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SENATE

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TREATY WITH THE UNITED KINGDOM ON MUTUAL
 LEGAL ASSISTANCE ON CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT WASHINGTON ON JANUARY 6, 1994, TOGETHER WITH A RELATED EXCHANGE OF NOTES SIGNED THE SAME DATE



JANUARY 23, 1995.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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WASHINGTON : 1995

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 23, 1995.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters, signed at Washington on January 6, 1994, with a related exchange of notes signed the same date. Also transmitted for the information of the Senate is the report of the Department of State with respect to this Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter criminal activities more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of modern criminals, including members of drug cartels, "white-collar criminals," and terrorists. The Treaty is self-executing.

The Treaty provides for as broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: (1) the taking of testimony or statements of witnesses; (2) the provision of documents, records, and evidence; (3) the service of legal documents; (4) the location or identification of persons; (5) the execution of requests for searches and seizures; and (6) the provision of assistance in proceedings relating to the forfeiture of the proceeds of crime and the collection of fines imposed as a sentence in a criminal prosecution.

I recommend that the Senate give early and favorable consideration to the Treaty, and related exchange of notes, and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, January 6, 1995.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters (the "Treaty"), signed at Washington on January 6, 1994, together with a related exchange of notes signed on the same date. I recommend that the Treaty and the related exchange of notes be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with Argentina, the Bahamas, Canada, Italy, Mexico, Morocco, the Netherlands, Spain, Switzerland, Thailand, Turkey, the United Kingdom concerning the Cayman Islands, and Uruguay. Other similar treaties have been signed and ratified by the United States (but have not yet entered into force) with Belgium, Colombia, and Jamaica. In addition, treaties with Nigeria and Panama have been transmitted to the Senate and await Senate consideration. This Treaty contains many provisions similar to those in the other treaties.

This Treaty will enhance our ability to investigate and prosecute drug-related money laundering offenses. It is designed to be self-executing and will not require implementing legislation.

Article 1 provides for mutual assistance in "proceedings", which is defined in Article 19 to include any measure taken in connection with the investigation or prosecution of criminal offenses, including the freezing, seizure, and forfeiture of proceeds and instrumentalities of crime and the imposition of fines related to a criminal prosecution.

The Treaty does not contain a provision limiting assistance to offenses which are proscribed under the law of the Party from which assistance is requested (the "Requested Party"). As clarified in the interpretative notes that accompany the Treaty, however, the Treaty does not apply to anti-trust or competition investigation or proceedings underway at the time the Treaty was signed. This exchange of notes also provides that the Central Authorities of the Parties may, at a later date, provide assistance in such proceedings as may be agreed in writing between the Parties.

Article 1 further provides that assistance under the Treaty shall include: taking the testimony or statements of persons; providing documents, records, and evidence; serving documents; locating or identifying persons; transferring persons in custody for testimony or other purposes; executing requests for searches and seizures; identifying, tracing, freezing, seizing, and forfeiting the proceeds and instrumentalities of crime and assistance in related proceedings; and such other assistance as may be agreed between the Central authorities.

Article 1 explicitly states that the Treaty does not create rights in private parties to obtain, suppress, or exclude evidence, or to impede the execution of a request.

Article 2 provides for the establishment of Central Authorities and defines the Central Authorities for purposes of the Treaty. For the United States, the Central Authority is the Attorney General or a person designated by the Attorney General. For the United Kingdom, the Central Authority is the Secretary of State for the Home Department or the Secretary's designee. The article provides that requests under the Treaty shall be made directly between the Central Authorities.

Article 3 sets forth the circumstances under which a Party may deny assistance under the Treaty, including requests related to certain military offenses, offenses of a political character, and requests relating to an offender who, if proceeded against in the Requested Party, would be entitled to be discharged on grounds of a previous acquittal or conviction. In addition, a Requested Party may also refuse assistance, if, in its view, the request, if granted, would impair its sovereignty, security, or other essential interests or would be contrary to important public policy. As clarified in the interpretative notes accompanying the Treaty, the limitation based on "important public policy" grounds would include a Requested Party's policy of opposing the exercise of jurisdiction which, in its view, is extraterritorial and objectionable.

