

LEGISLATIVE COUNCIL BRIEF

Mutual Legal Assistance in Criminal Matters Ordinance (Chapter 525)

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (INDONESIA) ORDER

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (JAPAN) ORDER

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (SRI LANKA) ORDER

INTRODUCTION

At the meeting of the Executive Council on 11 November 2008, the Council ADVISED and the Chief Executive ORDERED that –

- (a) the Mutual Legal Assistance in Criminal Matters (Indonesia) Order, at **Annex A**, should be made under section 4 of Cap. 525, subject to the approval of the Legislative Council, to implement the bilateral mutual legal assistance in criminal matters (MLA) agreement signed with Indonesia;
- (b) the Mutual Legal Assistance in Criminal Matters (Japan) Order, at **Annex B**, should be made under section 4 of Cap. 525, subject to the approval of the Legislative Council, to implement the bilateral MLA agreement signed with Japan; and
- (c) the Mutual Legal Assistance in Criminal Matters (Sri Lanka) Order, at **Annex C**, should be made under section 4 of Cap. 525, subject to the approval of the Legislative Council, to implement the bilateral MLA agreement signed with Sri Lanka.

JUSTIFICATIONS

2. Hong Kong is fully committed to international cooperation in combating serious crimes. We have been expanding our network of bilateral agreements with other jurisdictions on MLA. These agreements enhance international cooperation in the fight against transnational crimes and ensure reciprocal assistance between the contracting parties.

3. Cap. 525 provides for the statutory framework for MLA arrangements. It regulates the provision and obtaining of assistance in the investigation and prosecution of criminal offences, including the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime.

4. Section 4(1) of Cap. 525 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 Cap. 525 shall, subject to such modifications as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate.

5. The MLA agreements with Indonesia, Japan and Sri Lanka were signed on 3 April 2008, 23 May 2008 and 16 June 2008 respectively. The three Orders to be made under section 4(1) of Cap. 525 will enable these agreements to be brought into force and render Cap. 525 applicable as between Hong Kong and Indonesia, Japan and Sri Lanka respectively. Schedule 1 to each of the Orders contains a copy of the relevant MLA agreement.

6. There are certain variations between the respective agreements and Cap. 525, and we need to modify the Ordinance to reflect such variations. Such modifications are specified in Schedule 2 to each of the Orders in accordance with section 4 of the Ordinance. Explanatory statements on modifications to Cap. 525 in respect of the three Orders are at **Annex D**, **Annex E** and **Annex F** respectively.

Conformity and Commencement

7. Section 4(2) of Cap. 525 provides that the Chief Executive in Council shall not make an order under the Ordinance unless the arrangements for MLA are substantially in conformity with the provisions of the Ordinance. The three agreements do so conform.

8. The commencement date of each of the three Orders will be appointed by the Secretary for Security by notice in the Gazette. This date will coincide with the date on which the relevant agreement enters into force. The commencement date will be settled after consultation with the country concerned and will depend upon when the necessary domestic procedures of that country are completed.

LEGISLATIVE TIMETABLE

9. The legislative timetable will be –

Introduction into the Legislative Council	10 December 2008
Commencement	to be specified by the Secretary for Security

IMPLICATIONS OF THE ORDERS

10. The three Orders are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of Cap. 525. They have no sustainability, economic, financial or civil service implications.

PUBLIC CONSULTATION

11. The three Orders will enable the above-mentioned bilateral agreements to be brought into force in accordance with the existing legal framework. Public consultation is not necessary.

PUBLICITY

12. We have issued this Legislative Council brief. A spokesman will also be available to answer enquiries.

BACKGROUND

13. Twenty-two Orders in relation to bilateral MLA agreements signed with foreign jurisdictions have been made under section 4 of Cap. 525.

ENQUIRIES

14. Enquires on this brief should be directed to –

Telephone No.

Mr David Lau 2810 2329
Principal Assistant Secretary for Security

Ms Jane Lee 2810 3523
Assistant Secretary for Security

**Security Bureau
19 November 2008**

Annex A

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (INDONESIA) 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 Indonesia

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 Republic of Indonesia.

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 REPUBLIC OF INDONESIA 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 authorized by the Central People's Government of the People's

Republic of China to conclude this Agreement and the Government of the Republic of Indonesia (hereinafter referred to as “The Parties”);

Desiring to strengthen the close cooperation between the Parties by improving the effectiveness of the law enforcement authorities of the Parties in the investigation and prosecution of crimes, and the confiscation of criminal proceeds and resulting proceedings;

Have agreed as follows:

ARTICLE 1 **SCOPE OF ASSISTANCE**

1. The Parties shall, in accordance with the provisions of this Agreement, grant each other assistance in criminal matters.

2. For the purpose of this Agreement, criminal matters mean investigations, prosecutions or proceedings relating to any offence which at the time of the request for assistance, falls within the jurisdiction of the competent authorities of the Requesting Party.

