

立法會
Legislative Council

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Tel : 2869 9205

Date : 11 January 2007

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 24 January 2007

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

Further to LC Paper No. CB(3) 175/06-07 issued on 29 November 2006, the Secretary for Security has given fresh notice to move a resolution at the Council meeting of 24 January 2007 under the Mutual Legal Assistance in Criminal Matters Ordinance relating to the Mutual Legal Assistance in Criminal Matters (Germany) 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 resolution is attached herewith for Members’ consideration. The draft speech, in both English and Chinese versions, which the Secretary for Security will deliver when moving the proposed resolution, is also attached.

3. Please note that the above Order had been circulated vide LC Paper No. CB(3) 137/06-07 issued on 16 November 2006. To economise on the use of paper, the Order is not attached.

(Mrs Justina LAM)
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 (Germany)
Order, made by the Chief Executive in Council on
14 November 2006, be approved.

(Translation)

Mutual Legal Assistance in Criminal Matters (Germany) Order

**Draft Speech by the Secretary for Security
for the Resolution on 24 January 2007**

Madam President,

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

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 21 such 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 an Order to implement the bilateral agreement on mutual legal

assistance in criminal matters signed between Hong Kong and Germany. By applying the arrangements prescribed in the Ordinance between Hong Kong and Germany, the Order allows assistance to be provided or obtained in accordance with the procedures set out in the Ordinance and the provisions under the agreement. The Order is substantially in conformity with the provisions in the Ordinance. Meanwhile, 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 agreement with Germany are summarised in Schedule 2 to the Order.

5. The Subcommittee set up by the Legislative Council scrutinized the Order in December 2006. We would like to thank the Subcommittee Chairman, the Honourable James To, and other Members for their views. Regarding Article 10 of the bilateral agreement with Germany, the Subcommittee has asked whether the provision would permit German police officers to appear at court proceedings in Hong Kong and examine witnesses. In this respect, we have clarified that it is a preferred practice in Hong Kong that only legal representatives from the requesting party may be permitted to appear in Hong Kong's court. If the German side requests for its police officers to appear at such court proceedings, we will discuss with the German side and advise the German side to adopt the practice in Hong Kong. The Subcommittee has also asked about the types of information that Hong Kong may provide to Germany in accordance with the bilateral agreement. We have explained that generally materials that have been obtained by

compulsory process for domestic purposes may not be transmitted to a foreign authority, unless there are statutory provisions to enable such transmission. We will continue to observe this in implementing the agreement.

6. To strengthen our cooperation with other jurisdictions in mutual juridical assistance on criminal matters, it is important for the Order to be made to enable the bilateral agreement with Germany to be brought into force.

7. I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Germany) Order.

8. Thank you, Madam President.

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