Before denying assistance, the Central Authority of the Requested State is required to consult with its counterpart in the Requesting State to consider whether assistance can be given subject to such conditions it deems necessary. If the Requesting State accepts assistance subject to conditions, it shall comply with the conditions.

Article 4 prescribes the form and content of written requests under the Treaty, specifying in detail the information required in each case. The article specifies further information to be provided to the extent necessary and possible to assist in locating individuals and effecting particular types of assistance.

Article 5 provides that a Request Party shall take whatever steps it deems necessary to give effect to requests from the other Party. Courts in the Requested State are empowered to issue subpoenas, search warrants, or other order orders necessary to execute such requests.

Article 5 further states that requests be executed in accordance with the laws of the Requested State unless the Treaty provides otherwise. The method of execution specified in the request is to be followed to the extent that it is not incompatible with the laws and practices of the Requested Party. If the Central Authority of the

Requested Party determines that execution of the request would interfere with ongoing proceedings or prejudice the safety of any person in its territory, it may postpone execution or, after consultations with the Requesting Party, impose conditions on such execution. If the Requesting Party accepts assistance subject to such conditions, it shall comply with them.

Under Article 5, the Central Authority of the Requested Party shall promptly inform its counterpart in the Requesting Party of the outcome of the execution of a request. If a request is denied, a Central Authority shall inform its counterpart of the reasons for such denial.

Article 6 apportions between the two States the costs incurred in executing a request. Generally, each State shall bear the expenses incurred within its territory of executing a request.

Article 7 establishes procedures both for ensuring the confidentiality of requests and their contents. Upon request, the Requested Party shall keep confidential any information that might indicate that a request has been made or responded to. However, if a request cannot be executed without breaching confidentiality, the Requested State must inform the Requesting State, so that the Requesting State may determine whether to withdraw the request in order to maintain confidentiality. Article 7 further obliges the Requesting Party not to use or disclose any information or evidence obtained under the treaty for purposes unrelated to the proceedings stated in the request without the prior consent of the Requested Party. In the interpretative notes, the Parties recognize that these prohibitions will not prohibit a Requesting Party from disclosing such information to the extent there is an obligation to do so under that Party's Constitution or law. This last clarification was provided to ensure that the United States and the United Kingdom authorities would be in a position to make available exculpatory information to criminal defendants.

Article 8 provides that the Requested Party may compel, if necessary, the taking of testimony or production of documents in its territory on behalf of the Requesting Party. In the event that a person whose testimony or evidence is being taken asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting Party, the testimony or evidence shall be taken and the claim made known to the Requesting Party for resolution by its authorities.

Article 8 also requires the Requested Party, upon request, to inform the Requesting Party in advance of the date and place of the taking of testimony. The Requested Party must also permit the presence of any persons specified in the request (such as the accused, counsel for the accused, or other interested person) and to permit such persons to question the person whose testimony is being taken, through a legal representative qualified to appear before the courts of the Requested Party. Finally, this article provides a mechanism for authentication of documentary evidence produced pursuant to this article and provides that no further authentication or certification shall be necessary in order for such information to be admissible in evidence in proceedings in the Requesting Party.

Article 9 requires that the Requested Party provide the Requesting Party with copies of publicly available records of government departments and agencies. The Requested Party may further pro-

vide copies of other records 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 it would to its own law enforcement or judicial authorities. The article requires official authentication of documents furnished, using forms appended to the Treaty and confirms their admissibility in evidence in the Requesting Party if so authenticated.

Article 10 provides a mechanism for a Requesting Party to invite the voluntary appearance and testimony in its territory of a person located in the Requested Party. In such a case, the Central Authority of the Requested Party is required to invite the person to appear and promptly inform the Central Authority of the Requesting Party of the person's response. The request may state that the Requesting Party will assure the person shall not be subject to service of process or be detained or subjected to restriction of personal liberty, by reason of any acts or convictions which preceded his departure from the territory of the Requested Party. This safe conduct shall cease fifteen days after the Central Authority of the Requesting Party has notified its counterpart that the person's presence is no longer required, or if the person has left the territory of the Requesting Party and voluntarily returns to it.

