until the person is surrendered. The requesting Party shall bear all subsequent expenses.

#### Article 15

##### Arrangements for surrender

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

#### Article 16

##### Surrender of property

1. To the extent permitted under the law of the requested Party, when a request for surrender of a person is granted, the requested Party:

- a) shall hand over to the requesting Party all articles, including sums of money,
  - (i) which may serve as proof of the offence; or
  - (ii) which have been acquired as a result of the offence.
- b) may, if the articles in question are liable to seizure or confiscation in the requested Party in connection with pending proceedings, temporarily retain them or hand them over on condition they are returned.

2. The provisions of paragraph 1 shall not prejudice the rights of the requested Party or of any person other than the person sought. When such rights exist the articles shall on request be returned to the requested Party without charge as soon as practicable after the completion of the proceedings.

3. The articles in question shall, if the requesting Party so requests, be surrendered to that Party even if the surrender cannot be carried out due to the death or escape of the person sought.

#### Article 17

##### 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 his surrender other than:

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

unless he has first had an opportunity to exercise his right to leave the requesting Party and he has not done so within forty days or has voluntarily returned to that Party having left it.

2. For the purpose of paragraph 1 c) of this Article, the requested Party may require the submission of any document referred to in Article 8, and any statement made by the person on the matter.

3. Without prejudice to paragraph 1 of this Article, the requesting Party may take any measures necessary under its law to prevent any legal effects of lapse of time.

#### Article 18

##### Resurrender

1. A person who has been surrendered shall not be resurrendered to a third party for an offence committed prior to his surrender unless:

- a) the requested Party consents to such resurrender; or
- b) he has first had an opportunity to exercise his right to leave the requesting Party and has not done so within forty days or has voluntarily returned to that Party having left it.

2. For the purpose of paragraph 1 a) of this Article, the requested Party may require the submission of any document referred to in Article 8, and any statement made by the person on the matter.

#### Article 19

##### Transit

1. To the extent permitted by its law, the right to transport through one of the Parties a person surrendered to the other Party by a third party may be granted on request made by any means affording a record in writing. The request for transit shall contain a description of the person being transported and a brief statement of the facts of the case. The request for transit may be forwarded to the requested Party through the same channels as a request for surrender or through direct contact between the Department of Justice of the Hong Kong Special Administrative Region and the Ministry of Justice of the French Republic.

2. Permission for the transit of a person surrendered shall include authorisation for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the Party of transit in maintaining custody.

3. Where a person is being held in custody pursuant to paragraph 2 of this Article, the Party where the person is being held may direct that the person be released if transportation is not continued within a reasonable time.

4. Authorisation for transit shall not be required when air transport is to be used and no landing is scheduled in the Party of transit. If an unscheduled landing occurs in that Party, it may require the other Party to furnish a request for transit as provided in paragraph 1 of this Article.

5. The requested Party may refuse a request for transit if it has substantial grounds for believing that any of the prohibitions contained in Article 5 of this Agreement apply.

#### Article 20

##### Entry into force and termination

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

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

3. Either Party may terminate this Agreement at any time by giving notice in writing to the other Party through the channel notified under paragraph 1 of Article 8. In that event the Agreement shall cease to have

effect on the one hundred and eightieth day from the date on which notice is given.

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

Done in duplicate at Hong Kong, this Fourth day of May of Two thousand and Seventeen in the Chinese, English and French languages, each text being equally authentic.



Clerk to the Executive Council

COUNCIL CHAMBER

20 November 2018

---

### 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 French Republic. The Order is made in consequence of the arrangements for the surrender of fugitive offenders entered into by the Government of the Hong Kong Special Administrative Region and the Government of the French Republic and signed in Hong Kong on 4 May 2017. The terms of those arrangements are recited in the Schedule to the Order. Those procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms so recited.

## Mutual Legal Assistance in Criminal Matters (Mongolia) Order

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

### 1. Commencement

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

### 2. Ordinance applies between Hong Kong and Mongolia

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

## Schedule 1

[s. 2]

### Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Mongolia on Mutual Legal Assistance in Criminal Matters<sup>#</sup>

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 to conclude this Agreement by the Central People's Government of the People's Republic of China and the Government of Mongolia (hereinafter referred to as "the Parties"),

Desiring to improve the effectiveness of law enforcement of both Parties in the prevention, investigation, prosecution of crime and the confiscation of criminal proceeds through cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

