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GOVERNMENT SECRETARIAT
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HONG KONG

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Legislative Council Secretariat
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Legislative Council Building
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(Attn: Ms Connie Fung)

Dear Ms Fung

Mutual Legal Assistance in Criminal Matters (Belgium) Order
Mutual Legal Assistance in Criminal Matters (Denmark) Order

I refer to your letter of 22 April 2005. Our response to your questions on the above two Orders is set out as follows:-

The Belgium Order

Article X(5)

If a witness asserts a claim for privilege under the law of the Requesting Party, it is envisaged that the taking of evidence in the Requested Party will proceed but the evidence obtained will be sealed. The sealed evidence together with a record of the claim of privilege made by the witness will be transmitted to the Requesting Party. The court or organ responsible for determining the validity of a claim of privilege in the Requesting Party will examine the validity of the claim by the witness and the evidence obtained in the Requested Party will only be released to the relevant prosecuting / investigating authorities in the Requesting Party after the said court or organ is satisfied that the claim is not substantiated. If the claim for privilege is found substantiated, the evidence will be returned to the Requested Party intact.

Article XI(5)

The agreement does not confer immunity from penalty or coercive measures pursuant to the law of the Requesting Party.

As far as Hong Kong is concerned, Hong Kong courts have no jurisdiction to penalize a person who fails to comply with any process of Hong Kong courts served on him through the Belgian authorities pursuant to the HKSAR / Belgium Mutual Legal Assistance (MLA) Agreement. On the other hand, the Belgian side would like to retain jurisdiction under their domestic law over persons in Hong Kong who fail to comply with any process served on them pursuant to a request from Belgium under the MLA Agreement.

Article XI (5) is consistent with the Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525. Section 31(3) of Cap. 525 only confers immunity under Hong Kong law when foreign process is served in Hong Kong. It does not seek to provide for immunity under the law of the requesting jurisdiction (e.g. by providing that process will only be served in Hong Kong if an undertaking is given that failure to comply will not result in any penalty in the requesting jurisdiction).

The Denmark Order

Article 13(2)

A person transferred pursuant to Article 11 who is subsequently released from custody in the Requesting Party will not be a person in custody within the meaning of Article 13(2). Accordingly pursuant to the terms of Article 13(2) the immunity provided for in Article 13(1) will cease if being free to leave (which he should be having been released from custody) he does not leave the Requesting Party within 15 days after being notified that his presence is no longer required.

Yours sincerely



(Miss Jane Lee)
for Secretary for Security