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**Paper for the House Committee Meeting
on 14 December 2018**

**Further Report by Legal Service Division on
Proposed Resolution under section 4 of the
Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)**

Mutual Legal Assistance in Criminal Matters (Mongolia) Order

Members may recall that at the House Committee meeting on 7 December 2018, the Legal Service Division ("LSD") made a report on the above Order, which seeks to implement the arrangements for mutual legal assistance in criminal matters ("MLA") entered into between the Government of Hong Kong and the Government of Mongolia ("the Agreement"). In the LSD report (LC Paper No. LS25/18-19), we informed Members that we had written to the Administration to request, among others, clarification on certain matters in respect of the Order and will report further, if necessary.

2. In response to LSD's enquiries, the Administration has provided clarification on the following matters:

- (a) Refusal on the ground of "lapse of time for prosecution" not provided in the Agreement

The refusal ground of "lapse of time for prosecution" is not included in Article 4 of the Agreement at the suggestion of Mongolia as it is not a ground for refusal under the law of Mongolia. It is also not a ground for refusal of assistance under section 5 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525). This ground is also not provided in MLA agreements signed between Hong Kong and other jurisdictions¹.

- (b) No definition of "proceeds of crime" under Article 18

The term "proceeds of crime" is not defined in the model agreement. While the term is not defined in Article 18 of the Agreement, pursuant to Article 18(2) and (3) of the Agreement, assistance

¹ Such as Belgium, Germany, Israel, Poland and the USA.

provided under Article 18 shall be in accordance with the Requested Party's law. As such, the meaning and scope of the "proceeds of crime" under Article 18 of the Agreement will be determined by the respective definitions of this term under the laws of Hong Kong and Mongolia.

(c) Reasons for and ambit of the additional refusal ground of "sex"

The additional ground of "sex" for refusal of assistance is added at the request of Mongolia to reflect their legal requirements. It is in line with the protection against sex discrimination under the Sex Discrimination Ordinance (Cap. 480) and the Hong Kong Bill of Rights Ordinance (Cap. 383). This refusal ground also appears in MLA agreements signed between Hong Kong and other jurisdictions².

(d) Reasons for the modification to section 17(3)(b) of Cap. 525

An extended period of 15 days for the application of the immunities to persons giving assistance to the Requesting Party is provided in Article XVII(2) of the model agreement. It is a standard provision which allows time for the person to leave the area of the Requesting Party after being notified that his presence is no longer required. The extended period of 15 days also appears in MLA agreements signed between Hong Kong and other jurisdictions³.

3. The Administration has also provided the article-by-article comparison of the Agreement with the model agreement and also the model agreement which are at Annexes A and B respectively for Members' reference.

4. Subject to Members' views on the above matters, no legal or drafting difficulties have been identified in relation to the Order.

Encls.

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LS/R/3/18-19

² Such as Australia, Belgium, Czech Republic, Israel, Italy, Malaysia, New Zealand, Singapore and Spain.

³ Such as Australia, Czech Republic, Denmark, Ireland, Italy, Netherlands, Singapore, South Korea, Spain, Sweden, United Kingdom, Ukraine and the USA.

**Article-by-article comparison of the
HKSAR / Mongolia Agreement on
Mutual Legal Assistance in Criminal Matters
with the model agreement**

TITLE

The title is substantially the same as the model text.

PREAMBLE

2 The preamble is substantially the same as that of the model text.

ARTICLE 1 – SCOPE OF ASSISTANCE

Paragraphs 1 and 2

3 These correspond to Article I(1) of the model text. The reference to “investigation and prosecution of criminal offences and in proceedings related to criminal matters” is now covered in the definition of “criminal matter” in paragraph 2. The definition of “criminal matter” follows that of the HK/Indonesia MLA Agreement (Article 1(2)).

Paragraph 3

4 This paragraph corresponds to Article I(2) of the model text.

- *Sub-paragraphs (a) and (b)* are substantially the same as Article I(2)(c) and (i) of the model text. Reference to “letters rogatory” in Article 1(2)(c) of the model text is omitted. Precedents include Agreements with Canada, France, Ireland, Italy, South Korea, Philippines, Ukraine and USA.
- *Sub-paragraph (c)* has extended Article I(2)(a) of the model text to cover the location and identification of “items”. Similar provisions can be found in the Agreements with South Korea, Canada, Ukraine, Belgium, Japan and USA.
- *Sub-paragraph (d)* is substantially the same as Article I(2)(b) of the model text.
- *Sub-paragraph (e)* is the same as Article I(2)(d) of the model text.

