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Date : 17 May 2007

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 6 June 2007

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

I forward for Members' consideration a proposed resolution which the Secretary for Security will move at the Council meeting of 6 June 2007 under the Mutual Legal Assistance in Criminal Matters Ordinance relating to the Mutual Legal Assistance in Criminal Matters (Malaysia) 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 speech, in both English and Chinese versions, which the Secretary for Security will deliver when moving the proposed resolution, is also 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 (Malaysia)
Order, made by the Chief Executive in Council on
8 May 2007, be approved.

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (MALAYSIA) ORDER

(Made by the Chief Executive in Council under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) subject to the approval of the Legislative Council)

1. Commencement

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Ordinance to apply between Hong Kong and Malaysia

In relation to the arrangements for mutual legal assistance a copy of which is annexed at Schedule 1, it is directed that the Ordinance shall, subject to the modifications specified in Schedule 2, apply as between Hong Kong and Malaysia.

SCHEDULE 1

[s. 2]

AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF MALAYSIA CONCERNING MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region") having been duly authorised by the Central People's Government of the People's Republic of China to conclude this Agreement and the Government of Malaysia (hereinafter referred to singularly as "the Party" and collectively as "the Parties");

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution and prevention of crime and tracing, restraint and forfeiture of the proceeds and instrumentalities of crime through co-operation and mutual legal assistance in criminal matters;

Have agreed as follows:

PART I – GENERAL PROVISIONS

ARTICLE 1

SCOPE OF ASSISTANCE

(1) The Parties shall, in accordance with the provisions of this Agreement and in conformity with their respective laws, render to one another the widest measure of mutual legal assistance in connection with investigations, prosecutions and proceedings that pertain to offences over which the Requesting Party has jurisdiction at the time the assistance is requested.

(2) Assistance shall include:

- (a) locating and identifying witnesses and suspects;
- (b) serving of judicial documents;

- (c) obtaining of statements and evidence from persons;
- (d) executing requests for search and seizure;
- (e) facilitating the attendance of persons to give evidence or assistance in relation to criminal matters;
- (f) arranging the temporary transfer of persons in custody to give evidence or assistance in relation to criminal matters;
- (g) providing information, documents, articles and records (including judicial and official records and bank, financial, corporate and business records);
- (h) identifying, tracing, restraining, seizing, recovering, forfeiting and confiscating proceeds and instrumentalities of criminal activities;
- (i) lending of exhibits;
- (j) examining objects and sites; and
- (k) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.

(3) In the case of requests related to the investigation of taxation offences assistance shall be refused if the primary purpose of the investigation is the assessment or collection of tax.

(4) This Agreement is intended solely for mutual legal assistance between the Parties. The provisions of the Agreement shall not give rise to any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

ARTICLE 2

NON-APPLICATION

- (1) This Agreement does not apply to -
- (a) the arrest or detention of any person with a view to the surrender of that person;
 - (b) the enforcement in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party;
 - (c) the transfer of persons in custody to serve sentences; and
 - (d) the transfer of proceedings in criminal matters.
- (2) This Agreement does not authorise either Party to undertake, in the territory of the other, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of the other Party by its law.

ARTICLE 3

CENTRAL AUTHORITIES

- (1) Each Party shall designate a Central Authority to make and receive requests pursuant to this Agreement.
- (2) Requests pursuant to this Agreement shall be made and received through the Consulate-General of Malaysia in the Hong Kong Special Administrative Region.
- (3) The Central Authorities of the Parties shall process requests for mutual legal assistance in accordance with the provisions of this Agreement.
- (4) The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or a person authorised by the Secretary for Justice. For Malaysia, the Central Authority shall be the Attorney General or a person designated by the Attorney General. Either Party may change its Central Authority in which case it shall notify the other of the change.
- (5) The Central Authorities may communicate directly with each other for the purposes of this Agreement.