#### Article 1

---

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



Scope of Assistance

1. The Parties shall, in accordance with the provisions of this Agreement, grant each other the widest measure of assistance in criminal matters.
2. For the purpose of this Agreement, criminal matters mean investigations, prosecutions or proceedings relating to any offence which at the time of the request for assistance falls within jurisdiction of the competent authorities of the Requesting Party.
3. Assistance shall include;
  - (a) taking evidence or statements from persons;
  - (b) providing information, documents, records and articles of evidence;
  - (c) locating or identifying persons or items;
  - (d) serving documents;
  - (e) executing requests for search and seizure;
  - (f) making detained persons and others available to give testimony or assist investigations;
  - (g) tracing, restraining and confiscating the proceeds and instrumentalities of criminal activities;
  - (h) delivery of property, including the restitution of property and lending of exhibits; and

- (i) other forms of assistance consistent with the objects of this Agreement which is not prohibited by the law of the Requested Party.
4. Assistance under this Agreement may be granted in connection with criminal offences against a law related to taxation, customs duties or other revenue matters provided that in the case of investigation of such offences the primary purpose of the investigation is not the assessment or collection of tax.
5. 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.
6. This Agreement does not apply to;
  - (a) the surrender of offenders;
  - (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the laws of Requested Party and this Agreement;
  - (c) the transfer of prisoners to serve sentences; and
  - (d) the transfer of proceedings in criminal cases.

Article 2

Other Arrangements

This Agreement shall not affect obligations subsisting between the Parties whether pursuant to other agreements, arrangements or otherwise, or

prevent the Parties from providing or continuing to provide assistance to each other pursuant to other agreements, arrangements or otherwise.

### Article 3

#### Central Authority

1. Each Party shall designate a Central Authority to make or receive requests for the purpose of this Agreement. The Central Authority of the Hong Kong Special Administrative Region shall be the Secretary for Justice or his duly authorized officer. The Central Authority for Mongolia shall be the Ministry of Justice of Mongolia or an officer duly authorized by the Minister for Justice of Mongolia. Either Party may change its Central Authority in which case it shall notify the other of the change.

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

### Article 4

#### Refusal or Postponement of Assistance

1. Assistance shall be refused if, in the opinion of the Requested Party:

- (a) the execution of the request would impair its essential interests;
- (b) the execution of the request would impair the sovereignty, security or public order of Mongolia or, in the case of the Hong Kong Special Administrative Region, of the People's Republic of China;

- (c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinions or that person's position may be prejudiced for any of those reasons;
- (d) the acts or omissions alleged to constitute the offence, if they had taken place in the Requested Party would not have constituted an offence under the laws of the Requested Party;
- (e) the request relates to an offence of a political character;
- (f) the request relates to the prosecution of a person for an offence where the person has been convicted, acquitted or pardoned by a competent court or other authority in either Party or has undergone the punishment provided by law in respect of that offence or another offence constituted by the same acts or omissions as that offence.

2. The Requested Party may, and if required by its law shall, refuse assistance if the request relates to an offence only under military law.

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, not carried out.

4. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or proceeding in the Requested Party.

5. Before refusing or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority -

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

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

7. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request and the reason for that decision.

#### Article 5

##### Content of Requests

1. Requests for assistance shall include:
  - (a) the name of the competent authority conducting the criminal matter to which the request relates, including the name of a responsible person and that person's contact details;
  - (b) the purpose of the request and the description of the assistance sought;
  - (c) the description of the subject matter and nature of the criminal matter, including a summary of relevant facts and laws and

the maximum penalty for the offence to which the criminal matter relates;

- (d) any time limit within which compliance with the request is desired;
- (e) a description of any particular procedure or requirement to be followed in executing the request;
- (f) the need for confidentiality and the reasons therefor;
- (g) such other information as is necessary for the proper execution of the request.

2. Requests for assistance, to the extent necessary and possible, shall also include:

- (a) information on the identity, nationality and location of any person from whom evidence is sought;
- (b) information on the identity and location of a person to be served, that person's relationship to the proceeding, and the manner in which service is to be made;
- (c) information on the identity and whereabouts of a person to be located;
- (d) a description of the place to be searched and of the items to be seized;
- (e) information as to the allowances and expenses to which a person asked to appear in the Requesting Party will be entitled.

3. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

4. Requests shall be made in writing.

5. Requests, supporting documents and other communications made pursuant to this Agreement shall be in the English language and, if requested, accompanied by a translation into an official language of the Requested Party.

#### Article 6

##### Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner prescribed by the Requesting Party as far as practicable.

2. The Requested Party shall promptly inform the Requesting Party of any circumstances and reasons which are likely to cause a significant delay in responding to the request.