- *Sub-paragraph (f)* is the amalgamation of Article I(2)(e) and (f) of the model text. Similar provisions are found in the Agreements with Canada (Article 1(4)(g)) and Germany (Article 1(7)).
- *Sub-paragraph (g)* is substantially the same as Article I(2)(h) of the model text.
- *Sub-paragraph (h)* is substantially the same as Article I(2)(j) of the model text.
- *Sub-paragraph (i)* is a “catch-all” clause newly added to make this paragraph more comprehensive. Similar provisions are found in other signed Agreements (e.g. Japan Article 1(2)(9), Italy Article I(2)(k), Ireland Article 1(2)(j), Sri Lanka Article 1(2)(j), India Article I(2)(k), Finland Article 1(2)(l), Indonesia Article 1(4)(h)).
- Omission: Article I(2)(g) of the model text is deleted at the suggestion of the Mongolian side who considered that such records are covered by the term “records” in *sub-paragraph (b)*.

Paragraph 4

5 This paragraph is consistent with Article I(3) of the model text and section 5(2)(b) of Cap. 525. It provides discretion to the Parties to provide assistance in cases involving tax offences provided that the primary purpose is not the assessment or collection of tax. Similar provisions are found in other signed Agreements (e.g. Belgium Article 1(3), Israel Article I(3), India Article I(3))

Paragraph 5

6 This paragraph is the same as Article I(4) of the model text.

Paragraph 6

7 This paragraph is adopted at the request of the Mongolian side. Precedents of making provisions for “non-application” of the Agreement are found in other Agreements (such as the Agreements with Australia, Belgium, Indonesia, Singapore, South Korea, Switzerland and Malaysia).

- *Sub-paragraphs (a) to (c)* are substantially similar to Article I(4)(a) to (c) of the MLA Agreement with Australia.
- *Sub-paragraph (d)* is substantially the same as Article 2(1)(d) of the MLA Agreement with Indonesia.

ARTICLE 2 – OTHER ARRANGEMENTS

8 This Article corresponds to Article III of the model text. The Title and the formulation follow Article 2 of the MLA Agreement with South Korea.

ARTICLE 3 – CENTRAL AUTHORITY

Paragraph 1

9 This paragraph corresponds to Article II(1) and (2) of the model text. It is more comprehensive as it also provides for the change of Central Authority. Similar provision can be found in the Agreements with Belgium (Article II(2)), Denmark (Article 2(2)), Finland (Article 2(2)), Indonesia (Article 4(3)), Ireland (Article 2(2)), Israel (Article 2(3)), Malaysia (Article 3(4)), Poland (Article 2(2)), Portugal (Article 2(2)), Singapore (Article 20(1)), Sri Lanka (Article 2(1)).

Paragraph 2

10 This paragraph reflects Article II(3) of the model text and it covers all communications between the Parties. This is consistent with the HKSAR's MLA practice. Similar provision can be found in the Agreements with Japan (Article 2(3)), Poland (Article 2(3)), Switzerland (Article 26(4)).

ARTICLE 4 – REFUSAL OR POSTPONEMENT OF ASSISTANCE

Title

11 The title is changed at the suggestion of the Mongolian side. The same title is found in Article 4 of the Agreement with Germany.

Paragraph 1

12 This corresponds to Article IV(1) of the model text:

- *Chapeau* is substantially the same as that of Article IV(1). The reference “in the opinion of the Requested Party” is added at the suggestion of the Mongolian side. Similar formulation can be found in Article 3(1) of the Agreement with Singapore and Article 6(2) of the Agreement with Indonesia.
- *Sub-paragraph (a)* is substantially the same as Article IV(1)(f) of the model text.
- *Sub-paragraph (b)* is substantially the same as Article IV(1)(a) of the model text. At the suggestion of the Mongolian side, the formulation of this provision follows that of Article 3(1)(3) of the

Agreement with Japan.

