

立法會
Legislative Council

LC Paper No. CB(2)1682/10-11
(These minutes have been seen
by the Administration)

Ref : CB2/SS/4/10

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

**Minutes of meeting
held on Thursday, 24 March 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon LAU Kong-wah, JP

Public Officers attending : Item II

Mr David LAU Kam-kuen
Principal Assistant Secretary for Security

Ms Veronica WONG Hoi-yee
Assistant Secretary for Security

Ms Susana SIT Ka-li
Senior Government Counsel
International Law Division
Department of Justice

Miss Emma WONG
Senior Government Counsel
Law Drafting Division
Department of Justice

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Priscilla LAU
Council Secretary (2) 5

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Election of Chairman

Dr Margaret NG was elected Chairman of the Subcommittee.

II. Meeting with the Administration

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

3. The Administration stated that Schedule 3 would be included in future mutual legal assistance in criminal matters orders in line with Section 4(3) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and to facilitate members' understanding on modification in the orders.

4. In light of the Coroner's death inquest into the Manila incident of 23 August 2010 involving a tour group from Hong Kong, the Subcommittee requested the Administration to consider providing a framework for assistance between Hong Kong and overseas jurisdictions in death inquests. The Administration agreed to consider the suggestion and would report the results of its study to the Panel on Security or the relevant Panel for follow-up.

5. The Subcommittee requested the Administration to provide information on relevant precedent court cases involving immovable property that was considered by the court as "instrument of crime" vis-à-vis "location of crime".

6. The Subcommittee requested the Administration to highlight the following in the speech of the Secretary for Security when moving the resolution on Mutual Legal Assistance in Criminal Matters (India) Order ("the Order") at the Council meeting -

- (a) although no provision was made in the Order for refusal of assistance if a request related to an external offence punishable with death, the governments of the Hong Kong Special Administration Region and the Republic of India had agreed that the above request might be refused on the ground of "essential interest" under Article IV(1) of the Order; and
- (b) Article X(4) had to be read in the context of Article X(3) so that any additional questions raised under Article X(4) should be within the original scope of questions specified under Article X(3).

III. Any other business

7. The Chairman said that the Subcommittee had completed scrutiny of the Order. Pending the information to be provided by the Administration, the Subcommittee would submit a report to the House Committee.

8. The being no other business, the meeting ended at 9:40 am.

Council Business Division 2
Legislative Council Secretariat
5 May 2011

**Proceedings of meeting of the Subcommittee on
Mutual Legal Assistance in Criminal Matters (India) Order
held on Thursday, 24 March 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action Required
<i>Agenda Item I – Election of Chairman</i>			
000000 - 000447	Dr Hon Margaret NG Hon James TO Hon LAU Kong-wah	Election of Chairman	
<i>Agenda Item II – Meeting with the Administration</i>			
000448 - 000554	Chairman	Opening remarks	
000555 - 000852	Admin	Briefing on the Mutual Legal Assistance in Criminal Matters (India) Order ("the Order"), which was the first Mutual Legal Assistance (MLA) Order in which the Administration had summarized the modifications to the Order in its Schedule 3 which was introduced in accordance with Section 4(3) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLAO")	
000853 - 001101	Chairman ALA8 Admin	Compliance of Schedule 2 and Schedule 3 of the Order with Section 4(1) and Section 4(3) of MLAO respectively	
001102 - 001214	Chairman Hon James TO Admin	Schedule 3 would be included in future Order with other countries so as to comply with the Section 4(3) of MLAO and to facilitate members' understanding on modifications in an Order during scrutiny	
001215 - 001605	Admin Chairman Hon LAU Kong-wah	Examination of Section 1 and Section 2 of Schedule 3 to the Order	
001606 - 001740	Chairman Admin	Examination of Title and Preamble of Schedule 1 to the Order; comparison between the Article and the relevant article in the Model Agreement on Mutual Legal Assistance in Criminal Matters ("model agreement") (LC Paper No. CB(2)1335/10-11(02))	

Time marker	Speaker(s)	Subject(s)	Action Required
001741 - 003313	Hon James TO Chairman Admin Hon LAU Kong-wah	<p>Hon James TO requested the Admin to study and provide a legal framework for mutual legal assistance between Hong Kong and overseas jurisdictions in death inquests</p> <p>Hon LAU Kong-wah said that while he had no objection to the suggestion, the Administration should study the matter prudently, having regard to the implication, if any, on other matters</p>	
003314 - 003523	Chairman Hon LAU Kong-wah Admin	Examination of Article I of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
003524 - 003547	Admin	Examination of Article II of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
003548 - 003610	Admin	Examination of Article III of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
003611 - 004022	Chairman Admin Hon James TO Hon LAU Kong-wah	<p>Examination of Article IV of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement</p> <p>Article IV(3) was included at the request of the Indian Government, which was in line with the present practice</p>	
004023 - 004144	Chairman Admin Hon James TO	<p>Examination of Article V to Article VIII of Schedule 1 to the Order; comparison between the Articles and the relevant articles in the model agreement</p> <p>Reason for no provision in the Order for refusal of assistance if a request related to an external offence punishable with death. The Administration explained that it was requested by the Indian Government due to the judicial authority to impose death penalty rested solely with its courts. However, both governments of Hong Kong and India agreed that requests relating to death penalty might be refused on the ground of "essential interest" under Article IV(1). Hon James TO requested the Administration to highlight this point in</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>the speech of the Secretary for Security when moving the resolution at the Council meeting</p> <p>Inclusion of agreement or arrangement concerning the capital punishment in papers for MLA orders for members' reference in future</p>	
004145 - 004202	Admin	Examination of Article IX of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
004203 - 004226	Admin	Examination of Article X of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
004227 - 004349	Admin	Examination of Section 1 to Section 3 of Article XI of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
004350 - 005123	Chairman Hon James TO Admin	<p>Application and scope of additional questions put to the witness or person giving evidence stated in Article X(4)</p> <p>Hon James TO requested the Administration to explain in the speech of the Secretary for Security when moving the resolution at the Council meeting that Article X(4) was a flexibility clause to Article X(3) and any additional questions raised under Article X(4) should be within the original scope of questions specified under Article X(3)</p>	
005124 - 005325	Chairman Admin Hon James TO	Examination of Section 4 to Section 6 of Article XI of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
005326 - 005331	Chairman Admin	Examination of Article XII to Article XIV of Schedule 1 to the Order; comparison between the Articles and the relevant articles in the model agreement	
005332 - 005420	Admin	Examination of Article XV of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	

Time marker	Speaker(s)	Subject(s)	Action Required
005421 - 005525	Admin	Examination of Article XVI of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
005526 - 005531	Chairman	Examination of Article XVII of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
005532 - 010517	Admin Hon James TO Chairman	Examination of Article XVIII of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement Definition and scope of "instruments of crime"	Admin to provide information on relevant precedent court cases involving immovable property that was considered by the court as "instruments of crime" vis-à-vis "location of crime"
010518 - 010522	Chairman Admin	Examination of Article XIX of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
010523 - 010606	Admin	Examination of Article XX of Schedule 1 to the Order; comparison between the Article and the relevant article in the model agreement	
010607 - 010626	Admin	Articles not included in the Order: Article X and Article XI of the model agreement	
010627 - 010708	Chairman Admin	Examination of Schedule 2 to the Order	
010709 - 010924	Chairman ALA8 Admin	Article IX(4) of the model agreement and Article IX of the Order	
010925 - 011024	Chairman Hon James TO	Completion of scrutiny of the Order	