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Secretary for Security
(Attention: Ms Angelina Kwan, Assistant Secretary)
Security Bureau
6/F Main and East Wings
Central Government Offices
Hong Kong

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BY FAX

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Dear Ms Kwan,

Mutual Legal Assistance in Criminal Matters (Ireland) Order
Mutual Legal Assistance in Criminal Matters (Netherlands) Order

I am scrutinizing the above Orders with a view to advising Members and should be grateful if you would clarify the following matters:

The Ireland Order

Article 6(4)

Should "刑事" be added before "偵查" to reflect the meaning of "criminal investigation" in the English text?

Article 9(5)

Should the reference to "由該方的中心機關在取證後解決" be replaced by "由該方的有關當局解決" to reflect the meaning of "for subsequent resolution by the authorities of that Party" and to achieve consistency with a similar provision in the Mutual Legal Assistance in Criminal Matters (United States of America) Order?

Article 21(2)

Should the reference to "本協定於締約另一方接獲通知三個月後失效" be replaced by "本協定於發出通知之日後三個月失效" to reflect the meaning of "the Agreement shall cease to have effect three months following the date of notification"?

The Netherlands Order

References to "request", "request for assistance", "the Requested Party" and "the Requesting Party"

It is noted that the Chinese rendition adopted for "request", "request for assistance", "the Requested Party" and "the Requesting Party" in this Order is "請求", "協助請求", "被請求方" and "請求方" respectively. This is different from the existing orders on mutual legal assistance in criminal matters where the Chinese rendition for the relevant terms is "要求", "協助要求", "被要求方" and "要求方" respectively. Should the same Chinese rendition be used for the sake of consistency?

References to "require"

In Article 5(4), Article 8(2) and Article 15(2), would "要求" be a more appropriate rendition for "require"?

Article 4

- (a) Is there any reason why there is no provision under Article 4 which covers the following situations:
- (i) the situation of refusal of assistance if the request relates to an offence which can no longer be prosecuted by reason of lapse of time; and
 - (ii) the situation of refusal of assistance if the request relates to an offence carrying death penalty, having regard to section 5(3)(c) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("the Ordinance")?
- (b) According to the Explanatory Statement on the Modifications to the Ordinance on the Netherlands Order (**Annex C** to the LegCo Brief) provided by the Administration, the modification to section 5(1)(e) of the Ordinance reflects Article 4(g) of the Hong Kong/Netherlands Agreement. However, Article 4(g), unlike the corresponding provision in the existing orders on mutual legal assistance in criminal matters, is not drafted in a way that is consistent with section 5(1)(e) of the Ordinance. Please explain why a different provision is adopted in the Netherlands Order.
- (c) In Article 4(g), should "要求" be added after "協助"?

Article 5

- (a) In paragraph (2)(b), should "文本" be added after "適用條文" to reflect the meaning of "the text of the applicable provisions" and to achieve consistency with a similar text used in Article 27(1)(e) of the Mutual Legal Assistance in Criminal Matters (Switzerland) Order?

- (b) In paragraph (2)(e), should "請求" be replaced by "要求" to reflect the meaning of "requirements"?
- (c) In paragraph (4), should "保密請求" be replaced by "保密要求" to reflect the meaning of "the required confidentiality"?

Article 6

- (a) In paragraph (1), should "回應" be replaced by "執行" to reflect the meaning in the English text?
- (b) In paragraph (6), we suggest that the Chinese text for "terms and conditions" be amended to "條款及條件".

Article 7(3) and Article 8(2)

We suggest that the Chinese text for "terms and conditions" be amended to "條款及條件".

Article 14

- (a) In paragraph (1), please consider replacing "及民事起訴或如該人不在請求方便不須承受的任何訴訟" by "，亦不得因其在離開被要求方之前的任何作為或不作為而受民事起訴，或承受假如該人不在要求方便不予起訴的任何訴訟" to reflect the meaning of the English text. You may wish to refer to the Chinese text of a similar provision (i.e. Article 21(1)) in the Switzerland Order.
- (b) In paragraph (5), the meanings of the Chinese and English texts do not match. Please make the appropriate amendments.

Article 16(1)(a)

Should the Chinese text for "instruments" be "文書"?

Article 17(5)

Should the reference to "締約雙方" be replaced by "任何一方" to reflect the meaning of "either Party" and to achieve consistency with a similar reference in Article 12(4) of the same Order?

Article 18(2)

Please consider adding "的文本" after "任何文件、紀錄或資料" to reflect the meaning of "copies of any document, record or information". You may wish to note that "文本" is included in the Chinese text of a similar provision (i.e. Article XI(2)) in the Mutual Legal Assistance in Criminal Matters (Italy) Order.

Article 19

Should "證明" be replaced by "核證" to reflect the meaning of "certification"?

Article 20

Please consider replacing "有關罪行的資料和證據" by "就有關罪行提供資料和證據" to reflect the meaning of "by providing information and evidence in relation to that offence".

Article 23

- (a) In paragraph (1), please make the necessary amendments to make the Chinese and English texts match. You may wish to adopt the Chinese text used in Article 21(1) of the Mutual Legal Assistance in Criminal Matters (Canada) Order given that the English text of that Article is similar to Article 23(1) of the Netherlands Order.
- (b) In paragraph (2), should the reference to "而不論有關的作為或不作為是否在本協定生效之前發生" be amended to "即使有關的作為或不作為是在本協定生效之前發生" to reflect the meaning of "even if the relevant acts and omissions occurred before that date"?

Article 24

Upon termination of the Agreement, would it be appropriate to include a saving provision, similar to Article 21(2) of the Ireland Order, that 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 it was still in force?

Paragraph before Schedule 2

We suggest that "一式兩份," be added before "每份" to reflect the meaning of "in duplicate" and "三種文本" be replaced by "各文本" to reflect the meaning of "each version".

I would appreciate it you could let me have your reply in both languages by 29 January 2003.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

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