

立法會
Legislative Council

LC Paper No. LS62/09-10

**Paper for the House Committee Meeting
on 7 May 2010**

**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 19 May 2010 to seek the approval of the Legislative Council for the Mutual Legal Assistance in Criminal Matters (South Africa) 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 20 April 2010.

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 to which is annexed a copy of the arrangements 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 Government of the Hong Kong Special Administrative Region and the Government of the Republic of South Africa signed in Hong Kong on 20 February 2009 (the Agreement), 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 -

- (a) there are substantial grounds for believing that the request was made for prosecuting, punishing or causing prejudice to a person on account of the person's gender;
- (b) the request relates to the prosecution of a person for an external offence in a case where the person has been convicted, acquitted or pardoned in Hong Kong or the person has undergone the punishment provided by the law of Hong Kong, in respect of that offence or of another external offence constituted by the same act or omission as that offence; and
- (c) the request relates to the prosecution of a person for an offence for which the person could no longer be prosecuted by reason of lapse of time under the law of the requesting party.

5. 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(3)(b) provide that such immunities shall cease when the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 days after being notified that his presence is no longer required.

6. The Order will come into operation on a day to be appointed by the Secretary by notice published in the Gazette. According to paragraph 8 of the LegCo Brief, the commencement date will be settled after consultation with the Republic of South Africa and will depend upon when the necessary domestic procedures of Hong Kong and South Africa are completed.

7. Members may refer to the LegCo Brief dated 28 April 2010 issued by the Security Bureau (File Ref. SBCR3/5691/95 Pt.46 and SBCR1/2716/89 Pt.25) for further information.

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

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

Prepared by

TAM Shuk-fong, Clara
Assistant Legal Adviser
Legislative Council Secretariat
4 May 2010