

**MUTUAL LEGAL ASSISTANCE  
IN CRIMINAL MATTERS (UKRAINE) ORDER  
Additional Information on Article 11 and Article 19**

**ARTICLE 11 – LOCATION OF PERSONS**

“Endeavour” in Article 11 simply means that the Requested Party will use its best efforts to locate the person.

Before a request to locate a person is executed, the Requesting Party will have provided the information required under Article 5(2) of the Agreement. In particular, in order to comply with paragraph (d), it will be necessary to provide a summary of the matter that contains a clear description of the facts to show the connection of the person to the criminal matter. It will also be necessary for the Requesting Party to provide sufficient information to facilitate the execution of the request (paragraph (h)) e.g. the address of the person, the details of the travel document held by the person, the means of travel and date of arrival of the person in Hong Kong, i.e. details to establish why the person is believed to be in Hong Kong and some lead as to his possible whereabouts. If insufficient details are provided the Requesting Party will be asked to provide the necessary additional information.

When the requirements under Article 5 of the MLA Agreement are met, the relevant law enforcement agency (the Hong Kong Police, the Customs and Excise Department, or the ICAC, etc) will endeavour to locate the person in Hong Kong.

Members have asked whether s.33 of the Telecommunications Ordinance (CAP 106) could be utilized to satisfy a request under Article 11. There may be rare cases where compulsory measures would be employed to execute a request pursuant to Article 11. But in such cases the powers would be those under the Mutual Legal Assistance in Criminal Matters Ordinance (CAP 525) i.e. the taking of evidence, production orders, search and seizure.

## **ARTICLE 19 – PROCEEDS FROM CRIME**

### **Article 19(1)**

This provision requires the Requested Party to ascertain whether proceeds from crime committed in the Requesting Party are located within its jurisdiction; in other words the obligation is to trace the foreign proceeds.

Pursuant to Article 5 of the Agreement the Requesting Party will provide a description of the proceeds of crime, its connection to Hong Kong and any other information which will assist the Requested Party to trace the proceeds.

Usually sufficient information will be available to enable the proceeds to be traced without resort to compulsory measures. But, if necessary, compulsory measures under CAP 525 (taking of evidence, production orders) can be used to trace the proceeds.

It was suggested at the last Subcommittee meeting that the phrase in Article 19(1) “according to the law of the Requesting Party qualified the expression “proceeds from crime”. We have looked at this issue carefully and consider that the phrase in fact only qualifies the word “crime”. Such an interpretation is consistent with the obligations in Article 19 to restrain and confiscate in accordance with the law of the Requested Party. In other words, the Requested Party is only required to take action in respect of “proceeds” within the meaning of its law.

### **Article 19(2)**

The measures permitted by the laws of Hong Kong for discharging the obligations under Article 19(2) are set out in s.27 of CAP 525. Under s.27(1)(b), action can be taken in accordance with Schedule 2 to restrain dealing in any property which may be available to satisfy an external confiscation order.

**Article 19(3)**

The measures permitted by the laws of Hong Kong for discharging the obligations under Article 19(3) are set out in ss27 and 28 of CAP 525. Under section 28 the Court of First Instance may register an external confiscation order. Once that is done section 27(1)(a) permits action to be taken in accordance with schedule 2 to, in effect, enforce the external confiscation order.

**Article 19(5)**

At the outset it should be noted that the definition of “proceeds from crime” is “inclusive”. It was, in fact, proposed by Hong Kong and based on the definitions of “external confiscation order” and “Hong Kong confiscation order” in CAP 525. Accordingly, even though the definition is inclusive, it goes some way to aligning the meaning of “proceeds” to HK domestic law (CAP 525). It is considered desirable that Articles on “proceeds” give insight as to the meaning of proceeds.

At the last Subcommittee meeting concern was expressed at the scope of Article 19(5)(c). This provision, in fact, replicates provisions in CAP 525. We consider it desirable that property intended to be used in connection with an offence be liable to confiscation. Section 4A(1)(c) of the Dangerous Drugs Ordinance (CAP 134)), for instance, makes it an offence to commit acts preparatory to trafficking in dangerous drugs. The purchase of property for the purpose of facilitating drug trafficking may in itself be an offence. And it is appropriate, accordingly, that that property be liable to confiscation.