

立法會
Legislative Council

Ref : CB2/SS/5/02

LC Paper No. CB(2) 1626/02-03
(These minutes have been seen by
the Administration)

**Subcommittee on
the Mutual Legal Assistance in Criminal Matters (Ireland) Order
and the Mutual Legal Assistance in Criminal Matters (Netherlands) Order**

**Minutes of meeting
held on Thursday, 13 March 2003 at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Margaret NG
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-yee, JP
Hon Audrey EU Yuet-mee, SC, JP
- Public Officers Attending** : Mrs Margaret CHAN
Principal Assistant Secretary for Security
- Ms Amelia LUK
Deputy Law Officer (International Law)
- Mr John Hunter
Deputy Principal Government Counsel
- Ms Anthea LI
Senior Government Counsel
- Mr Alan CHONG
Government Counsel
- Clerk in attendance** : Mrs Constance LI
Chief Assistant Secretary (2)5
- Staff in attendance** : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Miss Betty MA
Senior Assistant Secretary (2)1

I. Election of Chairman

[Appendix IV of the House Rules]

Mr James TO was elected Chairman of the Subcommittee.

II. Meeting with the Administration

[LC Paper Nos. CB(2) 1226 & 1265/02-03]

2. The Subcommittee deliberated (Index of proceedings attached at **Annex**).
3. The Administration took members through the Mutual Legal Assistance in Criminal Matters (Ireland) Order and, in particular the comparison of the various Articles in the Agreement itself with the Articles in the model agreement [LC Paper No. CB(2) 1226/02-03(01)].
4. In scrutinising the Mutual Legal Assistance in Criminal Matters (Ireland) Order, members raised questions on certain paragraphs in the Order, particularly on their consistency with the Mutual Legal Assistance in Criminal Matters Ordinance.
5. Members also requested the Administration to provide additional information to supplement its explanation given at the meeting to address the concerns raised by members as follows -

Article 8

- (a) whether the Government of Hong Kong Special Administrative Region could contest an application for the making of a court order for release of information provided by Ireland on the basis that to do so would breach the confidentiality requirement in this Article;

Article 9(5)

- (b) the rationale for the second sentence of Article 9(5) which would allow a witness who was required to give evidence pursuant to a request for assistance to assert a claim of immunity or privilege under the law of the Requesting Party, and yet at the same time to require that the evidence be given;

- (c) the procedures for taking of evidence where claims of immunity pursuant to the second sentence in Article 9(5) were made;
- (d) the different scenarios for taking of evidence under Article 9(5), i.e. when a witness asserted a claim of immunity or privilege under the law of Requesting Party, which was not permitted under the law of the Requested Party, and vice versa; and
- (e) regarding the second sentence in Article 9(5), as the witness was required to give evidence first even though he could assert a claim of immunity or privilege under the law of the Requesting party, the reasons why the Administration considered it proper for a Requesting Party to make use of Hong Kong as a conduit to ask for information which it otherwise would not have been able to obtain within its own jurisdiction.

6. The Chairman also requested the Secretariat to trace the background on the deliberations of the then Bills Committee on the Mutual Legal Assistance in Criminal Matters Bill on section 10(7) and (9) of the Ordinance.

III. Date of next meeting

7. The Chairman said that the Subcommittee would study the Mutual Legal Assistance in Criminal Matters (Netherlands) Order at the next meeting. The Secretariat would inform members the date of next meeting in due course.

8. There being no other business, the meeting ended at 10:20 am.

Council Business Division 2
Legislative Council Secretariat
1 April 2003

**Subcommittee on
the Mutual Legal Assistance in Criminal Matters (Ireland) Order
and the Mutual Legal Assistance in Criminal Matters (Netherlands) Order
Meeting on Thursday, 13 March 2003 at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action Required
0001-0118	Hon Margaret NG Hon James TO	Election of Chairman	
0220-0809	Chairman Administration	Comparison of Articles 1 to 5 of the Mutual Legal Assistance in Criminal Matters (Ireland) Order (the Ireland Order) with the model Agreement	
0810-0922	Administration	Comparison of Article 6 of the Ireland Order with the model Agreement	
0923-2038	Chairman Administration Hon Miriam LAU Hon Margaret NG Hon Audrey EU	Variations in Article 6(1) of the Ireland Order from the model Agreement	
2039-3645	Chairman Administration Hon Margaret NG Hon Jasper TSANG Yok-sing Hon Miriam LAU	The inclusion of Article 6(3) in the Ireland Order at Ireland's suggestion	
3646-3911	Administration	The inclusion of Article 6(5) to allow for partial execution of a request	
3912-3939	Administration	Comparison of Articles 7 and 8 of the Ireland Order with the MLA model agreement	

3940-4220	Chairman Administration	The Requested Party's obligation to keep the request and other information confidential	Admin to provide further information
4221-4527	Administration	Comparison of Article 9 of the Ireland Order with the MLA model agreement	
4528-011856	Hon Margaret NG Administration Chairman Hon Audrey EU	Taking of evidence under Article 9(5) if the witness asserted a claim of immunity under the law of the Requesting Party	Admin to provide information. The Clerk to trace the background on the enactment of section 10(7) and (9) of the Mutual Legal Assistance in Criminal Matters Ordinance
011857-011942	Administration	Comparison of Article 10 of the Ireland Order with the MLA model agreement	
011943-012254	Hon Miriam LAU Administration	Meaning of "endeavour" in Article 10	
012255-012438	Administration	Comparison of Articles 11 to 15 of the Ireland Order with the MLA model agreement	
012439-012718	Chairman Administration	Modifications made in Article 15(2)(c) and (d)	
012719-012852	Administration	Comparison of Article 16 of the Ireland Order with the MLA model agreement	
012853-013427	Chairman Administration	Comparison of Article 17 of the Ireland Order with the MLA model agreement	

013428-013527	Chairman Administration	Comparison of Articles 18 and 19 of the Ireland Order with the MLA model agreement	
013528-014108	Chairman Administration	Scope of instrumentalities of crime in Article 19	
014109-014240	Administration	Comparison of Articles 20 to 21 of the Ireland Order with the MLA model agreement, and briefing on Schedule 2 to the Order	
014241-014352	Chairman	Date of next meeting	Clerk to notify members

Note : The audio records of the above proceedings are kept at the LegCo Library

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