

Legislative Council Brief

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Mutual Legal Assistance in Criminal Matters Ordinance (Chapter 525)

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (UKRAINE) ORDER

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (SINGAPORE) ORDER

INTRODUCTION

At the meeting of the Executive Council on 9 December 2003, the Council ADVISED and the Chief Executive ORDERED that –

- _____ (a) the Mutual Legal Assistance in Criminal Matters (Ukraine) Order at **Annex A**; and
- _____ (b) the Mutual Legal Assistance in Criminal Matters (Singapore) Order at **Annex B**;

should be made under Section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance, subject to the approval of the Legislative Council, to implement the bilateral arrangements for mutual legal assistance ("MLA") in criminal matters with the Ukraine and Singapore.

JUSTIFICATIONS

2. The Hong Kong Special Administrative Region ("HKSAR") is fully committed to international cooperation in combating serious crimes. In this connection, we have embarked on a program to establish a network of bilateral agreements with other jurisdictions on mutual legal

assistance in criminal matters. These agreements ensure reciprocity between the contracting parties and enhance international cooperation in the fight against transnational crime.

3. The Mutual Legal Assistance in Criminal Matters Ordinance provides the necessary statutory framework for implementing the mutual legal assistance arrangements and enables provision of assistance 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.

THE ORDERS

4. The Mutual Legal Assistance in Criminal Matters Agreements with Ukraine and Singapore were signed on 2 April and 23 July 2003 respectively. The two Orders to be made under Section 4(1) of the Ordinance will enable the Agreements to be brought into force and enable the Ordinance, subject to the modifications summarized in the schedule to the relevant Order, to be applicable as between HKSAR and these countries. **Schedule 2** to each of the Orders contains a copy of the relevant bilateral agreement.

5. Section 4(2) of the Ordinance provides that the Chief Executive in Council shall not make an order unless the arrangements for MLA to which the order relates are substantially in conformity with the provisions of the Ordinance. The two Agreements do so conform. They are similar to the model agreement for HKSAR which had been agreed by the former Sino-British Joint Liaison Group and approved by the former Executive Council before reunification as the basis for the conduct of negotiations.

6. The modifications to the Ordinance set out in **Schedule 1** to each of the Orders reflect those variations between the Agreement & the Ordinance which necessitate the making of modifications for either reasons of clarity (the modification in respect of “previous convictions etc”) or to enable Hong Kong to comply with obligations in the Agreement (the modification in respect of “immunities”).

7. An explanatory statement in relation to the modifications to the Ordinance is at **Annex C**.

8. The commencement date of the two Orders will be appointed by the Secretary for Security by notice in the Gazette. These dates will coincide with the dates on which the relevant agreements enter into force. The commencement date will be settled after consultation with the countries concerned and will depend upon when the necessary domestic procedures of those countries have been completed.

LEGISLATIVE TIMETABLE

9. The legislative timetable will be -

Introduction into
the Legislative Council

14 January 2004

Commencement

to be specified by the
Secretary for Security

IMPLICATIONS OF THE ORDERS

10. The Orders are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the Ordinance. They have no sustainability or financial and staffing implications.

PUBLIC CONSULTATION

11. The Orders will permit the Agreements to be brought into force in accordance with the existing legal framework. Public consultation is, therefore, considered not necessary.

PUBLICITY

12. A Legislative Council brief and a press release will be issued. A spokesman will be available to answer enquiries.

BACKGROUND

13. 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 MLA, by order direct that the Ordinance shall, subject to such modifications as may be specified in the order, apply as between HKSAR and the place outside HKSAR to which the arrangements relate.

14. Thirteen Orders in relation to MLA bilateral arrangements (with Australia, the USA, France, the UK, New Zealand, Italy, South Korea, Switzerland, Canada, Philippines, Portugal, Ireland and the Netherlands) have been made under Section 4(1) of the Ordinance.

ENQUIRIES

15. Enquires on the content of this paper should be directed to:-

Mrs. Margaret Chan Principal Assistant Secretary for Security	<u>Telephone No.</u> 2810 2329
Ms. Angelina Kwan Assistant Secretary for Security	2810 3523

Security Bureau
January 2004

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (UKRAINE) 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 Ukraine

(1) In relation to the scheduled arrangements for mutual legal assistance, it is directed that the Ordinance shall, subject to the modifications summarized in Schedule 1, apply as between Hong Kong and Ukraine.