ARTICLE 4

LIMITATIONS ON COMPLIANCE

- (1) The Requested Party shall refuse assistance if:
 - (a) the granting of the request would, in the case of the Hong Kong Special Administrative Region, impair the sovereignty, security or public order of the People's Republic of China, or, in the case of Malaysia, impair the sovereignty, security or public order of Malaysia;

- (b) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;
- (c) the request for assistance relates to an offence only under military law;
- (d) there are substantial grounds for believing that the request for assistance was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of his race, religion, sex, ethnic origin, nationality or political opinions;
- (e) the request for assistance relates to the investigation, prosecution or punishment of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requesting Party or has undergone the punishment provided by the law of that Party;
- (f) it is of the opinion that the granting of the request would seriously impair its essential public interests;
- (g) the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence against the law of the Requested Party;
- (h) the Central Authority of the Requesting Party fails to undertake that the item requested will not be used for a matter other than the criminal matter in respect of which the request was made and the

Central Authority of the Requested Party has not consented to waive such undertaking;

- (i) the Central Authority of the Requesting Party fails to undertake to return to the Central Authority of the Requested Party, upon its request, any item that may be obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;
- (j) the provision of the assistance would require steps to be taken that would be contrary to the law of the Requested Party.

(2) The Requested Party may refuse assistance if the Requested Party is of the opinion that the provision of assistance could prejudice the safety of any person or impose an excessive burden on the resources of the Requested Party.

(3) The Requested Party may refuse assistance if the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided.

(4) The Requested Party may postpone assistance if execution of the request would interfere with or prejudice an ongoing investigation or prosecution in the Requested Party.

(5) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority –

- (a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and

(b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

(6) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (5)(b), it shall comply with those terms and conditions.

ARTICLE 5

REQUESTS

(1) Requests shall be made in writing or, where possible, by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity. In urgent situations and where permitted by the law of the Requested Party, requests may be made orally, but in such cases the requests shall be confirmed in writing within ten days.

(2) Central Authorities shall deal with the transmission of all requests and any communication related thereto. In urgent situations and where permitted by the law of the Requested Party, requests and any communication related thereto may be transmitted through the International Criminal Police Organization (INTERPOL).

ARTICLE 6

CONTENTS OF REQUESTS

(1) Requests for assistance shall include:

- (a) the name of the requesting office and the competent authority conducting the investigation or criminal proceedings to which the request relates;
- (b) a description of the purpose of the request and the nature of the assistance requested including particulars of the evidence, information or other assistance sought;
- (c) a description of the nature of the investigation, prosecution and offence including the maximum penalty for such offence and whether or not proceedings have been instituted;
- (d) in the event that proceedings have been instituted, details of the proceedings;
- (e) a summary of the relevant facts including a description of the facts alleged to constitute the offence and a statement or text of the relevant laws;
- (f) any requirements for confidentiality and the reasons for it;
- (g) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed;
- (h) specification of any time limit within which compliance with the request is desired; and
- (i) any other information which is required to facilitate execution of the request.

(2) Requests for assistance may also, to the extent necessary, contain the following information:

- (a) the identity, nationality and location of the person or persons who are the subject of the investigation or criminal proceedings;
- (b) the identity and location of any person from whom evidence is sought;
- (c) the identity and location of a person to be served, that person's relationship to the criminal proceedings, and the manner in which service is to be made;
- (d) information on the identity and whereabouts of a person to be located;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked of a witness;
- (g) a description of the documents, records or items of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;
- (h) a statement as to whether sworn or affirmed evidence or statements are required;

- (i) a description of the property, asset or article to which the request relates, including its identity and location; and
- (j) any court order relating to the assistance requested and a statement relating to the finality of that order.

(3) The request, all documents submitted in support of the request and other communications made pursuant to this Agreement shall, if they are not in English, be accompanied by a translation into English.

(4) If the Central Authority of the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, the Central Authority may request additional information. The Requesting Party shall supply such additional information as the Requested Party considers necessary to enable the request to be fulfilled.

ARTICLE 7

EXECUTION OF REQUESTS

(1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.

(2) A request shall be executed in accordance with the law of the Requested Party and, to the extent not prohibited by the law of the Requested Party, in accordance with the directions stated in the request so far as practicable.

