

LEGISLATIVE COUNCIL BRIEF

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

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (SWITZERLAND) ORDER

INTRODUCTION

At the meeting of the Executive Council on 14 September 1999, 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 Mutual Legal Assistance in Criminal Matters (Switzerland) Order at Annex A 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 Switzerland.

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 country to which the arrangements relate.

The Order

3. A bilateral agreement has been signed with Switzerland. The Order made under section 4 of the Ordinance, mentioned in paragraph 1 above, will enable this agreement to be brought into force and enable the Ordinance, subject to the modifications summarized in the schedule to the Order, to be applicable as between Hong Kong and Switzerland. Schedule 1 to the Order contains a copy of the 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. The agreement does 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 the Order reflect the areas in which the agreement varies from the Ordinance. These variations reflect the practice of the particular negotiating partner. Such modifications to the Ordinance are necessary to enable Hong Kong to comply with the obligations in the particular agreement. 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. The Order 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 agreement enters into force. This will be settled after consultation with Switzerland and will depend upon when its necessary domestic procedures have been completed.

LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows:-

Introduction into the Legislative Council	26 June 2000
Commencement date	to be specified by the Secretary for Security

BASIC LAW IMPLICATIONS

9. The Department of Justice advises that the making of the Order does 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 Order is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE ORDERS

11. The Order will not affect the current binding effect of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525).

FINANCIAL AND STAFFING IMPLICATIONS

12. The making of the Order will not have financial or staffing implications.

PUBLIC CONSULTATION

13. The Order will permit the arrangements 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:-

	<u>Telephone No.</u>
Mrs. Carrie Willis Principal Assistant Secretary for Security	2810 2329
Mr. W Y Man Assistant Secretary for Security	2810 2918

Security Bureau
5 June 2000

File Reference: SBCR 3/5691/95