3. Assistance may also be granted in connection with offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters, but not in connection with non-criminal proceedings relating thereto.

4. Assistance shall include:
 - (a) taking evidence or statements from persons;

- (b) providing information, documents, records and items of evidence;
 - (c) locating or identifying persons or items;
 - (d) serving documents;
 - (e) executing requests for search and seizure;
 - (f) making arrangements for persons to give evidence or assist in criminal investigations, prosecutions, or proceedings in the Requesting Party;
 - (g) tracing, restraining, forfeiting, confiscating and returning the proceeds of criminal activities; and
 - (h) other assistance deemed necessary by the Requesting Party and consistent with this Agreement as well as the law of the Requested Party.
5. This Agreement applies solely to the provision of mutual assistance between the Parties. The provisions of this Agreement shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

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 judgements 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. Nothing in this Agreement entitles a Party to undertake in the territory of the other Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic law.

ARTICLE 3 **OTHER ASSISTANCE**

This Agreement shall not affect any existing obligations between the Parties, whether pursuant to other agreements, arrangements, or otherwise, nor prevent the Parties from providing assistance to each other pursuant to other agreements, arrangements, or otherwise.

ARTICLE 4 **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 for the Hong Kong Special Administrative Region is the Secretary for Justice or his duly authorized officer and the Central Authority for the Republic of Indonesia is the Minister for Law and Human Rights.
3. Either Party may change its Central Authority in which case, it shall notify the other Party of the change.
4. The Central Authorities may communicate directly with each other, or, if they choose, through the Consulate General of the Republic of Indonesia in the Hong Kong Special Administrative Region.

ARTICLE 5 **REQUESTS**

1. Requests for assistance 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 verbally, but in such cases the requests shall be confirmed in writing within five (5) days.
2. Requests for assistance shall include:
 - (a) the name of the competent authority conducting the investigation or criminal proceedings to which the request relates;
 - (b) the purpose of the request and the nature of the assistance sought;

- (c) a description of the nature of the criminal matter and its current status, and a statement setting out a summary of the relevant facts and law, including the maximum penalty for the offence to which the request relates;
 - (d) a description of the evidence, information or other assistance sought;
 - (e) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed;
 - (f) specification of any time limit within which compliance with the request is desired;
 - (g) any special requirements for confidentiality and the reasons for it; and
 - (h) such other information or undertaking as may be required under the domestic law of the Requested Party or which is otherwise necessary for the proper execution of the request.
3. 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 produced 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 location; and
 - (j) any court order relating to the assistance requested and a statement relating to the finality of that order.
4. The request and documents and other relevant material submitted in support of the request shall be in the English language and, if requested, accompanied by a translation into an official language of the Requested Party.

5. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, the Requested Party 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 6 **LIMITATIONS ON ASSISTANCE**

1. Assistance shall be refused if:
 - (a) the request relates to an offence that is regarded by the Requested Party as an offence of a political character;
 - (b) the request relates to an offence only under military law;
 - (c) the request relates to the prosecution of a person for an offence in respect of which the person has been finally convicted, acquitted, pardoned or has served the sentence imposed in the Requested Party;
 - (d) there are substantial grounds for believing that the request for assistance has been made for the purpose of investigating, prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinions, or, that the request for assistance will result in that person being prejudiced for any of those reasons;

- (e) the provision of the assistance would impair the sovereignty, security, public order or essential interests of the Republic of Indonesia or in the case of the Hong Kong Special Administrative Region, 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 the essential interests of the Hong Kong Special Administrative Region;
 - (f) the acts or omissions alleged to constitute the offence to which the request relates, would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence; or
 - (g) there is no assurance from the Requesting Party that the assistance requested will not be used for purposes other than those stated in the request without the prior consent of the Requested Party.
2. The Requested Party may refuse assistance if, in its opinion:
- (a) the provision of the assistance would, or would be likely to prejudice the safety of any person, whether that person is within or outside the territory of the Requested Party; or
 - (b) the provision of the assistance would impose an excessive burden on the resources of the Requested Party.
3. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

4. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing criminal matters in the Requested Party. The Requested Party may also postpone the delivery of documents if such documents are required for civil proceedings in that Party, in which case the Requested Party shall, upon request, provide certified copies of documents.
5. Before refusing a request or postponing its execution pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions.
6. If the Requesting Party accepts assistance subject to the terms and conditions required under paragraph 5, it shall comply with such terms and conditions.
7. If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.

ARTICLE 7 **EXECUTION OF REQUESTS**

1. Requests for assistance shall be carried out promptly by the competent authorities of the Requested Party in accordance with the law of that Party and, to the extent that law permits, in the manner requested by the Requesting Party.
2. The Requested Party shall promptly inform the Requesting Party of circumstances, when they become known to the Requested Party, which are likely to cause a significant delay in carrying out the request.

