

## PROPOSED AMENDMENTS TO THE HARARE SCHEME ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

### BACKGROUND

1. Senior Officials at their meeting in November 2001 considered several possible amendments to the Harare Scheme on Mutual Assistance in Criminal Matters. The specific issues considered were:

- the availability of court-based mutual legal assistance channels to the defence;
- issues relating to privilege, including legal privilege and the protection against self-incrimination;
- the interception of (and evidence obtained from the interception of) telecommunications and other forms of electronic surveillance;
- the taking of personal samples; and
- provisions relating to computer data.

### PROPOSED AMENDMENT

2. At the conclusion of their deliberations, Senior Officials recommended one amendment to the Scheme, relating to the protection against self-incrimination and the process for determining questions of privilege. The proposed amendment to Clause 6 of the Scheme, with the additions in bold, is annexed to this paper.

3. Regarding other issues such as the interception of telecommunications and electronic surveillance, the taking of DNA samples and provisions relating to computer data, Senior Officials requested that further work be undertaken in respect of these proposed amendments.

4. In relation to computer and computer related crime, Law Ministers may wish to note that at the second meeting of the Computer Crime expert group, the recommendations respecting possible amendments to the Harare Scheme were reiterated. (See LMM(02)17)

### ACTION

Law Ministers are requested to consider the adoption of the amendment to the Harare Scheme as set out in the *Annex*.

PROPOSED AMENDMENT TO PARAGRAPH 6 OF THE HARARE SCHEME  
ACTION IN THE REQUESTED COUNTRY

6. (1) Subject to the provisions of this Scheme, the requested country shall grant the assistance requested as expeditiously as practicable.
- (2) The Central Authority of the requested country shall, subject to the following provisions of this paragraph, take the necessary steps to ensure that the competent authorities of that country comply with the request.
- (3) If the Central Authority of the requested country considers
- (a) that the request does not comply with the provisions of this Scheme, or
  - (b) that in accordance with the provisions of this Scheme the request for assistance is to be refused in whole or in part, or
  - (c) that the request cannot be complied with, in whole or in part, or
  - (d) that there are circumstances which are likely to cause a significant delay in complying with the request,

it shall promptly inform the Central Authority of the requesting country, giving reasons.

- (4) The requested country may make the granting of assistance subject to the requesting country giving an undertaking that:
- (a) the evidence provided will not be used directly or indirectly in relation to the investigation or prosecution of a specified person; or
  - (b) a court in the requesting country will determine whether or not the material is subject to privilege.
- (5) If the requesting country refuses to give the undertaking under sub paragraph (4), the requested country may refuse to grant the assistance sought in whole or in part.