

L.N. 107 of 2016

**Mutual Legal Assistance in Criminal Matters
(Argentina) 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 Argentina

- (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 Argentine Republic.
 - (2) The modifications referred to in subsection (1) are summarized in Schedule 3.
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Schedule 1

[s. 2]

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

The Hong Kong Special Administrative Region of the People's Republic of China having been duly authorised by the Central People's Government of the People's Republic of China, and the Argentine Republic, hereinafter referred to as "the Parties";

CONSIDERING the ties of friendship and co-operation that unite them;

ENCOURAGED by the purpose of enhancing mutual legal assistance and co-operation in criminal matters;

CONVINCED of the need of developing joint action for the prevention, control and suppression of crime;

AWARE that the increase in criminal activity makes it necessary to strengthen the mechanisms of co-operation in criminal matters.

HAVE AGREED AS FOLLOWS:

Note:[#] The Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Argentine Republic on Mutual Legal Assistance in Criminal Matters was done in the Chinese, English and Spanish languages, each text being equally authentic. The Spanish 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 mutual assistance in accordance with the provisions of this Agreement, in connection with the prevention, investigation, and prosecution of offences, and in proceedings related to criminal matters.
2. Assistance shall include:
 - (a) taking testimony or statements;
 - (b) providing documents, records, and articles of evidence;
 - (c) serving documents;
 - (d) locating or identifying persons;
 - (e) transferring persons for testimony and other assistance related to criminal matters;
 - (f) executing requests for search and seizure;
 - (g) immobilizing assets;
 - (h) assisting in proceedings related to forfeiting the proceeds and instruments of criminal activities; and
 - (i) any other form of assistance not inconsistent with the law of the Requested Party.

3. The Parties shall, in accordance with the provisions of this Agreement, provide assistance in connection with criminal offences against a law relating to taxation, customs duties and other revenue matters.

4. This Agreement is intended solely for mutual legal assistance between the Parties. Its provisions shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

5. This Agreement shall not apply to:

- (a) the arrest of persons in order to be surrendered, nor to requests for the surrender of fugitive offenders;
- (b) the transfer of sentenced persons for the execution of criminal judgements;
- (c) assistance to individuals or third jurisdictions.

ARTICLE 2

CENTRAL AUTHORITIES

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Agreement. The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or his duly authorized officer. The Central Authority for the Argentine Republic is the Ministry of Foreign Affairs and Worship. 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 purposes of this Agreement.
3. The Central Authorities of the Parties shall consult to make the present Agreement as effective as possible.

ARTICLE 3

LIMITATIONS ON USE

1. The Requesting Party shall not use any information or evidence obtained under this Agreement for purposes different from those stated in the request, except when the Requested Party has previously so authorized.
2. The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished be kept confidential or be disclosed or used only subject to such terms and conditions as the Requested Party may specify.

ARTICLE 4

FORM AND CONTENT OF REQUESTS

1. A request for assistance shall be made in writing. In urgent cases, the Requesting Party may transmit a request by facsimile, electronic mail or other means of communication that provides a written record of the transmission, and shall submit the original of the request promptly thereafter.
2. The request shall include the following:

- (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- (b) a description of the facts constituting the subject matter of the investigation, prosecution, or proceeding and of the relevant law, including the specific criminal offences which relate to the matters;
- (c) a description of the assistance sought; and
- (d) a statement of the purpose for which the assistance is sought and a description of the connection between the request and the criminal matter.

3. To the extent necessary and possible, a request shall also include:

- (a) information on the identity and location of any person from whom evidence is sought;
- (b) information on the identity and location of any person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (c) information on the identity and whereabouts of any person to be located;
- (d) a precise description of the place or identification of any person to be searched and of the articles to be seized;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked;

- (g) a description of any particular procedure to be followed in executing the request;
- (h) information as to the fees, allowances and expenses to which a person asked to appear in the Requesting Party will be entitled;
- (i) any requirements for confidentiality;
- (j) any time limits relevant to the request;
- (k) a certified copy of any court order sought to be enforced, and a statement to the effect that it is not subject to appeal; or
- (l) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request.

4. If the Requested Party considers the contents of the request to be insufficient to enable it to execute the request, it may request additional information.

5. Requests and supporting documents made under this Agreement shall be accompanied by a translation into an official language of the Requested Party.