Article 11 provides for the voluntary transfer to one Party of a person in custody in the other Party, for purposes of assistance under the Treaty, provided that the person in question and both Parties agree. The article establishes the express authority and the obligation for the Requesting Party to maintain the person in custody unless otherwise authorized by the Requested Party. It further specifies the requirements for ensuring the person's safety and return to the Requested Party.

Article 12 provides that the Requested Party shall use its best efforts to ascertain the location or identity of persons specified in a request and shall promptly notify the Requesting Party of the results of its inquiries.

Under Article 13, a Requested Party shall, to the extent possible, effect service of process of any document requested under the Treaty, including subpoenas or other process requiring the appearance of any person before any authority or tribunal in the territory of the Requesting Party. Such service, however, does not impose an obligation under the law of the Requested Party to comply with such process. The article further requires that any request for the service of a document requiring a person to appear in the territory of the Requesting Party be transmitted a reasonable time before the scheduled appearance. The Requested Party is required to return proof of service.

Article 14 obligates each Party to execute requests for search, seizure, and delivery of any article to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party. The Requested Party may refuse such a request if it relates to conduct for which its own powers of search and seizure would not be exercisable in a similar circumstance. The article further provides for the authentication and certification of evidence delivered under this article and provides that the Central

Authority of the Requested Party may impose conditions on transfer to protect third party interests in the property.

Article 15 obliges the Requesting Party to return any documents or articles furnished to it under this treaty unless the Central Authority waives such return.

Article 16 obligates the Parties to assist each other in asset forfeiture proceedings. Specifically, the Parties agree to assist each other in proceedings involving the identification, tracing, freezing, seizure, or forfeiture of the proceeds and instrumentalities of crime and to assist each other in relation to proceedings involving the imposition of fines related to a criminal prosecution. Under this article, a Requested Party may transfer forfeited assets or the proceeds of their sale to the other Party to the extent permitted by the former's domestic law, upon such terms as may be agreed.

Article 17 provides that assistance and procedures provided in this Treaty shall not prevent the Parties from providing assistance to each other through the provisions of other international agreements, national laws, or any other arrangement, agreement, or practice applicable between their law enforcement agencies.

Article 18 provides that the Parties or their Central Authorities shall consult promptly at the request of either, concerning the implementation of this Treaty. Article 18 also contains novel consultative procedures to enable the Parties to have first recourse to the Treaty, with respect to any matter for which assistance could be granted under the Treaty, prior to the enforcement of a "compulsory measure" requiring an action to be performed by a person located in the territory of the other Party. The term "compulsory measure" is described with greater specificity in the interpretative notes. Under the consultative mechanisms for dealing with the enforcement of compulsory measures, if a Party is aware that its authorities are intending to take such compulsory measures, its Central Authority shall inform the other Central Authority, who may request consultations. Should a Central Authority learn that such measures may be taken in its territory, it may also request consultations. Ultimately, should consultations fail to resolve the matter, cause unreasonable delay, or jeopardize the successful completion of a proceeding, enforcement of the compulsory measure is not foreclosed. In such instance the Central Authority of the Party taking such action may give written notice to the other Central Authority of that circumstance. Article 18 finally provides for a general obligation of the parties to exercise moderation and restraint, even when the Parties' consultation obligations under this article are satisfied.

In addition to the consultative mechanism for compulsory measures described above, the interpretative notes commit the U.S. Department of Justice, on behalf of the United States Government, to take certain specified practical measures to reduce the number of instances in which a conflict of laws, policies, or national interests may arise. Specifically, the notes state that the Department of Justice shall: (1) Instruct all federal prosecutors not to seek compulsory measures, as referred to in Article 18(2) with respect to any matter for which assistance could be granted under the Treaty unless the U.S. Central Authority has concluded that the consultative mechanisms in Article 18 have been satisfied; (2) instruct all fed-

eral prosecutors not to enforce any compulsory measures, as referred to in Article 18(2), with respect to any matter for which assistance could be granted under the Treaty unless the U.S. Central Authority has concluded that the consultative mechanisms in Article 18 have been satisfied; and (3) undertake to discourage the issue of compulsory measures by other U.S. Government agencies for evidence located in the United Kingdom in any matter covered by the Treaty by advising all such agencies not to seek such process without consultation and coordination with the United States Central Authority.

