

# 立法會

## *Legislative Council*

LC Paper No. LS81/07-08

**Paper for the House Committee Meeting  
on 9 May 2008**

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

The Secretary for Security (the Secretary) has given notice to move a motion at the Legislative Council meeting of 21 May 2008 to seek the approval of the Legislative Council for the Mutual Legal Assistance in Criminal Matters (Finland) Order (the Order) made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (the Ordinance) by the Chief Executive in Council on 22 April 2008.

2. Section 4(1) of the Ordinance provides that the Chief Executive in Council may, with the approval of the Legislative Council, in relation to any arrangements for mutual legal assistance, by order direct that the Ordinance shall, subject to such modifications thereto as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate. Section 4(2) of the Ordinance provides that the Chief Executive in Council shall not make an order unless the arrangements for mutual legal assistance are substantially in conformity with the provisions of the Ordinance. Section 4(7) restricts the Legislative Council's power to amend such an order so that the Legislative Council may only repeal the whole order but not amend any part of it.

### **The Order**

3. The Order is made in consequence of the agreement between the HKSAR Government and the Government of the Republic of Finland signed on 4 October 2007, which is reproduced in Schedule 1 to the Order. It specifies the scope and procedures in relation to the provision of mutual legal assistance in criminal matters. It also provides for safeguard for persons involved in criminal proceedings.

4. Schedule 2 to the Order specifies the modifications to sections 5 and 17 of the Ordinance. Section 5 of the Ordinance sets out the circumstances under which assistance shall be refused by the Secretary for Justice. The modifications to section 5 are to empower the Secretary for Justice to refuse to provide assistance if the request relates to the prosecution of a person for an external offence if the person has been

convicted, acquitted or pardoned in Hong Kong in respect of that offence or of an act or omission that, if it had occurred in Hong Kong, could no longer be prosecuted in Hong Kong by reason of lapse of time. Section 17 of the Ordinance provides certain immunities to a person who comes to Hong Kong from another jurisdiction to render assistance in a criminal matter. The modifications to section 17 provide that such immunities shall cease when the person, being free to leave, has been notified by the Requesting Party that his presence is no longer required and has not left the Requesting Party within a period of 15 days.

5. Section 1 of the Order provides that it shall come into operation on a day to be appointed by the Secretary by notice published in the Gazette. According to paragraph 7 of the LegCo Brief, the commencement date will be settled after consultation with the Government of the Republic of Finland and will depend upon when the necessary domestic procedures of Hong Kong and Finland are completed.

6. Members may refer to the LegCo Brief dated 30 April 2008 issued by the Security Bureau (File Ref. SBCR3/5691/95 Pt. 41 and SBCR1/2716/89(98) Pt. 24) for further information.

7. The Panel on Security has not been consulted on the Order.

8. No difficulties relating to the legal and drafting aspects have been identified.

Prepared by

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