

**立法會**  
***Legislative Council***

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**Paper for the House Committee Meeting  
on 11 March 2016**

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

**Mutual Legal Assistance in Criminal Matters (Sweden) Order  
Mutual Legal Assistance in Criminal Matters (Argentina) Order**

The Secretary for Security (the Secretary) has given notice to move two motions at the Legislative Council (LegCo) meeting of 16 March 2016. The purpose of the motions is to seek the LegCo's approval of the following two Orders (the two Orders) made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525):

- (a) Mutual Legal Assistance in Criminal Matters (Sweden) Order (the Sweden Order); and
- (b) Mutual Legal Assistance in Criminal Matters (Argentina) Order (the Argentina Order).

2. Cap. 525 regulates the provision to and obtaining of assistance in criminal matters between Hong Kong and places outside Hong Kong. Section 4(1) of Cap. 525 provides that the Chief Executive (CE) in Council may, with the approval of the LegCo, in relation to any arrangements for mutual legal assistance (MLA), by order to which is annexed a copy of the arrangements direct that Cap. 525 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(3) requires that such modifications shall be summarized in a Schedule to the order.

3. Section 4(2) of Cap. 525 provides that CE in Council shall not make an order under section 4(1) unless the arrangements for MLA are substantially in conformity with the provisions of the Cap. 525. Section 4(7) restricts LegCo's power to amend such an order so that LegCo may only repeal the whole order but not amend any part of it.

4. Schedule 1 to the Sweden Order and the Argentina Order respectively exhibit the bilateral arrangements entered into between Hong Kong and the Kingdom of Sweden and the Argentine Republic for MLA in criminal matters.

5. Modifications made to Cap. 525 under the two Orders are specified in the respective Schedule 2 to the Orders and summarized in the respective Schedule 3 to the Orders in compliance with section 4(3) of Cap. 525.

### **The Sweden Order**

6. The Sweden Order is made in consequence of the arrangements for MLA entered into between the Government of Hong Kong and the Government of the Kingdom of Sweden and signed on 28 November 2013 (the Sweden Agreement).

7. Schedule 1 to the Sweden Order contains the text of the Sweden Agreement which specifies the scope and procedures in relation to the provision of MLA in the investigation and prosecution of criminal offences and in proceedings related to criminal matters, and provides for safeguards of the rights of persons involved in criminal proceedings. Schedule 2 specifies the modifications to Cap. 525.

8. Section 5(1)(d) of Cap. 525 provides that the Secretary for Justice (SJ) shall refuse assistance to a place outside Hong Kong 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 race, religion, nationality or political opinions. To reflect the provision in Article 4(1)(e) of the Sweden Agreement, modification is made to section 5(1)(d) of Cap. 525 in the Order to extend 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 sex or ethnic origin.

9. Section 5(1)(e) of Cap. 525 provides that SJ shall refuse assistance if the request relates to the prosecution of a person for an offence for which the person has been convicted, acquitted, pardoned or punished in the requesting jurisdiction. Article 4(1)(f) of the Sweden Agreement extends this protection to circumstances where the request relates to the prosecution of a person for an offence for which the person has been convicted, acquitted or pardoned in the requested jurisdiction or a decision on waiver of prosecution concerning the act has been issued or for which the person could no longer be prosecuted in the requested jurisdiction by reason of lapse of time. The modification expands the

scope of section 5(1)(e) of Cap. 525 to reflect this provision of the Sweden Agreement.

10. Section 17 of Cap. 525 provides certain immunities to a person who comes to Hong Kong from another jurisdiction to give assistance in relation to a criminal matter. These immunities cease to apply if the person has had the opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for the purpose of providing assistance. Article 16(2) of the Sweden Agreement provides that the immunities will continue to apply for a period of 15 days after the person has had the opportunity of leaving Hong Kong. The modification to section 17 of Cap. 525 reflects the additional protection in Article 16(2) of the Sweden Agreement.

11. Section 23(2)(a) of Cap. 525 provides for the undertakings to be given by a requesting jurisdiction. One of undertakings, provided in section 23(2)(a)(ii), relates to immunity from civil suit in the requesting jurisdiction. As no immunity from civil suit is provided under the Sweden Agreement, modification is made in the Order to reflect this situation.

### **The Argentina Order**

12. The Argentina Order is made in consequence of the arrangements for MLA entered into between Hong Kong and the Argentine Republic and signed on 29 October 2015 (the Argentine Agreement).

13. Schedule 1 to the Argentina Order contains the text of the Argentina Agreement which specifies the scope and procedures in relation to the provision of MLA in the prevention, investigation, and prosecution of criminal offences and in proceedings related to criminal matters, and provides for safeguards of the rights of persons involved in criminal proceedings.

14. Schedule 2 to the Argentina Order specifies the modifications to Cap. 525 as follows:

- (a) The modification to section 5(1)(d) of Cap. 525 reflects the provision in Article 6(1)(b) of the Argentina Agreement which extends 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 sex or social condition.
- (b) The modification to section 5(1)(e) of Cap. 525 reflects the provision in Article 6(1)(a) of the Argentina Agreement which

extends the protection in section 5(1)(e) to circumstances where the request relates to the prosecution of a person for an offence for which the person has been convicted, acquitted or pardoned in the requested jurisdiction or for which the person could no longer be prosecuted in the requested jurisdiction by reason of lapse of time.

- (c) The modification to section 17 of Cap. 525 reflects the protection in Article 14(6) of the Argentina Agreement which provides that the immunities will continue to apply to the person giving assistance for a period of 10 days after the person has had the opportunity of leaving Hong Kong.
- (d) The modification to section 23 of Cap. 525 is exactly the same as the modification provided in the Sweden Order. The modification is made as no immunity from civil suit is provided in the Argentina Agreement.

15. Members may refer to the LegCo Brief (with no reference number) issued by the Security Bureau on 24 February 2016 for more background information.

### **Commencement**

16. The two Orders come into operation on days to be appointed respectively by the Secretary for Security by notice published in the Gazette.

### **Consultation**

17. As advised by the Clerk to the Panel on Security, the Panel has not been consulted on the two Orders.

### **Concluding Observations**

18. The Legal Service Division has asked the Administration to clarify certain matters and to provide a comparison of the two Agreements with the model agreement. A further report will be made, if necessary.

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