#### Article 7

##### Return of Material to the Requested Party

Where required by the Requested Party, the Requesting Party shall return the material provided under this Agreement as soon as possible when it is no longer needed for the criminal matter to which the request relates.

#### Article 8

##### Confidentiality

The Requested Party, if so requested, shall use its best efforts to keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

#### Article 9

##### Limitation on Use

1. The Requesting Party shall not disclose or use any information or evidence obtained under this Agreement for purposes other than those described in the request without the prior consent of the Requested Party.

2. The Requesting Party, if so requested, shall keep confidential information and evidence provided by the Requested Party, except to the extent that the information and evidence is needed for the criminal matter described in the request and where otherwise authorized in writing by the Requested Party.

3. Information and 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 10

##### Obtaining of Evidence, Articles or Documents

1. The Requested Party shall, in conformity with its law and upon request, take testimony or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the Requesting Party.

2. 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.

3. The Requested Party shall, to the extent permitted by its law, allow the presence of such persons as specified in the request during the execution of the request, and may allow such persons to question the person whose testimony or evidence is being taken. In the event that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the persons whose testimony or evidence is being taken.

4. A person who is required to give evidence in the Requested Party under this Article may decline to give evidence where either:

- (a) the law of the Requested Party would permit that person to decline to give evidence in similar circumstances in proceedings which originated in the Requested Party; or
- (b) where the law of the Requesting Party would permit him to decline to give evidence in such proceedings in the Requesting Party.

5. Where a person who is required to give evidence in the Requested Party under this Article claims that there is a right to decline to give evidence under the law of the Requesting Party, the evidence shall nevertheless be taken and the claim made known to the Central Authority of the Requesting Party for subsequent determination by the authorities of that Party.

Article 11

Video Conference

Where possible and consistent with their laws, the Parties may agree on a case by case basis that the taking of the testimony takes place by means of video conference. In such case, both parties shall agree on the specific arrangements for the video conference.

Article 12

Availability of Persons in Custody to Give Evidence or Assist  
Investigations

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

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

Article 13

Availability of Other Persons to Provide Assistance

1. The Requesting Party may request the assistance of the Requested Party in inviting a person to appear in the Requesting Party for the purposes of providing assistance in a criminal matter pursuant to this Agreement. The Requesting Party shall indicate the extent to which the expenses and allowances will be paid.

2. Upon receipt of such a request the Requested Party shall invite the person to travel to the Requesting Party. The Requested Party shall promptly inform the Requesting Party of the person's response.

#### Article 14

##### Safe Conduct

1. A person present in the Requesting Party pursuant to a request made under Articles 12 and 13 shall not be obliged to give evidence in any proceeding or to assist any investigation other than the proceeding or investigation to which the request relates.

2. A person who does not consent to a request pursuant to Articles 12 or 13 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

3. A person who consents to provide assistance pursuant to Articles 12 or 13:

- (a) shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence which preceded his departure from the Requested Party, except as provided in Article 12;

- (b) shall not be subject to civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from the Requested Party pursuant to the request, being a civil suit to which the person could not be subject if he were not in the Requesting Party.

4. Paragraphs 1 and 3 shall not apply if the person, not being a person in custody transferred under Article 12, and being free to leave, has not left the Requesting Party within a period of fifteen days after being notified that his presence is no longer required, or having left the Requesting Party, has returned.

5. A person who consents to give evidence under Articles 12 or 13 shall not be subject to prosecution based on his testimony, except for perjury or contempt of court.

#### Article 15

##### Provision of Publicly Available and Official Documents

1. The Requested Party shall provide copies of documents and records that are open to public access as part of a public register or otherwise, or that are available for purchase by the public.

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 16

### Service of Documents

1. The Requested Party shall serve documents that are transmitted to it for this purpose by the Requesting Party.
2. A request for the service of documents requiring the appearance of a person in the Requesting Party shall be received by the Requested Party not less than forty-five (45) days before the date on which the appearance is required. In urgent cases, the Requested Party may waive this requirement.
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, forward to the Requesting Party a proof of service in the manner required by the Requesting Party. Such proof of service may include a description of the date, place and manner of service, together with a receipt signed by the person on whom the document was served.
5. A person who fails to comply with any process served on him shall not by reason thereof be liable to any penalty or compulsory measure pursuant to the law of the Requesting Party or Requested Party.