ARTICLE 8
RETURN OF MATERIAL TO REQUESTED PARTY

Where required by the Requested Party, the Requesting Party shall return material provided under this Agreement when it is no longer needed for the criminal matter to which the request relates.

ARTICLE 9
CONFIDENTIALITY AND LIMITATION ON USE

1. The Requested Party shall use its best efforts to keep confidential a request for assistance, the contents of the request and its supporting documentation, and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party before executing the request, and the Requesting Party shall advise whether it nevertheless wishes the request to be executed.
2. The Requesting Party shall use its best efforts to keep confidential the information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the criminal matters to which the request relates and where otherwise authorized by the Requested Party.
3. The Requesting Party shall use its best efforts to ensure that the information or evidence is protected against loss, unauthorized access, modification, disclosure or misuse.
4. The Requesting Party shall provide assurances that it will not use the information or evidence obtained, or anything derived therefrom, for

purposes other than those stated in a request without the prior consent of the Requested Party.

ARTICLE 10 **SERVICE OF DOCUMENTS**

1. The Requested Party shall, to the extent its law permits, carry out requests for the service of documents in respect of a criminal matter.
2. A request for service of a summons requiring the appearance of a person as a witness in the Requesting Party shall be made to the Requested Party not less than forty five (45) days before the scheduled appearance. In urgent cases, the Requested Party may waive this requirement.
3. The Requested Party shall forward to the Requesting Party proof of service of the documents. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.
4. A person who fails to comply with any process served on him or her shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or the Requested Party.

ARTICLE 11 **TAKING OF EVIDENCE**

1. The Requested Party shall, to the extent its law permits and upon request, take testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the Requesting Party.

2. The Requested Party shall, to the extent its law permits, allow the presence of such persons as are specified in the request during the execution of request, and may also allow such persons and their legal representatives to question the person whose testimony or evidence is being taken. In the event that such direct questioning is not permitted, such persons shall be allowed to submit written questions.
3. A person from whom evidence is to be taken in the Requested Party pursuant to a request under this Article may decline to give evidence where the law of the Requested Party or that of the Requesting Party so provides.
4. If any person in the Requested Party claims that there is a right or obligation to decline to give evidence under the law of the Requesting Party, the Requesting Party shall, upon request, provide a certificate to the Requested Party as to the existence of that right. In the absence of evidence to the contrary, the certificate shall be sufficient evidence of the matters stated in it.
5. For the purposes of this Article, the taking of evidence includes the production of documents or other material.

ARTICLE 12
**AVAILABILITY OF PERSONS IN CUSTODY
TO GIVE EVIDENCE OR PROVIDE ASSISTANCE**

1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to that Party to give evidence or to provide assistance in criminal proceedings in that Party.

2. The Requested Party shall transfer a person in custody to the Requesting Party only if:
 - (a) the person freely consents to the transfer; and
 - (b) the Requesting Party agrees to comply with any conditions specified by the Requested Party relating to the custody or security of the person to be transferred.
3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released.
4. A person who is transferred pursuant to a request under this Article shall be returned to the Requested Party in accordance with arrangements agreed by the Requested Party as soon as practicable after that person has given evidence or provided assistance or at such earlier time as the person's presence is no longer required.
5. A person transferred shall receive credit for service of the sentence imposed in the Requested Party for the time spent in custody in the Requesting Party.
6. A person who does not consent to give evidence or to provide assistance under this Article shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or the Requested Party.

ARTICLE 13

**AVAILABILITY OF OTHER PERSONS
TO GIVE EVIDENCE OR PROVIDE ASSISTANCE**

1. The Requesting Party may request the assistance of the Requested Party in inviting a person, not being a person to whom Article 12 of this Agreement applies, to give evidence or provide assistance in the Requesting Party. The Requesting Party shall undertake to make satisfactory arrangements for the safety of such person and provide information on any expenses or allowances payable.
2. The Requested Party shall invite the person and promptly inform the Requesting Party of the person's response. If the person consents, the Requested Party shall take all necessary steps to facilitate the request.
3. A person who does not consent to give evidence or to provide assistance under this Article shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or the Requested Party.

ARTICLE 14

SAFE CONDUCT

1. Subject to paragraph 2 of this Article, where a person is in the Requesting Party pursuant to a request made under Articles 12 or 13 of this Agreement:
 - (a) the person shall not be detained, prosecuted or restricted in his personal liberty in the Requesting Party for any criminal offence which preceded his or her departure from the Requested Party;

- (b) the person shall not be subject to civil proceedings to which the person could not be subjected if he or she were not in the Requesting Party; and
 - (c) the person shall not, without his or her consent, be required to give evidence in any criminal proceedings or to assist in any criminal investigation other than the criminal matter to which the request relates.
2. Paragraph 1 of this Article ceases to apply if that person, being free to leave, has not left the Requesting Party within a period of fifteen (15) days after he or she has been officially notified that his or her presence is no longer required or, having left, has returned.
 3. A person who consents to give evidence pursuant to Articles 12 or 13 of this Agreement shall not be subject to prosecution based on his or her testimony, except for perjury or contempt of court.

