

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 29 April 2005**

**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 (Belgium) Order
Mutual Legal Assistance in Criminal Matters (Denmark) Order**

The Secretary for Security ("the Secretary") has given notice to move two motions at the Legislative Council meeting of 11 May 2005. 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 (Belgium) Order ("the Belgium Order"); and
- (b) Mutual Legal Assistance in Criminal Matters (Denmark) Order ("the Denmark 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 2 to the Belgium Order and the Denmark Order respectively exhibit the bilateral arrangements entered into between the Government of the Hong Kong Special Administrative Region ("HKSAR") and the Government of the Kingdom of Belgium and the Government of the Kingdom of Denmark for mutual legal assistance in criminal matters.

4. Schedule 1 to the two Orders respectively set out the modifications to the Ordinance.

The Belgium Order

5. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the HKSAR Government and the Government of the Kingdom of Belgium and signed in Brussels on 23 September 2004.

6. Schedule 2 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 1 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 for which he has been convicted, acquitted, pardoned or punished in the requesting jurisdiction. Article IV(1)(f) of the Hong Kong/Belgium 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 XVI(6) of the Hong Kong/Belgium Agreement provides that the immunities will continue to apply for a period of 30 days after the person has had the opportunity of leaving Hong Kong. The modification reflects the additional protection provided in Article XVI(6) of the Agreement.

The Denmark Order

9. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the HKSAR Government and the Government of the Kingdom of Denmark and signed in Hong Kong on 23 December 2004.

10. Schedule 2 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 1 specifies the modifications to the Ordinance. According to the Administration, the modification to section 5(1)(e) of the Ordinance reflects Article 4(1)(e) of the Hong Kong/Denmark Agreement by extending the scope of protection in section 5(1)(e) to cover immunity from prosecution acquired in the requested jurisdiction.

12. Section 17(3)(b) of the Ordinance provides that the immunities under section 17(1) of the Ordinance cease to apply if a person who comes to Hong Kong from another jurisdiction to render assistance has had the opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for the purpose of rendering assistance. Article 13(2) of the Hong Kong/Denmark Agreement provides that the immunities will continue to be applicable for a period of 15 days after the person, being free to leave Hong Kong, has been notified that his presence is no longer required. The modification reflects the additional protection in the Agreement by providing for a 15-day period in section 17 of the Ordinance.

13. Sections 17(1)(ii) and 23(2)(a)(ii) of the Ordinance give a person rendering assistance in the requesting jurisdiction immunity from civil suits. Such immunity is not provided in the Hong Kong/Denmark Agreement. According to the Administration, the reason for not providing for this immunity in the Agreement is that immunity from civil suits is not available under the Danish law. The modifications to sections 17(1) and 23(2)(a) reflect the deletion of such immunity.

14. The Security Bureau has issued a LegCo Brief on 20 April 2005 (File Ref.: SBCR 3/5691/95 Pt.30). Members may refer to the Brief for more background information.

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

16. The Legal Service Division has asked the Administration to clarify certain matters relating to the execution of requests for assistance, including the taking or obtaining of evidence under the Belgium Order and the scope of certain immunities under the Denmark Order, and is waiting for its reply. Meanwhile, Members may consider whether it is necessary to form a subcommittee to study the two Orders.

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