(2) In subsection (1), "scheduled arrangements for mutual legal assistance" (列明的相互法律協助的安排) means arrangements which are applicable to Hong Kong and Ukraine, a copy of which is annexed at Schedule 2.

SCHEDULE 1

[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, if it had occurred in Hong Kong, could no longer be prosecuted in Hong Kong by reason of lapse of time;"*

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

"(b) the person has had an opportunity of leaving Hong Kong, 15 days have expired since that opportunity* and the person* 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).

SCHEDULE 2

[s. 2]

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

The Hong Kong Special Administrative Region of the People's Republic of China ("The Hong Kong Special Administrative Region"), having been duly authorised by the Central People's Government of the People's Republic of China, and Ukraine, hereinafter referred to as "the Parties",

Being guided by mutual intent to improve the effectiveness of co-operation of both Parties in the fields of prevention, investigation and prosecution of crime and the confiscation of criminal proceeds;

Have agreed as follows:

ARTICLE 1

SCOPE OF LEGAL ASSISTANCE

- (1) The Parties shall provide, in accordance with the provisions of this Agreement, legal assistance in the investigation and prosecution of criminal offences and in proceedings related to criminal matters.
- (2) Legal assistance shall include:
 - (a) location of persons and objects, including their identification;
 - (b) serving of documents including documents seeking attendance of persons;
 - (c) the furnishing of information, articles, records and documents, including criminal records, judicial documents and other official documents;
 - (d) obtaining of evidence and testimony;
 - (e) search and seizure of property;
 - (f) taking measures in relation to locating, restraint and confiscation of criminal proceeds;
 - (g) effecting the temporary transfer of persons in custody to provide assistance;
 - (h) transfer of property, whether temporary or otherwise, including material evidence and exhibits.
- (3) In the case of requests relating to taxation offences assistance shall be refused if the primary purpose of the request is the assessment or collection of tax.
- (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 AUTHORITIES

- (1) The Parties shall establish Central Authorities.
- (2) The Central Authority of Ukraine shall be the General Prosecutor's Office of Ukraine in relation to matters under preliminary investigation and the Ministry of Justice of Ukraine in relation to judicial proceedings. The Central Authority of the Hong Kong Special Administrative Region shall be the Secretary for 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) Requests in relation to matters under this Agreement shall be sent by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

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 shall refuse legal assistance if:
 - (a) such assistance may impair the sovereignty, security or public order of Ukraine or, in the case of the Hong Kong Special Administrative Region, the People's Republic of China;
 - (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 fulfillment of the request for assistance will result in prejudice to a person on account of his/her 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 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;
- (f) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided;
- (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; or
- (h) it is of the opinion that the granting of the request would seriously impair its essential interests.

(2) 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.

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

(4) Where the Requested Party is considering denying or postponing assistance pursuant to this Article it shall, through the Central Authorities -

- (a) promptly inform the Requesting Party of its reasons for considering denial or postponement; and
- (b) consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

(5) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (4)(b), it shall comply with those terms and conditions.

ARTICLE 5

CONTENTS AND FORM OF REQUESTS FOR LEGAL ASSISTANCE

- (1) Requests shall be made in writing. In urgent cases, requests may be made orally, but shall be confirmed in writing within 10 days thereafter.
- (2) Requests for legal assistance shall include:
 - (a) the name of the authority on behalf of which the request is made;
 - (b) 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;
 - (d) a summary of the matter and text of the relevant provisions of the law;
 - (e) any requirements for confidentiality;
 - (f) details of any particular procedure the Requesting Party wishes to be followed;
 - (g) the time within which the request should be complied with; and
 - (h) any other information which is required to facilitate execution of the request.
- (3) A request and documents submitted in support of the request shall, if they are not in English, be accompanied by a translation into English.

ARTICLE 6

EXECUTION OF REQUESTS FOR LEGAL ASSISTANCE

- (1) The Central Authority to whom a request is sent shall promptly execute the request or arrange for its execution by 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 its law, in accordance with the directions stated in the request (with the utmost possible compliance with the procedure suggested by the Requesting Party).
- (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.

