

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 24 January 2003**

**Legal Service Division Report on
Proposed Resolutions under section 4 of the
Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)**

**Mutual Legal Assistance in Criminal Matters (Ireland) Order
Mutual Legal Assistance in Criminal Matters (Netherlands) Order**

The Secretary for Security ("the Secretary") has given notice to move two motions at the Legislative Council meeting of 12 February 2003. The purpose of the motions is to seek the Legislative Council's approval of the following Orders made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("the Ordinance"):

- (a) Mutual Legal Assistance in Criminal Matters (Ireland) Order ("the Ireland Order"); and
- (b) Mutual Legal Assistance in Criminal Matters (Netherlands) Order ("the Netherlands Order").

2. Section 4(1) of the Ordinance provides that the Chief Executive in Council may, with the approval of the Legislative Council, in relation to any arrangements for mutual legal assistance, by order to which is annexed a copy of the arrangements direct that the Ordinance shall, subject to such modifications thereto as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate. Section 4(2) of the Ordinance provides that the Chief Executive in Council shall not make an order unless the arrangements for mutual legal assistance to which the order relates are substantially in conformity with the provisions of the Ordinance. Section 4(3) requires that the modifications be summarized in a Schedule to the order. Section 4(7) restricts the Legislative Council's power to amend orders made so that the Legislative Council may only repeal the whole order but not amend any part of it.

3. Schedule 1 to the Ireland Order and the Netherlands Order exhibits respectively the bilateral arrangements entered into between Hong Kong and Ireland and the Kingdom of Netherlands for mutual legal assistance in criminal matters.

4. Schedule 2 to the Orders sets out the modifications to the Ordinance.

The Ireland Order

5. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the Government of Hong Kong and the Government of Ireland and signed in Hong Kong on 19 September 2001.

6. Schedule 1 specifies the scope and procedures in relation to the provision of mutual legal assistance in criminal matters. It also provides for safeguards of the rights of persons involved in criminal proceedings.

7. Schedule 2 specifies the modifications to the Ordinance. Section 5(1)(e) of the Ordinance provides that the Secretary for Justice shall refuse assistance if the request relates to the prosecution of a person for an offence in respect of which he has been convicted, acquitted, pardoned or punished in the requesting jurisdiction. Article 6(1)(e) of the Hong Kong/Ireland Agreement extends this protection to conviction, acquittal or pardon in the requested jurisdiction as well. The modification expands the scope of section 5(1)(e) of the Ordinance to reflect the provision in the Agreement.

8. Section 17 of the Ordinance gives certain immunities to a person who comes to Hong Kong from another jurisdiction to provide assistance. These immunities cease to apply if the person has had the opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for the purpose of providing assistance. Article 17(2) of the Hong Kong/Ireland Agreement provides that the immunities will continue to apply for a period of 15 days after the person has had the opportunity of leaving Hong Kong. The modification reflects the additional protection provided in Article 17(2) of the Agreement.

The Netherlands Order

9. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the Government of Hong Kong and the Government of the Kingdom of the Netherlands and signed in Hong Kong on 26 August 2002.

10. Schedule 1 specifies the scope and procedures in relation to the provision of mutual legal assistance in criminal matters. It also provides for safeguards of the rights of persons involved in criminal proceedings.

11. Schedule 2 specifies the modifications to the Ordinance. According to the Administration, the modification to section 5(1)(e) of the Ordinance reflects Article 4(g) of the Hong Kong/Netherlands Agreement which extends the protection in section 5(1)(e) to cover immunity from prosecution acquired in the requested jurisdiction.

12. The modification to section 17 of the Ordinance is exactly the same as the modification provided for in the Ireland Order. The modification reflects the additional protection in Article 14(2) of the Hong Kong/Netherlands Agreement.

13. The Security Bureau has issued a LegCo Brief in December 2002 (File Ref.: SBCR 3/5691/95 Pt.22). Members may refer to the Brief for more background information.

14. The two Orders will come into operation on days to be appointed respectively by the Secretary for Security by notice published in the Gazette.

15. The Legal Service Division is seeking clarification from the Administration on certain matters, in particular, the reason for not including a provision in the Netherlands Order to cover the situation of refusal of assistance if the request relates to an offence carrying death penalty in the Requesting Party and the reason for not adopting the saving provision in relation to requests made before the termination of the Agreement. We have also made some comments on the Chinese text of the two Orders and are waiting for the Administration's reply. A further report will be issued if necessary.

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