- *Sub-paragraph (c)* is substantially the same as Article IV(1)(d) of the model text, except that the reference of “sex” is added at the suggestion of the Mongolian side. Similar addition is found in the Agreements with Japan (Article 3(1)(5)), Indonesia (Article 6(1)(d)) and South Korea (Article 4(1)(d)). The formulation of this provision follows section 5(1)(d) of Cap. 525.
- *Sub-paragraph (d)* is substantially the same as Article IV(1)(h) of the model text.
- *Sub-paragraph (e)* is substantially the same as Article IV(1)(b) of the model text.
- *Sub-paragraph (f)* is the amalgamation of Article IV(1)(e) of the model text and section 5(1)(e) of Cap. 525. This is acceptable as it is consistent with the principle of double jeopardy. Similar provision can be found in the Agreements with Australia (Article IV(1)(e)), Canada (Article 5(2)(c)), Israel (Article 4(1)(f)).

Paragraph 2

13 This paragraph is substantially the same as Article IV(1)(c) of the model text. The formulation of “The Requested Party may, and if required by its law, shall” is adopted to cater for the Mongolian side’s position that this is not a mandatory ground of refusal under its law.

Paragraph 3

14 This paragraph is the same as Article IV(3) of the model text.

Paragraph 4

15 This paragraph is substantially the same as Article IV(4) of the model text.

Paragraph 5

16 This paragraph is substantially the same as Article IV(5) of the model text.

Paragraph 6

17 This paragraph is the same as Article IV(6) of the model text.

Paragraph 7

18 This paragraph is substantially the same as Article VI(4) of the model text.

Omission of Article IV(1)(g) of the model text

19 This paragraph is omitted at the request of the Mongolian side who pointed out that the provision is covered by Article 9(1) which provides that the Requesting Party shall not disclose or use information or evidence furnished for other criminal matters. The omission is acceptable. This paragraph is also omitted in the Agreements with Poland, Indonesia and USA.

Omission of Article IV(2) of the model text

20 This paragraph is omitted at the request of the Mongolian side. The Mongolian side considered that there is no need to define “essential interest” in the Agreement and it is for the Requested Party to determine what its ‘essential interests’ are. The provision is also omitted in many other MLA agreements such as the MLA agreements with Belgium, Denmark, France, Germany, Italy, the Netherlands and Poland.

ARTICLE 5 – CONTENTS OF REQUEST

Title

21 The title is changed to “Contents of Request” at the suggestion of the Mongolian side.

Paragraph 1

22 This paragraph is substantially the same as Article V(2) of the model text but with the following variation: -

- *Sub-paragraph (c)* is an amalgamation of items (c), (d) and (e) of Article V(2) of the model text. “maximum penalty” is added to reflect the requirement under section 8(2)(h) of Cap. 525.
- *Sub-paragraph (g)* is a “catch-all” provision added for completeness.

Paragraph 2

23 This paragraph is added at the suggestion of the Mongolian side. Similar provisions are found in the Agreements with the USA (Article 4(4)), Indonesia (Article 5(3)).

- *Sub-paragraph (a)*: similar provisions are found in the Agreements with Indonesia (Article 5(3)(b)), Ireland (Article 4(3)(a)) and USA (Article 4(4)(a)).
- *Sub-paragraph (b)*: similar provisions are found in the Agreements with Indonesia (Article 5(3)(c)), Ireland (Article 4(3)(b)) and USA (Article 4(4)(b)).
- *Sub-paragraph (c)*: similar provisions are found in the Agreements with Indonesia (Article 5(3)(d)), Ireland (Article 4(3)(c)) and USA (Article 4(4)(c)).
- *Sub-paragraph (d)*: similar provisions are found in the Agreements with Poland (Article 4(3)(d)), South Korea (Article 5(3)(d)) and USA (Article 4(4)(d)).
- *Sub-paragraph (e)*: similar provisions are found in the Agreements with South Africa (Article 4(3)(h)), Japan (Article 4(3)(10)) and New Zealand (Article V(2)(j)).

Paragraph 3

24 The paragraph is included at the Mongolian side's suggestion. Precedents of such a provision are found in the MLA agreements with South Korea (Article 5(4)), the Netherlands (Article 5(5)), New Zealand (Article V(4)) and Malaysia (Article 6(4)).

