

**L.N. 240 of 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.

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## 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:

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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.

## Article 1

### Obligation to surrender

The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement, any person who is found in the 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 surrender; 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.

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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.

Wendy LEUNG  
Clerk to the Executive Council

COUNCIL CHAMBER

20 November 2018

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### **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.