

L.N. 105 of 2016

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

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

1. Commencement

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

2. Ordinance applies between Hong Kong and Sweden

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

[s. 2]

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

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region") having been duly authorised by the Central People's Government of the People's Republic of China to conclude this Agreement, and the Government of the Kingdom of Sweden, hereinafter referred to as the Parties;

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

Have agreed as follows:

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

ARTICLE 1

SCOPE OF ASSISTANCE

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

(2) Assistance shall include:

- (a) identifying and locating persons;
- (b) service of documents;
- (c) taking the testimony or statements of persons;
- (d) executing requests for search and seizure;
- (e) facilitating the personal appearance of persons to give testimony or to provide other assistance in the Requesting Party;
- (f) effecting the temporary transfer of persons in custody to give testimony or to provide other assistance;
- (g) providing information, documents, objects and records, and transfer of exhibits;
- (h) tracing, restraining, forfeiting and confiscating the proceeds of crime and instrumentalities of criminal activities;
- (i) restitution of property; and

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

ARTICLE 2

CENTRAL AUTHORITY

- (1) The Central Authorities of the Parties shall process requests for mutual legal assistance in accordance with the provisions of this Agreement.
- (2) The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or his duly authorised officer. The Central Authority for the Kingdom of Sweden is the Ministry of Justice. Either Party may change its Central Authority in which case it shall notify the other of the change in writing.
- (3) Requests for mutual legal assistance shall be made directly between the Central Authorities on behalf of authorities that by law are responsible for investigations, prosecutions or proceedings relating to criminal matters. For the Hong Kong Special Administrative

Region these authorities are the Department of Justice, the Hong Kong Police Force, the Immigration Department, the Customs and Excise Department, the Independent Commission Against Corruption and the Securities and Futures Commission. For Sweden, these authorities are courts, public prosecutors and the Enforcement Authority.

ARTICLE 3

OTHER ASSISTANCE

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

ARTICLE 4

GROUND FOR REFUSAL

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

- (b) the Requested Party being the Government of the Kingdom of Sweden, the execution of the request would impair the sovereignty, security, public order, general principles of national law or other essential interests of the Kingdom of Sweden;
- (c) the request for assistance relates to an offence of a political character;
- (d) the request for assistance relates to an offence under military law which is not also an offence under ordinary criminal law of the Requested Party;
- (e) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;
- (f) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party or a decision on waiver of prosecution concerning the act has been issued or for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the Requested Party; or
- (g) the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence.

(2) For the purposes of paragraph (1)(g), for offences relating to taxes, duties or customs control, it shall be immaterial that the law of the Requested Party does not impose the same kind of tax, duty or customs control or does not contain a tax, duty or customs regulation of the same kind as the law of the Requesting Party.

(3) The Requested Party may refuse assistance if the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of information or evidence provided.

ARTICLE 5

REQUESTS

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

(2) Requests for assistance shall include:

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

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

- (j) any other information that may be brought to the attention of the Requested Party to facilitate its execution of the request.
- (4) A request and all documents submitted in support of a request shall be in, or accompanied by a translation into, an official language of the Requested Party unless agreed otherwise.

ARTICLE 6

EXECUTION OF REQUESTS

- (1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.
- (2) A request shall be executed in accordance with the law of the Requested Party and the provisions of this Agreement and, to the extent not prohibited by the law of the Requested Party, in accordance with the directions stated in the request so far as practicable.
- (3) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.
- (4) The Requested Party may postpone assistance if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.

(5) Before refusing or postponing assistance, the Requested Party shall promptly inform the Requesting Party of the reasons for considering refusal or postponement and consult with that Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

(6) The Requested Party shall inform the Requesting Party in writing of a decision to refuse assistance and the reasons therefor.

ARTICLE 7

REPRESENTATION AND EXPENSES

(1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

(2) The Requested Party shall meet the cost of fulfilling the request for assistance except that the Requesting Party shall bear:

- (a) fees of counsel retained at the request of the Requesting Party;
- (b) fees of experts;
- (c) expenses of translation;
- (d) travel expenses and allowances of persons who travel between the Requesting and Requested Parties; and

- (e) the cost in setting up a video conference in the Requested Party under Article 10, including the cost of establishing the videolink, costs related to the servicing of the videolink in the Requested Party, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the Requested Party.
- (3) If during the execution of the request it becomes apparent that expenses of a substantial or extraordinary nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

ARTICLE 8

CONFIDENTIALITY AND LIMITATIONS ON USE

- (1) The Requested Party, to the extent permitted by its law and if so requested, shall keep the request for assistance, the contents of a request and its supporting documents, and the fact of granting of such assistance, confidential, except to the extent that disclosure is necessary to execute a request. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine whether the request should nevertheless be executed.
- (2) The Requesting Party, to the extent permitted by its law and if so requested, shall keep confidential evidence and information provided by the Requested Party, including documents, objects or records, except to the extent that disclosure is necessary for the investigation, prosecution or proceeding described in the request.