Paragraph 4

25 This paragraph corresponds to Article V(1) of the model text. Reference to oral requests is deleted as it is no longer the HKSAR's MLA practice to accept oral requests.

Paragraph 5

26 This paragraph corresponds to Article V(4) of the model text. Both sides agreed that requests and other documents pursuant to this Agreement shall be in the English language, and translation into an official language is required if requested. A similar provision is found in the Agreement with Indonesia (Article 5(4)).

Article V(3) of the model text

27 This paragraph is moved to Article 8.

ARTICLE 6 – EXECUTION OF REQUESTS

Paragraph 1

28 This paragraph is the amalgamation of Article VI(1) and (2) of the model text.

Paragraph 2

29 This paragraph is substantially the same as Article VI(3) of the model text.

Article VI(4) of the model text

30 This paragraph is moved to Article 4(7).

ARTICLE 7 – RETURN OF MATERIAL TO THE REQUESTED PARTY

31 This Article is added at the suggestion of the Mongolian side to expressly provide for the obligation to return material delivered under the Agreement. For precedents see earlier agreements with Canada (Article 8(2)), Israel (Article 9(8)), Indonesia (Article 8), South Korea (Article 11), Malaysia (Article 20(1)), Poland (Article 16), Singapore (Article 13(1)) and USA (Article 17).

ARTICLE 8 – CONFIDENTIALITY

32 This paragraph is an expanded formulation of Article V(3) of the model text. The formulation is based on Article 9(a) of the UN Model Treaty on Mutual Legal Assistance in Criminal Matters (“UN Model”). Similar provisions are found in the Agreements with the USA (Article 5(6)), the Philippines (Article VII (2)), Ireland (Article 8(1)) and Indonesia (Article 9(1)).

ARTICLE 9 – LIMITATION ON USE

Paragraph 1

33 This paragraph is substantially the same as Article VIII(2) of the model text.

Paragraph 2

34 This paragraph corresponds to Article VIII(1) of the model text, and has specified the exceptions to the confidentiality obligation. The formulation is adopted from Article 9(b) of the UN model. A similar provision is found in the Agreement with Indonesia (Article 9(2)).

Paragraph 3

35 This paragraph is added at the suggestion of the Mongolian side and accords with the HKSAR's MLA practice. Similar provisions are found in the Agreements with the USA (Article 7(4)), South Korea (Article 7(4)) and Poland (Article 7(4)).

ARTICLE 10 – OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

Paragraph 1

36 This paragraph corresponds to Article IX(1) and (2) of the model text. The formulation is substantially similar to Article 9(1) of the Agreement with South Korea.

Paragraph 2

37 This paragraph is the same as Article IX(3) of the model text.

Paragraph 3

38 This paragraph provides for the presence of persons at the taking of evidence, which corresponds to Article IX(4) of the model text. This is consistent with the general practice in the HKSAR. The formulation follows that of Article 11(2) of the Agreement with Indonesia.

Paragraph 4

39 This paragraph is substantially the same as Article IX(5) of the model text.

Paragraph 5

40 The paragraph corresponds to Article IX(6) of the model text, and provides that where a person claims a right to decline to give evidence under the law of the Requesting Party, the evidence shall nevertheless be taken and the claim made known to the Requesting Party for its subsequent determination. A similar provision is found in Article 9(5) of the Agreement with the USA.

ARTICLE 11 – VIDEO CONFERENCE

41 Both sides agreed to add a separate Article to provide for the taking of evidence of by means of video conference. This provision is consistent with

HKSAR's MLA practice. Similar provision can be found in the Agreements with Malaysia (Article 11), the Netherlands (Article 11) and Spain (Article 11).

ARTICLE 12 – AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

Title

42 The Title is replaced by that of Article 13 of the UN model at the suggestion of the Mongolian side. The same title is used in the Agreements with Indonesia (Article 12) and South Korea (Article 13).

Paragraph 1

43 This paragraph is substantially the same as Article XV(1) of the model text. The reference to “appearing as a witness or expert in proceedings” is added at the request of the Mongolian side. Similar addition appears in the Agreements with France (Article XIV(1)) and Switzerland (Article 18(1)).

