

立法會
Legislative Council

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 14 June 2006

**Proposed resolutions under
the Mutual Legal Assistance in Criminal Matters Ordinance**

Further to LC Paper No. CB(3) 393/05-06 issued on 27 February 2006, the Secretary for Security has given fresh notice to move two resolutions at the Council meeting of 14 June 2006 under the Mutual Legal Assistance in Criminal Matters Ordinance relating to:

- (a) the Mutual Legal Assistance in Criminal Matters (Israel) Order;
and
- (b) the Mutual Legal Assistance in Criminal Matters (Poland) Order.

The President has directed that “it be printed in the terms in which it was handed in” on the Agenda of the Council.

2. The resolutions are attached herewith for Members’ consideration. Please note that the above Orders have been circulated under LC Paper No. CB(3) 354/05-06 issued on 17 February 2006. For economy and environmental reasons, they are not attached.

3. The speeches, in both English and Chinese versions, which the Secretary for Security will deliver when moving the proposed resolutions, are also attached.

(Ray CHAN)
for Clerk to the Legislative Council

Encl.

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

RESOLUTION

(Under section 4 of the Mutual Legal Assistance in Criminal
Matters Ordinance (Cap. 525))

RESOLVED that the Mutual Legal Assistance in Criminal Matters
(Israel) Order, made by the Chief Executive in Council
on 7 February 2006, be approved.

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

RESOLUTION

(Under section 4 of the Mutual Legal Assistance in Criminal
Matters Ordinance (Cap. 525))

RESOLVED that the Mutual Legal Assistance in Criminal Matters
(Poland) Order, made by the Chief Executive in Council
on 7 February 2006, be approved.

(Translation)

Mutual Legal Assistance in Criminal Matters (Israel) Order

**Draft Speech by the Secretary for Security
for the Resolution on 14 June 2006**

Madam President,

I move that the first motion under my name be passed, that is, the resolution to make the Mutual Legal Assistance in Criminal Matters (Israel) Order be passed by this Council. I shall move another resolution to make the Mutual Legal Assistance in Criminal Matters (Poland) Order in a short while.

2. Hong Kong is fully committed to international cooperation in combating serious crimes. In this respect, we have been expanding our network of bilateral agreements with other jurisdictions on mutual legal assistance in criminal matters. These agreements enhance international cooperation in the fight against transnational crimes and ensure reciprocal assistance between the contracting parties. We have so far signed 20 bilateral agreements with other jurisdictions.

3. The Mutual Legal Assistance in Criminal Matters Ordinance provides the necessary statutory framework for implementing mutual legal assistance arrangements, enabling assistance to be provided to or obtained from foreign jurisdictions in the investigation and prosecution of criminal offences, which includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime.

4. Pursuant to the Ordinance, the Chief Executive in Council has made two Orders to implement the bilateral arrangements on mutual legal assistance in criminal matters with Israel and Poland respectively. These two Orders apply the arrangements prescribed in the Ordinance between Hong Kong and Israel, and between Hong Kong and Poland, allowing assistance to be provided or obtained in accordance with the procedures set out in the Ordinance and the provisions under the Agreements. The Orders are substantially in conformity with the provisions in the Ordinance. However, as legislation and arrangements on mutual legal assistance in criminal matters vary from jurisdiction to jurisdiction, it is necessary for the relevant orders to modify some of the provisions of the Ordinance to reflect the practices of individual jurisdictions. Such modifications are necessary to enable Hong Kong to discharge its obligations under the agreements concerned. The modifications made for the bilateral agreements with Israel and Poland are summarised in Schedule 1 to each of the two Orders.

5. The Subcommittee set up by the Legislative Council scrutinized the two Orders in March 2006. The Administration has explained in detail matters relating to the Orders, including the scope of assistance, legal rights of transferred persons and grounds for refusing the provision of assistance.

6. With regard to the Agreement Hong Kong signed with Israel, the Subcommittee was concerned that the grounds for refusal of provision of assistance were set out as discretionary grounds. The Subcommittee requested the Administration to consider undertaking that it would not make a request for assistance involving mandatory grounds for Hong Kong as a requested party to refuse provision of assistance

under Hong Kong law, even if Israel would discretionarily consider whether assistance would be refused on such grounds.

7. As we have explained to the Subcommittee, the relevant provision has been drafted to take into account that under Israeli law, all grounds of refusal are discretionary. The Mutual Legal Assistance in Criminal Matters Ordinance specifies that Hong Kong may only make requests for assistance in respect of criminal offences in contravention of the Hong Kong law. Such requirements in conjunction with the relevant provisions of the Agreement will require Hong Kong, when making a request to Israel for assistance, to clearly set out the purpose of the request, the criminal offence and laws concerned, the nature of the assistance requested, and the connection with the criminal investigation or prosecution concerned. Hong Kong is obliged to honour its bilateral agreements in good faith and in all likelihood would not knowingly make a request if any of the mandatory grounds for refusal under Hong Kong law applied. For example, if a person has already been convicted, acquitted or pardoned in Israel for the same offence, Hong Kong will not request Israel to provide assistance, as any subsequent attempt of prosecution in Hong Kong would be futile.

8. The Subcommittee reported to the House Committee on 12 May 2006 on its scrutiny of the two Orders. I would like to thank the Chairman, the Honourable James To, and other Members of the Subcommittee for their support of my submission of the Orders to this Council for approval.

9. To strengthen our cooperation with foreign jurisdictions in respect of mutual legal assistance in criminal matters, it is important for

the two Orders to be made to enable the bilateral agreements to be implemented.

10. I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Israel) Order. I shall in a moment move the resolution to make the Mutual Legal Assistance in Criminal Matters (Poland) Order.

11. Thank you, Madam President.

- END -

(Translation)

Mutual Legal Assistance in Criminal Matters (Poland) Order

**Draft Speech by the Secretary for Security
for the Resolution on 14 June 2006**

Madam President,

I move that the second motion under my name be passed, that is, the resolution to make the Mutual Legal Assistance in Criminal Matters (Poland) Order be passed by this Council.

2. In moving the resolution to make the Mutual Legal Assistance in Criminal Matters (Israel) Order earlier, I have explained the purpose and importance of making orders on mutual legal assistance in criminal matters. I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Poland) Order.

3. Thank you, Madam President.

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