

**Legislative Council Sub-Committee on
Mutual Legal Assistance in Criminal Matters (Indonesia) Order,
Mutual Legal Assistance in Criminal Matters (Japan) Order and
Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order**

**Resource implications arising from
the processing of assistance requests made under
the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)**

Purpose

At its first meeting held on 12 December 2008, the Legislative Council Subcommittee set up to consider the three Mutual Legal Assistance in Criminal Matters (MLA) Orders concerning Indonesia, Japan and Sri Lanka requested the Administration to provide information on the estimated expenses incurred and the manpower involved in processing assistance requests made under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (the MLA Ordinance). This note sets out the requested information.

MLA Requests

2. Under the MLA Ordinance, the Secretary for Justice may make arrangements for the provision of the following assistance to another place -

- (a) taking of oral evidence and production of things before a magistrate;
- (b) search and seizure of material under search warrants;
- (c) obtaining of material under production orders;
- (d) arranging for travel of persons to another place to assist in criminal investigation or proceedings;

- (e) enforcement of external confiscation orders and restraining of dealing in property which may be subject to external confiscation orders; and
- (f) service of process.

Overseas jurisdictions provide like assistance to Hong Kong under relevant bilateral or international agreements, or in the absence of such agreements, on the basis of reciprocity.

3. The Mutual Legal Assistance Unit (MLA Unit), International Law Division of the Department of Justice, with support from the law enforcement agencies (LEAs), is the central authority within the Administration for processing incoming and outgoing MLA requests made under the MLA Ordinance. The MLA Unit is currently staffed by 11 officers from the Government Counsel Grade with supporting staff. All staff members of the Unit are engaged in MLA work on a daily basis and on average each counsel has an active caseload of some 20 requests under the MLA Ordinance at any one time. On average, the processing of MLA requests under the MLA Ordinance accounts for approximately 65% of the workload of the Unit¹.

4. Statistics on requests made under the MLA Ordinance received by the MLA Unit from 2004 to end September 2008, and orders made by the court for obtaining evidence in Hong Kong in response to incoming requests made under the MLA Ordinance during the same period, are set out at the **Annex**.

Resource implications

5. The resources involved in processing each MLA request vary, depending on the scope and type of assistance sought as well as the complexity of the case.

¹ Apart from requests for assistance under the MLA Ordinance, requests for criminal legal assistance may also be made to or by Hong Kong pursuant to the Evidence Ordinance (Cap. 8) and the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405). Counsel in the MLA Unit may also work on such requests.

6. Some MLA requests are relatively straightforward and the resources involved mainly include the man-hours engaged in reviewing the request and ensuring that the requirements and safeguards under the relevant legislation are met, obtaining the requested documents and evidence, and transmitting the documents to the requesting jurisdiction in the requested form. The processing of such a request does not involve substantial resources. For example, a simple request not involving the use of compulsive powers e.g. the obtaining of a reasonable amount of public records or the obtaining of statements from a voluntary witness in relation to a relatively straightforward criminal matter may take eight to ten man-hours to process.

7. On the other hand, there are also requests which relate to complicated criminal matters and/or which seek various types of assistance at different stages of the investigation/prosecution process². For instance, a request may involve production of documentary evidence, obtaining bank records, examination of witnesses, execution of search warrants and seizure of evidence. Some other requests may involve the issue of a restraint order for identified bank accounts and/or properties in Hong Kong which are believed to be, or derived from, proceeds of crime, and ultimately, confiscation of the restrained proceeds. The processing of such requests, especially if court procedures are involved, may span over a long period of time and involve close communication between the requesting jurisdiction and Hong Kong. It is not unusual for complicated requests to span several years for overall execution, particularly if the procedures are contested by litigation at any stage of the proceedings.

8. Apart from the MLA Unit, substantial input is also provided by the LEAs in the execution of requests, such as obtaining production orders and executing search warrants, liaising with witnesses, service of documents and conducting background inquiries. The Judiciary will also be involved where the execution of a request requires an application to the Court for an appropriate order.

² It is not uncommon to receive or make one or more supplementary request(s) based on information supplied pursuant to the original request. In a particularly complex case, some seven or eight supplementary requests may be received.

9. Bilateral MLA agreements which Hong Kong enters into typically require the requested jurisdiction to bear the cost of processing an incoming assistance request. Where exceptional expenses are envisaged, the bilateral agreements allow the two jurisdictions to consult each other. An example of this is found in Article 19.3 of the MLA Agreement concluded between Hong Kong and Indonesia. As far as Hong Kong is concerned, if it becomes apparent that the processing of an incoming MLA request will incur substantial resource (e.g. where evidence is to be taken via live television link), the MLA Unit will consult the requesting jurisdiction to explore ways to minimize costs, e.g. by considering alternative means to obtain the evidence, and the requesting jurisdiction may be asked to bear some of the expenses incurred.

**Security Bureau
Department of Justice
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Table A: Number of incoming/outgoing requests for legal assistance in criminal matters under the MLA Ordinance received by the MLA Unit in 2004 to 2008

Year	Incoming	Outgoing	Total
2004	98	17	115
2005	98	26	124
2006	94	25	119
2007	99	39	138
2008 (up to end of September)	66	15	81

Table B: Number of orders made by Hong Kong courts in 2004 to 2008 for obtaining evidence in response to incoming requests for assistance in criminal matters under the MLA Ordinance

Year	Witness Summonses (s.10)	Search Warrants (s.12)	Production Order (s.15)
2004	22	13	82
2005	9	4	107
2006	33	6	106
2007	4	6	80
2008 (up to end of September)	4	5	70