Paragraph 2

44 This paragraph is the same as Article XV(2) of the model text.

ARTICLE 13 – AVAILABILITY OF OTHER PERSONS TO PROVIDE ASSISTANCE

Title

45 The Title is changed at the request of the Mongolian side. Similar title is used in the Agreements with Indonesia (Article 13) and South Korea (Article 14).

Paragraph 1

46 This paragraph corresponds to Article XVI(1) of the model text. It has been slightly amended into the more appropriate wording “inviting a person to appear”, since the Requested Party cannot “make available” a person to provide assistance. There is an additional requirement regarding providing information on expenses and allowances payable. There is no objection. For precedents, see the Agreements with Canada (Article 13(2)), France (Article XV(2)), Indonesia (Article 13(1)), Italy (Article XIV(2)) and South Korea (Article 14(1)).

Paragraph 2

47 Consequent upon changes to paragraph 1, paragraph 2 limits the obligation of the Requested Party to informing the Requesting Party of the person's response and not to oblige the Requested Party to consider the question of the person's security as in Article XVI(2) of the model text. The question of security is for the person himself to consider when deciding whether to agree to appear. For precedents, see Czech (Article 16(2)), Spain (Article 14(2)), UK (Article XVI(2)), Indonesia (Article 13(2)).

ARTICLE 14 – SAFE CONDUCT

Paragraph 1

48 This is substantially the same as Article XVII(4) of the model text.

Paragraph 2

49 This is substantially the same as Article XVII(5) of the model text.

Paragraph 3

50 This paragraph corresponds to Article XVII(1) of the model text and follows the relevant provisions in Cap. 525 (sections 17(1)(b)(ii) and 23(2)(a)(ii)).

Paragraph 4

51 This is the same as Article XVII(2) of the model text, except that the reference to the protection under Article 14(1) (the obligation to assist in other criminal matters) is added. The inclusion of Article 14(1) in this paragraph is consistent with sections 17(3) and 23(2) of Cap. 525. There is no objection. Similar inclusion is found in the Agreements with Indonesia (Article 14(2)), Japan (Article 15(2)) and Singapore (Article 9(2)).

Paragraph 5

52 This corresponds to Article XVII(3) of the model text and has added "contempt of court". The addition is consistent with sections 19 and 23(2)(b) of Cap. 525. Similar addition is made in the Agreements with Australia (Article XVII(3)), Singapore (Article 9(1)(a)(iii)), Indonesia (Article 14(3)) and South Africa (Article 15(3)).

ARTICLE 15 – PROVISION OF PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

Title

53 The Title is substantially the same as that of Article XIII of the model text.

Paragraph (1)

54 This paragraph corresponds to Article XIII(1) of the model text and elaborates on the public documents which the Requested Party is obliged to provide. The qualification to the obligation (“subject to its law”) is removed at the suggestion of the Mongolian side. There is no objection, as the provision of publicly available documents is permitted by the HKSAR law and accords with the HKSAR’s MLA practice.

Paragraph (2)

55 This is the same as Article XIII(2) of the model text.

ARTICLE 16 – SERVICE OF DOCUMENTS

Paragraph 1

56 This is substantially the same as Article XII(1) of the model text.

Paragraph 2

57 This paragraph is substantially the same as Article XII(2) of the model text. A minimum number of days has been specified for service of documents requiring the appearance of persons in the Requesting Party. For precedents, see Belgium (Article XI(2)), France (Article XI(3)), Indonesia (Article 10(2)), Italy (Article X(3)), Japan (Article 16(2)), South Korea (Article 10(2)) and the Netherlands (Article 17(3)).

Paragraph 3

58 This is the same as Article XII(3) of the model text.

Paragraph 4

59 This is the equivalent of Article XII(4) of the model text with the contents of the proof of service specified in the Article. Similar details of the proof of service are also provided in the Agreements with Italy (Article X(4)), Malaysia (Article 13(6)), the Netherlands (Article 17(4)) and Switzerland (Article 17(3)).

Paragraph 5

60 This is substantially the same as Article XII(5) of the model text.

ARTICLE 17 – SEARCH AND SEIZURE

Paragraph 1

61 This paragraph is substantially similar to Article XVIII(1) of the model text. The last sentence is a helpful provision included at the suggestion of the Mongolian side to make reference to the need to include in the request information justifying the requested assistance. For precedents, see the Agreements with Germany (Article 5(3)(2)) and South Korea (Article 16(1)).