Article 19 defines the term "proceedings", thus setting forth the matters for which the Parties will provide assistance under the Treaty. As noted above, the term "proceedings" means proceedings related to criminal matters and includes any measure or step taken in connection with the investigation or prosecution of criminal offenses, including the freezing, seizure or forfeiture of the proceeds and instrumentalities of crime, and the imposition of fines related to a criminal prosecution. Article 19 further provides that the Central Authorities may at their discretion treat as proceedings such hearings before or investigations by any court, administrative agency or administrative tribunal with respect to the imposition of civil or administrative sanctions as may be agreed in writing between the Parties.

Article 20 sets forth the territorial application of the Treaty. With respect to the United Kingdom, the Treaty shall apply to England, Wales, Scotland, Northern Ireland, the Isle of Man, Channel Islands, and to any other territory for whose international relations the United Kingdom is responsible and to which this Treaty shall have been extended by agreement between the Parties.

Article 21 provides that the treaty shall be ratified and shall enter into force upon an exchange of instruments of ratification.

Article 22 provides for termination to be effective six months after written notice of termination is given by one party to the other Party.

A Technical Analysis explaining in detail the provisions of the Treaty is being prepared by the United States negotiating delegation, consisting of representatives from the Departments of Justice and State, and will be transmitted separately to the Senate Committee on Foreign Relations.

The Department of Justice joins the Department of State in favoring approval of this Treaty and related exchange of notes by the Senate as soon as possible.

Respectfully submitted,

WARREN CHRISTOPHER.

TREATY BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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TREATY BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United States of America and The
Government of the United Kingdom of Great Britain and Northern
Ireland,

Desiring to improve the effectiveness of the law enforcement
authorities of both countries in the investigation, prosecution,
and combatting of crime through cooperation and mutual legal
assistance in criminal matters,

Reaffirming their determination to enhance assistance in the
fight against crime as set out in the Agreement Concerning the
Investigation of Drug Trafficking Offences and the Seizure and
Forfeiture of Proceeds and Instrumentalities of Drug Trafficking,
done at London February 9, 1988,

Have agreed as follows:

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ARTICLE 1
Scope of Assistance

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, for the purpose of proceedings as defined in Article 19 of this Treaty.

2. Assistance shall include:

- (a) taking the testimony or statements of persons;
- (b) providing documents, records, and evidence;
- (c) serving documents;
- (d) locating or identifying persons;
- (e) transferring persons in custody for testimony (or other purposes);
- (f) executing requests for searches and seizures;
- (g) identifying, tracing, freezing, seizing, and forfeiting the proceeds and instrumentalities of crime and assistance in related proceedings; and
- (h) such other assistance as may be agreed between Central Authorities.

3. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

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ARTICLE 2

Central Authorities

1. Central Authorities shall be established by both Parties.
2. For the United States of America, the Central Authority shall be the Attorney General or a person or agency designated by him. For the United Kingdom, the Central Authority shall be the Secretary of State for the Home Department or a person or agency designated by him.
3. Requests under this Treaty shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.
4. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

ARTICLE 3

Limitations on Assistance

1. The Central Authority of the Requested Party may refuse assistance if:
 - (a) the Requested Party is of the opinion that the request, if granted, would impair its sovereignty, security, or other essential interests or would be contrary to important public policy;

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- (b) the request relates to an offender who, if proceeded against in the Requested Party for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction; or
- (c) the request relates to an offence that is regarded by the Requested Party as:
 - (i) an offence of a political character; or
 - (ii) an offence under military law of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

ARTICLE 4

Form and Contents of Requests

1. Requests shall be submitted in writing. However, in urgent circumstances, the request may be made orally but shall be confirmed in writing within ten days thereafter.

