

# **LEGISLATIVE COUNCIL BRIEF**

## *Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)*

### **MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (AUSTRALIA) ORDER**

### **MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (FRANCE) ORDER**

### **MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (NEW ZEALAND) ORDER**

### **MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (UNITED KINGDOM) ORDER**

### **MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (UNITED STATES OF AMERICA) ORDER**

## **INTRODUCTION**

At the meeting of the Executive Council on 13 October 1998, the Council ADVISED and the Chief Executive ORDERED that under section 4(1) of the Mutual Legal Assistance in Criminal Matters Ordinance (the Ordinance), the following Orders at Annex A (A1 to A5) -

- (a) the Mutual Legal Assistance in Criminal Matters (Australia) Order;
- (b) the Mutual Legal Assistance in Criminal Matters (France) Order;
- (c) the Mutual Legal Assistance in Criminal Matters (New Zealand) Order;
- (d) the Mutual Legal Assistance in Criminal Matters (United Kingdom) Order; and

- (e) the Mutual Legal Assistance in Criminal Matters (United States of America) Order,

should be made, subject to the approval of the Legislative Council, to implement the bilateral arrangements for mutual legal assistance (“MLA”) in criminal matters with these countries.

## **BACKGROUND AND ARGUMENT**

### **The Mutual Legal Assistance in Criminal Matters Ordinance**

2. The Ordinance became fully operational on 20 February 1998. Section 4 of the Ordinance provides that the Chief Executive in Council may, with the approval of the Legislative Council, in relation to any arrangements for MLA, by order direct that the Ordinance 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.

### **The Orders**

3. We have signed five bilateral agreements (with Australia, France, New Zealand, the United Kingdom, and the United States of America). Orders made under section 4 of the Ordinance, mentioned in paragraph 1 above, will permit these agreements to be brought into force. Schedule 1 to each of the Orders contains a copy of the relevant bilateral agreement.

4. Section 4(2) of the Ordinance provides that the Chief Executive in Council shall not make an order unless the arrangements for MLA to which the order relates are substantially in conformity with the provisions of the Ordinance. All five agreements do so conform.

5. Section 4(3) of the Ordinance provides that where an order specifies modifications to the Ordinance those modifications shall be summarized in a schedule to the order. The modifications which are set out in Schedule 2 to each of the Orders reflect areas in which the relevant agreement varies from the Ordinance. These variations reflect the practice of the particular negotiating partners. Such modifications to the Ordinance are necessary to enable Hong Kong to comply with the obligations in the particular agreements. It should be noted that it is not

a matter for interpretation whether a particular agreement has the effect of modifying the Ordinance. The application of the Ordinance to the particular country is only modified to the extent of the modifications actually specified in Schedule 2 to the Order.

6. At Annex B is an explanatory statement in relation to the modifications to the Ordinance.

7. These Orders will come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette. That day will coincide with the day on which the relevant agreement enters into force. This will be settled after consultation with the place outside Hong Kong concerned and will depend upon when the necessary domestic procedures of that place have been completed.

#### **LEGISLATIVE TIMETABLE**

8. The legislative timetable is as follows-

|   |   |
|---|---|
| Introduction into the Legislative Council | 11 November 1998                              |
| Commencement date                         | to be specified by the Secretary for Security |

#### **BASIC LAW IMPLICATIONS**

9. The Department of Justice advises that the making of these Orders do not conflict with those provisions of the Basic Law carrying no human rights implications.

#### **HUMAN RIGHTS IMPLICATIONS**

10. The Department of Justice advises that the proposed Orders are consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT OF THE ORDERS**

11. The Orders implement agreements to which the Hong Kong Special Administrative Region Government (HKSARG) is a party and accordingly apply to the HKSARG. The Orders do not apply to other parts of the "territory" as defined in the Interpretation and General Clauses Ordinance (Cap. 1).

## **FINANCIAL AND STAFFING IMPLICATIONS**

12. The making of these Orders will not have financial or staffing implications.

## **PUBLIC CONSULTATION**

13. The Orders will permit the agreements to be brought into force in accordance with the existing legal framework. Public consultation is not, therefore, considered necessary.

## **ENQUIRIES**

14. Enquiries on the contents of this paper should be directed to

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**Security Bureau**  
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