

SBCR 3/5691/95

28 November 2006

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Dear Mr Lee,

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

I refer to your letter of 23 November 2006. The Administration’s response to the questions raised in your letter is set out below please.

Article 3

The provision follows the model Agreement, a number of Hong Kong’s signed Agreements (such as those signed with Australia, New Zealand and the UK) and Article 3 of the United Nation’s Model Agreement on Mutual Legal Assistance (MLA). “Agreements” would comprehend applicable multilateral treaties which make provision for MLA. “Arrangements” would comprehend memoranda of understanding (such memoranda are commonly included in relation to the exchange of financial intelligence). “Practices” would comprehend informal police co-operation.

If a request was made pursuant to a multilateral Agreement, its processing would be governed pursuant to the terms of that Agreement. Multilateral Agreements are cast in wide terms and generally allow the Requested Party to take into account the requirements of its domestic law. Arrangements or practices will cover the provision of informal assistance. In providing such assistance, jurisdictions will take into account the requirements of their domestic law.

Article 5

The “competent authority” in Article 5 is not defined in order to allow flexibility in individual cases. For Hong Kong, in practice, such a declaration would likely be made by a counsel from the Department of Justice who prosecutes the case or who renders advice on the case to the investigating authority.

Article 9

The provision was included at the request of the German side to meet Germany's legal requirement that detailed personal data provisions shall be included in all international agreements signed by Germany.

Article 9(2) is modelled upon Article 14 of the German/Canada MLA Agreement and is consistent with the Personal Data (Privacy) Ordinance (Cap. 486) in Hong Kong. The provision on “warding off substantial dangers” corresponds to the exemption laid down in section 57(2) of Cap. 486.

Article 14

The provision is adopted from Article 11.1 of the European Convention at the suggestion of the German side. It is entirely consistent with the corresponding provisions in our signed Agreements which all provide for the Requested Party to have a discretion in relation to the transfer of a person in custody. This formulation (see also Article 19 of the Swiss Agreement) is intended to emphasise that transfer will generally be approved – but a complete discretion is retained by the Requested Party.

Insofar as requests for transfer of prisoners from Hong Kong are concerned, section 24 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) provides that a prisoner who is serving a term of imprisonment for a Hong Kong offence shall be deemed to be continuing to serve that term of imprisonment, while he is in custody in connection with a request for his removal from Hong Kong under section 23 of the Ordinance (including custody outside Hong Kong).

Yours sincerely,

(Miss Jane Lee)
for Secretary for Security

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