ARTICLE 7

REPRESENTATION AND EXPENSES

- (1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding related to a request for assistance and shall otherwise represent the interests of the Requesting Party.
- (2) The Requested Party shall assume all ordinary expenses relating to the execution of the request, except:
 - (a) fees of counsel retained at the request of the Requesting Party;
 - (b) fees of experts;
 - (c) expenses of translation, interpretation and record-keeping; and
 - (d) travel expenses and allowances of persons.

(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 each other to determine the terms and conditions under which the execution of the request may continue.

ARTICLE 8

LIMITATIONS OF 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 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, records or other material.

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

(4) Where pursuant to the request for assistance under this Article a person is required to give evidence, that person, the person to whom the investigation, prosecution or proceeding relates and representatives of the Requesting Party may, subject to the laws of the Parties, appear or have legal representation or both when the evidence is taken.

- (5) A person who is required to give evidence in the Requested Party pursuant to a request for assistance may decline to give evidence where either:
- (a) the legislation 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) where the legislation 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 the 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 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 IDENTIFICATION OF PERSONS AND ARTICLES

The Requested Party shall, if requested, endeavour to ascertain the location or identity of any person or articles 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 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 that requires 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) No request may result in any penalty or coercive measure for non-appearance.

ARTICLE 13

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

(1) Subject to its law the Requested Party shall, if requested, 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

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. Such material shall not require any particular form of certification or authentication unless the law of the Requesting Party specifically so requires.

(2) Documents furnished by the Requesting Party in support of a request shall only be certified or authenticated if the Requested Party so requests. Such

documents shall not require any particular form of certification or authentication unless the law of the Requested Party specifically so requires.

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 making a person available for the purpose of providing assistance pursuant to this Agreement.

(2) The Requested Party shall, if the satisfactory arrangements for that person's security will be made by the Requesting Party, request the person to travel to the Requesting Party to provide assistance.

ARTICLE 17

SAFE CONDUCT

(1) A person who is in the Requesting Party for the purpose of providing assistance pursuant to Articles 15 or 16 shall not, whilst there:

- (a) be prosecuted, detained, or restricted in his personal liberty for any criminal offence which preceded his departure from the Requested Party, except as provided in Article 15;
 - (b) be subject to any civil suit in respect of acts or omissions which preceded his departure from the Requested Party unless the civil suit could have been instituted against him even if he were not present in the Requesting Party.
- (2) Paragraph (1) shall not apply if the person has not left the Requesting Party within a period of 15 days after being notified that his presence is no longer required, except for cases when such person is unable to leave the Requesting Party due to circumstances beyond that person's control.
- (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 FROM CRIME

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds from crime according to 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 from 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 from 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.
- (5) For the purpose of this Agreement "proceeds from crime" includes –
 - (a) payments or other rewards received in connection with a criminal offence or their value;
 - (b) property derived or realized directly or indirectly from payments or other rewards received in connection with a criminal offence or the value of such property;
 - (c) property used or intended to be used in connection with a criminal offence or the value of such property; and
 - (d) a pecuniary advantage obtained in connection with a criminal offence.

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) This Agreement is concluded for an indefinite term and shall terminate six months after either of the Parties has given notice to the other of such termination. 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.

Done at the Hong Kong Special Administrative Region, this Second Day of April Two Thousand and Three in the Chinese, English and Ukrainian languages, each text being equally authentic. In case of divergence in interpretation the English text shall prevail.

Clerk to the Executive Council

COUNCIL CHAMBER

2003

Explanatory Note

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) shall apply as between Hong Kong and Ukraine. The Order is made in consequence of the arrangements for mutual legal assistance entered into by Hong Kong and Ukraine and signed in Hong Kong on 2 April 2003. A copy of those arrangements is annexed at Schedule 2 to the Order. It should be noted that the Ordinance is subject to the modifications summarized in Schedule 1 to the Order.

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
(SINGAPORE) 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 Singapore

(1) In relation to the scheduled arrangements for mutual legal assistance, it is directed that the Ordinance shall, subject to the modifications summarized in Schedule 1, apply as between Hong Kong and the Republic of Singapore.

