

SBCR 3/5691/95 pt.27

電話號碼 TEL. NO. : 2810 3523
傳真號碼 FAX. NO. : 2524 3762

BY FAX

9 January 2004

Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8, Jackson Road
Central
Hong Kong
(Attn: Ms. Connie Fung)

Dear Ms Fung,

MLA (Ukraine) and MLA (Singapore) Order

I refer to your letter of 6 January 2004. Our response to your question on the above two Orders is set out as follows:

The Ukraine Order

Article 2(2)

Under the HK/Ukraine Agreement, the Secretary of Justice is the designated central authority of HKSAR Government to deal with all matters and not just in respect of preliminary investigations. Article 2(2) of the Agreement reflects this intention.

Article 9(5)

The provisions of Article 9(5) of the HK/Ukraine Agreement reflect the intention of the Parties. The “claims of privilege” referred to in Article 9(5)(a) and 9(5)(b) of the Agreement are, as far as HK is concerned, covered by s.10(7) and s.10(10) of the Mutual Legal Assistance in Criminal Matters Ordinance. The reference to legislation is accordingly appropriate. Article 9(6) is only an implementing provision of Article 9(5)(b) and it is acceptable that it refers to the law in the Requesting Parting conferring the right to decline to give evidence in general terms.

The Singapore Order

- (a) The Singapore side did not consider it appropriate from their point of view to include a specific ground for refusal in the Agreement in relation to the death penalty but the leader of the Singapore delegation confirmed at the negotiations that Hong Kong could rely on Article 3(1)(f) of the Agreement, namely, that the granting of the request would seriously impair the essential interests of the Hong Kong SAR, to refuse the granting of assistance in such cases. A similar approach was followed with the USA, Philippines and the Netherlands. Section 5(3) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) confers a discretionary power on SJ to refuse assistance where the requesting place fails to give an undertaking that death penalty will not be imposed in respect of an external serious offence punishable with death.
- (b) We have been advised by the Singapore side that Singapore is unable under its law to provide legal assistance in relation to the investigation of taxation offences in a requesting jurisdiction. On the other hand, Hong Kong is empowered to provide assistance in taxation cases if the conditions set out in s.5(2) of Cap. 525 are satisfied. It was therefore agreed between the two sides that the Agreement would be silent on this point and that it would be up to Hong Kong to decide in a particular case whether it would assist Singapore if a request was received.
- (c) Under the law of Singapore, Singapore cannot transfer persons in custody to a foreign jurisdiction to provide assistance and hence the omission of such provision in the Agreement. It would be up to Hong Kong in a particular case to decide whether to provide assistance to Singapore (for Hong Kong prisoners to travel to Singapore to provide assistance) as it is empowered to do so under s.23 of Cap.525.

Yours sincerely,

(Ms Angelina Kwan)
for Secretary for Security

c.c. DoJ	(Ms. Amelia Luk	2523 7959
	Miss Selina Lau	2869 1302
	Mr Alan chong)	