

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 25 June 2008

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

Further to LC Paper No. CB(3) 617/07-08 issued on 14 May 2008, the Secretary for Security has given fresh notice to move a proposed resolution at the Council meeting of 25 June 2008 under the Mutual Legal Assistance in Criminal Matters Ordinance relating to the Mutual Legal Assistance in Criminal Matters (Finland) 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 proposed 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 was circulated vide LC Paper No. CB(3) 581/07-08 issued on 2 May 2008. 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 (Finland)
Order, made by the Chief Executive in Council on 22 April 2008,
be approved.

(Translation)

Mutual Legal Assistance in Criminal Matters (Finland) Order

**Draft Speech by the Secretary for Security
for the Resolution on 25 June 2008**

Madam President,

I move that the motion, as printed on the Agenda, on the resolution to make the Mutual Legal Assistance in Criminal Matters (Finland) Order be passed by this Council.

2. Hong Kong has been actively cooperating with other jurisdictions in combating serious crime, and is committed to concluding bilateral agreements with partners who intend to provide closer cooperation in mutual legal assistance in criminal matters. These bilateral agreements ensure reciprocal assistance between the contracting parties, and are conducive to enhancing international cooperation in the fight against transnational crime.

3. The Mutual Legal Assistance in Criminal Matters Ordinance provides the statutory framework for implementing agreements on mutual legal assistance signed between Hong Kong and other jurisdictions, 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 the Mutual Legal Assistance in Criminal Matters (Finland) Order to implement the bilateral agreement on mutual legal assistance in criminal matters signed between Hong Kong and Finland. By applying the Ordinance between Hong Kong and Finland, the Order allows Hong Kong to provide and obtain assistance in accordance with the procedures set out in the Ordinance and the provisions under the agreement. As the legislation and arrangements on mutual legal assistance in criminal matters vary from jurisdiction to jurisdiction, modifying certain provisions of the Mutual Legal Assistance in Criminal Matters Ordinance to reflect the practices of individual jurisdictions in implementing the orders on the bilateral agreements concerned is often required. Such modifications are necessary to enable Hong Kong to discharge its obligations under the bilateral agreements concerned. The modifications made for the bilateral agreement between Hong Kong and Finland are specified in Schedule 2 to the Order. These modifications do not affect that the substantial conformity of the Order with the provisions of the Mutual Legal Assistance in Criminal Matters Ordinance.

5. The Legislative Council set up a Subcommittee in May 2008 to scrutinize the Order. I would like to thank the Subcommittee Chairman, the Honourable James To, and other Members for their comments on the Order.

6. The Subcommittee asked us to explain the scope of assistance that might be provided by a “witness” referred to in Article 15(1) of the bilateral agreement between Hong Kong and Finland on mutual legal assistance in criminal matters. Since the law of Finland permits the transfer of prisoners only if they are to appear as witnesses in the

requesting party, Article 15(1) provides that the requested party may transfer a person in custody to the requesting party as a witness. A “witness” refers to a person who gives evidence in any pre-trial investigation or judicial proceedings of the requesting party. Such assistance is within the scope of assistance permitted under sections 16 and 23 of the Mutual Legal Assistance in Criminal Matters Ordinance.

7. Article 21(2) provides that the Agreement shall apply to offences committed before and after its entry into force. The Subcommittee enquired whether the provision was in conformity with the Mutual Legal Assistance in Criminal Matters Ordinance and the relevant human rights safeguards. We explained that the Mutual Legal Assistance in Criminal Matters Ordinance covers offences committed before and after the entry into force of relevant bilateral agreements. Indeed, the bilateral agreements on mutual legal assistance signed between Hong Kong and many other jurisdictions contain provisions similar to Article 21(2). That provision is consistent with the Mutual Legal Assistance in Criminal Matters Ordinance as well as Hong Kong law concerning human rights.

8. The making of the Mutual Legal Assistance in Criminal Matters (Finland) Order will enable the implementation of the bilateral agreement signed between Hong Kong and Finland on mutual legal assistance in criminal matters. This is important to the strengthening of Hong Kong’s cooperation with foreign jurisdictions in mutual legal assistance in criminal matters.

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

10. Thank you, Madam President.

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