

**Subcommittee on Mutual Legal Assistance in Criminal Matters
(Finland) Order**

At the Subcommittee meeting held on 19 May 2008, Members enquired whether Article 21(2) of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Finland Concerning Mutual Legal Assistance in Criminal Matters ("the Agreement") is consistent with the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and the human rights safeguards.

Consistency with Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)

2. Article 21(2) of the Agreement provides that:

"The Agreement shall apply to offences committed before as well as after its entry into force."

It permits Hong Kong and Finland to make requests for legal assistance in respect of offences committed before or after the entry into force of the Agreement. The provision is consistent with Cap. 525 as explained in paragraphs 3 to 7 below.

3. Cap. 525 regulates the provision and obtaining of assistance in criminal matters between Hong Kong and places outside Hong Kong. Places outside Hong Kong consist of two categories:

- (a) prescribed places¹ (as defined in section 2) with which Hong Kong has entered into prescribed arrangements² on mutual legal assistance by virtue of orders made under section 4³, and

¹ Under section 2 of Cap. 525, "prescribed place" means a place outside Hong Kong to or from which assistance in criminal matters may be provided or obtained, as the case may be, pursuant to prescribed arrangements.

² Under section 2 of Cap. 525, "prescribed arrangements" means arrangements for mutual legal assistance which are the subject of an order under section 4(1) which is in force.

³ Under section 4 of Cap. 525, 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 Cap. 525 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.

- (b) Non-prescribed places with which Hong Kong has not entered into prescribed arrangements on mutual legal assistance.

4. A prescribed place may make a request to Hong Kong pursuant to a prescribed arrangement implemented by an order made under section 4. In the absence of a prescribed arrangement, a non-prescribed place may obtain legal assistance from Hong Kong under section 5(4) of Cap. 525 if that place gives a reciprocity undertaking to Hong Kong that it will, subject to its law, comply with a future request by Hong Kong to that place for legal assistance.

5. Section 6 of Cap. 525 allows Hong Kong to provide legal assistance to a place outside Hong Kong, be it a prescribed place or a non-prescribed place, and regardless of whether the offences covered by a request are committed before or after the entry into force of any arrangement.

6. Section 7 of Cap. 525 allows Hong Kong to make a request to a prescribed place or a non-prescribed place outside Hong Kong for legal assistance. It does not limit such requests to offences committed after the entry into force of any arrangement.

7. Under sections 6 and 7 of Cap. 525, requests for legal assistance are not subject to any limitations relating to the timing of the entry into force of any agreement on mutual legal assistance. Indeed, the requirement for a reciprocity undertaking from a non-prescribed place under section 5(4) reinforces the construction that a prescribed place is not limited to making requests in respect of offences committed after the entry into force of a prescribed arrangement. Otherwise, a prescribed place would be subject to more restrictions and hence be placed in a less advantageous position than a non-prescribed place. Article 21(2) of the Agreement is therefore consistent with Cap. 525.

Adoption of similar provisions in other Agreements on Mutual Legal Assistance

8. Provisions similar to Article 21(2) of the Agreement appear in the agreements on mutual legal assistance signed by Hong Kong with Australia, Belgium, Canada, Korea, The Netherlands, New Zealand, Philippines, Singapore and the USA, and are implemented by the relevant

orders made under section 4 of Cap. 525. The relevant articles in these agreements are set out in the **Annex**.

Consistency with human rights safeguards

9. The scope of assistance under the Agreement is restricted to the investigation and prosecution of crimes committed before or after the entry into force of the Agreement, and the related proceedings. It does not in any way create retrospective criminal liability or penalty. Article 21(2) of the Agreement is in conformity with Hong Kong law concerning human rights.

**Security Bureau
International Law Division, Department of Justice
May 2008**

**Provisions in other Mutual Legal Assistance in
Criminal Matters Agreements similar to
Article 21(2) of the Agreement between Hong Kong and Finland
concerning Mutual Legal Assistance in Criminal Matters**

| Agreement Partner | Article | Provision |
|--------------------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Australia | XXI(2) | This Agreement shall apply to requests whether or not the relevant acts or omissions occurred prior to this Agreement entering into force. |
| Belgium | XXII(2) | This Agreement shall apply to requests whether or not the relevant acts or omissions occurred prior to the Agreement entering into force. |
| Canada | 21(2) | This Agreement shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date. |
| Korea | 21(2) | This Agreement applies to any requests presented after its entry into force even if the relevant acts or omissions occurred prior to this Agreement entering into force. |
| The Netherlands | 23(2) | This Agreement shall apply to any requests presented after its entry into force even if the relevant acts and omissions occurred before that date. |
| New Zealand | XXII(2) | This Agreement shall apply to requests whether or not the relevant acts or omissions occurred prior to this Agreement entering into force. |
| Philippines | XXI(2) | This Agreement shall apply to requests made pursuant to it whether or not the relevant acts or omissions occurred prior to this Agreement entering into force. |

| Agreement Partner | Article | Provision |
|--------------------------|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Singapore | 27(2) | This Agreement shall apply to requests presented after its entry into force even if the relevant acts or omissions occurred before that date. |
| USA | 23(2) | This Agreement shall apply to requests whether or not the relevant acts or omissions occurred prior to this Agreement's entry into force. |