Paragraph 2

62 This is substantially the same as Article XVIII(2) of the model text.

Paragraph 3

63 This is substantially the same as Article XVIII(3) of the model text. The reference to third party right is added at the suggestion of the Mongolian side. A similar addition is found in the Agreement with South Korea (Article 16(3)).

ARTICLE 18 – PROCEEDS OF CRIME

Paragraphs 1, 2 and 5

64 These are substantially the same as Article XIX(1), (2) and (4) of the model text respectively.

Paragraph 3

65 This paragraph corresponds to Article XIX(3) of the model text and has been amended to restrict the execution of the request to that provided by the laws of the Requested Party. This is appropriate since the HKSAR can only provide assistance pursuant to Cap. 525, in cases where the offence carries a maximum penalty of 2 years or more, under the Laws of the HKSAR. For precedents, see Agreements with Czech (Article 19(3)), Spain (Article 19(3)), Poland (Article 17(2)), Denmark (Article 15(3)), Ukraine (Article 19(3)).

Paragraph 4

66. This paragraph is added at the suggestion of the Mongolian side. The

HKSAR has no objection. Similar provision is made in the Agreements with Australia (Article XIX(4)), Indonesia (Article 17(4)) and New Zealand (Article XIX(5)).

ARTICLE 19 – CERTIFICATION AND AUTHENTICATION

Paragraph 1

67 This corresponds to the first sentence of Article XIV of the model text. The paragraph covers the certification and authentication requirements of all documents sent by either Party to the other. There is no objection. A similar provision can be found in the Agreement with Indonesia (Article 18(1)).

Paragraph 2

68 This paragraph is included at the request of the Mongolian side and accords with the HKSAR's MLA practice. Similar provision is found in the Agreement with Canada (Article 8(5)).

Paragraph 3

69 This is the same as the second sentence of Article XIV of the model text.

ARTICLE 20 – REPRESENTATION AND EXPENSES

Paragraph 1

70 This is substantially the same as Article VII(1) of the model text.

Paragraph 2

71 This is substantially the same as Article VII(2) of the model text but with the following variations:

- *Sub-paragraph (a)* corresponds to and is a more detailed formulation of Article VII(2)(d) of the model text;
- *Sub-paragraph (b)* corresponds to and is substantially the same as Article VII(2)(a) and (b) of the model text;

Paragraph 3

72 This is substantially the same as Article VII(3) of the model text.

Article VII(2)(c) of the model text

73 The provision is omitted at the request of the Mongolian side. The HKSAR has no objection to the omission based on the Mongolian side's confirmation that the evidence to be provided to Mongolia pursuant to the Agreement may be in the English or Chinese languages. Both sides agreed that the Parties will consult in cases where Mongolia requires a Mongolian translation of the HKSAR evidence.

ARTICLE 21 – CONSULTATION

74 This provision is added at the suggestion of the Mongolian side and is a helpful provision. There are several precedents for consultation clauses e.g. the Agreements with Malaysia (Article 24), New Zealand (Article XX), Poland (Article 20) and USA (Article 21).

ARTICLE 22 – SETTLEMENT OF DISPUTES

75 This is the same as Article XX of the model text.

ARTICLE 23 – ENTRY INTO FORCE, AMENDMENT AND TERMINATION

Title

76 The Title is amended to reflect the provision on amendment in Article 23(2).

Paragraph 1

77 This is substantially the same as Article XXI(1) of the model text.

Paragraph 2

78 This provides for amendment of the Agreement and is a useful provision. For precedents, see the MLA agreements with Malaysia (Article 25) and Indonesia (Article 21).

Paragraph 3

79 This is added at the suggestion of the Mongolian side and is modelled on Article 22(3) of the UN Model. Similar provisions are found in the Agreements with Indonesia (Article 22(2)) and South Korea (Article 21(2)).

Paragraph 4

80 This is substantially the same as Article XXI(2) of the model text. Both sides agreed to adopt a six-month time frame for the termination to take effect.