ARTICLE 5

EXECUTION OF REQUESTS

1. Requests shall be promptly executed in accordance with the laws of the Requested Party. Requests shall be executed in accordance with the procedure specified therein except insofar as prohibited by the laws of the Requested Party.
2. If the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation or proceeding in that Party, it may postpone execution, or make execution subject to conditions determined to be necessary, after consultations with the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.
3. The Requested Party shall promptly inform the Requesting Party of any circumstances that are likely to cause a significant delay in responding to the request.
4. The Requested Party shall use its best efforts to keep confidential a request and its contents, if such confidentiality is requested by the Requesting Party. 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.
5. The Requested Party shall respond to inquiries by the Requesting Party concerning progress toward execution of the request.
6. The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request. If the request is not executed, the Requested Party shall inform the Requesting Party of the reasons for the failure to execute.

ARTICLE 6

DENIAL OF THE REQUEST

1. The Requested Party shall deny the assistance if:
 - (a) the request is related to an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party 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;
 - (b) the request for assistance has been made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on the grounds of race, sex, social condition, nationality, religion, or political opinions;
 - (c) the granting of the request would, in the case of the Hong Kong Special Administrative Region, impair the sovereignty of the People's Republic of China or the security or public order of the People's Republic of China or any part thereof, or, in the case of the Argentine Republic, impair the sovereignty, security or public order of the Argentine Republic;
 - (d) the request relates to a political or military offence;
 - (e) the granting of the request would seriously impair its essential interests.

2. The Requested Party may, and if required by its law shall, deny assistance if 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.

3. The Requested Party may refuse assistance if the request relates to an offence which carries the death penalty in the Requesting Party 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. 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 material provided.

ARTICLE 7

TAKING OF TESTIMONY OR EVIDENCE

1. If the request has been made for the purpose of taking testimony or evidence from a person in the Requested Party, the Requested Party shall give notice to the person to appear in accordance with its domestic law. The Requested Party shall take the testimony or evidence in accordance with the terms of the request including any questions transmitted by the Requesting Party.

2. The Requested Party shall authorize the persons specified in the request to be present during the execution thereof and shall allow them to propose questions to the extent permitted by the laws of the Requested Party.

3. A person who is required to give 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 witness to decline to give evidence in similar circumstances in proceedings which originated in the Requested Party; or

- (b) The law of the Requesting Party would permit him to decline to give evidence. In such case, the evidence shall nonetheless be taken and the claim made known to the Requesting Party for subsequent resolution by the authorities of the Requesting Party.

ARTICLE 8

OBTAINING OF OFFICIAL RECORDS

The Requested Party may provide, upon request, copies of official documents, records or information kept in any governmental organization or agency but not publicly available, to the same extent and under the same conditions as such documents, records or information would be available to its own authorities.

ARTICLE 9

TRANSMISSION AND RETURN OF MATERIAL

1. The evidence, documents, articles or records obtained pursuant to this Agreement shall be transmitted as originals or certified copies through the Central Authorities.
2. Original documents or records, as well as any articles, which have been transmitted must be returned as soon as possible by the Requesting Party, except when the Requested Party has waived that requirement.

ARTICLE 10

SEARCH AND SEIZURE

1. The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any property to the Requesting Party which is 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 property seized.

3. The property shall be transmitted through the Central Authorities.

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

ARTICLE 11

HEARING BY VIDEO CONFERENCE

1. 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 under specific conditions.

2. The competent authority of the Requested Party shall provide a written record certifying the taking of the testimony.

ARTICLE 12

TRANSFER OF PERSONS TO PROVIDE TESTIMONY
OR OTHER ASSISTANCE

1. When the Requesting Party requests the appearance of a person to provide testimony or other assistance, the Requested Party shall invite the person to appear before the appropriate authority in the Requesting Party.
2. The Requesting Party shall indicate the extent to which expenses will be paid. The Requested Party shall promptly inform the Requesting Party of the response of the person.

ARTICLE 13

TRANSFER OF PERSONS IN CUSTODY

1. A person in the custody of the Requested Party whose presence in the Requesting Party is needed for the purpose of providing assistance under this Agreement shall be transferred from the Requested Party to the Requesting Party if both the person and the Requested Party consent to the transfer.
2. For the purposes of this Article:
 - (a) the Requesting Party shall keep the person transferred in custody unless otherwise authorized by the Requested Party;
 - (b) the Requesting Party shall return the person transferred to the custody of the Requested Party as soon as circumstances permit or as otherwise agreed by the Parties;

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

ARTICLE 14

SAFE CONDUCT

1. The person who appears before the competent authority of the Requesting Party for the purpose of providing the requested assistance may not be prosecuted or arrested for any criminal offence which preceded his or her departure from the Requested Party.
2. A person, whatever his or her nationality, who gives his or her written consent to appear before the competent authorities of the Requesting Party to answer for acts that are the subject of proceedings against him or her, shall not be prosecuted, arrested or subject to any other restriction of his or her personal liberty in respect of acts or omissions or judicial decisions previous to his or her departure from the Requested Party, and not specified in the summons.
3. A person who consents to give evidence under Articles 12 or 13 shall not be subject to prosecution based on his or her testimony, except for giving false evidence.
4. A person who consents to provide assistance pursuant to Articles 12 or 13 shall not be required to provide assistance in any proceedings other than the proceedings to which the request relates.