ARTICLE 15
**PROVISION OF PUBLICLY AVAILABLE DOCUMENTS
AND OTHER RECORDS**

1. The Requested Party shall provide to the Requesting Party copies of publicly available documents or records.
2. The Requested Party may, subject to its domestic law and practice, provide the Requesting Party with copies of any documents or records in the possession of government departments and agencies that are not publicly available.

ARTICLE 16
SEARCH AND SEIZURE

1. The Requested Party shall, to the extent its law permits, carry out requests made in respect of a criminal matter in the Requesting Party for the search, seizure and delivery of material to that 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 and circumstances of seizure, and the subsequent custody of the material seized.
3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party.

ARTICLE 17
PROCEEDS OF CRIME

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of crime are located within its jurisdiction and shall notify the Requesting Party of the results 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. The Requested Party shall, to the extent its law permits, give effect to a final order forfeiting or confiscating the proceeds of crime made by a court of the Requesting Party.
4. In the application of this Article, the rights of bona fide third parties shall be respected under the law of the Requested Party. Where there is a claim from a third party, the Requested Party shall represent the interests of the Requesting Party in seeking to retain the proceeds until a final determination by a competent court in the Requesting Party.
5. The Requested Party shall dispose of confiscated proceeds in accordance with its law. Where these proceeds derive from offences of corruption relating to public funds or property the Requested Party shall, having deducted the expenses incurred in recovering the proceeds, return the balance of the proceeds to the Requesting Party.
6. For the purposes of this Agreement, “proceeds of crime” includes:
 - (a) property which represents the value of property and other benefits derived from the commission of an offence;
 - (b) property derived or realized directly or indirectly from the commission of an offence; and
 - (c) property used or intended to be used in connection with an offence or the value of such property.

ARTICLE 18
CERTIFICATION AND AUTHENTICATION

1. Subject to paragraph 2, a request for assistance, the documents in support thereof, and documents furnished in response to a request, shall not require any form of certification or authentication.

2. Where, in a particular case, the Requested or Requesting Party requests that documents be authenticated, the documents shall be duly authenticated in the manner provided in paragraph 3.

3. Documents are authenticated for the purpose of this Agreement if:
 - (a) they purport to be signed or certified by a judge or other official in or of the Party sending the documents; and

 - (b) they purport to be sealed with an official seal of the Party sending the documents or of a Minister, a Department or official of the Government, of that Party.

ARTICLE 19
REPRESENTATION AND EXPENSES

1. Unless otherwise provided in this Agreement, the Requested Party shall make all necessary arrangements for the representation of the Requesting Party in all 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 cost of fulfilling the request for assistance except that the Requesting Party shall bear:

- (a) the travel and accommodation expenses and any other allowances of a person who provides assistance pursuant to a request under Articles 11, 12 or 13 of this Agreement;
 - (b) the expenses of custodial or escorting officers; and
 - (c) fees and expenses of experts and those associated with the translation of documents.
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 assistance can be provided.

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
AMENDMENT

This Agreement may be amended at any time by mutual consent of both Parties and such amendments shall enter into force thirty (30) days after the date on which the Parties have notified each other in writing that their respective domestic requirements for the entry into force of the amendments have been complied with.

ARTICLE 22
ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force thirty (30) days after the date on which the Parties have notified each other in writing that their respective domestic requirements for the entry into force of the Agreement have been complied with.
2. This Agreement shall apply to requests whether or not the relevant acts or omissions occurred prior to the Agreement entering into force.
3. Either Party may terminate this Agreement by notice in writing at any time and this Agreement shall cease to be in force six (6) months after the date on which notice is given.
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.

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

DONE in duplicate at Hong Kong on the Third day of April Two Thousand and Eight in the Chinese, English and Indonesian languages. All texts are equally authentic. If there is any divergence of interpretation, the English text shall prevail.

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 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.”.

* 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

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 Republic of Indonesia. 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 Republic of Indonesia and signed in Hong Kong on 3 April 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.

Annex B

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (JAPAN) 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 Japan

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 Japan.

