

立法會

Legislative Council

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Subcommittee on Mutual Legal Assistance in Criminal Matters (Belgium) Order and Mutual Legal Assistance in Criminal Matters (Denmark) Order

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information relating to the Legislative Council's (LegCo) scrutiny of bilateral agreements for mutual legal assistance (MLA) in criminal matters between the Hong Kong Special Administrative Region (HKSAR) and other jurisdictions.

Background

2. The HKSAR has established a network of bilateral agreements with other jurisdictions on MLA in criminal matters. These agreements ensure reciprocity between the contracting parties in providing assistance in criminal matters and enhancing international cooperation in the fight against transnational crime.

3. The Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (the Ordinance) provides the statutory framework for implementing the MLA arrangements and enables provision of assistance in the investigation and prosecution of criminal offences, such as the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime.

4. At the Council meeting on 11 May 2005, the Secretary for Security gave notice to move two resolutions to seek LegCo's approval for the following Orders to be made under section 4 of the Ordinance –

- (a) Mutual Legal Assistance in Criminal Matters (Belgium) Order (Belgium Order); and

(b) Mutual Legal Assistance in Criminal Matters (Denmark) Order (Denmark Order).

MLA Orders scrutinised by LegCo

5. As legislation and arrangements on MLA in criminal matters vary from jurisdiction to jurisdiction, it is necessary for the relevant orders to modify some of the provisions of the Ordinance to reflect the practices of individual negotiation partners. Such modifications enable the HKSAR to comply with its obligations in the agreements concerned. The Model Agreement for the HKSAR, which was agreed by the former Sino-British Joint Liaison Group and approved by the former Executive Council before the reunification, has become the basis for the conduct of negotiations with other jurisdiction. To facilitate LegCo's scrutiny of an order, it is the established practice that the Administration provides an article by article comparison between the order and the Model Agreement.

6. Since the first term of LegCo, five subcommittees (including this Subcommittee) have been formed to scrutinise MLA Orders. A list of these subcommittees are in the **Appendix**. A total of 15 Orders in relation to MLA bilateral arrangements signed with foreign jurisdictions have been made under section 4 of the Ordinance. These jurisdictions are Australia, France, New Zealand, United Kingdom, United States of America, Italy, South Korea, Switzerland, Canada, Philippines, Portugal, Ireland, Netherlands, Ukraine and Singapore.

The Belgium and Denmark Orders

7. The Belgium Order and the Denmark Order are made in consequence of the arrangements for MLA entered into by the HKSAR Government and the Government of the Kingdom of Belgium and the Kingdom of Denmark on 20 September 2004 and 23 December 2004 respectively.

8. According to the Administration, the two Orders have no sustainability, financial or civil service implications. Public consultation is considered not necessary.

9. The two Orders will come into operation on days to be appointed respectively by the Secretary for Security by notice published in the Gazette.

10. The Legal Service Division has asked the Administration to clarify certain matters relating to the execution of requests for assistance, including the taking or obtaining of evidence under the Belgium Order and the scope of

certain immunities under the Denmark Order. The Administration's reply is in LC Paper No. CB(2)1574/04-05(05)).

Council Business Division 2
Legislative Council Secretariat
27 May 2005

Appendix

List of Subcommittees formed to study Mutual Legal Assistance in Criminal Matters Orders

Name of Subcommittee	Date of forming Subcommittee	No of Orders scrutinised	Date of approval by LegCo
Subcommittee on <ul style="list-style-type: none"> – Mutual Legal Assistance in Criminal Matters (Australia) Order; – Mutual Legal Assistance in Criminal Matters (France) Order; – Mutual Legal Assistance in Criminal Matters (New Zealand) Order; – Mutual Legal Assistance in Criminal Matters (United Kingdom) Order; – Mutual Legal Assistance in Criminal Matters (United States of America) Order; – Mutual Legal Assistance in Criminal Matters (Italy) Order; – Mutual Legal Assistance in Criminal Matters (South Korea) Order; and – Mutual Legal Assistance in Criminal Matters (Switzerland) Order 	30.10.98	8	9.12.98 9.12.98 9.12.98 9.12.98 10.11.99 19.1.00 19.1.00 26.6.00
Subcommittee on <ul style="list-style-type: none"> – Mutual Legal Assistance in Criminal Matters (Canada) Order, – Mutual Legal Assistance in Criminal Matters (Philippines) Order, and – Mutual Legal Assistance in Criminal Matters (Portugal) Order 	12.10.01	3	19.12.01 19.12.01 19.12.01
Subcommittee on <ul style="list-style-type: none"> – Mutual Legal Assistance in Criminal Matters (Ireland) Order; and – Mutual Legal Assistance in Criminal Matters (Netherlands) Order 	24.1.03	2	2.7.03 29.10.03

Name of Subcommittee	Date of forming Subcommittee	No of Orders scrutinised	Date of approval by LegCo
Subcommittee on – Mutual Legal Assistance in Criminal Matters (Ukraine) Order; and – Mutual Legal Assistance in Criminal Matters (Singapore) Order	9.1.04	2	2.6.04 2.6.04
Subcommittee on – Mutual Legal Assistance in Criminal Matters (Belgium) Order; and – Mutual Legal Assistance in Criminal Matters (Denmark) Order	29.4.05	2	