

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 7 December 2018**

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

Mutual Legal Assistance in Criminal Matters (Mongolia) Order

The Secretary for Security ("the Secretary") has given notice to move a motion at the Legislative Council ("LegCo") meeting of 9 January 2019 to seek the LegCo's approval of the Mutual Legal Assistance in Criminal Matters (Mongolia) Order ("the Order") made by the Chief Executive ("CE") in Council under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525).

2. Cap. 525 regulates the provision to and obtaining of assistance in the investigation and prosecution of criminal offences between Hong Kong and places outside Hong Kong. Section 4(1) of Cap. 525 provides that CE in Council may, with the approval of the LegCo, in relation to any arrangements for mutual legal assistance ("MLA"), 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. Section 4(3) requires that such modifications shall be summarized in a Schedule to the order.

3. Section 4(2) of Cap. 525 provides that CE in Council shall not make an order under section 4(1) unless the arrangements for MLA are substantially in conformity with the provisions of the Cap. 525. Section 4(7) restricts LegCo's power to amend such an order so that LegCo may only repeal the whole order but not amend any part of it.

The Order

4. The Order is made in consequence of the arrangements for MLA entered into by the Government of the Hong Kong Special Administrative Region and the Government of Mongolia and signed on 26 March 2018 ("the

Agreement"), which is reproduced in Schedule 1 to the Order. It specifies the scope and procedures in relation to the provision of MLA in the investigation and prosecution of criminal offences and in proceedings related to criminal matters, and provides for safeguards of the rights of persons involved in criminal proceedings.

5. Schedule 2 to the Order specifies the modifications to sections 5 and 17 of Cap. 525. Section 5(1)(d) of Cap. 525 provides that a request by a place outside Hong Kong for assistance shall be refused if the Secretary for Justice ("SJ") is of the opinion that there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, nationality or political opinions. Section 5(1)(e) of Cap. 525 provides that SJ shall also refuse such request where it relates to the prosecution of a person for an external offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in the place, or has undergone the punishment provided by the law of that place, in respect of that offence or of another external offence constituted by the same act or omission as that offence.

6. To reflect the provisions in Articles 4(1)(c) and 4(1)(f) of the Agreement, sections 5(1)(d) and 5(1)(e) of Cap. 525 are modified respectively to extend SJ's power to refuse assistance if:

- (a) there are substantial grounds for believing that the request was made for prosecuting, punishing or otherwise causing prejudice to a person on account of the person's sex; and
- (b) the request relates to the prosecution of a person for an external offence in a case where the person has been convicted, acquitted or pardoned by a competent court, or other authority in Hong Kong or the person has undergone the punishment provided by the law of Hong Kong, in respect of that offence or of another external offence constituted by the same act or omission as that offence.

7. Section 17 of Cap. 525 provides certain immunities to a person who comes to Hong Kong from another jurisdiction pursuant to a request made by SJ or to give assistance in relation to a criminal matter. These immunities cease to apply if the person has had the opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for the purpose of providing assistance. To reflect the provision in Article 14(4) of the Agreement, section 17(3)(b) of Cap. 525 is modified to specify that such immunities shall cease to apply if the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 days after being notified that his presence is no longer required.

8. Schedule 3 to the Order summarizes the above modifications in accordance with section 4(3) of Cap. 525.

Commencement

9. The Order comes into operation on a day to be appointed by the Secretary by notice published in the Gazette. According to paragraph 11 of the LegCo Brief (File Ref: SBCR 6/1/2716/80 and SBCR 50/22/581/87) issued by the Security Bureau in November 2018, the commencement date will coincide with the date on which the Agreement enters into force. Article 23 of the Agreement provides that it shall enter into force 30 days after the date on which the Parties have notified each other in writing of the completion of their respective internal procedures required for entry into force of the Agreement.

Consultation

10. As advised by the Clerk to the Panel on Security, the Panel has not been consulted on the Order.

Concluding observations

11. The Legal Service Division has asked the Administration to clarify certain matters and to provide a comparison of the Agreement with the model agreement. A further report will be made, if necessary.

Prepared by

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