SCHEDULE 1

[s. 2]

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

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

Desiring to establish more effective cooperation between both Parties in the area of mutual legal assistance in criminal matters,

Desiring that such cooperation will contribute to combating crime,

Have agreed as follows:

Article 1

1. Each Party shall, upon request by the other Party, provide mutual legal assistance (hereinafter referred to as “assistance”) in connection with investigations, prosecutions and other proceedings in criminal matters in accordance with the provisions of this Agreement.
2. Assistance shall include the following:
 - (1) obtaining testimony, statements or items;
 - (2) examining persons, items or places;
 - (3) locating or identifying persons, items or places;
 - (4) providing items in the possession of the authorities of the requested Party;
 - (5) presenting an invitation to a person whose appearance before an appropriate authority in the requesting Party is sought;
 - (6) transfer of a person in custody for giving testimony or otherwise assisting in investigations, prosecutions or other proceedings;
 - (7) serving judicial documents;

(8) assisting in proceedings related to confiscation and immobilization of proceeds or instrumentalities of criminal offences; and

(9) any other assistance permitted under the laws of the requested Party and agreed upon between the Central Authorities of the Parties.

3. The term “items” as used in this Agreement means documents, records and articles of evidence.

4. With regard to a request for assistance in connection with an offence against a law related to taxation, the primary purpose of the request shall not be the assessment or collection of tax.

Article 2

1. Each Party shall designate the Central Authority that is to perform the functions provided for in this Agreement. For the Hong Kong Special Administrative Region, the Central Authority shall be the Secretary for Justice or a person designated by the Secretary for Justice. For Japan, the Central Authority shall be the Minister of Justice or the National Public Safety Commission or persons designated by them.

2. Requests for assistance under this Agreement shall be made by the Central Authority of the requesting Party to the Central Authority of the requested Party.

3. The Central Authorities of the Parties shall communicate directly with one another for the purposes of this Agreement.

Article 3

1. The Central Authority of the requested Party may refuse assistance if the requested Party considers that:

(1) the request relates to a political offence;

(2) the execution of the request would impair its essential interests;

(3) the execution of the request would impair the sovereignty, security or public order of Japan or, in the case of the Hong Kong Special Administrative Region, of the People's Republic of China;

(4) the request does not conform to the requirements of this Agreement;

(5) there are well-founded reasons to suppose that the request for assistance has been made with a view to prosecuting or punishing a person by reason of race, religion, nationality, ethnic origin, political opinions or sex, or that such person's position may be prejudiced for any of those reasons;

(6) the conduct that is the subject of the investigation, prosecution or other proceeding in the requesting Party would not constitute a criminal offence under the laws of the requested Party; or

(7) the request for assistance relates to the prosecution of a person for an offence where the person has been convicted or acquitted in the requested Party in respect of that offence or another offence constituted by the same conduct.

2. Before refusing assistance pursuant to paragraph 1, the Central Authority of the requested Party shall consult with the Central Authority of the requesting Party to consider whether assistance can be provided subject to such conditions as the requested Party may deem necessary. If the requesting Party accepts such conditions, the requesting Party shall comply with them.

3. If assistance is refused, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party of the reasons for the refusal.

4. Nothing in this Agreement shall require either Party to execute a request if it is required by its laws to refuse assistance on any of the grounds specified in paragraph 1.

Article 4

1. The Central Authority of the requesting Party shall make a request in writing. However, the Central Authority of the requesting Party may make a request by any other reliable means of communication if the Central Authority of the requested Party considers it appropriate to receive a request by that means. In such cases, the Central Authority of the requesting Party shall provide supplementary confirmation of the request in writing promptly thereafter, if the Central Authority of the requested Party so requires. A request shall be accompanied by a translation into an official language of the requested Party or, in case of urgency, into the English language unless otherwise agreed between the Central Authorities of the Parties.

2. A request shall include the following:

(1) the name of the authority conducting the investigation, prosecution or other proceeding;

(2) the facts pertaining to the subject of the investigation, prosecution or other proceeding; the nature and the stage of the investigation, prosecution or other proceeding; and the text of the relevant laws of the requesting Party;

(3) a description of the assistance requested; and

(4) a description of the purpose of the assistance requested.

3. To the extent necessary and possible, a request shall also include the following:

(1) information on the identity and whereabouts of any person from whom testimony, statements or items are sought;

(2) a description of the manner in which testimony, statements or items are to be obtained or recorded;

(3) a list of questions to be asked of the person from whom testimony, statements or items are sought;

(4) a precise description of persons or places to be searched and of items to be sought;

(5) information regarding persons, items or places to be examined;

(6) a description of the manner in which an examination of persons, items or places is to be conducted and recorded, including the format of any written record to be made concerning the examination;

(7) information regarding persons, items or places to be located or identified;

(8) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(9) a description of any particular procedure to be followed in executing the request;

(10) information on the allowances and expenses to which a person whose appearance is sought before the appropriate authority in the requesting Party will be entitled;

(11) a description of the reason for confidentiality concerning the request; and

(12) any other information that should be brought to the attention of the requested Party to facilitate the execution of the request.

4. If the requested Party considers that the information contained in a request for assistance is not sufficient to meet the requirements under this Agreement to enable the execution of the request, the Central Authority of the requested Party may request that additional information be provided.