(2) In subsection (1), “scheduled arrangements for mutual legal assistance” (列明的相互法律協助的安排) means arrangements which are applicable to the Government and the Government of the Republic of Singapore, a copy of which is annexed at Schedule 2.

SCHEDULE 1

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

“(b) the person has had an opportunity of leaving Hong Kong, 15 days have expired since that opportunity* and the person* 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).

SCHEDULE 2

[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 REPUBLIC OF
SINGAPORE 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 ("the 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 Republic of Singapore, hereinafter called the 'Parties',

Desiring to improve the effectiveness of the law enforcement authorities of the Parties in the investigation, prosecution and suppression of crime,

Have agreed as follows:

CHAPTER 1 - GENERAL PROVISIONS

Article 1

Scope of assistance

(1) The Parties shall provide in accordance with the provisions of this Agreement and subject to their respective domestic laws, mutual assistance in criminal matters.

(2) Assistance shall include:

- (a) the provision and obtaining of information, voluntary statements, evidence and documents, articles and records (including judicial and official records);
- (b) arranging the attendance of persons to give evidence or assistance in relation to criminal matters;
- (c) restraining and confiscating or forfeiting property used in or derived from the commission of offences;
- (d) the execution of requests for search and seizure;
- (e) the location and identification of persons;
- (f) the service of documents; and
- (g) other forms of assistance consistent with the objects of this Agreement, as may be mutually agreed in any particular case and as permitted by respective domestic laws.

(3) Assistance shall not include:

- (a) the surrender of any fugitive offender; and
- (b) the execution or enforcement of final criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party and this Agreement.

Article 2

Exclusion of third party rights

The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence or to impede the execution of a request.

Article 3

Refusal or postponement of execution of requests

- (1) The Requested Party shall refuse assistance if it is of the opinion that:
 - (a) the granting of the request for assistance would impair the sovereignty, security or public order of the Republic of Singapore or, in the case of the Government of the Hong Kong Special Administrative Region, the People's Republic of China;
 - (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, 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 Requested 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 Requesting Party or Requested Party;
- (f) the granting of the request would seriously impair the essential interests of the Hong Kong Special Administrative Region or be contrary to the public interest of Singapore as the case may be;
- (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; or
- (h) the Requesting Party cannot comply with conditions relating to confidentiality or limitation as to the use of material to be provided.

(2) If the Requested Party determines that the execution of the request, or any portion thereof, could prejudice a criminal matter, it may and shall, if required by its law, refuse the request or postpone execution or make the grant of the request subject to conditions determined necessary after consultations with the Requesting Party.

(3) If the Requesting Party accepts assistance subject to the conditions stated in paragraph (2), it shall comply with those conditions.

(4) The Requested Party may and shall, if required by its law, refuse assistance if it is of the opinion that:

- (a) the offence to which the request relates is not an offence of sufficient gravity;
- (b) the material requested is of insufficient importance to the investigation or could reasonably be obtained by other means;
- (c) the provision of the assistance would, or would be likely to, prejudice the safety of any person; or
- (d) the provision of the assistance would impose an excessive burden on resources.

(5) The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request. If the request cannot be executed in whole or in part, the Requested Party shall inform the Requesting Party of the reasons therefor.

CHAPTER 2 - SPECIFIC FORMS OF ASSISTANCE

Article 4

Obtaining statements of persons

- (1) Where a request is made to obtain the statement of a person for the purpose of an investigation or proceedings in relation to a criminal matter in the Requesting Party, the Requested Party shall endeavour, with the consent of that person, to obtain that statement.
- (2) For the purposes of a request under this Article, the Requesting Party shall specify the subject matter about which the statement is to be taken, including any question it seeks to be put.

Article 5

Obtaining of evidence

- (1) Where a request is made that evidence be taken for the purpose of the prosecution of a criminal offence or proceedings in relation to a criminal matter in the Requesting Party, the Requested Party shall, subject to its law, arrange to have such evidence taken and transmitted to the Requesting Party.
- (2) For the purposes of requests under this Article, the Requesting Party shall specify the subject matter about which witnesses are to be examined, and may also specify any questions to be put to them as well as the manner and form in which evidence should be taken.
- (3) Where evidence is to be taken under this Article, the person to whom the prosecution or proceedings 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.