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2. The request shall include the following:

- (a) the name of the authority conducting the proceedings to which the request relates;
- (b) the subject matter and nature of the proceedings for the purposes of which the request is made;
- (c) a summary of the information giving rise to the request;
- (d) a description of the evidence or information or other assistance sought; and
- (e) the purpose for which the evidence or information or other assistance is sought.

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

- (a) the identity, date of birth and location of any person from whom evidence is sought;
- (b) the identity, date of birth and location of a person to be served, that person's relationship to the proceedings, and the manner in which the service is to be made;
- (c) available information on the identity and whereabouts of a person to be located;
- (d) a precise description of the place or person to be searched and of the articles to be seized;
- (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;

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- (g) a description of any particular procedures to be followed in executing the request;
- (h) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled;
- (i) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request; and
- (j) requirements for confidentiality.

4. The Requested Party may ask the Requesting Party to provide any further information which appears to the Requested Party to be necessary for the purpose of executing the request.

ARTICLE 5

Execution of Requests

1. As empowered by this Treaty or by national law, or in accordance with its national practice, the Requested Party shall take whatever steps it deems necessary to give effect to requests received from the Requesting Party. The courts of the Requested Party shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by the persons appointed by the Central Authority of the Requested Party.

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3. The method of execution specified in the request shall be followed to the extent that it is not incompatible with the laws and practices of the Requested Party.

4. If the Central Authority of the Requested Party determines that execution of the request would interfere with ongoing proceedings or prejudice the safety of any person in the territory of the Requested Party, the Central Authority of that Party may postpone execution, or make execution subject to conditions determined necessary after consultation with the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Central Authority of the Requested Party shall facilitate the participation in the execution of the request of such persons as are specified in the request.

6. The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

7. The Central Authority of the Requesting Party shall inform the Central Authority of the Requested Party promptly of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.

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8. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested Party shall inform the Central Authority of the reasons for the denial.

ARTICLE 6

Costs

1. The Requested Party shall, subject to paragraph (2) of this Article, pay all costs relating to the execution of the request, except for the fees of expert witnesses and the allowances and expenses related to the travel of persons pursuant to Articles 10 and 11 of this Treaty, which fees, allowances, and expenses shall be paid by the Requesting Party.

2. If the Central Authority of the Requested Party notifies the Central Authority of the Requesting Party that execution of the request might require costs or other resources of an extraordinary nature, or if it otherwise requests, the Central Authorities shall consult with a view to reaching agreement on the conditions under which the request shall be executed and the manner in which costs shall be allocated.

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ARTICLE 7

Confidentiality and Limitations on Use

1. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed.

2. The Requesting Party shall not use or disclose any information or evidence obtained under this Treaty for any purposes other than for the proceedings stated in the request without the prior consent of the Requested Party.

3. Unless otherwise indicated by the Requested Party when executing the request, information or evidence, the contents of which have been disclosed in a public judicial or administrative hearing related to the request, may thereafter be used for any purpose.

ARTICLE 8

**Taking Testimony and Producing Evidence
in the Territory of the Requested Party**

1. A person in the territory of the Requested Party from whom evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear in order to testify or produce

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documents, records, or articles of evidence by subpoena or such other method as may be permitted under the law of the Requested Party.

2. A person requested to testify or to produce documentary information or articles in the territory of the Requested Party may be compelled to do so in accordance with the requirements of the law of the Requested Party. If such a person asserts a claim of immunity, incapacity or privilege under the laws of the Requesting Party, the evidence shall nonetheless be taken and the claim be made known to the Requesting Party for resolution by the authorities of that Party.

3. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the evidence pursuant to this Article.

4. The Requested Party shall allow persons specified in the request to ask questions of the person whose testimony or evidence is being taken, through a legal representative qualified to appear before the courts of the Requested Party.

