

立法會
Legislative Council

Ref : CB2/SS/4/05

LC Paper No. CB(2) 1800/05-06
(These minutes have been seen by
the Administration)

**Subcommittee on
Mutual Legal Assistance in Criminal Matters (Poland) Order and
Mutual Legal Assistance in Criminal Matters (Israel) Order**

**Minutes of meeting
held on Friday, 17 March 2006 at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Margaret NG
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Public Officers attending : Ms Manda CHAN
Principal Assistant Secretary for Security
Security Bureau

Mr Wayne WALSH
Deputy Principal Government Counsel
(Mutual Legal Assistance Unit)
Department of Justice

Mr Vidy CHEUNG
Senior Government Counsel
Department of Justice

Ms Jane LEE
Assistant Secretary for Security
Security Bureau

Clerk in attendance : Mrs Constance LI
Chief Council Secretary (2)5

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Miss Josephine SO
Council Secretary (2)1

I. Election of Chairman

Hon James TO was elected Chairman of the Subcommittee.

2. The Subcommittee accepted Hon LAU Kong-wah's application for joining the Subcommittee after the deadline.

II. Meeting with the Administration

[LC Paper Nos. CB(2)1364/05-06(01) & (02)]

3. The Subcommittee deliberated (index of proceedings attached at **Annex**).

4. The Subcommittee examined the Mutual Legal Assistance (MLA) in Criminal Matters (Poland) Order and the Mutual Legal Assistance in Criminal Matters (Israel) Order, by making reference to the article-by-article comparison of the two Orders with the Model Agreement provided by the Administration [LC Paper Nos. CB(2)1364/05-06(01)&(02)].

5. In view of the concerns raised by members, the Administration undertook to –

Poland Order

- (a) consider whether Article 7(3) in the Agreement in relation to the use or disclosure of information exculpatory to the defendant in a criminal prosecution should be made a standard provision in future agreements to be negotiated with other jurisdictions;
- (b) provide information on the safeguards to protect the legal rights of a person transferred under Article 11(2);

Israel Order

- (c) in relation to Article 1(1), explain whether the reference to the scope of assistance for “prevention of offences” is consistent with the ambit of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525);

- (d) in relation to Article 4(1), consider undertaking that Hong Kong would not request for assistance if according to the laws of Hong Kong, assistance should be refused where the request related to the grounds set out in that Article;
- (e) in relation to Article 4(1)(g), advise whether it was a mandatory provision under Cap. 525 to deny assistance on grounds of confidentiality; and
- (f) in relation to Article 7(4), provide information on the criteria for awarding compensation under the laws of Israel.

6. The Subcommittee completed scrutiny of the two Orders. The Chairman said that the information to be provided by the Administration in paragraph 5 above would be circulated to members for consideration. If members did not raise further queries on the two Orders, no further meeting of the Subcommittee would be held. The Subcommittee would then provide a report to the House Committee.

7. There being no other business, the meeting ended at 12:20 pm.

Council Business Division 2
Legislative Council Secretariat
21 April 2006

**Subcommittee on
Mutual Legal Assistance in Criminal Matters (Poland) Order and
Mutual Legal Assistance in Criminal Matters (Israel) Order**

**Proceedings of the meeting held on Friday, 17 March 2006 at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000-000101	Hon Margaret NG Hon LAU Kong-wah Hon Audrey EU Hon James TO	Election of Chairman	
000102-000150	Chairman Hon Margaret NG Hon LAU Kong-wah Hon Audrey EU	Application for late membership from Hon LAU Kong-wah	
000141-000324	Chairman Admin	Scrutiny of the Mutual Legal Assistance in Criminal Matter (Poland) Order Article-by-article comparison with the model agreement	
000325-000450	Admin	Article 1	
000451-000549	Admin	Article 2	
000550-000818	Admin	Article 3	
000819-001002	Admin	Article 4	
001003-001200	Admin	Article 5	
001201-001240	Chairman Admin	Article 6	

