

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 24 November 2006**

**Legal Service Division Report on
Proposed Resolution under section 4 of the Mutual Legal Assistance in
Criminal Matters Ordinance (Cap. 525)**

The Secretary for Security ("the Secretary") has given notice to move a motion at the Legislative Council meeting of 6 December 2006 to seek the approval of the Legislative Council for the making of the Mutual Legal Assistance in Criminal Matters (Germany) Order ("the Order") under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("the Ordinance") by the Chief Executive in Council on 14 November 2006.

2. Section 4(1) of the Ordinance provides that the Chief Executive in Council may, with the approval of the Legislative Council, in relation to any arrangements for mutual legal assistance, by order to which is annexed a copy of the arrangements direct that the Ordinance shall, subject to such modifications thereto as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate. Section 4(3) provides that the modifications shall be summarized in a schedule to the order. In the Order, the modifications are summarized in Schedule 2.

3. Section 4(2) of the Ordinance provides that the Chief Executive in Council shall not make an order unless the arrangements for mutual legal assistance are substantially in conformity with the provisions of the Ordinance. Section 4(7) restricts the Legislative Council's power to amend such an order so that the Legislative Council may only repeal the whole order but not amend any part of it.

The Order

4. The Order is made in consequence of the agreement between the HKSAR Government and the Government of the Federal Republic of Germany made in Hong Kong on 26 May 2006 ("the Agreement"). It is set out in Schedule 1 to the Order. The Order provides the statutory framework for implementing the mutual legal assistance arrangements in the investigation and prosecution of criminal offences and in proceedings related to criminal matters, such as the taking of evidence, search and seizure, location of persons and objects, etc.

Schedule 1

5. Schedule 1 to the Order specifies the scope and procedures in relation to the provision of mutual legal assistance in different aspects.

Schedule 2

6. Section 5(1)(e) of the Ordinance provides that the Secretary for Justice shall refuse assistance to a place outside Hong Kong if the request relates to the prosecution of a person for an external offence in a case where a person has been convicted, acquitted or pardoned by a competent court or other authority or the person has undergone the punishment provided by the law of that place in respect of that offence or of another external offence constituted by the same act or omission. The modifications to section 5(1)(e) reflect the provision in Article 4(1)6 of the Agreement which extends the Secretary for Justice's power to refuse to assist to the case where a person has been convicted, acquitted, pardoned or has undergone punishment of the offence in the requested jurisdiction, i.e. Hong Kong.

7. Section 17 of the Ordinance provides certain immunities to a person who comes to Hong Kong from another jurisdiction to render assistance in a criminal matter. The amendment to section 17(3)(b) is to reflect Article 16(3) of the Agreement which provides that such immunities shall cease when the person has been notified by the Requesting Party that his presence is no longer required and having had, for a period of 15 consecutive days from the date of notification, an opportunity to leave has nevertheless remained in the jurisdiction of the Requesting Party or having left the jurisdiction of the Requesting Party has returned.

8. According to the LegCo Brief (File Ref.: SBCR3/5691/95 Pt. 36 and SBCR1/2716/89 (98) Pt. 22), the Order deletes section 17(1)(ii) and section 23(2)(a)(ii) as these immunities are not available under the German Law.

9. Members may refer to the above mentioned LegCo Brief for more background information.

10. Section 1 of the Order provides that it will come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

11. The Panel on Security has not been consulted on the Order.

12. The Legal Service Division will ask the Administration to clarify certain matters in relation to the drafting of the Order. A further report will be provided if necessary.

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