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Secretary for Security
(Attention: Ms Angelina Kwan, Assistant Secretary)
Security Bureau
6/F Main and East Wings
Central Government Offices
Hong Kong

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BY FAX
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Dear Ms Kwan,

Mutual Legal Assistance in Criminal Matters (Ukraine) Order
Mutual Legal Assistance in Criminal Matters (Singapore) Order

I am scrutinizing the above Orders with a view to advising Members and should be grateful if you would clarify the following:

The Ukraine Order

Article 2(2)

In the English text, it appears that the reference to "in relation to matters under preliminary investigation" is applicable to the Central Authority of Ukraine only. The Chinese text, however, applies the reference to the Central Authority of the Hong Kong Special Administrative Region as well. To make the meaning of both texts match, should the Chinese text be amended?

Article 9(5)

The reference to "legislation" in Article 9(5)(a) and (b) would have the effect of confining the claim of privilege to cases where there are statutes in the Requested Party and the Requesting Party which would permit a witness to decline to give evidence. Does this reflect the intention of the parties to the Agreement? Apart from statutes, is there any other law in the Parties concerned allowing a witness to decline to give evidence? It is further noted that Article 9(6) refers to the right to decline to give evidence under "the law of the Requesting Party" while Article 9(5)(b) refers to such right under "the legislation of the Requesting Party". Should the references in paragraphs (5) and (6) within the same Article be made consistent?

The Singapore Order

- (a) Is there any reason why there is no provision under Article 3 which covers the situation of refusal of assistance if the request relates to an offence carrying death penalty, having regard to section 5(3)(c) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)?
- (b) Where the criminal matter to which a request relates is an investigation into an external offence relating to taxation, will the request be refused? Is there any reason why no provision is made under Article 3 to cover this, having regard to section 5(2) of Cap. 525?
- (c) Unlike other previous bilateral arrangements on mutual legal assistance in criminal matters entered into by Hong Kong, there is no provision in the Hong Kong/Singapore Agreement providing for transfer of persons in custody for the purposes of providing assistance. Is there any reason why no such provision is included in the Agreement?

I would appreciate it if you could let me have your reply in both languages on or before the House Committee meeting on 9 January 2004.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

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