

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL  
MATTERS ORDINANCE**

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**RESOLUTION**

(Under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance  
(Cap. 525))

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**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.

## **MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (SRI LANKA) 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 Sri Lanka**

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 the Democratic Socialist Republic of Sri Lanka.

#### 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 THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA CONCERNING MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

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 and the Government of the Democratic Socialist Republic of Sri Lanka, (hereinafter referred to as "the Parties"),

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution and prevention of crime and the confiscation of criminal proceeds;

Have agreed as follows :

## ARTICLE 1

### SCOPE OF ASSISTANCE

(1) The Parties shall provide, in accordance with the provisions of this Agreement, mutual assistance in the investigation and prosecution of criminal offences and in proceedings related to criminal matters.

(2) Assistance shall include:

- (a) identifying and locating persons;
- (b) serving of documents;
- (c) the obtaining of statements and evidence from persons;
- (d) executing requests for search and seizure;
- (e) facilitating the personal appearance of persons to provide assistance;
- (f) effecting the temporary transfer of persons in custody to provide assistance;

- (g) providing information, documents, articles and records (including judicial and official records);
- (h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities;
- (i) delivery of property, including the restitution of property and lending of exhibits; and
- (j) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.

(3) Assistance under this Agreement may be granted in connection with offences against a law related to taxation, customs duties or other revenue matters but not in connection with non-criminal proceedings relating thereto.

(4) This Agreement is intended solely for mutual assistance between the Parties. The provisions of this 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

### CENTRAL AUTHORITY

(1) The Central Authorities of the Parties shall process requests for mutual legal assistance in accordance with the provisions of this Agreement.

(2) The Central Authority of the Hong Kong Special Administrative Region is the Secretary for Justice or his or her duly authorised officer. The Central

Authority for Sri Lanka is the Secretary to the Ministry of the Minister in charge of the subject of Justice or his or her duly authorised officer. Either Party may change its Central Authority in which case it shall notify the other of the change.

(3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.

### ARTICLE 3

#### OTHER ASSISTANCE

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

### ARTICLE 4

#### LIMITATIONS ON COMPLIANCE

- (1) The Requested Party may, and shall if required by its law, refuse assistance if:
- (a) the granting of the request would, in the case of the Hong Kong Special Administrative Region, impair the sovereignty of the People's Republic of China or the security or public order of the People's Republic of China or any part thereof, or, in the case of Sri Lanka, impair the sovereignty, security or public order of Sri Lanka;
  - (b) the request for assistance relates to an offence of a political character;

- (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 will result in a person being prejudiced on account of his race, religion, nationality or political opinions;
- (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party or Requesting Party or for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the Requested Party or Requesting Party;
- (f) it is of the opinion that the granting of the request would seriously impair its essential 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.

(2) Paragraph (1)(b) of this Article does not apply to an offence which the Requested Party considers excluded from being a political offence by any international Agreement that applies to the Parties.

(3) For the purpose of paragraph (1)(f) the Requested Party may include in its consideration of essential interests whether the provision of assistance could prejudice the safety of any person or impose an excessive burden on the resources of the Requested Party.

(4) The Requested Party may refuse assistance if the request relates to an offence which carries the death penalty in the Requesting Party but in respect of which the death penalty is either not provided for in the Requested Party or not normally carried out unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be imposed or, if imposed, not carried out.

(5) 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.

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

(7) 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.

(8) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (7)(b), it shall comply with those terms and conditions.

## ARTICLE 5

### REQUESTS

- (1) Requests shall be made in writing.
- (2) Requests for assistance shall include:
  - (a) the name of the authority on behalf of which the request is made;
  - (b) a description of the purpose of the request and the nature of the assistance requested;
  - (c) a description of the nature of the investigation, prosecution, offence or criminal matter and whether or not proceedings have been instituted;
  - (d) where proceedings have been instituted, details of the proceedings;
  - (e) a summary of the relevant facts and laws;
  - (f) any requirements for confidentiality;
  - (g) details of any particular procedure the Requesting Party wishes to be followed;
  - (h) details of the period within which the request should be complied with; and



(i) any other information which is required to facilitate execution of the request.

(3) The request and all documents submitted in support of a request shall be translated, if so required by the Requested Party, into an official language of the Requested Party.

(4) Any document to be admitted in evidence in support of a request shall be duly certified or authenticated in accordance with the requirements of the law of the Requested Party.

#### ARTICLE 6

#### 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 when authorised by the Requesting Party.

## ARTICLE 7

### 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) fees of experts;
- (c) expenses of translation; 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 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.

