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**Subcommittee on
Fugitive Offenders (Czech Republic) Order,
Mutual Legal Assistance in Criminal Matters (Spain) Order and
Mutual Legal Assistance in Criminal Matters (Czech Republic) Order**

**Background brief prepared by the Legislative Council Secretariat
on bilateral agreements on mutual legal assistance
in criminal matters**

Purpose

This paper provides background information relating to the Legislative Council ("LegCo")'s scrutiny of bilateral agreements for mutual legal assistance ("MLA") in criminal matters between the Hong Kong Special Administrative Region ("HKSAR") and other jurisdictions.

Background

2. The HKSAR has established a network of bilateral agreements with other jurisdictions on MLA in criminal matters. These agreements ensure reciprocity between the contracting parties in providing assistance in criminal matters and enhancing international cooperation in the fight against transnational crime.

3. The Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLAO") provides the statutory framework for implementing the MLA arrangements and regulates the provision and obtaining of assistance in the investigation and prosecution of criminal offences, including the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime. Section 4(1) of MLAO provides that the Chief Executive in Council may, with the approval of LegCo, in relation to any arrangements for MLA, by order direct that MLAO shall, subject to such modifications as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate.

4. The Secretary for Security ("S for S") has given notice to move two proposed resolutions at the Council meeting of 20 November 2013 to seek LegCo's approval for the Mutual Legal Assistance in Criminal Matters (Spain) Order ("the Spain Order") and the Mutual Legal Assistance in Criminal Matters (Czech Republic) Order ("the Czech Order") to be made under section 4 of MLAO. At the request of the House Committee, S for S has withdrawn his notice for moving the two proposed resolutions in relation to the Spain Order and the Czech Order accordingly.

MLA Orders scrutinized by LegCo

5. As legislation and arrangements on MLA in criminal matters vary from jurisdiction to jurisdiction, it is necessary for the relevant orders to modify some of the provisions of MLAO to reflect the practices of individual negotiation partners. Such modifications enable HKSAR to comply with its obligations in the agreements concerned. The Model Agreement for HKSAR, which was agreed by the former Sino-British Joint Liaison Group and approved by the former Executive Council before the reunification, has become the basis for the conduct of negotiations with other jurisdiction. To facilitate LegCo's scrutiny of an order, it is the established practice that the Administration provides an article-by-article comparison between the order and the Model Agreement.

6. Since the First LegCo, 13 subcommittees (including this Subcommittee) have been formed to scrutinize MLA Orders. A total of 29 Orders in relation to MLA bilateral arrangements signed with foreign jurisdictions have been made under section 4 of MLAO. These jurisdictions are Australia, France, New Zealand, the United Kingdom, the United States of America, Italy, South Korea, Switzerland, Canada, the Philippines, Portugal, Ireland, the Netherlands, Ukraine, Singapore, Belgium, Denmark, Poland, Israel, Germany, Malaysia, Finland, Indonesia, Japan, Sri Lanka, South Africa, India, Spain and Czech Republic.

The Spain Order

7. The Spain Order is made in consequence of the agreement signed by the HKSAR Government and the Government of Spain on 15 November 2012 ("the Spain Agreement").

8. Schedule 2 to the Spain Order specifies the modifications to various sections of MLAO, and such modifications are summarized in Schedule 3 to the Spain Order to comply with section 4(3) of MLAO.

9. Modifications are made in the Spain Order to section 5(1)(d) of MLAO to reflect the provisions of the Spain Agreement. The modifications extend Secretary for Justice ("SJ")'s power to refuse assistance if there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing, or otherwise causing prejudice to a person on account of the person's ethnic origin or sex.

10. According to the Administration, the Spain Order is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of MLAO. It has no civil service, sustainability, environmental, economic, financial or family implications.

11. The Spain Order will come into operation on a day to be appointed by S for S by notice published in the Gazette.

The Czech Order

12. The Czech Order is made in consequence of the agreement signed by the HKSAR Government and the Government of Czech Republic on 4 March 2013 ("the Czech Agreement").

13. Schedule 2 to the Czech Order specifies the modifications to various sections of MLAO, and such modifications are summarized in Schedule 3 to the Czech Order to comply with section 4(3) of MLAO.

14. Modifications are made in the Czech Order to section 5(1)(d) of MLAO to reflect the provisions of the Czech Agreement. The modifications extend SJ's power to refuse assistance if there are substantial grounds for believing that -

- (a) the request was made for the purpose of prosecuting, punishing, or otherwise causing prejudice to a person on account of the person's sex; or
- (b) the request will result in a person being subjected to torture or other cruel or inhuman or degrading treatment or punishment.

15. According to the Administration, the Czech Order is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of MLA0. It has no civil service, sustainability, environmental, economic, financial or family implications.

16. The Czech Order will come into operation on a day to be appointed by S for S by notice published in the Gazette.

Council Business Division 2
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