

立法會
Legislative Council

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Tel : 2869 9205

Date : 26 April 2011

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 11 May 2011

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

Further to LC Paper No. CB(3) 574/10-11 issued on 14 March 2011, the Secretary for Security has given fresh notice to move at the Council meeting of 11 May 2011 a proposed resolution under the Mutual Legal Assistance in Criminal Matters Ordinance relating to the Mutual Legal Assistance in Criminal Matters (India) 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 for Members’ consideration. The speech, in both Chinese and English, which the Secretary will deliver when moving the proposed resolution is also attached.

3. Please note that the above Order was provided to Members vide LC Paper No. CB(3) 519/10-11 issued on 25 February 2011. To economize on the use of paper, the Order is not attached to this paper.

(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 (India) Order, made by the Chief Executive in Council on 15 February 2011, be approved.

Mutual Legal Assistance in Criminal Matters (India) Order

**Draft Speech by the Secretary for Security
on the Resolution
at the Legislative Council Meeting on 11 May 2011**

Mr President,

I move that the motion on the resolution to make the Mutual Legal Assistance in Criminal Matters (India) 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 (India) Order to implement the bilateral agreement on mutual legal assistance in criminal matters signed with India. By applying the Ordinance to the cooperation between Hong Kong and India, 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 India are specified in Schedule 2 to the Order. They are also summarized in Schedule 3 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 (India) 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. In examining the Legal Assistance in Criminal Matters (India) Order, the Subcommittee noted that Article IV(3) of the Model Agreement, which is related to death penalty, has not been included in the Agreement between Hong Kong and India. We have explained to the Subcommittee that the HKSAR Government and the government of the Republic of India have agreed that the Requested Party may refuse providing assistance in death penalty cases on the ground of 'essential

interest' under Article IV(1)(b) of the Agreement.

7. The Subcommittee also expressed concern about the possible broad scope of the additional questions put to the witness or person giving evidence by the competent authority of the Requested Party under Article X(4) of the Agreement, which may even be out of the original scope of questions specified in Article X(3). We have explained to the Subcommittee that Article X(4) of the Agreement refers to questions additional to those specified under Article X(3), and it has to be read in the context of Article X(3) so that any additional questions raised under Article X(4) should be within the original scope of questions specified under Article X(3).

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

10. Thank you, President.