(3) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

(4) The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.

(5) The Requested Party shall use its best efforts to keep confidential a request and its contents except to the extent necessary to execute it.

(6) The Central Authority of the Requested Party shall respond within a reasonable period to reasonable inquiries by the Central Authority of the Requesting Party concerning progress toward execution of the request.

(7) The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the law and practice of the Requested Party in order to give effect to the request received from the Requesting Party.

ARTICLE 8

LIMITATIONS ON USE

(1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished, including documents, articles or records, be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

(2) The Requesting Party shall not disclose or use information or evidence furnished, including documents, articles or records, for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.

(3) In an investigation, prosecution or proceeding where the charge is altered, the information or evidence provided may continue to be used in that investigation, prosecution or proceeding so far as the offence, as charged, is an offence in respect of which mutual legal assistance could be provided under this Agreement.

ARTICLE 9

PROTECTION OF CONFIDENTIALITY AND RESTRICTION ON USE OF EVIDENCE AND INFORMATION

(1) The Requested Party shall, upon request and to the extent permitted by its law, use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting of such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching the confidentiality requirements stated in the request, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

(2) The Requesting Party shall, upon request and to the extent permitted by its law, keep confidential evidence and information provided by the Requested Party, except to the extent that the evidence and information is needed for the investigation and criminal proceedings described in the request.

PART II – FORMS OF ASSISTANCE

ARTICLE 10

OBTAINING OF EVIDENCE

(1) Where a request is made that evidence be taken for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter in the

jurisdiction of the Requesting Party, the Requested Party shall arrange to have such evidence taken.

(2) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, articles or records.

(3) For the purposes of requests under this Article, the Requesting Party shall specify the questions to be put to the witnesses or the subject matter about which they are to be examined.

(4) Where evidence is to be taken, pursuant to a request for assistance under this Article, the person to whom the investigation, prosecution or proceeding in the Requesting Party relates, the person who is to give evidence and representatives of the Requesting Party may, subject to the law of the Requested Party, appear or have legal representation or both for the purpose of questioning the person giving the evidence.

(5) A person who is required to give evidence in the Requested Party pursuant to a request for assistance may decline to do so where either:

(a) the law of the Requested Party would permit or require that witness to decline to give evidence in similar circumstances in proceedings which originated in the Requested Party; or

(b) the law of the Requesting Party would permit or require him to decline to give evidence in such proceedings in the Requesting Party.

(6) If any person claims that there is a right to decline to give evidence under the law of the Requesting Party, the Requested Party shall with respect

thereto rely on a certificate of the Central Authority of the Requesting Party.

ARTICLE 11

TAKING OF TESTIMONY BY VIDEO OR TELEVISION LINK

The Parties may agree on a case by case basis to the use of live video or television links or other appropriate communications and multimedia facilities in accordance with the law and procedure of the Requested Party for the purpose of executing this Agreement if it is expedient in the interest of justice to do so.

ARTICLE 12

LOCATION OR IDENTIFICATION OF PERSONS

The Requested Party shall, if requested, use its best endeavours to ascertain the location or identity of any person specified in the request.

ARTICLE 13

SERVICE OF DOCUMENTS

- (1) The Requested Party shall use its best endeavours to effect service of any document transmitted to it for the purpose of service.
- (2) The Requesting Party shall transmit a request for the service of a document that requires a response or appearance in the Requesting Party within a reasonable time before the scheduled response or appearance.
- (3) A request for the service of a document pertaining to an appearance in the Requesting Party shall include such notice as the Central Authority of the

Requesting Party is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.

(4) The Requested Party shall, subject to its law, return a proof of service in the manner required by the Requesting Party.

(5) A person who fails to comply with any process served on him shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or Requested Party.

(6) For the purposes of paragraph (4), the expression “proof of service” includes information in the form of an affidavit on when and how the document was served and, where possible, a receipt signed by the person on whom it was served and if the serving officer has not been able to cause the document to be served, that fact and the reason for the failure.