Article 5

1. The requested Party shall promptly execute a request in accordance with the relevant provisions of this Agreement. The competent authorities of the requested Party shall take every possible measure in their power to ensure the execution of a request.
2. A request shall be executed in the manner or procedure provided for by the laws of the requested Party. The manner or particular procedure described in a request referred to in paragraph 3(2), 3(6) or 3(9) of Article 4 shall be followed, if appropriate, to the extent it is not prohibited by the laws of the requested Party.
3. If the execution of a request is deemed to interfere with an ongoing investigation, prosecution or other proceeding in the requested Party, the Central Authority of the requested Party may postpone the execution or make the execution subject to conditions deemed necessary after consultations between the Central Authorities of the Parties. If the requesting Party accepts such conditions, the requesting Party shall comply with them.
4. The requested Party shall make its best efforts to keep confidential the fact that a request has been made, the contents of a request, the outcome of the execution of a request and other relevant information concerning the execution of a request if such confidentiality is requested by the Central Authority of the requesting Party. If a request cannot be executed without disclosure of such information, the Central Authority of the requested Party shall so inform the Central Authority of the requesting Party, which shall then determine whether the request should nevertheless be executed.

5. The Central Authority of the requested Party shall respond to reasonable inquiries by the Central Authority of the requesting Party concerning the status of the execution of a request.

6. The Central Authority of the requested Party shall promptly inform the Central Authority of the requesting Party of the result of the execution of a request, and shall provide the Central Authority of the requesting Party with the testimony, statements or items obtained as a result. If a request cannot be executed in whole or in part, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party of the reasons therefor.

Article 6

1. Unless otherwise agreed between the Central Authorities of the Parties, the requested Party shall pay all costs related to the execution of a request, except for the fees of an expert witness, the costs of translation, interpretation and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 13 and 14. Such fees, costs, allowances and expenses shall be paid by the requesting Party.

2. If it becomes apparent that expenses of an extraordinary nature are required to execute a request, the Central Authorities of the Parties shall consult to determine the conditions under which the request will be executed.

Article 7

1. The requesting Party shall not use any testimony, statements or items provided under this Agreement other than in the investigation, prosecution or

other proceeding described in a request without prior consent of the Central Authority of the requested Party.

2. The Central Authority of the requested Party may request that testimony, statements or items provided under this Agreement be kept confidential or be used only subject to other conditions it may specify. If the requesting Party agrees to such confidentiality or accepts such conditions, it shall comply with them.

Article 8

1. The Central Authority of the requested Party may request that the requesting Party transport and maintain items provided under this Agreement in accordance with the conditions specified by the Central Authority of the requested Party, including the conditions deemed necessary to protect third-party interests in the items to be transferred.

2. The Central Authority of the requested Party may request that the requesting Party return any items provided under this Agreement in accordance with the conditions specified by the Central Authority of the requested Party, after such items have been used for the purpose described in a request.

3. The requesting Party shall comply with a request made pursuant to paragraph 1 or 2. When such a request has been made, the requesting Party shall not examine the items without the prior consent of the Central Authority of the requested Party if the examination impairs or could impair the item.

Article 9

1. The requested Party shall obtain testimony, statements or items. In obtaining testimony or items, the requested Party shall employ compulsory measures, including search and seizure, if such measures are necessary and the request includes information justifying those measures under the laws of the requested Party.
2. The requested Party shall make its best efforts to facilitate the presence of such persons as specified in a request for obtaining testimony, statements or items during the execution of the request, and to allow such persons to question the person from whom testimony, statements or items are sought. In the event that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the person from whom testimony, statements or items are sought.
3. (1) If a person, from whom testimony, statements or items are sought pursuant to this Article, asserts a claim of immunity, incapacity or privilege under the laws of the requesting Party, testimony, statements or items shall nevertheless be obtained.

(2) In cases where testimony, statements or items are obtained in accordance with sub-paragraph (1), they shall be provided, together with the claim referred to in that sub-paragraph, to the Central Authority of the requesting Party for resolution of the claim by the competent authorities of the requesting Party.

Article 10

1. The requested Party shall examine persons, items or places. The requested Party shall, subject to its laws, employ compulsory measures in order to do so, if such measures are necessary and the request includes information justifying those measures.
2. The requested Party shall make its best efforts to facilitate the presence of such persons as specified in a request for examining persons, items or places during the execution of a request.

Article 11

The requested Party shall make its best efforts to locate or identify persons, items or places.

Article 12

1. The requested Party shall provide the requesting Party with items that are in the possession of the authorities of the requested Party and are available to the general public.
2. The requested Party shall endeavour to provide the requesting Party with items that are in the possession of the authorities of the requested Party and are not available to the general public, to the same extent and under the same conditions as such items would be available to its investigative and prosecuting authorities.

