

立法會
Legislative Council

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Tel : 2869 9205

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 7 July 2010

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

Further to LC Paper No. CB(3) 691/09-10 issued on 12 May 2010, the Secretary for Security has given fresh notice to move a resolution at the Council meeting of 7 July 2010 under the Mutual Legal Assistance in Criminal Matters Ordinance relating to the Mutual Legal Assistance in Criminal Matters (South Africa) 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 was circulated vide LC Paper No. CB(3) 643/09-10 issued on 3 May 2010. 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 (South
Africa) Order, made by the Chief Executive in Council on 20 April
2010, be approved.

(Translation)

**Mutual Legal Assistance in Criminal Matters
(South Africa) Order**

**Draft Speech by the Secretary for Security
on the Resolution
at the Legislative Council Meeting on 7 July 2010**

Mr President,

I move that the motion on the resolution to make the Mutual Legal Assistance in Criminal Matters (South Africa) 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 have 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 (South Africa) Order to implement the bilateral agreement on mutual legal assistance in criminal matters signed with South Africa. By applying the Ordinance to the cooperation between Hong Kong and South Africa, 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 South Africa 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 Legal Assistance in Criminal Matters (South Africa) Order. I would like to thank the Subcommittee for giving support to the Administration in the submission of the Order to this council for approval.

6. When scrutinizing the Legal Assistance in Criminal Matters (South Africa) Order, the Subcommittee noted that the principle of double criminality is only applicable to a request made by South Africa to Hong Kong as specified in Article 3(1)(i) of the Agreement between Hong Kong and South Africa. The Administration explained to the Subcommittee that this provision was added at the request of South Africa. As there is no double criminality requirement in South Africa, South

Africa should not refuse assistance even if Hong Kong made a request relating to an offence the act or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of South Africa, have constituted an offence.

7. In accordance with Article 4(4) of the Agreement between Hong Kong and South Africa, the Requested Party shall use its best efforts to keep confidential a request and its contents. The Subcommittee enquired how the above requirement be implemented in practice given that the proceedings were normally held in open court in Hong Kong. The Administration explained to the Subcommittee that the request would not be submitted to the court and its contents would not be disclosed unless the court made an order for disclosure. Further, proceedings relating to the taking of evidence or the production of thing for the purposes of a criminal matter would normally be held in open court except under certain circumstances as provided in section 10(3) of the Mutual Legal Assistance in Criminal Matters Ordinance.

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

10. Thank you, President.