

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

Purpose

This note provides additional information in respect of Article 27(2) of the Hong Kong/Malaysia Agreement on Mutual Legal Assistance in Criminal Matters (the Agreement).

Article 27(2) of the Agreement

2. Article 27(2) of the Agreement provides that the Agreement shall apply to requests for assistance presented after the date of its entry into force whether the relevant acts or omissions constituting the offence occurred before or after that date. The Subcommittee has asked the Administration to explain how the principle of double criminality would apply in relation to the time of commission of an offence and the respective time when the act concerned was criminalized in Hong Kong and in Malaysia under Article 27(2). Specifically, the Subcommittee has requested additional information on whether Malaysia's request for assistance would be entertained in the following three scenarios -

- (a) an act or omission constituted an offence in Malaysia before the Agreement enters into force but has been de-criminalized in Malaysia after the Agreement enters into force, while such act or omission constitutes an offence in Hong Kong both before and after the Agreement enters into force;
- (b) an act or omission constitutes an offence in Malaysia both before and after the Agreement enters into force, while such act or omission constituted an offence in Hong Kong before Agreement enters into force but has been de-criminalized in Hong Kong after the Agreement enters into force; and
- (c) an act or omission constituted an offence in both Malaysia and Hong Kong before the Agreement enters into force, but has been de-criminalized in both Malaysia and Hong Kong after the Agreement enters into force.

3. Article 1(1) of the Agreement stipulates that the Parties shall, in accordance with the provisions of the Agreement and in conformity with their respective laws, render to one another mutual legal assistance in connection with investigations, prosecutions and proceedings that pertain to offences over which the Requesting Party has jurisdiction at the time the assistance is requested. Article 4(1)(g) further specifies that the Requested Party shall refuse assistance if the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence against the law of the Requested Party.

4. Having regard to the above mentioned provisions, for the scenario set out in paragraph 2(a) above, Malaysia's request will not be entertained as Malaysia will not have jurisdiction over the act or omission concerned at the time the assistance is requested.

5. For the scenario set out in paragraph 2(b) above, Malaysia's request will not be entertained as the act or omission as de-criminalized no longer constitutes an offence in Hong Kong.

6. For the scenario set out in paragraph 2(c) above, Malaysia's request will not be entertained as Malaysia will not have jurisdiction over the act or omission concerned at the time the assistance is requested and the act or omission as de-criminalized no longer constitutes an offence in Hong Kong.

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June 2007