

SBCR 8/22/581/87

BY FAX

電話號碼 TEL. NO.: 2537 7171
傳真號碼 FAX. NO.: 2524 3762
來函傳真 YOUR FAX.: 2877 5029

2 November 2001

Legal Services Division
Legislative Council Secretariat
LegCo Building
8 Jackson Road, Central
Hong Kong
(Attn: Mr Stephen Lam)

Dear Mr Lam,

**Mutual Legal Assistance in Criminal Matters
(Canada, Philippines, Portugal) Orders**

I refer to your letter of 10 October, in which you reiterated your views on the Chinese text of the provisions which deal with the postponing of the execution of the request if it would interfere with an on-going investigation on prosecution in the Requested Party in the above 3 Orders. The relevant provisions in the 3 Orders are Article 5(6) of the Canada Order, Article VI(5) of the Philippines Order and Article 4(4) of the Portugal Order.

The questions on the three Chinese texts of the three Orders are substantially the same. Take the Canadian Order as an example, the English and Chinese texts of Article 5(6) of the Canadian Order are as follows:

"The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party".

"如執行要求會妨礙正在被要求方進行的調查或檢控，被要求方可延期提供協助。"

You have proposed to amend the Chinese text as follows:

"如執行要求會妨礙正在被要求方境內正在進行的調查或檢控，被要求方可延期提供協助。"

Having examined the provisions in question, we still maintain the view that the Chinese texts need not be amended as suggested by you. The element you have suggested for introduction is the term "境內". We have already explained that the meaning of "境內" is connoted in the original Chinese text. We are still of the view that the meaning of "境內" is contained in the term "在被要求方", as the word "在" refers to the locality as to where the investigation or prosecution is conducted. As such, we consider that the Chinese term "在被要求方" is a suitable rendition of the English term which is "in the Requested Party".

As we have previously mentioned, this Clause appears in a number of other Orders which have been adopted by the LegCo. Therefore, this is not a novel translation. In addition, we also have not encountered any difficulties in the application of such a Clause in practice. In these circumstances, we do not consider any change to the Chinese texts is required.

Yours sincerely,

(Ms Angelina Kwan)
for Secretary for Security

c.c. Department of Justice (Attn: Miss Deneb Cheung)