OTHER ARTICLES OF THE MODEL TEXT WHICH ARE OMITTED

Article X – Obtaining Statements of Persons

81 This Article is omitted at the suggestion of the Mongolian side. It was agreed that this Article is covered by Article 10(1). This provision is also omitted in many other Agreements such as those with France, Italy, The Netherlands and Malaysia.

Article XI – Location or Identity of Persons

82 This Article is omitted at the suggestion of the Mongolian side. It was agreed that this Article is covered by Article 1(3)(c). This provision is also omitted in many other Agreements such as those with The Netherlands, Finland and South Korea.

Annex B

AGREEMENT BETWEEN

THE GOVERNMENT OF HONG KONG

AND

THE GOVERNMENT OF _____

CONCERNING

MUTUAL LEGAL ASSISTANCE IN

CRIMINAL MATTERS

The Government of Hong Kong, having been duly authorised by the sovereign government responsible for its foreign affairs, and the Government of _____

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 I

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 evidence, articles or documents, including the execution of letters rogatory;
- (d) executing requests for search and seizure;

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(e) facilitating the personal appearance of witnesses;

(f) effecting the temporary transfer of persons in custody to appear as witnesses;

(g) obtaining production of judicial or official records;

(h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities;

(i) providing information, documents and records; and

(j) delivery of property, including lending of exhibits.

(3) Proceedings relating to criminal matters do not include proceedings related to the regulations involving the imposition, calculation or collection of taxes.

(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 II
CENTRAL AUTHORITY

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority of Hong Kong shall be the Attorney General or his duly authorised officer. The Central Authority for _____ shall be _____
- (3) Requests under this Agreement shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

ARTICLE III
OTHER ASSISTANCE

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

ARTICLE IV
LIMITATIONS ON COMPLIANCE

- (1) The Requested Party shall refuse assistance if:

- 5 -

- (a) the request for assistance impairs the sovereignty, security or public order of _____ or, in the case of the Government of Hong Kong, the State which is responsible for its foreign affairs;
- (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 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) if it is of the opinion that the granting of the request would seriously impair its essential interests;

(g) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided; and

(h) if 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) 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.

(3) 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.

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

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

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

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

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

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ARTICLE V

REQUESTS

(1) Requests shall be made in writing except in urgent cases. In urgent cases, requests may be made orally, but shall be confirmed in writing within 10 days thereafter.

(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 fact and laws;

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- (f) any requirements for confidentiality;
- (g) details of any particular procedure the Requesting Party wishes to be followed; and
- (h) details of the period within which the request should be complied with.

(3) The Requested Party shall use its best efforts to keep confidential a request and its contents except when otherwise authorized by the Requesting Party.

(4) All documents submitted in support of a request shall be accompanied by a translation in the language of the Requested Party.

ARTICLE VI

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.

ARTICLE VII

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:

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(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.

(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 VIII

LIMITATIONS OF USE

(1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished 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 for purposes other than

those stated in the request without the prior consent of the Central Authority of the Requested Party.

ARTICLE IX

OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

(1) Where a request is made that evidence be taken for the purpose of a 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 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, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting Party, the parties to the relevant proceedings in the Requesting Party, their legal representatives or representatives of the Requesting Party

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may, subject to the laws of the Requested Party, appear and question the person giving that evidence.

(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 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) where 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.

ARTICLE X

OBTAINING STATEMENTS OF PERSONS

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

ARTICLE XI

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 XII

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 XIII

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 XIV
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. Material shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

ARTICLE XV
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 Requesting 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 XVI

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 satisfied that 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 XVII

SAFE CONDUCT

(1) A person who consents to provide assistance pursuant to Articles XV or XVI shall not be prosecuted,

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detained, or restricted in his personal liberty in the Requesting Party for any criminal offence or civil matter which preceded his departure from the Requested Party.

(2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article XV, 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 XV or XVI shall not be subject to prosecution based on his testimony, except for perjury.

(4) A person who consents to provide assistance pursuant to Articles XV or XVI shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.

(5) A person who does not consent to give evidence pursuant to Articles XV or XVI shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting or Requested party.

ARTICLE XVIII

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 a proceeding or investigation 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 XIX

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 assistance shall be given by whatever means are appropriate. 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 XX

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 XXI

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 on 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 this day of 19...