



MEMORANDUM OF UNDERSTANDING

ON

CO-OPERATION BETWEEN

THE HONG KONG POLICE

AND

**THE PROSECUTIONS DIVISION OF THE
DEPARTMENT OF JUSTICE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION,
PEOPLE'S REPUBLIC OF CHINA**

Memorandum of Understanding

This Memorandum, dated the 24th day of July, 2000, made between the Commissioner of Police of the Hong Kong Police Force and the Director of Public Prosecutions, Department of Justice, Hong Kong, hereby sets out the agreed guidelines for the level of service to be provided in the categories indicated by the Hong Kong Police ('the Police') to the Prosecutions Division ('the PD') of the Department of Justice and by the Prosecutions Division to the Police.

1. Communication between the Police and the PD

- 1.1 The Police agree that the officer in charge of each case (OC Case) shall mark his/her contact telephone number (including fax number, pager and/or portable telephone number and/or e-mail address where officially provided) on the minute sheet submitted to the PD. Where appropriate, the number of the supervisory officer shall also be provided.
- 1.2 The PD agrees that the advising counsel shall mark his/her contact number on the advice given.
- 1.3 The Police and the PD each agree to inform the other, as soon as practicable, of any change in the OC Case or the counsel responsible for the case.
- 1.4 The PD agrees to confirm the receipt of case files upon submission and its General Registry will inform the OC Case of the name and contact number of the counsel assigned to handle the case upon request.

2. Advice

- 2.1 Where advice is to be sought from the PD, the Police agree to prepare files in accordance with the standards directed by the Commissioner of Police as published in his Orders from time to time. All files shall be submitted to the PD in a timely manner.
- 2.2 The PD undertakes to provide advice and return all files to the Police in a similar timely manner. Where this is not possible the PD will ensure early liaison with the Police.
- 2.3 The Police agree to ensure that advice files contain all such material as is necessary to enable the PD to consider all the issues upon which advice is sought. The PD agrees to give a written advice on the legal issues sought by the Police in accordance with the standards contained in its Performance Pledges. Should any further information or clarification of any point be required, the responsible counsel will advise the Police and the Police will use their best endeavours to assist counsel. Wherever practicable, communications between the parties shall be in writing.
- 2.4 The PD recognises that, in exceptional circumstances, there may be an urgent need for advice in the absence of a written file. The Police will provide justification for any such request. When the PD accepts such a request, the advising counsel will discuss the matter with the Police and offer legal advice to the extent that is reasonable in the circumstances.
- 2.5 Oral advice provided under paragraph 2.3 will usually be given in conference. The Police agree to produce all available documentation at any such conference. A written record will be made in relation to the advice given by the PD and the information on which the advice is based.

- 2.6 Only in exceptional circumstances will advice be given over the telephone. This does not however preclude communication between the Police and the assigned counsel as a continuation of the latter's initial advice.
- 2.7 The PD accepts that a request for a second opinion by the Police may be legitimate. Any such request will be the exception rather than the rule. Such requests will be processed in accordance with agreed procedures. If a request for a second opinion is accepted, the PD undertakes to provide a different counsel to review the case file afresh.
- 2.8 A request for a second opinion will be made by an officer of, or above the rank of Chief Superintendent. It will be directed to a Deputy Director of Public Prosecutions.
- 2.9 In the event that a second opinion does not resolve the issue, the Director of Crime and Security may consult the Director of Public Prosecutions.
- 2.10 The Department of Justice remains solely responsible for the taking of all prosecutorial decisions and the Police remain solely responsible for the conduct of investigations.

3. Victims of Crime

- 3.1 Once a decision to prosecute has been taken, the Police and the PD agree to cooperate, as required, to protect the rights of the victims of crime.
- 3.2 The Police and the PD agree to ensure, either separately or, where appropriate, through liaison, that victims are treated with compassion and respect for their dignity throughout the entirety of the legal process.
- 3.3 The Police and the PD agree to assist the other in the course of criminal proceedings to observe the principles of the *Victim of Crime Charter*.