## 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.

## ARTICLE 9

### OBTAINING OF EVIDENCE, DOCUMENTS ARTICLES OR RECORDS

- (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, subject to its law, 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 laws 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 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 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 as prima facie evidence of the matters stated therein.

## ARTICLE 10

### OBTAINING STATEMENTS OF PERSONS

Where a request is made to obtain the statement of a person for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter in the Requesting Party, the Requested Party shall endeavour to obtain such statement.

## ARTICLE 11

### LOCATION OR IDENTITY OF PERSONS

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

## ARTICLE 12

### SERVICE OF DOCUMENTS

- (1) The Requested Party shall serve any document transmitted to it for the purpose of service.
- (2) The Requesting Party shall transmit a request for the service of a document pertaining to 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.

### ARTICLE 13

#### PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

(1) Subject to its law the Requested Party shall provide copies of publicly available documents.

(2) The Requested Party may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own law enforcement and judicial authorities.

### ARTICLE 14

#### CERTIFICATION AND AUTHENTICATION

Documents, transcripts, records, statements or other material which are to be transmitted to the Requesting Party shall only be certified or authenticated if the Requesting Party so requests.

### ARTICLE 15

#### TRANSFER OF PERSONS IN CUSTODY

(1) A person in custody in the Requested Party whose presence is requested in the Requesting Party for the purposes of providing assistance pursuant to this Agreement shall if the Requested Party consents be 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.

## ARTICLE 16

### TRANSFER OF OTHER PERSONS

(1) The Requesting Party may request the assistance of the Requested Party in inviting a person to appear 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.

## ARTICLE 17

### SAFE CONDUCT

(1) A person who consents to provide assistance pursuant to Articles 15 or 16 shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence which preceded his departure from the Requested Party, except as provided in Article 15.

(2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article 15, and being free to leave, has not left the Requesting Party within a period of 15 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 Articles 15 or 16 shall not be subject to prosecution based on his testimony, except for perjury.

(4) A person who consents to provide assistance pursuant to Articles 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 Articles 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.

(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, the circumstances 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 OF CRIME

(1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime against the law of the Requesting Party 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 may be located in its jurisdiction.

(2) Where pursuant to paragraph (1) suspected proceeds 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 of crime, pending a final determination in respect of those proceeds by a Court of the Requesting Party.

(3) Where a request is made for assistance in securing the confiscation of proceeds such request shall be executed pursuant to the laws of the Requested Party. This may include enforcing an order made by a court in the Requesting Party and initiating or assisting in proceedings in relation to the proceeds to which the request relates.

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

## ARTICLE 20

### SETTLEMENT OF DISPUTES

Any dispute arising out of 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 21

### ENTRY INTO FORCE AND TERMINATION

(1) This Agreement shall enter into force thirty 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) Each of the Parties may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect six months after the receipt of that notice. Requests for assistance which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

In witness whereof the undersigned, being duly authorised by their respective governments have signed this Agreement.

Done at the Hong Kong Special Administrative Region, this sixteenth day of June Two thousand and eight in the Chinese, English and Sinhala languages, each text being equally authentic.

## SCHEDULE 2

[s. 2]

## MODIFICATIONS TO THE ORDINANCE

1. Section 5(1)(e) of the Ordinance shall be modified to read as follows –
  - “(e) the request relates to the prosecution of a person for an external offence in a case where the person –
    - (i)\* has been convicted, acquitted or pardoned by a competent court or other authority in the place,\*\* or Hong Kong in respect of that offence or of another external offence constituted by the same act or omission as that offence;\* or
    - (ii)\* has undergone the punishment provided by the law of that place or Hong Kong\*;\*\* in respect of that offence or of another external offence constituted by the same act or omission as that offence;”.
  
2. Section 5(1) of the Ordinance shall be modified by adding –
  - “(ea) the request relates to the prosecution of a person in respect of an act or omission that –
    - (i) can no longer be prosecuted in the place by reason of lapse of time under the law of the place; or
    - (ii) if it had occurred in Hong Kong, could no longer be prosecuted in Hong Kong by reason of lapse of time under the law of Hong Kong;\*”.
  
3. Section 17(1) of the Ordinance shall be modified by deleting paragraph (ii).
  
4. 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 days after being notified that the person’s

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.”.

5. Section 23(2)(a) of the Ordinance shall be modified –

- (a) by adding “or” at the end of subparagraph (i);
- (b) by deleting subparagraph (ii).

\* 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

11 November 2008

### **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 the Democratic Socialist Republic of Sri Lanka. 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 the Democratic Socialist Republic of Sri Lanka and signed in Hong Kong on 16 June 2008. 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.