

立法會

Legislative Council

LC Paper No. LS74/06-07

**Paper for the House Committee Meeting
on 25 May 2007**

**Legal Service Division Report on
Proposed Resolution under section 4 of the Mutual Legal Assistance in
Criminal Matters Ordinance (Cap. 525)**

The Secretary for Security (the Secretary) has given notice to move a motion at the Legislative Council meeting of 6 June 2007 to seek the approval of the Legislative Council for the Mutual Legal Assistance in Criminal Matters (Malaysia) Order (the Order) made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (the Ordinance) by the Chief Executive in Council on 8 May 2007.

2. Section 4(1) of the Ordinance provides that the Chief Executive in Council may, with the approval of the Legislative Council, in relation to any arrangements for mutual legal assistance, by order to which is annexed a copy of the arrangements direct that the Ordinance shall, subject to such modifications thereto as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate. Section 4(2) of the Ordinance provides that the Chief Executive in Council shall not make an order unless the arrangements for mutual legal assistance are substantially in conformity with the provisions of the Ordinance. Section 4(7) restricts the Legislative Council's power to amend such an order so that the Legislative Council may only repeal the whole order but not amend any part of it.

The Order

3. The Order is made in consequence of the agreement between the HKSAR Government and the Government of Malaysia signed in Hong Kong on 17 October 2006 (the Agreement), which is reproduced in Schedule 1 to the Order. It specifies the scope and procedures in relation to the provision of mutual legal assistance in criminal matters. It also provides for safeguard for persons involved in criminal proceedings.

4. Schedule 2 to the Order specifies the modifications to the Ordinance. Section 17 of the Ordinance provides certain immunities to a person who comes to Hong Kong from another jurisdiction to render assistance in a criminal matter. The

modifications to section 17(3)(b) are to reflect Article 17 of the Agreement which provides that such immunities shall cease when the person has been notified by the Requesting Party that his presence is no longer required, has not left the Requesting Party within a period of 15 consecutive days or having left the Requesting Party, has returned.

5. Section 1 of the Order provides that it will come into operation on a day to be appointed by the Secretary by notice published in the Gazette. According to paragraph 8 of the LegCo Brief, the commencement date will be settled after consultation with Malaysia and will depend upon when the necessary domestic procedures of Hong Kong and Malaysia are completed.

6. Members may refer to the LegCo Brief dated 16 May 2007 issued by the Security Bureau (File Ref. SBCR3/5691/95 Pt. 40 and SBCR1/2716/89(98) Pt. 23) for further information.

7. The Panel on Security has not been consulted on the Order.

8. The Legal Service Division is seeking clarification from the Administration on certain technical matters. A further report will be provided if necessary.

Prepared by

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