(4) A person who is required to give evidence in the Requested Party may decline to give evidence where either:

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

(b) the law of the Requesting Party would permit the person to decline to give evidence in such criminal proceedings in the Requesting Party.

(5) 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 Requesting Party.

Article 6

Production of material

Where a request is made for the production of documents, records or other material for the purposes of any criminal matter in the Requesting Party, the Requested Party shall, subject to its law, arrange for such production and transmission to the Requesting Party.

Article 7

Attendance of persons

The Requested Party may arrange for the attendance of a person (not being a person who is in custody) in the territory of the Requesting Party for the purposes of providing evidence or assistance in relation to a criminal matter.

Article 8

Consent of persons

Before making any arrangement under Article 7, the Requested Party shall seek the consent of the person and inform him prior to the seeking of the consent of any payment or allowances payable to him by the Requesting Party.

Article 9

Safe conduct

(1) Where a request for assistance under Article 7 is made, the Requesting Party shall provide an undertaking in writing to the Requested Party:

- (a) that the person whose attendance is sought in the territory of the Requesting Party –
 - (i) shall not be subject to detention, prosecution, punishment or civil suit (being a civil suit to which the person could not be subject if he were not in the territory of the Requesting Party) in respect of any act or omission which preceded the person's departure from the territory of the Requested Party;

- (ii) shall not be required to assist in any criminal matter other than the criminal matter to which the request relates;
 - (iii) shall not be subject to any prosecution based on his testimony, other than for an offence of perjury or contempt of court; and
 - (iv) shall be returned to the territory of the Requested Party in accordance with arrangements agreed by both Parties, and
- (b) on such other matters as the Requested Party deems appropriate.

(2) Paragraph (1) shall not apply if the person, being free to leave the territory of the Requesting Party, has not left within 15 days after he is officially and personally notified in writing by the Requesting Party that his presence is no longer required, or having left the territory of the Requesting Party, has voluntarily returned.

(3) A person who does not consent to give evidence or provide assistance pursuant to Article 7 shall not by reason thereof be subject to any penalty or liability or otherwise prejudiced pursuant to the law of the Requesting Party or Requested Party.

Article 10

Confiscation and forfeiture

(1) The Parties shall, subject to their respective domestic laws, assist each other in relation to proceedings to confiscate or forfeit property used in or derived from the commission of offences. This may include restraining or seizing property pending further proceedings, registering or enforcing court orders and judgments, or otherwise initiating or assisting in proceedings to confiscate or forfeit the property.

(2) Assistance under this Article shall only be granted in respect of proceedings which are instituted after the coming into force of this Agreement.

(3) In this Article, "property used in or derived from the commission of offences" includes –

- (a) payments or other rewards received in connection with an offence, or the value of such payments or rewards;
- (b) property derived or realised, directly or indirectly, from payments or other rewards received in connection with such an offence, or the value of such property; and
- (c) property used in connection with an offence or the value of such property.

Article 11

Accrual of confiscated or forfeited property

Property confiscated or forfeited pursuant to Article 10 shall accrue to the Requested Party, unless otherwise agreed in a particular case between the Parties.

Article 12

Search and seizure

(1) The Requested Party shall, subject to its law, execute a request for the search, seizure and delivery of any thing or material which relates to a criminal matter in the Requesting Party if there are reasonable grounds for believing that the thing or material is relevant to the criminal matter and is located in the Requested Party.

(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.

Article 13

Return of material

(1) Upon request, the Requesting Party shall undertake to immediately return to the Requested Party any particular thing or material obtained at the conclusion of the criminal matter in respect of which the request for assistance was made.

(2) The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any thing or material which is delivered to the Requesting Party.

Article 14

Locating or identifying persons

Upon request, the Requested Party shall use its best endeavours to ascertain the location or identity of a person who is believed to be in its territory.

Article 15

Service of process

(1) Upon request, the Requested Party shall assist in the service of process on a person in its territory.

(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.