5. Documentary information produced pursuant to this Article may be authenticated by the attestation of a person competent to do so in the form indicated in Appendix A to this Treaty. No further authentication or certification shall be necessary in order for such documentary information to be admissible in evidence in proceedings in the territory of the Requesting Party. Documentary information produced pursuant to

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this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

ARTICLE 9

Records of Government Agencies

1. The Requested Party shall provide the Requesting Party with copies of publicly available records of government departments and agencies of the Requested Party.

2. The Requested Party may provide a copy of any record or information in the possession of a government department or agency but not publicly available to the same extent and on the same conditions as to its own law enforcement or judicial authorities. The Requested Party may refuse a request pursuant to this paragraph entirely or in part.

3. Official records provided pursuant to this Article shall be authenticated by the Central Authority of the Requested Party in the manner indicated in Appendix B to this Treaty. No further authentication or certification shall be necessary in order for such records to be admissible in evidence in proceedings in the territory of the Requesting Party. Records provided pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

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ARTICLE 10

Personal Appearance in the Territory of the Requesting Party

1. A request under this Treaty may seek assistance in facilitating the appearance of any person in the territory of the Requesting Party for the purpose of giving evidence before a court or of being identified in, or otherwise by his presence assisting, any proceedings.

2. The Central Authority of the Requested Party shall:

(a) ask a person whose voluntary appearance in the territory of the Requesting Party is desired whether he agrees to appear; and

(b) promptly inform the Central Authority of the Requesting Party of his answer.

3. If the Central Authority of the Requesting Party so indicates, a person agreeing to appear in the territory of the Requesting Party pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded his departure from the territory of the Requested Party.

4. The safe conduct provided for by this Article shall cease fifteen days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person's presence is no longer required, or if the

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person has left the territory of the Requesting Party and voluntarily returned to it.

ARTICLE 11

Transfer of Persons in Custody

1. A person in the custody of one Party whose presence in the territory of the other Party is sought for the purpose of providing assistance under this Treaty shall be transferred for that purpose if the person and both Parties consent.

2. For the purposes of this Article:

(a) the Requesting Party shall be responsible for the safety of the person transferred and shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the Requested Party;

(b) the Requesting Party shall return the person transferred to the custody of the Requested Party as soon as circumstances permit and in any event no later than the date upon which he would have been released from custody in the territory of the Requested Party, unless otherwise agreed by both Central Authorities and the person transferred; and

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(c) the Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred.

ARTICLE 12

Location or Identification of Persons

1. The Requested Party shall make best efforts to ascertain the location or identity of persons specified in the request.
2. The Central Authority of the Requested Party shall promptly communicate the results of its inquiries to the Central Authority of the Requesting Party.

ARTICLE 13

Service of Documents

1. The Requested Party shall, as far as possible, effect service of any document relating to or forming part of any request for assistance properly made pursuant to this Treaty by the Requesting Party, including any subpoena or other process requiring the appearance of any person before any authority or tribunal in the territory of the Requesting Party.
2. Service of any subpoena or other process by virtue of paragraph (1) of this Article shall not impose any obligation under the law of the Requested Party to comply with it.

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3. The Central Authority of the Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting Party a reasonable time before the scheduled appearance.

4. The Requested Party shall return a proof of service in the manner specified in the request.

ARTICLE 14

Search and Seizure

1. The Requested Party shall execute a request for the search, seizure and delivery of any article to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party.

2. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances.

3. Every official who has custody of a seized article shall certify the continuity of custody, the identity of the article and the integrity of its condition in the form indicated in Appendix C to this Treaty. No further authentication or certification shall be necessary in order to establish these matters in proceedings in the territory of the Requesting Party. Certification under this Article may also be provided in any

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other form or manner as may be prescribed from time to time by either Central Authority.

4. The Central Authority of the Requested Party may require that the Requesting Party agree to terms and conditions which the Requested Party may deem necessary to protect third party interests in the item to be transferred.

ARTICLE 15

Return of Documents and Articles

The Central Authority of the Requesting Party shall return any documents or articles furnished to it in the execution of a request under this Treaty as soon as is practicable unless the Central Authority of the Requested Party waives the return of the documents or articles.