Article 13

The requested Party shall present an invitation to a person in the requested Party whose appearance before the appropriate authority in the requesting Party is sought. The Central Authority of the requesting Party shall inform the Central Authority of the requested Party of the extent to which the allowances and expenses for such appearance will be paid by the requesting Party. The Central Authority of the requested Party shall promptly inform the Central Authority of the requesting Party of the response of the person.

Article 14

1. A person in the custody of the requested Party whose presence within the jurisdiction of the requesting Party is necessary for giving testimony or otherwise assisting in investigations, prosecutions or other proceedings shall be transferred for those purposes to the requesting Party, if the person consents and if the Central Authorities of the Parties agree, where permitted under the laws of the requested Party.

2. (1) The requesting Party shall keep the person transferred pursuant to paragraph 1 in the custody of the requesting Party, unless permitted by the requested Party to do otherwise.

(2) The requesting Party shall immediately return the person transferred to the requested Party, as agreed beforehand, or as otherwise agreed between the Central Authorities of the Parties.

(3) The person transferred shall receive credit for service of the sentence imposed in the requested Party for the time served in the custody of the requesting Party.

Article 15

1. A person who consents to appear before the appropriate authority in the requesting Party under Article 13 or a person who consents to be transferred to the requesting Party under Article 14 shall not be subject to prosecution, detention or any restriction of personal liberty within its jurisdiction by reason of any conduct or conviction that precedes the departure from the requested Party of that person, nor shall that person be obliged to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation which is specified in the request.

2. (1) The safe conduct provided in accordance with paragraph 1 to the person who consents to appear before the appropriate authority in the requesting Party under Article 13 shall cease when:

(a) the person, having had an opportunity to leave, has nevertheless remained in the requesting Party for a period of fifteen (15) consecutive days after the date of notification by the appropriate authority that the appearance of that person is no longer necessary;

(b) the person, having left the requesting Party, voluntarily returns to it; or

- (c) the person fails to appear before the appropriate authority on the scheduled appearance date unless there are compelling reasons.
- (2) When the notification is made pursuant to sub-paragraph (1)(a), or when the safe conduct ceases pursuant to sub-paragraph (1)(b) or (1)(c), the Central Authority of the requesting Party shall so inform the Central Authority of the requested Party without delay.
3. The safe conduct provided in accordance with paragraph 1 to the person who consents to be transferred to the requesting Party under Article 14 shall cease when that person returns to the requested Party.
4. A person who does not consent to appear before the appropriate authority in the requesting Party under Article 13 or a person who does not consent to be transferred to the requesting Party under Article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting Party, notwithstanding any contrary statement in the request.

Article 16

1. The requested Party shall effect service of judicial documents that are transmitted to it for this purpose by the requesting Party.
2. A request for service of a judicial document requiring the appearance of a person before an appropriate authority in the requesting Party shall be received by the requested Party not less than forty-five (45) days before the date on which the appearance is required. In urgent cases, the requested Party may waive this requirement.

3. In informing the result of the execution of a request for service of a judicial document in accordance with the provisions of paragraph 6 of Article 5, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party in writing of the fact that the service was effected, as well as the date, place and manner of the service.

4. A person who does not comply with a judicial document requiring the appearance of the person before an appropriate authority in the requesting Party served pursuant to this Article shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting Party, notwithstanding any contrary statement in that document.

Article 17

1. The requested Party shall assist, to the extent permitted by its laws, in proceedings related to the confiscation of the proceeds or instrumentalities of criminal offences. Such assistance may include action to identify, trace and temporarily immobilize the proceeds or instrumentalities pending further proceedings.

2. The requested Party that has custody over proceeds or instrumentalities of criminal offences may transfer such proceeds or instrumentalities, in whole or in part, to the requesting Party, to the extent permitted by the laws of the requested Party and upon such conditions as it deems appropriate. Such transfer may take place irrespective of whether taking custody over the proceeds or instrumentalities of criminal offences took place before, on or after the entry into force of this Agreement.

Article 18

Nothing in this Agreement shall prevent either Party from requesting assistance from or providing assistance to the other Party in accordance with other applicable international agreements, or pursuant to its laws that may be applicable.

Article 19

1. The Central Authorities of the Parties shall hold consultations for the purpose of facilitating speedy and effective assistance under this Agreement, and may decide on such measures as may be necessary for this purpose.
2. The Parties shall, if necessary, hold consultations on any matter that may arise in the interpretation or implementation of this Agreement and shall make every effort to reach agreement.
3. Any dispute arising out of the interpretation or implementation of this Agreement shall be resolved through diplomatic channels.

Article 20

1. This Agreement shall enter into force on the thirtieth day after the date on which the Parties exchange notes informing each other that their respective internal legal procedures necessary for entry into force of this Agreement have been completed.

2. This Agreement shall apply to any request for assistance presented on or after the date upon which this Agreement enters into force, whether the acts relevant to the request were committed before, on or after that date.
3. Either Party may terminate this Agreement at any time by giving six months' written notice to the other Party.