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

ARTICLE 9

OBTAINING OF TESTIMONY AND EVIDENCE IN THE REQUESTED PARTY

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

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

(3) Where testimony or evidence is to be taken, pursuant to a request for assistance under this Article, the person to whom the investigation, prosecution or proceeding in the Requesting Party relates, the person who is to give testimony or evidence and representatives of the Requesting Party may, subject to the law of the Requested Party, appear or have legal representation or both for the purpose of questioning the person giving the testimony or evidence.

(4) A person who is required to give testimony or evidence in the Requested Party pursuant to a request for assistance may decline to do so where either:

- (a) the law of the Requested Party would permit that person to decline to give testimony or evidence in similar circumstances in proceedings which originated in the Requested Party; or
 - (b) the law of the Requesting Party would permit that person to decline to give testimony or evidence in such proceedings in the Requesting Party.
- (5) If any person claims that there is a right to decline to give testimony or evidence under the law of the Requesting Party, the Requested Party shall with respect thereto rely on a certificate of the Central Authority of the Requesting Party as evidence of the existence of that right.

ARTICLE 10

VIDEO CONFERENCE

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

ARTICLE 11

SERVICE OF DOCUMENTS

- (1) The Requested Party shall serve any document transmitted to it for the purpose of service.
- (2) The Requesting Party shall transmit a request for the service of a document that requires a response in the Requesting Party within a reasonable time before the time-limit of the scheduled response.

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

ARTICLE 12

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

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

ARTICLE 13

CERTIFICATION

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

ARTICLE 14

TRANSFER OF PERSONS IN CUSTODY

(1) A person in custody in the Requested Party whose presence is required in the territory of the Requesting Party for the purpose of providing testimony or statements or identification or providing such assistance as permitted by the law of the Requested Party shall, if the Requested Party consents, be temporarily transferred from the Requested Party to the territory of the Requesting Party for that purpose provided that the assistance is not for the investigation or determination of any criminal liability of that person. While the person is required to be held in custody under the law of the Requested Party, the Requesting Party shall guarantee the maintenance in custody of the person. The Requesting Party shall also guarantee the person's subsequent return as soon as his or her presence is no longer required, but no later than the time specified by the Requested Party.

(2) Transfer may be refused if:

(a) the person concerned does not consent;

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

ARTICLE 15

APPEARANCE IN THE REQUESTING PARTY

- (1) The Requesting Party may request the assistance of the Requested Party in inviting a person to appear in the territory of the Requesting Party to provide assistance pursuant to this Agreement.
- (2) The Requested Party shall, upon receipt of such a request, invite the person to appear in the territory of the Requesting Party and seek that person's concurrence thereto.

(3) A person who does not consent to appear in the territory of the Requesting Party shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of either Party.

ARTICLE 16

SAFE CONDUCT

(1) A person in custody who is transferred to the Requesting Party pursuant to Article 14 or a person who provides assistance pursuant to Article 15 shall not be prosecuted, detained, or subject to any other restrictions in his or her personal liberty in the Requesting Party by reason of an act, omission or judgment that relates to the time prior to his or her departure from the Requested Party, except the maintenance in custody of the person as guaranteed under Article 14(1).

(2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article 14, and being free to leave, has not left the Requesting Party within a period of 15 days after being notified that his or her presence is no longer required, or having left the Requesting Party, has returned.

(3) A person in custody who is transferred to the Requesting Party pursuant to Article 14 or a person who provides assistance pursuant to Article 15 shall not be subject to prosecution based on his or her testimony, except for perjury.

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

ARTICLE 17

SEARCH AND SEIZURE

(1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any material that the Requesting Party considers relevant to an investigation, prosecution or proceeding in relation to a criminal matter.

(2) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the material seized.

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

ARTICLE 18

PROCEEDS OF CRIME

(1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.

(2) Where, pursuant to paragraph (1), suspected proceeds of crime are found the Requested Party shall, upon request, take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the Requesting Party.