ARTICLE 14

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

(1) The Requested Party shall provide the Requesting Party with copies of publicly available documents, including documents or information in any form, in the possession of government departments and agencies in the Requested Party.

(2) The Requested Party may, to the extent permitted by its law, provide the Requesting Party with copies of any records, including documents or information in any form, that are in the possession of a government department or agency in the Requested Party but that are not publicly available. The Requested Party may in its discretion deny, entirely or in part, a request pursuant to this paragraph.

ARTICLE 15

ATTENDANCE OF PERSONS IN THE REQUESTING PARTY

- (1) The Requesting Party may request the assistance of the Requested Party in inviting a person to attend in the Requesting Party to provide assistance pursuant to this Agreement.
- (2) Upon receipt of such a request the Requested Party shall invite the person to travel to the Requesting Party and inform the Requesting Party of the person's response.
- (3) Where a person is asked to attend in the Requesting Party, the request shall contain information on the following matters:
 - (a) the fees, allowances and expenses, if any, to which he will be entitled;
 - (b) the arrangements for his security while he is travelling to and from the Requesting Party and while he is in the Requesting Party, if any; and
 - (c) the arrangements for his accommodation while he is in the Requesting Party.

ARTICLE 16

ATTENDANCE OF PERSONS IN CUSTODY IN THE REQUESTING PARTY

(1) A person in custody in the Requested Party whose attendance is requested in the Requesting Party for the purposes of providing assistance pursuant to this Agreement shall, if the Requested Party consents and to the extent permitted by its law, be temporarily transferred from the Requested Party to the Requesting Party for that purpose, provided the person consents and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.

(2) Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst the person is in the Requesting Party, the Requested Party shall so advise the Requesting Party which shall ensure the person's release from custody and the person shall be treated as a person referred to in Article 15 of this Agreement.

(3) The Requesting Party shall not require the Requested Party to initiate proceedings for the surrender of the person transferred.

(4) The period during which such person was under the custody of the Requesting Party shall count towards the period of his imprisonment or detention in the Requested Party.

(5) No transfer under this Article shall be effected unless the Central Authority of the Requesting Party gives an undertaking –

- (a) to bear and be responsible for all the expenses of the transfer of custody;
- (b) to keep the person under lawful custody throughout the transfer of his custody; and

- (c) to return him into the custody of the Requested Party immediately upon his attendance before the competent authority or court in the Requesting Party is dispensed with.

ARTICLE 17

SAFE CONDUCT

(1) Where a person is present in the Requesting Party pursuant to a request made under Article 15 or 16 of this Agreement –

- (a) that person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party in respect of any acts or omissions or convictions for any offence against the law of the Requesting Party that is alleged to have been committed, or that was committed, before the person's departure from the Requested Party;
- (b) that person shall not be subjected to any civil suit (being a civil suit to which the person could not be subject if he were not in the Requesting Party) in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from the Requested Party.

(2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article 16, and being free to leave, has not left the Requesting Party within a period of 15 consecutive days after being notified that his presence is no longer required, or having left the Requesting Party, has returned.

(3) A person who consents to give evidence under Article 15 or 16 shall not be subjected to prosecution based on his testimony, except for perjury or contempt of court.

(4) A person who consents to provide assistance pursuant to Article 15 or 16 shall not be required to provide assistance in any proceedings other than the proceedings to which the request relates.

(5) A person who does not consent to provide assistance pursuant to Article 15 or 16 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

ARTICLE 18

SEARCH AND SEIZURE

(1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any material to the Requesting Party which is relevant to an investigation, prosecution or proceeding in relation to a criminal matter and provided that the rights of *bona fide* third parties are protected.

(2) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure and the subsequent custody of the property seized.

(3) The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

ARTICLE 19

PROCEEDS AND INSTRUMENTALITIES OF CRIME

(1) The Requested Party shall, upon request, use its best endeavours to identify or locate any proceeds or instrumentalities of crime located within its jurisdiction or to ascertain whether any such proceeds or instrumentalities are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds or instrumentalities may be located in its jurisdiction.