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

DONE at Hong Kong, in duplicate, in the Chinese, English and Japanese languages, all texts being equally authentic, this 23rd day of May, 2008. In case of any divergence of interpretation, the English text shall prevail.

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 17(1) of the Ordinance shall be modified by deleting paragraph (ii).

3. Section 17(3)(a) of the Ordinance shall be modified by deleting “or”.

4. 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 and has remained in Hong Kong for a period of 15 consecutive days after the date of being notified that the appearance of the person is no longer required for any of the following purposes* ~~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~~**; or*~~”.

5. Section 17(3) of the Ordinance shall be modified by adding –

“(c) in the absence of compelling reasons, the person fails to appear on the scheduled appearance date before the authority before which the person consents to appear.*”.

6. 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

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 Japan. The Order is made in consequence of the arrangements for mutual legal assistance entered into by the Hong Kong Special Administrative Region and Japan and signed in Hong Kong on 23 May 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.

**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

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.

Annex D

Explanatory Statement on the Modifications to the Mutual Legal Assistance in Criminal Matters Ordinance

Mutual Legal Assistance in Criminal Matters (Indonesia) 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 6(1)(c) of the Hong Kong/Indonesia Agreement provides for this protection in relation to conviction etc in the requested jurisdiction as well. The modification to section 5(1)(e) reflects the provision in the Agreement by extending the protection to cover convictions etc in the requested jurisdiction.

Immunities

2. Section 17 of the Ordinance gives certain immunities to a person who comes to Hong Kong from another jurisdiction to render assistance. 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 14(2) of the Hong Kong/Indonesia Agreement provides that the immunities will continue to be applicable for a period of 15 days after the person has been notified that his presence is no longer required. The modification reflects the additional protection in the Agreement by providing for a period of 15 days in section 17(3)(b).

Annex E

Explanatory Statement on the Modifications to the Mutual Legal Assistance in Criminal Matters Ordinance

Mutual Legal Assistance in Criminal Matters (Japan) 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)(7) of the Hong Kong/Japan Agreement provides for this protection in relation to conviction etc in the requested jurisdiction as well. The modification to section 5(1)(e) reflects the provision in the Agreement by extending the protection to cover convictions etc in the requested jurisdiction.

Immunities

2. Section 17 of the Ordinance gives certain immunities to a person who comes to Hong Kong from another jurisdiction to render assistance. 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 15(2)(1)(a) of the Hong Kong/Japan Agreement provides that the immunities will continue to apply for a period of 15 consecutive days after the person has been notified that the appearance of the person is no longer required. The modification reflects the additional protection in the Agreement by providing for a period of 15 days in section 17(3)(b).

3. Article 15(2)(1)(c) of the Hong Kong/Japan Agreement provides that immunities will cease to apply “when the person fails to appear before the appropriate authority on the scheduled appearance date unless there are compelling reasons”. The modification reflects the additional requirement in the Agreement by stipulating such requirement in section 17(3)(c).

4. Sections 17(1)(ii) and 23(2)(a)(ii) of the Ordinance relate to immunity from civil suit where a person is rendering assistance in Hong Kong (section 17) or in a place outside Hong Kong (section 23). Such immunity is not provided in the Hong Kong/Japan Agreement as the immunity is not available under Japanese law. The modifications to sections 17(1) and 23(2)(a) reflect the non-availability of this immunity.

Explanatory Statement on the Modifications to the Mutual Legal Assistance in Criminal Matters Ordinance

Mutual Legal Assistance in Criminal Matters (Sri Lanka) 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 / Sri Lanka Agreement provides for this protection in relation to conviction etc in the requested jurisdiction as well. The modification to section 5(1)(e) reflects the provision in the Agreement by extending the protection to cover convictions etc in the requested jurisdiction.

Lapse of Time

2. Article 4(1)(e) of the Hong Kong/Sri Lanka Agreement provides that a requested party shall refuse assistance if the request relates to the prosecution of a person for an offence 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. The addition of sub-section (ea) to section 5(1) of the Ordinance reflects such protection.

Immunities

3. Section 17 of the Ordinance gives certain immunities to a person who comes to Hong Kong from another jurisdiction to render assistance. 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/Sri Lanka Agreement provides that the immunities will continue to be applicable within a period of 15 days after the person has been notified that his presence is no longer required. The modification reflects the additional protection in the Agreement by providing for a period of 15 days in section 17(3)(b).

4. Sections 17(1)(ii) and 23(2)(a)(ii) of the Ordinance relate to immunity from civil suit where a person is rendering assistance in Hong Kong (section 17) or in a place outside Hong Kong (section 23). Such immunity is not provided in the Hong Kong/Sri Lanka Agreement as the immunity is not available under the law of Sri Lanka. The modifications to sections 17(1) and 23(2)(a) reflect the non-availability of this immunity.