ARTICLE 16

Assistance in Forfeiture Proceedings

1. The Parties shall assist each other in proceedings involving the identification, tracing, freezing, seizure or forfeiture of the proceeds and instrumentalities of crime and in relation to proceedings involving the imposition of fines related to a criminal prosecution.

2. If the Central Authority of one Party becomes aware that proceeds or instrumentalities are located in the territory of the

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other Party and may be liable to freezing, seizure or forfeiture under the laws of that Party, it may so inform the Central Authority of the other Party. If the Party so notified has jurisdiction, this information may be presented to its authorities for a determination whether any action is appropriate. The said authorities shall issue their decision in accordance with the laws of their country and the Central Authority of that country shall ensure that the other Party is aware of the action taken.

3. A Requested Party in control of forfeited proceeds or instrumentalities shall dispose of them according to its laws. Either Party may transfer forfeited assets or the proceeds of their sale to the other Party to the extent permitted by their respective laws, upon such terms as may be agreed.

ARTICLE 17

Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either of the Parties from granting assistance to the other Party through the provisions of other international agreements to which it may be a party, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any arrangement, agreement, or practice which may be applicable between the law enforcement agencies of the Parties.

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ARTICLE 18
Consultation

1. The Parties, or Central Authorities, shall consult promptly, at the request of either, concerning the implementation of this Treaty either generally or in relation to a particular case. Such consultation may in particular take place if, in the opinion of either Party or Central Authority, the expenses or other resources required for the implementation of this Treaty are of an extraordinary nature, or if either Party has rights or obligations under another bilateral or multilateral agreement relating to the subject matter of this Treaty.

2. With respect to any matter for which assistance could be granted under this Treaty, neither Party shall enforce any compulsory measure requiring an action to be performed by any person located in the territory of the other Party, unless the Party proposing such enforcement has first exhausted the procedures established in paragraphs (3) and (4) of this Article.

3. If a Party is aware that its authorities are intending to take measures referred to in paragraph (2) of this Article, its Central Authority shall inform the other Central Authority, who may request consultations. If the other Party is aware of or considers that the authorities of the first Party have taken or are about to take any such measures, its Central Authority may request consultations. Thereafter, the Central Authorities shall

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consult with a view to determining whether the assistance sought can be provided under this Treaty, or otherwise resolving the matter.

4. Where consultations fail to resolve the matter, or unreasonable delay may be jeopardizing the successful completion of a proceeding, either Central Authority may give the other written notice to that effect.

5. Unless otherwise agreed by the Parties, the obligations under paragraphs (2), (3) and (4) of this Article shall have been fulfilled 21 days after receipt of this written notice, provided that this is not less than 60 days after receipt of the request referred to in paragraph (3) above.

6. Even in those cases in which the Parties' obligations under this Article have been fulfilled, each Party shall continue to exercise moderation and restraint.

ARTICLE 19

Definitions

1. For the purposes of this Treaty, "proceedings" means proceedings related to criminal matters and includes any measure or step taken in connection with the investigation or prosecution of criminal offences, including the freezing, seizure or forfeiture of the proceeds and instrumentalities of crime, and the imposition of fines related to a criminal prosecution.

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2. In addition, the Central Authorities may at their discretion treat as proceedings for the purpose of this Treaty such hearings before or investigations by any court, administrative agency or administrative tribunal with respect to the imposition of civil or administrative sanctions as may be agreed in writing between the Parties.

ARTICLE 20
Territorial Application

This Treaty shall apply:

1. in relation to the United Kingdom:
 - (a) to England and Wales, Scotland, and Northern Ireland; and
 - (b) to the Isle of Man, Channel Islands and to any other territory for whose international relations the United Kingdom is responsible and to which this Treaty shall have been extended by agreement between the Parties, subject to any technical modifications agreed by the Parties and to either Party being able to terminate such extension by giving six months written notice to the other through the diplomatic channel; and
2. to the United States of America.

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ARTICLE 21

Ratification and Entry into Force

1. This Treaty shall be ratified, and the instruments of ratification shall be exchanged at London as soon as possible.
2. This Treaty shall enter into force upon the exchange of instruments of ratification.