(2) Where pursuant to paragraph (1) suspected proceeds or instrumentalities of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds or instrumentalities of crime, pending a final determination in respect of those proceeds or instrumentalities by a court of the Requesting Party.

(3) Where a request is made for assistance in securing the forfeiture or confiscation of proceeds or instrumentalities of crime, such request shall be executed pursuant to the law of the Requested Party. This may include enforcing an order made by a court in the Requesting Party.

(4) Proceeds or instrumentalities of crime forfeited or confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.

(5) In the application of this Article, the rights of *bona fide* third parties shall be respected to the extent permitted by the law of the Requested Party.

(6) For the purposes of this Agreement –

“proceeds of crime” includes –

- (a) property derived or realized directly or indirectly from the commission of an offence; and
- (b) property which represents the equivalent value of the property and other benefits derived from the commission of an offence;

“instrumentalities of crime” means property used or intended to be used in connection with the commission of an offence or the equivalent value of such property.

ARTICLE 20

RETURN OF EVIDENCE

(1) The Requesting Party shall, upon request, at the conclusion of the criminal matter in respect of which the request for assistance was made return to the Requested Party any evidence, including documents, records or items, provided to the Requesting Party pursuant to a request under this Agreement.

(2) Notwithstanding paragraph (1), the Requesting Party shall at any time, upon request, temporarily return to the Requested Party any evidence, including documents, records or items, provided to the Requesting Party pursuant to a request under this Agreement if it is needed for an investigation or criminal proceedings in the Requested Party.

PART III – FINAL PROVISIONS

ARTICLE 21

CERTIFICATION AND AUTHENTICATION

(1) Documents or other material which are to be transmitted to the Requesting Party shall only be certified or authenticated if the Requesting Party so requests. Documents or other material shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

(2) A document or other material is duly authenticated for the purposes of this Agreement if -

(a) it purports to be signed or certified by a judge, magistrate, or officer of the Requested Party duly authorised by the law of the Requested Party; and

(b) either –

(i) it is verified by the oath or affirmation of a witness, or of an officer of the government of the Requested Party; or

(ii) it purports to be sealed with an official or public seal of the Requested Party or of a Minister of State, or of a department or officer of the government, of the Requested Party.

(3) Nothing in this Article shall prevent the proof of any matter or the admission in evidence of any document or other material in accordance with the law of the Requesting Party.

(4) To the extent permitted by the law of each Party -

- (a) a document signed with a digital or electronic signature in accordance with the law of the Party concerned shall be as legally binding as a document signed with a handwritten signature, an affixed thumb-print or any other mark; and
- (b) a digital or electronic signature created in accordance with the law of the Party concerned shall be deemed to be a legally binding signature.

ARTICLE 22

REPRESENTATION AND EXPENSES

- (1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
- (2) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:
 - (a) fees of counsel retained at the request of the Requesting Party;
 - (b) the fees and expenses of expert witnesses;
 - (c) the costs of translation, interpretation and transcription; and
 - (d) travel expenses and allowances of persons who travel between the Requesting and Requested Parties.
- (3) If during the execution of the request it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfil the request, the

Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

(4) The cost of establishing live video or television links or other appropriate communications and multimedia facilities, the costs related to the servicing of live video or television links or other appropriate communications and multimedia facilities, the remuneration of interpreters provided by the Requested Party and allowances to witnesses and their travelling expenses in the Requested Party shall be refunded by the Requesting Party to the Requested Party, unless the Parties mutually agree otherwise.

ARTICLE 23

COMPATIBILITY WITH OTHER ARRANGEMENTS

(1) The Parties may provide assistance pursuant to other agreements, arrangements or practices.

(2) Unless the Parties mutually agree otherwise, this Agreement shall not be interpreted as affecting or restricting obligations in effect between the Parties under any other international, bilateral or multilateral treaty or arrangement that contains or might contain clauses governing specific aspects of international criminal judicial assistance, wholly or in part, or more favourable practices which those Parties might observe in this matter.

ARTICLE 24

CONSULTATION

(1) The Central Authorities of the Parties shall consult, at times mutually agreed upon by them, to promote the most effective use of this Agreement.

