

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 11 March 2009

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

Further to LC Paper No. CB(3) 202/08-09 issued on 4 December 2008, the Secretary for Security has given fresh notice to move three resolutions at the Council meeting of 11 March 2009 under the Mutual Legal Assistance in Criminal Matters Ordinance relating to the following subsidiary legislation respectively:

- (a) the Mutual Legal Assistance in Criminal Matters (Indonesia) Order (in **Appendix I**);
- (b) the Mutual Legal Assistance in Criminal Matters (Japan) Order (in **Appendix II**); and
- (c) the Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order (in **Appendix III**).

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

3. Please note that the above Orders were circulated vide LC Paper No. CB(3) 165/08-09 on 21 November 2008. To economise on the use of paper, the Orders are 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
(Indonesia) Order, made by the Chief Executive in Council on
11 November 2008, be approved.

(Translation)

Mutual Legal Assistance in Criminal Matters (Indonesia) Order

**Draft Speech by the Secretary for Security on the Resolution
at the Legislative Council Meeting on 11 March 2009**

Mister President,

I move that the motion, as printed on the Agenda, on the resolution to make the Mutual Legal Assistance in Criminal Matters (Indonesia) 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 wish to provide closer cooperation with us 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 cross-border 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. Such assistance includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of crime proceeds.

4. Pursuant to the Ordinance, the Chief Executive in Council has made the Mutual Legal Assistance in Criminal Matters (Indonesia) Order to implement the bilateral agreement on mutual legal assistance in criminal matters signed with Indonesia. By applying the Ordinance to the cooperation between Hong Kong and Indonesia, the Order allows Hong Kong to provide and obtain mutual legal assistance in accordance with the procedures set out in the Ordinance and the provisions under the agreement. As the legislation and the arrangements on mutual legal assistance in criminal matters vary from jurisdiction to jurisdiction, it is often necessary for the implementing order of a bilateral agreement to modify certain provisions of the Mutual Legal Assistance in Criminal Matters Ordinance to a limited extent in order to reflect the practices of individual jurisdictions. Such modifications are necessary to enable Hong Kong to discharge its obligations under the relevant bilateral agreement. The modifications made for the bilateral agreement between Hong Kong and Indonesia are specified in Schedule 2 to the Order. These modifications do not affect the substantial conformity of the Order with the provisions of the Mutual Legal Assistance in Criminal Matters Ordinance.

5. The Subcommittee set up by the Legislative Council has completed its scrutiny of the three Orders in respect of the bilateral agreement on mutual legal assistance in criminal matters signed between Hong Kong and Indonesia and similar bilateral agreements that Hong Kong has signed with Japan and Sri Lanka respectively. I would like to thank the Subcommittee chairman, the Honourable James To, and other members of the Subcommittee for giving support to the Administration in the submission of the three Orders to this council for approval.

6. When scrutinising the Mutual Legal Assistance in Criminal Matters (Indonesia) Order, the Subcommittee noted that the Agreement between Hong Kong and Indonesia does not contain a provision that the Requested Party may refuse assistance in respect of offences punishable by death penalty. The Administration explained to the Subcommittee that in accordance with Article 6.1(e) of the Agreement, the Requested Party may refuse assistance in respect of offences punishable by death penalty on the ground that its essential interests would be impaired. Indeed, the bilateral agreements on mutual legal assistance signed between Hong Kong and other jurisdictions such as the USA, Singapore and Malaysia also adopt a similar approach.

7. The making of the Mutual Legal Assistance in Criminal Matters (Indonesia) Order will implement the bilateral agreement signed between Hong Kong and Indonesia 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.

8. I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Indonesia) Order. I will in a moment move the resolutions to make the Mutual Legal Assistance in Criminal Matters (Japan) Order and Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order.

9. Thank you, President.

**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 (Japan)
Order, made by the Chief Executive in Council on
11 November 2008, be approved.

(Translation)

Mutual Legal Assistance in Criminal Matters (Japan) Order

**Draft Speech by the Secretary for Security on the Resolution
At the Legislative Council meeting on 11 March 2009**

President,

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

2. In moving the motion on the resolution to make the Mutual Legal Assistance in Criminal Matters (Indonesia) Order just now, I explained the purpose and importance of concluding bilateral agreements on mutual legal assistance in criminal matters between Hong Kong and other jurisdictions, as well as the procedural arrangements for implementing such bilateral agreements through the making of orders on mutual legal assistance in criminal matters.

3. Pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance, the Chief Executive in Council has made the Mutual Legal Assistance in Criminal Matters (Japan) Order to implement the bilateral agreement on mutual legal assistance in criminal matters signed between Hong Kong and Japan. As specified in Schedule 2 of the Order, certain provisions of the Mutual Legal Assistance in Criminal Matters Ordinance are modified to a limited extent to reflect the practices of Japan. Such modifications do not affect the substantial conformity of the Order with the provisions of the Mutual Legal Assistance in Criminal Matters Ordinance.

4. During its scrutiny of the Mutual Legal Assistance in Criminal Matters (Japan) Order, the Subcommittee set up by the Legislative Council noted the Agreement between Hong Kong and Japan does not contain a provision that the Requested Party may refuse assistance in respect of offences punishable by death penalty. The Administration explained to the Subcommittee that in accordance with Article 3(1)(2) of the Agreement, the Requested Party may refuse assistance in respect of offences punishable by death penalty on the ground that its essential interests would be impaired. Indeed, the bilateral agreement on mutual legal assistance signed between Hong Kong and Indonesia adopts the same approach.

5. Furthermore, the Subcommittee noted that the Agreement between Hong Kong and Japan does not provide that a person who consents to give evidence is immune from liability to any civil lawsuit. According to our understanding, such immunity is not available under the law of Japan. Sections 17(1)(iv) and (v), 19 and 23(2)(b) of the Mutual Legal Assistance in Criminal Matters Ordinance contain safeguards to protect the legal rights of a witness transferred to or from Hong Kong. In practice, the legal position of the witness is governed by the domestic law of the Requesting Party. Moreover, the transfer may take place only with the agreement of the person to be transferred. The bilateral agreements on mutual legal assistance signed between Hong Kong and other jurisdictions such as the UK, Denmark and Germany also do not provide that a person who consents to give evidence is immune from liability to any civil lawsuit.

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

7. Thank you, President.

**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 (Sri Lanka) Order, made by the Chief Executive in Council on 11 November 2008, be approved.

(Translation)

Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order

**Draft Speech by the Secretary for Security on the Resolution
At the Legislative Council meeting on 11 March 2009**

President,

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

2. In moving the motion on the resolution to make the Mutual Legal Assistance in Criminal Matters (Indonesia) Order just now, I explained the purpose and importance of concluding bilateral agreements on mutual legal assistance in criminal matters between Hong Kong and other jurisdictions, as well as the procedural arrangements for implementing such bilateral agreements through the making of orders on mutual legal assistance in criminal matters.

3. Pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance, the Chief Executive in Council has made the Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order to implement the bilateral agreement on mutual legal assistance in criminal matters signed between Hong Kong and Sri Lanka. As specified in Schedule 2 of the Order, certain provisions of the Mutual Legal Assistance in Criminal Matters Ordinance are modified to a limited extent to reflect the

practices of Sri Lanka. Such modifications do not affect the substantial conformity of the Order with the provisions of the Mutual Legal Assistance in Criminal Matters Ordinance.

4. During its scrutiny of the Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order, the Subcommittee set up by the Legislative Council noted that the Agreement between Hong Kong and Sri Lanka does not provide that a person who consents to give evidence is immune from liability to any civil lawsuit. According to our understanding, such immunity is not available under the law of Sri Lanka. Sections 17(1)(iv) and (v), 19 and 23(2)(b) of the Mutual Legal Assistance in Criminal Matters Ordinance contain safeguards to protect the legal rights of a witness transferred to or from Hong Kong. In practice, the legal position of the witness is governed by the domestic law of the Requesting Party. Moreover, the transfer may take place only with the agreement of the person to be transferred. The bilateral agreements on mutual legal assistance signed between Hong Kong and Japan and other jurisdictions such as the UK, Denmark and Germany also do not provide that a person who consents to give evidence is immune from liability to any civil lawsuit.

5. I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order.

6. Thank you, President.