5. A person who does not consent to provide assistance pursuant to Articles 12 or 13 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

6. The safe conduct provided for in paragraphs 1 and 2 shall cease to have effect when the person, on a voluntary basis, extends his or her stay in the Requesting Party for a period of more than ten days from the date when his presence is no longer required in that Party or, having left it, has returned.

ARTICLE 15

PROCEEDS AND INSTRUMENTS OF CRIME

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds from criminal activities or instruments of crime are located within its jurisdiction and shall notify the Requesting Party of the result. In making the request, the Requesting Party shall give reasons for believing that the proceeds or instruments may be located in the Requested Party.

2. If suspected proceeds or instruments of crime are found in accordance with paragraph 1 of this Article, the Requested Party shall take measures to freeze, seize and forfeit such proceeds or instruments according to its domestic law.

3. The Requested Party may, to the extent permitted by its domestic law and under the terms and conditions agreed to by the Parties, transfer all or part of the proceeds or instruments of crime forfeited pursuant to this Agreement.

ARTICLE 16

PROPERTY OF BONA FIDE THIRD PERSONS

1. In accordance with the provisions of this Agreement, the competent authorities of the Requested Party shall, pursuant to their domestic law, protect the interests and rights of bona fide third persons in the property affected by the execution of requests.
2. Any person affected by an attachment, seizure, impoundment or forfeiture order may claim redress in accordance with the domestic law of the Requested Party.

ARTICLE 17

SERVICE OF DOCUMENTS

1. The Requested Party shall serve any document transmitted to it for the purpose of service in accordance with and subject to its laws.
2. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting Party within a reasonable time before the scheduled response or appearance.
3. The Requested Party shall, subject to its laws, return a proof of service in the manner required by the Requesting Party.

ARTICLE 18

EXPENSES

1. The ordinary expenses arising from the execution of a request shall be paid by the Requested Party except—

- (a) fees of experts or other professionals;
- (b) expenses of translation; and
- (c) travel expenses and allowances of persons.

2. If expenses of an extraordinary nature are required to fulfil the request, the Parties shall consult each other in order to determine the terms and conditions under which the execution of the request may continue.

ARTICLE 19

FORWARDING INFORMATION WITH A VIEW TO PROCEEDINGS

1. Either Party may, without prior request, submit information or evidence to the other Party with a view to proceedings being instituted in that Party.

2. The Party to whom such information or evidence is submitted shall notify the other Party of any action taken and shall forward a copy of any decision made.

ARTICLE 20

LEGALIZATION, CERTIFICATION AND AUTHENTICATION

1. A request and any supporting documents shall be exempted from legalization or analogous formality.
2. Documents, transcripts, records, statements or other material which are to be transmitted to either Party shall only be certified or authenticated if the other Party so requests.

ARTICLE 21

SETTLEMENT OF DISPUTES

Any dispute arising between the Parties related to the interpretation and application of this Agreement shall be resolved by the Central Authorities. If the Central Authorities are unable to reach agreement the dispute shall be resolved through diplomatic channels.

ARTICLE 22

ENTRY INTO FORCE AMENDMENT AND TERMINATION

1. The Parties shall notify each other in writing when their respective requirements for entry into force of this Agreement have been complied with, and it shall enter into force thirty (30) days after the date of the second notification.
2. Upon the mutual agreement of the Parties, this Agreement may be amended. Such amendment shall enter into force in accordance with the provisions set forth in Paragraph 1 of this Article.

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3. This Agreement shall be in force for an indefinite period. Either of the Parties may terminate it by giving a written notice to the other. The termination shall take effect one hundred and eighty (180) days after such notification was given. Requests for assistance which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

IN WITNESS WHEREOF, the undersigned have signed this Agreement.

DONE at Hong Kong on the Twenty-ninth day of October of Two thousand and Fifteen in two (2) originals in the Chinese, English and Spanish languages, each text being equally authentic. In case there is any divergence of interpretation of this Agreement, 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, social condition,* 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 5(1) of the Ordinance is modified by adding—

“(ea) 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;*”

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 10 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.”

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 social condition;
 - (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; or
 - (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.

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.

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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 Argentine Republic. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the Hong Kong Special Administrative Region and the Argentine Republic and signed in Hong Kong on 29 October 2015. 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.