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Secretary for Security  
(Attention: Miss Jane Lee, Assistant Secretary)  
Security Bureau  
6/F Main and East Wings  
Central Government Offices  
Hong Kong

15 June 2005

**BY FAX**  
Fax No. : 2524 3762  
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Dear Miss Lee,

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

At the meeting on 13 June 2005, the Administration advised the Subcommittee that a magistrate in Hong Kong did not have jurisdiction to make a ruling on claims of privilege of witnesses under foreign law. On the instructions of the Chairman, I am writing to seek your clarification on the following matters:

- (a) If an agreement on mutual legal assistance provides that a witness may decline to give evidence where the law of the Requesting Party would permit him to decline to give evidence in such proceedings in the Requesting Party and if the witness concerned asserts a claim for privilege under the law of the Requesting Party, is a magistrate in Hong Kong required to make a ruling on such claim when executing a request from the Requesting Party for the taking of evidence of the witness? If so, why does the Administration hold the view that a Hong Kong magistrate does not have jurisdiction to make a ruling on a claim of privilege by a witness under foreign law.
- (b) In making the ruling, is the magistrate bound by the facts stated in a duly certified external law immunity certificate? It would appear that since the certificate is not conclusive evidence, the magistrate will not be bound by it.

I would appreciate it if you could let us have the Administration's reply in both languages by *22 June 2005*.

Yours sincerely,

(Connie Fung)  
Assistant Legal Adviser

c.c.: LA  
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