

**立法會**  
**Legislative Council**

Ref : CB2/SS/6/06

LC Paper No. CB(2)2297/06-07  
(These minutes have been seen by the  
Administration)

**Subcommittee on  
Mutual Legal Assistance in Criminal Matters (Malaysia) Order**

**Minutes of meeting  
held on Friday, 15 June 2007, at 10:45 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)  
Hon Margaret NG  
Hon LAU Kong-wah, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Miriam LAU, GBS, JP
- Public Officers attending** : Ms Manda CHAN  
Principal Assistant Secretary for Security
- Ms Susana SIT  
Senior Government Counsel
- Mr Vidy CHEUNG  
Senior Government Counsel
- Miss Jane LEE  
Assistant Secretary for Security
- Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (2) 5
- Staff in attendance** : Mr Kelvin LEE  
Assistant Legal Adviser 1

Mr Raymond LAM  
Senior Council Secretary (2) 5

Ms Camy YOONG  
Clerical Assistant (2) 1

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**I. Election of Chairman**

Mr James TO was elected Chairman of the Subcommittee.

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

**II. Meeting with the Administration**

3. The Administration was requested to provide a written response to the following questions raised by members at the meeting -

- (a) to explain the operation of Article 8(3) of Schedule 1 to the Mutual Legal Assistance in Criminal Matters (Malaysia) Order (the Malaysia Order), and to provide one to two past requests for assistance from other jurisdictions which included an undertaking to the effect that the information or evidence provided by Hong Kong would not be used by the Requesting Party for purposes other than those stated in the request;
- (b) to advise whether a person who had given consent to give evidence under Article 15 or 16 and travelled to Malaysia but subsequently withdrew his consent would be prosecuted for contempt of court under Article 17(3) of Schedule 1 to the Malaysia Order; and
- (c) to explain how the principle of double criminality would operate under Article 27(2) of Schedule 1 to the Malaysia Order in relation to the time of commission of an offence and the respective time when the act concerned was criminalised in Hong Kong and in Malaysia.

4. The Chairman asked whether Hong Kong could refuse to provide assistance to Malaysia if the request related to an offence which carried the death penalty in Malaysia.

5. The Administration advised that the Government of the Hong Kong Special Administrative Region and the Government of Malaysia had agreed that assistance for death penalty offences could be refused pursuant to the "essential interest" provision under Article 4(1)(f) of Schedule 1 to the Malaysia Order. Hong Kong had made clear to Malaysia that Hong Kong

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would refuse to provide assistance if the request was related to an offence which carried death penalty in Malaysia, unless Malaysia gave sufficient assurance that death penalty would not be imposed or carried out.

**III. Way forward**

6. The Chairman said that no further meeting needed to be held, unless members decide otherwise upon receipt of the Administration's response to the issues raised in paragraph 3 above.

7. There being no other business, the meeting ended at 12:10 pm.

Council Business Division 2  
Legislative Council Secretariat  
26 June 2007

**Proceedings of meeting of the  
Subcommittee on  
Mutual Legal Assistance in Criminal Matters (Malaysia) Order  
on Friday, 15 June 2007, at 10:45 am  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000319	Hon Margaret NG Hon James TO Hon LAU Kong-wah	Election of Chairman	
000320 - 001239	Admin Chairman Hon Audrey EU	Article-by-article comparison between Article 1 of Schedule 1 to the Mutual Legal Assistance in Criminal Matters (Malaysia) Order (the Malaysia Order) and the model agreement on mutual legal assistance in criminal matters (MLA)	
001240 - 002337	Admin Chairman ALA1	Article-by-article comparison between Article 2 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
002338 - 002345	Admin	Article-by-article comparison between Article 3 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
002346 - 003011	Admin Chairman	Article-by-article comparison between Article 4 of Schedule 1 to the Malaysia Order and the model agreement on MLA; refusal of providing assistance for death penalty offences pursuant to the "essential public interest" provision under Article 4(1)(f) of Schedule 1 to the Malaysia Order	
003012 - 003346	Admin Chairman	Article-by-article comparison between Articles 5 and 6 of Schedule 1 to the Malaysia Order and the model agreement on MLA	

Time marker	Speaker	Subject(s)	Action Required
003347 - 003416	Admin	Article-by-article comparison between Article 7 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
003417 - 004600	Admin Chairman	Article-by-article comparison between Article 8 of Schedule 1 to the Malaysia Order and the model agreement on MLA	<b>Admin to explain the operation of Article 8(3) of Schedule 1 to the Mutual Legal Assistance in Criminal Matters (Malaysia) Order (the Malaysia Order), and to provide one to two past requests for assistance from other jurisdictions which included an undertaking to the effect that the information or evidence provided by Hong Kong would not be used by the Requesting Party for purposes other than those stated in the request</b>
004601 - 004633	Admin	Article-by-article comparison between Articles 9 and 10 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
004634 - 005151	Admin Hon Audrey EU Chairman	Article-by-article comparison between Article 11 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
005152 - 005158	Admin	Article-by-article comparison between Article 12 of Schedule 1 to the Malaysia Order and the model agreement on MLA	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
005159 - 005232	Admin	Article-by-article comparison between Article 13 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
005233 - 005249	Admin	Article-by-article comparison between Article 14 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
005250 - 005353	Admin Chairman	Article-by-article comparison between Article 15 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
005354 - 005425	Admin	Article-by-article comparison between Article 16 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
005426 - 010350	Admin	Article-by-article comparison between Article 17 of Schedule 1 to the Malaysia Order and the model agreement on MLA	<b>Admin to advise whether a person who had given consent to give evidence under Article 15 or 16 and travelled to Malaysia but subsequently withdrew his consent would be prosecuted for contempt of court under Article 17(3) of Schedule 1 to the Malaysia Order</b>
010351 - 010710	Admin	Article-by-article comparison between Articles 18 and 19 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
010711 - 010733	Admin	Article-by-article comparison between Article 20 of Schedule 1 to the Malaysia Order and the model agreement on MLA	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
010734 - 010758	Admin	Article-by-article comparison between Article 21 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
010759 - 010824	Admin	Article-by-article comparison between Article 22 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
010825 - 010840	Admin	Article-by-article comparison between Article 23 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
010841 - 010852	Admin	Article-by-article comparison between Article 24 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
010853 - 010858	Admin	Article-by-article comparison between Article 25 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
010859 - 010914	Admin	Article-by-article comparison between Article 26 of Schedule 1 to the Malaysia Order and the model agreement on MLA	
010915 - 011759	Admin Chairman	Article-by-article comparison between Article 27 of Schedule 1 to the Malaysia Order and the model agreement on MLA	<b>Admin to explain how the principle of double criminality would operate under Article 27(2) of Schedule 1 to the Malaysia Order in relation to the time of commission of an offence and the respective time when the act concerned was criminalised in Hong Kong and in Malaysia</b>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
011800 - 012249	Chairman Admin	Effect and scope of Article 21(4) of Schedule 1 to the Malaysia Order	
012250 - 012442	Chairman Admin	Examination of Schedule 2 to the Malaysia Order	
012443 - 012544	Chairman	Way forward	

Council Business Division 2  
Legislative Council Secretariat  
26 June 2007