4. Court Proceedings

- 4.1 The Police agree to ensure that an officer familiar with the case is available to assist the prosecutor at all stages of the proceedings - including bail application, plea day, pre-trial review, trial conference, trial and appeal - where such assistance is expected by the PD. Wherever practicable, the Police will endeavour to make the same officer available from start to finish in the interests of continuity. Wherever appropriate, the PD will endeavour to follow a similar practice with the assignment of prosecuting counsel.
- 4.2 Where the PD concludes that a prosecution should not be continued or that a plea of guilty to a lesser charge will satisfy the justice of the case, the PD agrees, so far as practicable, to consult the Police before a final decision is made. That final decision shall rest with the Department of Justice.
- 4.3 The PD shall exercise sole responsibility for the decision as to which counsel is to prosecute a case, and as to whether the case is to be prosecuted in-house or on fiat. The PD recognises that there may be rare occasions when the Police wish to make representations on this issue. Any such representations will be duly considered by the PD.

5. Unused Material

- 5.1 The Police agree to preserve all material that can be expected to be potentially disclosable until the case is ultimately concluded.

- 5.2 To enable an informed decision to be taken on disclosure, details of all unused material shall be supplied by the Police to the PD in a separate file with a detailed index, in accordance with the established procedures, at the time when the main police file is submitted to the PD for legal advice.
- 5.3 If the Police are of the opinion that for any reason it is not appropriate to make disclosure of any matter, this will be clearly indicated in a separate file, and the reasons for that opinion will be provided so as to assist the PD to reach an informed decision.
- 5.4 In cases where there is either no unused or no sensitive unused material, this should be clearly recorded by the Police and brought to the attention of the PD.
- 5.5 When the PD considers that any unused material which is identified as sensitive should be disclosed to the defence, the PD agrees to consult the OC Case, or, where appropriate, the supervisory officer, prior to the release of such material.
- 5.6 The PD will take care to protect intelligence information, and information provided by the Police in confidence. That will be so whether or not it is thought likely that the court will order its disclosure.

6. Protection of Identity of Vulnerable Witnesses, Agents and Informers

- 6.1 If the Police wish to protect the identity of any person associated with a prosecution, they will advise the PD of the role played by that person in the Police operation and of the reasons for such protection. The Police will keep a full record of the activity of any such person, and will advise the PD of what their position will be if the position is reached that protection cannot be guaranteed.

- 6.2 If the PD agrees that the identity of such a person requires protection, such steps as are appropriate will be taken to secure that objective. If the PD does not agree, the Police will be advised in writing of the reasons.
- 6.3 If the identity of such a person cannot be protected, the PD will advise the Police as to the most appropriate way forward regarding the legal aspects of the prosecution.

7. Witness Warning

- 7.1 The Police agree to provide the PD with full details of the availability of the civilian and police witnesses in accordance with the needs of the court.
- 7.2 The PD agrees to inform the court of the non-availability of witnesses at the pre-trial review so that the court and the defence can take this into account.
- 7.3 The PD agrees to advise the Police if a decision is taken that a witness is no longer required to attend court.

8. Major Crime Operations, Initiatives and Policing Policy

- 8.1 The Police agree to inform the PD, where necessary and appropriate, of any major operation or initiative, which will or may lead to future prosecutions or where participating informer immunities may be sought.
- 8.2 The Police and the PD agree to inform each other of new initiatives, fresh policies, and of general information, which may be of relevance and/or value and/or interest to the other.

9. Liaison and Continuous Improvement

- 9.1 The Police and the PD agree to fully consider each other's initiatives in the pursuit of excellence and improved efficiency.
- 9.2 The Police and the PD will jointly pursue the Administration's policy of promoting bilingualism where it is appropriate and in the interests of efficiency to do so.
- 9.3 The Police and the PD will adopt an open-minded and innovative approach to Information Technology and will consult fully on initiatives in this field to improve efficiency and communications.
- 9.4 The Police and the PD agree to issue internal memoranda, where appropriate, to secure the effective implementation of this Memorandum. Each party agrees to promote a culture of professionalism in its dealings with the other, and to monitor and address such areas of concern as may arise.
- 9.5 Issues affecting working relationships and service not covered by this Memorandum, will be negotiated either through the liaison meetings or will be resolved, as they arise, by mutual agreement and will be added to this Memorandum as appropriate.

10. Conclusion

- 10.1 The view of the parties is that the implementation of this Memorandum will strengthen existing channels of communication, promote effective liaison, and facilitate the smooth operation of the criminal justice system.

Signed by



(LAU Chun-sing)
Director of Crime and Security
for the Commissioner of Police



(I Grenville Cross, SC, JP)
Director of Public Prosecutions
for the Prosecutions Division
of the Department of Justice

Date: 24 July 2000