(3) Where a request is made for assistance in securing the confiscation of proceeds, such request shall be executed pursuant to the law of the Requested Party.

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

(5) For the purposes of this Agreement, “proceeds of crime” includes:

- (a) property which represents the value of property and other benefits derived from the commission of an offence;
- (b) property derived or realized directly or indirectly from the commission of an offence; and
- (c) property used or intended to be used in connection with an offence or the value of such property.

ARTICLE 19

SETTLEMENT OF DISPUTES

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

ARTICLE 20

ENTRY INTO FORCE AND TERMINATION

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

(2) Each of the Parties may terminate this Agreement at any time by giving written notice to the other. In that event this Agreement shall cease to have effect on receipt of that notice. Requests for assistance which have been received prior to termination of this Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement were still in force.

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

Mutual Legal Assistance in Criminal Matters (Sweden) Order

Schedule 1

L.N. 105 of 2016

B2231

Done in duplicate at Hong Kong, this Twenty Eighth day of November, Two thousand and Thirteen, in the Chinese, English and Swedish languages, each text being equally authentic. In case of divergence in interpretation, the English text shall prevail.

Schedule 2

[s. 2 & Sch. 3]

Modifications to the Ordinance

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

2. Section 5(1)(e) of the Ordinance is modified to read as follows—
 - “(e) the request relates to the prosecution of a person for an external offence in a case where the person—*
 - (i)* has been convicted, acquitted or pardoned by a competent court or other authority in the place,** or Hong Kong in respect of that offence or of another external offence constituted by the same act or omission as that offence;* or
 - (ii)* has undergone the punishment provided by the law of that place or Hong Kong*,** in respect of that offence or of another external offence constituted by the same act or omission as that offence;”.

3. Section 5(1) of the Ordinance is modified by adding—
- “(a) the request relates to the prosecution of a person in respect of an act or omission that, if it had occurred in Hong Kong, could no longer be prosecuted in Hong Kong by reason of lapse of time;
 - (b) the request relates to the prosecution of a person for an external offence in respect of which a decision on waiver of prosecution concerning the act or omission has been issued in Hong Kong.*”
4. Section 17(1) of the Ordinance is modified by deleting paragraph (ii).
5. Section 17(3)(b) of the Ordinance is modified to read as follows—
- “(b) the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 days after being notified that the person’s presence is no longer required for any of the following purposes* has had an opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for**—
 - (i) the purpose to which the request relates; or**
 - (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Secretary for Justice to be a criminal matter in relation to which it is desirable that the person give assistance.”

Mutual Legal Assistance in Criminal Matters (Sweden) Order

Schedule 2

L.N. 105 of 2016

B2237

6. Section 23(2)(a) of the Ordinance is modified—

- (a) by adding “or” at the end of subparagraph (i);
- (b) by deleting subparagraph (ii).

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

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

Schedule 3

[s. 2]

Summary of Modifications to the Ordinance

1. Sections 1, 2 and 3 of Schedule 2 specify modifications to section 5(1) of the Ordinance so that a request by a place outside Hong Kong for assistance under the Ordinance must also be refused if, in the opinion of the Secretary for Justice—
 - (a) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's sex or ethnic origin;
 - (b) the request relates to the prosecution of a person for an external offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in Hong Kong, or has undergone the punishment provided by the law of Hong Kong, in respect of that offence or of another external offence constituted by the same act or omission as that offence;
 - (c) the request relates to the prosecution of a person in respect of an act or omission that, if it had occurred in Hong Kong, could no longer be prosecuted in Hong Kong by reason of lapse of time; or
 - (d) the request relates to the prosecution of a person for an external offence in respect of which a decision on waiver of prosecution concerning the act or omission has been issued in Hong Kong.

Mutual Legal Assistance in Criminal Matters (Sweden) Order

Schedule 3

L.N. 105 of 2016
B2241

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

Kinnie WONG
Clerk to the Executive Council

COUNCIL CHAMBER

16 February 2016

Explanatory Note

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (*Ordinance*) applies as between Hong Kong and the Kingdom of Sweden. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the Government of the Hong Kong Special Administrative Region and the Government of the Kingdom of Sweden and signed in Hong Kong on 28 November 2013. A copy of those arrangements is annexed at Schedule 1 to the Order. The Ordinance is to apply subject to the modifications specified in Schedule 2 to the Order. The modifications are summarized in Schedule 3 to the Order.