

立法會
Legislative Council

LC Paper No. LS75/07-08

**Paper for the House Committee Meeting
on 25 April 2008**

**Legal Service Division Report on
Proposed Resolution under section 4 of the
Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)**

Introduction

The Secretary for Security has given notice to move a motion at the Council meeting of 7 May 2008 under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (the Ordinance).

2. The Central People's Government of the People's Republic of China has ratified the United Nations Convention against Transnational Organized Crime (the Convention). The Convention entered into force for Hong Kong on 27 September 2006. The motion seeks the approval of the Legislative Council for the Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order (the Order) to implement the relevant requirements under the Convention.

Proposed resolution under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)

3. The Order is made by the Chief Executive in Council under section 4 of the Ordinance. Under the said section, 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 modifications as thereto as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate.

4. In order to fulfil the requirements under Articles 14 and 18 of the Convention in relation to mutual legal assistance, the Order directs that the Ordinance shall, subject to the modifications specified in Schedule 2 to the Order, apply as between Hong Kong and the places outside Hong Kong to which the Convention relates. The Convention is recited in Schedule 1 to the Order.

5. Under section 4(2) of the Ordinance, the Chief Executive in Council shall not make the Order unless the arrangements for mutual legal assistance to which the Order relates are substantially in conformity with the provisions of the Ordinance.

According to paragraph 9 of the LegCo Brief, the mutual legal assistance arrangements under the Convention do so conform.

6. Under section 4(7) of the Ordinance, the Legislative Council may only repeal the Order in whole.

7. Members may refer to the LegCo Brief (File Ref.: SBCR 20/15/5691/74) issued by the Security Bureau in April 2008 for background information.

8. The Order will come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

Consultation with LegCo Panel

9. At its meeting on 5 December 2006, the Panel on Security was briefed on the Administration's proposal to give effect to the obligations in relation to mutual legal assistance in criminal matters under the Convention in Hong Kong. A member enquired why the Ordinance had not dealt with the requirements in Articles 14 and 18 of the Convention (in relation to mutual legal assistance). The member also enquired whether Hong Kong would be forced, after enactment of the proposed subsidiary legislation, to provide mutual legal assistance to countries which had not entered into bilateral agreements with Hong Kong and where their legal systems or values might be different from those of Hong Kong, even though Hong Kong considered it inappropriate to do so. The Administration's replies are in the minutes of the Panel meeting (LC Paper No. CB(2)880/06-07 refers). The Administration responded that the requests should be dealt with in accordance with the domestic legislation of the requested party. The existing safeguards provided under the Ordinance would be unaffected by the proposed legislative amendments.

Conclusion

10. The Legal Service Division is seeking clarification from the Administration on a drafting matter. A further report will be submitted, if necessary.

11. Members may note that apart from the Order, a related item of subsidiary legislation, namely the Fugitive Offenders (Transnational Organized Crime) Order (L.N. 78 of 2008), was gazetted on 18 April 2008. A report on that Order (LC Paper No. LS76/07-08 refers) will be made to the House Committee meeting on 25 April 2008.

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