(2) The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Agreement.

ARTICLE 25

AMENDMENT

(1) This Agreement may be modified or amended at any time by mutual written consent of the Parties. Such modification or amendment will enter into force on such date as may be mutually agreed upon by the Parties and will form part of the Agreement.

(2) Any modification or amendment will be without prejudice to the rights and obligations arising from or based on this Agreement before or up to the date such modification or amendment enters into force.

ARTICLE 26

SETTLEMENT OF DISPUTES

Any dispute arising from the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

ARTICLE 27

ENTRY INTO FORCE AND TERMINATION

(1) This Agreement shall enter into force 30 days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.

(2) This Agreement shall apply to requests presented after the date of its entry into force whether the relevant acts or omissions constituting the offence occurred before or after that date.

(3) Either Party may terminate this Agreement at any time by giving written notification to the other. In that event, the Agreement shall cease to have effect six months following the date of notification.

(4) Requests for assistance which have been received prior to termination of this Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement were still in force. Termination of the Agreement shall be without prejudice to the rights and obligations arising from or based on the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments have signed this Agreement.

Done in duplicate at Hong Kong, this 17th day of October Two thousand and six, in the Chinese, English and Malay languages, each text being equally authentic. In the event of any divergence in interpretation between any of the texts, the English text shall prevail.

SCHEDULE 2

[s. 2]

MODIFICATIONS TO THE ORDINANCE

Section 17(3)(b) of the Ordinance shall be modified to read as follows –

“(b) the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 consecutive days after being notified that his presence is no longer required for any of the following purposes* ~~has had an opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for~~ ** –

- (i) the purpose to which the request relates; ~~or~~**
- (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Secretary for Justice to be a criminal matter in relation to which it is desirable that the person give assistance.”.

* The words underlined are added. (The underlining is for ease of identifying the modification).

** The words crossed out are deleted. (The crossing out is for ease of identifying the modification).

Clerk to the Executive Council

COUNCIL CHAMBER

8 May 2007

Explanatory Note

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (“the Ordinance”) shall apply as between Hong Kong and Malaysia. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the Government of the Hong Kong Special

Administrative Region and the Government of Malaysia and signed in Hong Kong on 17 October 2006. A copy of those arrangements is annexed at Schedule 1 to the Order. The Ordinance is to apply subject to the modifications specified in Schedule 2 to the Order.

(Translation)

Mutual Legal Assistance in Criminal Matters (Malaysia) Order

**Draft Speech by the Secretary for Security on the Resolution
at the Legislative Council Meeting on 6 June 2007**

Madam President,

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

2. Hong Kong is fully committed to international cooperation in combating serious crimes, and has been expanding the network of bilateral agreements with other jurisdictions on mutual legal assistance in criminal matters. These agreements enhance international cooperation in the fight against transnational crimes and ensure reciprocal assistance between the contracting parties. We have so far signed 21 such bilateral agreements with other jurisdictions.

3. The Mutual Legal Assistance in Criminal Matters Ordinance provides the necessary statutory framework for implementing mutual legal assistance arrangements, 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 (Malaysia) Order to implement our bilateral agreement on mutual legal assistance in criminal matters signed with Malaysia. By applying the arrangements prescribed in the Ordinance between Hong Kong and Malaysia, the Order allows assistance to be provided or obtained in accordance with the procedures set out in the Ordinance and the provisions set out in the agreement. The Order is substantially in conformity with the provisions of the Ordinance. As legislation and arrangements on mutual legal assistance in criminal matters vary from jurisdiction to jurisdiction, it is necessary for the relevant orders to modify some of the provisions of the Ordinance to reflect the practices of individual jurisdictions. Such modifications are necessary to enable Hong Kong to discharge its obligations under the agreement concerned. The modifications made for the bilateral agreement with Malaysia are specified in Schedule 2 to the Order.

5. To strengthen our cooperation with foreign jurisdictions in criminal justice and international law enforcement, it is important for the Order to be made to enable the bilateral agreement to be brought into force.

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

7. Thank you, Madam President.

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