### Article 17

#### Search and Seizure

1. The Requested Party shall, insofar as its law permits, carry out a request for search and seizure and delivery of any material to the Requesting Party which is relevant to a criminal matter in the Requesting

Party, provided that the request includes information justifying such action under the law of the Requesting Party.

2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of the search, the place of seizure, the circumstances of seizure, and the subsequent custody of the material seized.
3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party, including any terms and conditions to protect third party interests in the material.

### Article 18

#### Proceeds of Crime

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds of crime against the law of the Requesting Party are located in the Requested Party and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in the Requested Party.
2. Where, pursuant to paragraph 1, suspected proceeds of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of such suspected proceeds pending a final determination in respect of those proceeds by a Court of the Requesting Party.
3. Where a request is made for assistance in securing the confiscation of proceeds of crime the Requested Party shall take measures as are permitted by its law to provide the assistance. This may include enforcing

an order made by a court in the Requesting Party and initiating or assisting in proceedings in relation to the proceeds to which the request relates.

4. In the application of this Article, the rights of bona fide third party shall be respected under law of the Requested Party.

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

#### Article 19

##### Certification and Authentication

1. A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require any form of certification or authentication unless requested by either Party.

2. Insofar as not prohibited by the law of the Requested Party, documents, records or other materials shall be transmitted in such form or accompanied by such certification as may be requested by the Requesting Party in order to make them admissible according to the law of the Requesting Party.

3. Material shall be certified or authenticated by consular or diplomatic officers only if the law of the Party specifically so requires.

#### Article 20

##### 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 and shall represent the interests of the Requesting Party in all other respects.

2. The Requested Party shall meet the ordinary cost of executing the request for assistance in the Requested Party, except that the Requesting Party shall bear:

- (a) the expenses associated with conveying any person to or from the Requested Party at the request of the Requesting Party, and any allowances or expenses payable to that person while in the Requesting Party pursuant to a request under Articles 12 or 13; and
- (b) the expenses and fees of experts and counsel retained at the request of the Requesting Party.

3. If during the execution of the request it becomes apparent that the execution of the request requires expenses of an extraordinary or substantial nature, the Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

#### Article 21

##### Consultation

The Parties shall consult promptly, at the request of either of them, concerning the interpretation, application or implementation of this Agreement.

#### Article 22



Settlement of Disputes

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

Article 23

Entry into Force, Amendment and Termination

1. Each Party shall notify the other Party in writing of the completion of its internal procedures required for entry into force of this Agreement. This Agreement shall enter into force thirty days after the date of the later of two notifications.
2. This Agreement may be amended upon the mutual written agreement of the Parties. Such amendment shall enter into force in accordance with the provisions set forth in paragraph 1.
3. This Agreement applies to any requests presented after its entry into force even if the relevant acts or omissions occurred prior to this Agreement entering into force.
4. Either Party may terminate this Agreement by notice in writing to the other at any time. Termination shall take effect six months after the day on which notice is given. Requests 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 authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate in Hong Kong on the twenty sixth day of March of Two thousand and eighteen, in the Chinese, Mongolian and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

---

## Schedule 2

[s. 2 & Sch. 3]

### Modifications to the Ordinance

1. Section 5(1)(d) of the Ordinance is modified to read as follows—

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

“(e) the request relates to the prosecution of a person for an external offence in a case where the person—\*
  - (i)\* has been convicted, acquitted or pardoned by a competent court or other authority in the place,\*\* or Hong Kong in respect of that offence or of another external offence constituted by the same act or omission as that offence,\* or
  - (ii)\* has undergone the punishment provided by the law of that place or Hong Kong\*,\*\* in respect of that offence or of another external offence constituted by the same act or omission as that offence;”.
3. Section 17(3)(b) of the Ordinance is modified to read as follows—

“(b) the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 days after being notified that the person’s presence is no longer required for any of the following purposes\* ~~has had an~~

~~opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for\*\*—~~

- (i) the purpose to which the request relates; ~~or\*\*~~
- (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Secretary for Justice to be a criminal matter in relation to which it is desirable that the person give assistance.”.

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

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

### Schedule 3

[s. 2]

#### Summary of Modifications to the Ordinance

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



Clerk to the Executive Council

COUNCIL CHAMBER

20 November 2018

---

### **Explanatory Note**

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (*Ordinance*) applies as between Hong Kong and Mongolia. 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 Mongolia and signed in Hong Kong on 26 March 2018. A copy of those arrangements is annexed at Schedule 1 to the Order. The Ordinance is to apply subject to the modifications specified in Schedule 2 to the Order. The modifications are summarized in Schedule 3 to the Order.