Time Marker	Speaker(s)	Subject(s)	Action required
001241-001610	Chairman Admin	Article 7 Reason for inclusion of Article 7(3) in the Hong Kong / Poland Agreement Situation where use or disclosure of information obtained under the Agreement is allowed Whether Article 7(3) should be made a standard provision in future agreements to be negotiated with other jurisdictions	The Admin to consider (para. 5(a) of the minutes refers)
001611-001648	Admin	Article 8	
001649-001702	Admin	Article 9	
001703-001721	Admin	Article 10	
001722-002227	Chairman Hon Margaret NG Admin	Article 11 The procedures for transfer and the safeguards to protect the legal rights of a person transferred under Paragraph (2)	The Admin to provide information (para. 5(b) of the minutes refers)
002228-002248	Admin	Article 12	
002249-002307	Admin	Article 13	
002308-002315	Admin	Article 14	
002316-002326	Admin	Article 15	
002327-002417	Admin	Article 16	
002418-002424	Admin	Article 17	
002425-002434	Admin	Article 18	
002435-002445	Admin	Article 19	

Time Marker	Speaker(s)	Subject(s)	Action required
002446-002453	Admin	Article 20	
002454-002531	Admin	Article 21	
002532-003053	Chairman Admin	Articles 11 & 12	
003054-005517	Hon Margaret NG Chairman Hon Miriam LAU ALA3 Admin	Scrutiny of the Mutual Legal Assistance in Criminal Matter (Israel) Order Article-by-article comparison with the model agreement <u>Articles 1 & 4</u> - the scope of assistance in relation to “prevention of offences” in Article 1(1), the impact and any difficulties in executing such requests - the meaning of “excessive burden on the resources of the Requested Party” in Article 4(1)(j), and which party to decide whether a request would impose “excessive burden”	The Admin to provide response (para. 5(c) of the minutes refers)
005518-005553	Admin	Article 1	
005554-005609	Admin	Article 2	
005610-005617	Admin	Article 3	

Time Marker	Speaker(s)	Subject(s)	Action required
005618-001009	Chairman Ms Miriam LAU ALA3 Admin	<p>Article 4</p> <p>Paragraph (1) – whether Hong Kong should request for assistance if according to the laws of Hong Kong, assistance should be refused where the request related to the grounds set out in the Article</p> <p>Paragraph 1(g) – whether it was a mandatory provision under Cap. 525 to deny assistance on grounds of confidentiality</p> <p>Principle of reciprocity in determining the grounds of refusal</p> <p>Paragraph (1)(j) – excessive burden on the resources of the Requested Party</p>	<p>The Admin to provide response (para. 5(d) of the minutes refers)</p> <p>The Admin to provide response (para. 5(e) of the minutes refers)</p>
011010-011034	Admin	Article 5	
011035-011102	Admin	Article 6	
011103-011225	Admin	Article 7	
0011226-011231	Admin	Article 8	
011232-011341	Admin	Article 9	
011342-011349	Admin	Article 10	
011350-011354	Admin	Article 11	
011355-011359	Admin	Article 12	
011400-011409	Admin	Article 13	

Time Marker	Speaker(s)	Subject(s)	Action required
011410-011921	Chairman Hon Miriam LAU Admin	Article 7(4) The financial implications arising from compensation ordered by a court of the Requested Party The criteria for awarding compensation under the laws of Israel	The Admin to provide information (para. 5(f) of the minutes refers)
011922-011959	Admin	Article 14	
012000-012043	Admin	Article 15	
012044-012129	Admin	Article 16	
012130-012133	Admin	Article 17	
012134-012138	Admin	Article 18	
012139-012150	Admin	Article 19	
012151-012224	Admin	Article 20	
012225-013017	Chairman Admin	Modifications to the Mutual Legal Assistance in Criminal Matters Ordinance as applied between Hong Kong and Poland Protection for persons who gave consent to be transferred for the purpose of giving assistance	
013018-013047	Admin	Modifications to the Mutual Legal Assistance in Criminal Matters Ordinance as applied between Hong Kong and Israel	
013048-013134	Chairman	Way forward	