

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

Members have requested the Administration to advise on the articles in 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") providing that a witness's consent is required if his presence in the Requesting Party is requested by that Party.

2. Article 15(1) of the Agreement stipulates that-

"A person in custody in the Requested Party whose presence is requested in the Requesting Party as a witness pursuant to this Agreement shall, if the Requested Party consents, be transferred from the Requested Party to the Requesting Party for that purpose, provided the person consents and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party."

Article 16(1) of the Agreement stipulates that-

"If the Requesting Party considers the personal appearance of a witness or expert for the purpose of providing assistance necessary it shall so inform the Requested Party. The Requested Party shall invite the witness or expert to appear and advise the Requesting Party of the reply from the witness or expert."

3. All witnesses, including those in the custody of the Requested Party, will only be transferred to the Requesting Party on a voluntary basis and their consent is required as explicitly specified in the Agreement. This is consistent with sections 16(1)(b)(iii) and 23(1)(d)(ii) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), requiring that the transfer of prisoners or other persons to or from Hong Kong to give assistance in relation to criminal matters will only be effected where the Secretary for Justice is of the opinion that such persons have given their consent to giving such assistance. For transfer of a person out of Hong Kong, the requesting party will be required to provide undertakings on the immunities the person to be transferred will be given on arrival in the requesting party. As required by section

23(1)(d)(ii) of Cap. 525, a copy of the undertakings has to be provided to the subject person who may then indicate in writing whether he/she consents to the transfer. For transfer of a person to Hong Kong, the HKSAR will give undertakings on the immunities such person is entitled for agreeing to travel to Hong Kong to give assistance. The undertakings are provided to the requested party for passing on to the person from whom assistance is sought. Consent of the person to be transferred is usually given in writing and is obtained by the overseas requested party.

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