

立法會

Legislative Council

LC Paper No CB(2)623/06-07(05)

Ref. : CB2/SS/3/06

Subcommittee on Mutual Legal Assistance in Criminal Matters (Germany) 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 enhancing 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 a proposed resolution at the LegCo meeting on 6 December 2006 to seek LegCo's approval for the Mutual Legal Assistance in Criminal Matters (Germany) Order (the Germany Order) to be made under section 4 of the Ordinance.

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 LegCo, seven subcommittees (including this Subcommittee) have been formed to scrutinise MLA Orders. A list of these subcommittees is in the **Appendix**. A total of 19 Orders in relation to MLA bilateral arrangements signed with foreign jurisdictions have been made under section 4 of the Ordinance. These jurisdictions are Australia, France, New Zealand, the United Kingdom, the United States of America, Italy, South Korea, Switzerland, Canada, the Philippines, Portugal, Ireland, the Netherlands, Ukraine, Singapore, Belgium, Denmark, Poland and Israel.

The Germany Order

7. The Germany Order is made in consequence of the arrangements for MLA entered into by the HKSAR Government and the Government of the Federal Republic of Germany on 26 May 2006.

8. There are certain variations between the agreement and Cap. 525 which necessitate modifications to Cap. 525 to enable Hong Kong to comply with the obligations in the agreement. Schedule 2 to the Germany Order summarises the modifications to the Ordinance.

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

10. The Germany Order will come into operation on a day to be appointed 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 relation to the drafting of the Germany Order. The letter from the Legal Service Division to the Administration and the Administration's reply are in LC Paper Nos. CB(2)623/06-07(03) and CB(2)623/06-07(04) respectively.

Appendix

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

Name of Subcommittee	Date of forming Subcommittee	No of Orders scrutinised	Date of approval by LegCo
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
Subcommittee on – Mutual Legal Assistance in Criminal Matters (Poland) Order; and – Mutual Legal Assistance in Criminal Matters (Israel) Order	24.2.06	2	14.6.06 14.6.06
Subcommittee on Mutual Legal Assistance in Criminal Orders (Germany) Order	24.11.06	1	