Article 16

Effect of service of process

(1) A person on whom process is served pursuant to Article 15 shall not be subject to any penalty, liability or coercive measure pursuant to the law of the Requesting Party or the Requested Party by reason only of that person's refusal or failure to accept or comply with such process.

(2) The Requesting Party shall provide at the time a request for service of process is made pursuant to Article 15:

- (a) details of the type or nature of the process to be served;

- (b) a statement of any possible consequences in the Requesting Party of refusal or failure to accept or comply with service of the process; and
- (c) where the request is for the service of a summons to appear as a witness, an undertaking that the person on whom the summons is to be served shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of the person's refusal or failure to accept or comply with the summons.

(3) The Requested Party shall inform the person to be served of the matters referred to in paragraphs (1) and (2) and may inform the person that it takes no position with respect to the merits of the proceedings in the Requesting Party.

Article 17

Proof of process

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

Article 18

Provision of public and official documents

(1) The Requested Party shall provide the Requesting Party with copies of publicly available documents in the possession of government departments and agencies.

(2) The Requested Party may, subject to its law, provide copies of any document, record or information in the possession of government departments and agencies.

CHAPTER 3 - PROCEDURAL MATTERS

Article 19

Form and contents of requests

- (1) All requests shall be made in writing.
- (2) A request shall –
 - (a) specify the purpose of the request and the nature of the assistance being sought;
 - (b) identify the person or authority that initiated the request;
and
 - (c) be accompanied by –
 - (i) a certificate that the request is made in respect of a criminal matter;
 - (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
 - (iii) where the request relates to –

(A) the location of a person who is suspected to be involved in or to have benefited from the commission of an offence; or

(B) the tracing of property that is suspected to be connected with an offence,

the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in sub-paragraph (A) or (B);

- (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
- (v) details of the procedure that the Requesting Party wishes to be followed in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied pursuant to the request;
- (vi) where the request is for assistance pursuant to Article 10 and judicial proceedings to obtain a confiscation order have not been instituted in the Requesting Party, a statement indicating when they are likely to be instituted;

- (vii) a statement setting out the wishes of the Requesting Party concerning the confidentiality of the request and the reason for those wishes;
- (viii) details of the period within which the Requesting Party wishes the request to be met;
- (ix) if the request involves a person travelling to the Requesting Party, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person while he is in the Requesting Party pursuant to the request; and
- (x) any other information that may assist in giving effect to the request.

Article 20

Central Authorities

(1) The Central Authority for Singapore is the Attorney-General of Singapore or his duly authorised officer. The Central Authority of the Hong Kong Special Administrative Region is the Secretary for Justice or his duly authorised officer. Either Party may change its Central Authority in which case it shall notify the other of the change.

(2) The Central Authorities of the Parties shall transmit and receive all requests for the purposes of this Agreement.

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

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

(5) A request shall be executed subject to the law of the Requested Party and if practicable, in accordance with the directions stated in the request.

(6) 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.

Article 21

Confidentiality

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

(2) The Central Authority of the Requested Party may consent to the information or evidence furnished, including documents, articles or records, being used for purposes other than those stated in the request subject to such terms and conditions as it may specify.

(3) The Requested Party shall use its best efforts to keep confidential a request, its contents and the fact that it has been granted, except when otherwise authorised by the Requesting Party. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine whether the request should nevertheless be executed.

Article 22
Authentication

Upon request, each Party shall authenticate any documents to be transmitted to the other Party under this Agreement. Documents are authenticated if:

- (a) they purport to be signed or certified by a judge, magistrate or official in or of the Party requested; and
- (b) they are either –
 - (i) verified by the oath or affirmation of a witness or official of the Party requested; or
 - (ii) purport to be sealed with an official seal of a competent authority of the Party requested.

Article 23
Language

The request and supporting documents shall be translated, if so required by the Requested Party, into an official language of the Requested Party.

Article 24
Representation and expenses

(1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceedings arising out of a

request for assistance and shall otherwise represent the interests of the Requesting Party.

(2) The Requested Party shall meet the ordinary costs of executing the request for assistance, except that the Requesting Party shall bear:

- (a) the expenses and fees of experts;
- (b) the expenses of translation, interpretation and transcription;
- (c) the fees of counsel retained at the request of the Requesting Party; and
- (d) travel expenses and allowances of persons.

