

Mutual Legal Assistance in Criminal Matters (Singapore) Order

Article 21(1)

Introduction

At the meeting of the Sub-committee of the Legislative Council to consider the above order on 24 March 2004, the Administration was asked to provide a paper by way of background on whether the confidentiality obligation in international agreements similar to that provided in Article 21(1) of the agreement between Hong Kong and Singapore on mutual legal assistance in criminal matters (MLA) would constitute a defence for non-compliance, or a reasonable excuse from complying with a summons requiring production of documents issued by a court or by a select committee of the Legislative Council using the powers under the Legislative Council (Powers and Privileges) Ordinance Cap. 382.

2. Article 21(1) of the MLA agreement between Hong Kong and Singapore provides that the Requesting Party shall not disclose or use the information or evidence furnished, including documents, articles or records, pursuant to the Agreement for purposes other than those stated in the request without the prior written consent of the Central Authority of the Requested Party.

3. Provisions similar to Article 21(1) of the Hong Kong / Singapore MLA agreement are common provisions in MLA agreements¹ and appear in many MLA agreements entered into by Hong Kong e.g. Australia : Article VIII(3); Canada : Article 16(2); France : Article VIII(2); New Zealand : Article VIII(3); Ireland : Article 8(3); Italy : Article 7(2); The Netherlands : Article 8(1); The Philippines : Article VII(3); Portugal : Article 8(2) and Ukraine : Article 8(2).

¹ See also Article 8 of the United Nations model treaty on mutual legal assistance in criminal matters.

Disclosure in legal proceedings

4. The Government will endeavour to comply with the confidentiality obligation under provisions similar to Article 21(1) in the Hong Kong / Singapore MLA agreement by resisting any application to a court for disclosure of information or evidence provided by a requested Party. The grounds to be relied on in resisting such an application will depend on the facts of the case. One obvious ground that the Government could rely on is that the information is protected by public interest immunity. The disclosure of information would be contrary to public interest on the basis that such disclosure would contravene an obligation in an international agreement.

Disclosure to LegCo

5. Whilst the determination of questions relating to the right or privilege of any person to refuse to produce any paper or document to a select committee of the Legislative Council is a matter for the Council under s. 15 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), the Administration has been asked to give its views on this question. The Administration would point out that pursuant to s. 14(1) of Cap. 382, every person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before the Legislative Council or a Legislative Council committee shall, subject to s. 15, be entitled, in respect of such evidence or the disclosure of any communication, or the production of any such paper, book, record or document, to the same right or privilege as before a court of law. The considerations in paragraph 4 above apply.

6. It is also relevant to note Article 48 (11) of the Basic Law which entrusts the Chief Executive with the power and function to “decide in light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees.” When BL 48(11) is construed in the common law context, this provision would be wide enough to cover information that could be withheld from disclosure under the common law doctrine of public interest immunity.