

立法會
Legislative Council

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**Subcommittee on
Mutual Legal Assistance in Criminal Matters (Poland) Order and
Mutual Legal Assistance in Criminal Matters (Israel) Order**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information relating to the Legislative Council's (LegCo) scrutiny of bilateral agreements for mutual legal assistance (MLA) in criminal matters between the Hong Kong Special Administrative Region (HKSAR) and other jurisdictions.

Background

2. The HKSAR has established a network of bilateral agreements with other jurisdictions on MLA in criminal matters. These agreements ensure reciprocity between the contracting parties in providing assistance in criminal matters and enhance international cooperation in the fight against transnational crime.

3. The Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) provides the statutory framework for implementing the MLA arrangements and regulates the provision and obtaining of assistance in the investigation and prosecution of criminal offences, including the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime. Section 4(1) of the Ordinance provides that the Chief Executive in Council may, with the approval of LegCo, in relation to any arrangements for MLA, by order direct that the Ordinance shall, subject to such modifications as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate.

4. The Secretary for Security has given notice to move two proposed resolutions at the LegCo meeting on 8 March 2006 to seek LegCo's approval for the following Orders to be made under section 4 of the Ordinance –

- (a) the Mutual Legal Assistance in Criminal Matters (Poland) Order (Poland Order); and
- (b) the Mutual Legal Assistance in Criminal Matters (Israel) Order (Israel Order).

MLA Orders scrutinised by LegCo

5. As legislation and arrangements on MLA in criminal matters vary from jurisdiction to jurisdiction, it is necessary for the relevant orders to modify some of the provisions of the Ordinance to reflect the practices of individual negotiation partners. Such modifications enable the HKSAR to comply with its obligations in the agreements concerned. The Model Agreement for the HKSAR, which was agreed by the former Sino-British Joint Liaison Group and approved by the former Executive Council before the reunification, has become the basis for the conduct of negotiations with other jurisdiction. To facilitate LegCo's scrutiny of an order, it is the established practice that the Administration provides an article by article comparison between the order and the Model Agreement.

6. Since the first term of LegCo, six subcommittees (including this Subcommittee) have been formed to scrutinise MLA Orders. A list of these subcommittees is in the **Appendix**. A total of 17 Orders in relation to MLA arrangements signed with foreign jurisdictions have been made under section 4 of the Ordinance. These jurisdictions are Australia, France, New Zealand, the UK, the USA, Italy, South Korea, Switzerland, Canada, the Philippines, Portugal, Ireland, the Netherlands, Ukraine, Singapore, Belgium and Denmark.

The Poland and Israel Orders

7. The Poland Order and the Israel Order are made in consequence of the arrangements for MLA entered into by the HKSAR Government and the Government of the Republic of Poland and the Government of the State of Israel on 26 April 2005 and 26 July 2005 respectively.

8. There are certain variations between the agreements and Cap. 525 which necessitate modifications to Cap. 525 to enable Hong Kong to comply with the obligations in the agreements. Schedule 1 to each of the two Orders summarizes the modifications to the Ordinance.

9. According to the Administration, the two Orders are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of Cap. 525. They have no sustainability, financial or civil service implications. Public consultation is considered not necessary.

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

11. The Legal Service Division has asked the Administration to clarify certain matters in respect of which Members may be interested. The correspondence between the Legal Service Division and the Administration is attached to the Legal Service Division Report on the two Orders (LC Paper No. LS37/05-06).

Council Business Division 2
Legislative Council Secretariat
13 March 2006

List of Subcommittees formed to study Mutual Legal Assistance in Criminal Matters Orders

| Name of Subcommittee | Date of forming Subcommittee | No of Orders Scrutinised | Date of approval by LegCo |
|---|------------------------------|--------------------------|---|
| Subcommittee on – Mutual Legal Assistance in Criminal Matters (Australia) Order; – Mutual Legal Assistance in Criminal Matters (France) Order; – Mutual Legal Assistance in Criminal Matters (New Zealand) Order; – Mutual Legal Assistance in Criminal Matters (United Kingdom) Order; – Mutual Legal Assistance in Criminal Matters (United States of America) Order; – Mutual Legal Assistance in Criminal Matters (Italy) Order; – Mutual Legal Assistance in Criminal Matters (South Korea) Order; and – Mutual Legal Assistance in Criminal Matters (Switzerland) Order | 30.10.98 | 8 | 9.12.98 9.12.98 9.12.98 9.12.98 10.11.99 19.1.00 19.1.00 26.6.00 |
| Subcommittee on – Mutual Legal Assistance in Criminal Matters (Canada) Order, – Mutual Legal Assistance in Criminal Matters (Philippines) Order, and – Mutual Legal Assistance in Criminal Matters (Portugal) Order | 12.10.01 | 3 | 19.12.01 19.12.01 19.12.01 |
| Subcommittee on – Mutual Legal Assistance in Criminal Matters (Ireland) Order; and – Mutual Legal Assistance in Criminal Matters (Netherlands) Order | 24.1.03 | 2 | 2.7.03 29.10.03 |
| Subcommittee on – Mutual Legal Assistance in Criminal Matters (Ukraine) Order; and – Mutual Legal Assistance in Criminal Matters (Singapore) Order | 9.1.04 | 2 | 2.6.04 2.6.04 |
| Subcommittee on – Mutual Legal Assistance in Criminal Matters (Belgium) Order; and – Mutual Legal Assistance in Criminal Matters (Denmark) Order | 29.4.05 | 2 | 6.7.05 6.7.05 |

| Name of Subcommittee | Date of forming Subcommittee | No of Orders Scrutinised | Date of approval by LegCo |
|--|-------------------------------------|---------------------------------|----------------------------------|
| Subcommittee on – Mutual Legal Assistance in Criminal Matters (Poland) Order; and – Mutual Legal Assistance in Criminal Matters (Israel) Order | 24.2.06 | 2 | |