(3) If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

CHAPTER 4 - FINAL PROVISIONS

Article 25

Other forms of assistance

The provisions of this Agreement shall not prevent the Parties from providing assistance in criminal matters pursuant to any other applicable international and bilateral agreements, arrangements and practices. In such a case, the provisions in such other agreements, arrangements or practices shall regulate the provision or refusal of assistance.

Article 26
Consultations

- (1) The Central Authorities of the Parties shall consult promptly at the request of either Party on any matter concerning the interpretation, application and implementation of this Agreement.

- (2) Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are unable to reach agreement.

Article 27
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 legal requirements have been complied with.

- (2) This Agreement shall apply to requests presented after its entry into force even if the relevant acts or omissions occurred before that date.

- (3) Either Party may terminate this Agreement by giving written notification to the other Party. In that event the Agreement shall cease to have effect three months after the date of 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 thereto by their respective Governments, have signed this Agreement.

Done at the Hong Kong Special Administrative Region, on the 23rd day of July 2003 in the Chinese and English languages each text being equally authentic. In case of divergence between the texts, the English text shall prevail.

Clerk to the Executive Council

COUNCIL CHAMBER

2003

Explanatory Note

This Order directs that the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) shall apply as between Hong Kong and the Republic of Singapore. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the Government of Hong Kong and the Government of the Republic of Singapore and signed in Hong Kong on 23 July 2003. A copy of those arrangements is annexed at Schedule 2 to the Order. It should be noted that the Ordinance is subject to the modifications summarized in Schedule 1 to the Order.

Explanatory Statement on the Modifications to the Ordinance

***Mutual Legal Assistance in Criminal Matters
(Ukraine) Order ("Ukraine Order")***

Previous Convictions etc.

Section 5(1)(e) of the Ordinance provides that the Secretary for Justice shall refuse assistance if the request relates to the prosecution of a person for an offence in respect of which he has been convicted, acquitted, pardoned or punished in the requesting jurisdiction. Article 4(1)(e) of the Hong Kong/Ukraine Agreement provides for refusal when immunity from prosecution has been acquired both in relation to convictions etc. in the requested jurisdiction and also where prosecution would not have been possible because of lapse of time had the offence occurred in the requested jurisdiction. The modification to section 5(1)(e) reflects the provision in the agreement by extending the protection to cover the situation in the requested jurisdiction.

Immunities

2. Section 17 of the Ordinance gives a person who comes to Hong Kong from another jurisdiction to render assistance certain immunities. These immunities cease to apply if the person has had the opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for the purpose of rendering assistance. Article 17(2) of the Hong Kong/Ukraine Agreement provides that the immunities will continue to be applicable for a period of 15 days after the person has had the opportunity of leaving Hong Kong. The modification reflects the additional protection in the agreement by providing for a 15 day period in section 17.

Explanatory Statement on the Modifications to the Ordinance

Mutual Legal Assistance in Criminal Matters (Singapore) Order ("Singapore Order")

Previous Convictions etc.

Section 5(1)(e) of the Ordinance provides that the Secretary for Justice shall refuse assistance if the request relates to the prosecution of a person for an offence in respect of which he has been convicted, acquitted, pardoned or punished in the requesting jurisdiction. Article 3(1)(e) of the Hong Kong/Singapore Agreement provides for refusal when immunity from prosecution has been acquired both in relation to convictions etc. in the requested jurisdiction and also where prosecution would not have been possible because of lapse of time had the offence occurred in the requested jurisdiction. The modification to section 5(1)(e) reflects the provision in the agreement by extending the protection to cover the situation in the requested jurisdiction.

Immunities

2. Section 17 of the Ordinance gives a person who comes to Hong Kong from another jurisdiction to render assistance certain immunities. These immunities cease to apply if the person has had the opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for the purpose of rendering assistance. Article 9(2) of the Hong Kong/Singapore Agreement provides that the immunities will continue to be applicable for a period of 15 days after the person has had the opportunity of leaving Hong Kong. The modification reflects the additional protection in the agreement by providing for 15 day period in section 17.