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Secretary for Security
(Attn. : Ms Manda CHAN
Principal Assistant Secretary (Security) A)
Security Bureau
6th Floor Main and East Wing
Central Government Offices
Central
Hong Kong

23 November 2006

BY FAX
Fax No. : 2524 3762

Dear Ms CHAN,

**Mutual Legal Assistance in
Criminal Matters (Germany) Order ("the Order")**

I am scrutinising the legal and drafting aspects of the Order. I would be most grateful if you may clarify the points which are set out in the Annex to this letter.

I would be most grateful if you could indicate by noon tomorrow (24 November 2006) whether an answer to my queries in both languages can be provided by noon on 29 November 2006 (Tuesday). In the case that an answer cannot be provided by that time, please indicate whether the Administration will consider withdrawing the Motion for the time being.

Yours faithfully,

(LEE Ka-yun, Kelvin)
Assistant Legal Adviser

Encl.

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Article 3

1. Unlike provision such as article 25 of the Mutual Legal Assistance in Criminal Matters (Singapore) Order (Cap. 525 sub. leg. P), article 3 of the Order provides that-

"The Parties may provide legal assistance pursuant to other agreements, arrangements or practices."

2. Please clarify what constitutes "agreements, arrangements, practices" in article 3. Please also clarify what procedures should be adopted by the Requested Party if the "agreements, arrangements or practices" are inconsistent with the agreement set out in Schedule 1 to the Order ("the Agreement").

Article 5

3. Article 5 sets out the procedure for making a request for assistance. Article 5(3)2 provides that in the case of requests for delivery of property obtained, or to be obtained, by search and seizure, the requests for assistance shall include:

"a) a declaration by a *competent authority* of the Requesting Party..."

4. "Competent authority" is not defined in the Agreement. Please clarify what is "competent authority".

Article 9

5. Article 9(2) provides that personal data transmitted shall be used for the purposes for which the data were transmitted. In addition-

"...such data may be used by the Party which has received it for the purpose of *warding off substantial dangers* to its security."

6. "Warding off substantial dangers" is not one of the stated purposes in Article 1. It seems that this is the first time such use of information is included in an order made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525). Please clarify the reasons for including "warding off substantial dangers" in the use of personal data and the meaning of "warding off substantial dangers".

Article 14

7. Article 14 provides that a person in custody in the jurisdiction of the Requested Party shall at the request of the Requesting Party be temporarily transferred to the jurisdiction of the Requesting Party to assist in investigations or criminal proceedings provided that the person consents to that transfer and that there are no overriding grounds against transferring the person. Please clarify what are "overriding grounds".
8. It is noted that the period of a person in custody in the jurisdiction of the Requesting Party is not expressly recognised as part of the sentence to be served in the Requested Party as in Article XIV(3) of the Mutual Legal Assistance in Criminal Matters (Belgium) Order (Cap. 525 sub. leg. Q). Please clarify the Administration's policy on this aspect.