ARTICLE 22

Termination

Either Party may terminate this Treaty by means of a written notice to the other Party. Termination shall take effect six months following the date of notification.

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

DONE in duplicate at Washington this sixth day of January, 1994.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND:



Appendix A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, _____, attest on penalty of criminal
 (Name)
 punishment for false statement or false attestation that I am
 employed by _____
 (Name of Business from which documents are produced)
 and that my official title is _____. I further
 (Official Title)
 state that each of the records attached hereto is the original
 or a duplicate of the original of records in the custody
 of _____. I
 (Name of Business from which documents are produced)
 further state that:

- A) such records were made at or near the time of the
 occurrence of the matters set forth, by (or from
 information transmitted by) a person with knowledge
 of those matters;
- B) such records were kept in the course of a regularly
 conducted business activity;
- C) the business activity made the records as a regular
 practice; and
- D) if any of such records is not the original, such
 record is a duplicate of the original.

(Signature)_____
(Date)

Sworn to or affirmed before me, _____,
 (Name)
 a _____, this ____ day
 (notary public, judicial officer, etc.)
 of _____, 199____.

Appendix B

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS

I, _____, attest on penalty of criminal
(Name)
punishment for false statement or attestation that my position
with the Government of _____
(Country)
is _____ and that in that position I am
(Official Title)
authorized by the law of _____
(Country)
to attest that the documents attached and described below are
true and accurate copies of original official records which are
recorded or filed in _____
(Name of Office or Agency)
which is a government office or agency of the Government of

(Country)

Description of Documents:

(Signature)

(Title)

(Date)

Appendix C

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____, attest on penalty of criminal
(Name)
punishment for false statement or attestation that my position
with the Government of _____
(Country)
is _____. I received custody of the articles
(Title)
listed below from _____ on _____, at
(Name of Person) (Date)
_____. I relinquished custody of the
(Place)
articles listed below to _____
(Name of Person)
on _____ at _____
(Date) (Place)
in the same condition as when I received them (or if different,
as noted below).

Description of Articles:

Changes in condition while in my custody:

Official Seal

(Signature)

(Title)

(Place)

(Date)

DEPARTMENT OF STATE
WASHINGTON
January 6, 1994

Excellency:

I have the honor to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honour to refer to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters (the Treaty) signed today. I have the honour to propose that the Treaty be applied in accordance with the provisions set out in this Note.

(a) The term 'important public policy' in Article 3(1)(a) would include a Requested Party's policy of opposing the exercise of jurisdiction which in its view is extraterritorial and objectionable.

(b) Article 3(1)(b) shall not affect the availability of assistance in respect of other participants in the offense for which assistance is requested who would not be entitled to be discharged on the grounds of previous acquittal or conviction.

His Excellency

Sir Robin W. Renwick, K.C.M.G.,
Ambassador of the United Kingdom
of Great Britain and Northern Ireland.

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(c) Article 7(2) shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution or law of the Requesting Party in a criminal prosecution. Any such proposed disclosure shall be notified by the Requesting Party to the Requested Party in advance.

(d) The Treaty shall not apply to anti-trust or competition law investigations or proceedings at this time. The Central Authorities may at their discretion treat as proceedings for the purpose of this Treaty such anti-trust or competition law matters, or anti-trust or competition law matters generally, as may be agreed in writing between the Parties at a later date.

(e) 'Compulsory measures' in Article 18, including in the case of the United States a grand jury subpoena, are those measures that require an action to be performed by any person located in the territory of the Party not issuing the measure and that fall within the following categories:

(i) any measure for the production of evidence located in the territory of the Party not issuing the measure;

(ii) any measure relating to assets in the territory of the Party not issuing the measure; or

(iii) any measure compelling a natural person who is in the territory of one Party to make a personal appearance in the territory of the other Party unless:

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a) the Party compelling the appearance has lawfully obtained jurisdiction over that person; or

b) the person is a national of the Party compelling the appearance, without prejudice to whether a Party objects to these compulsory measures or the jurisdiction claimed by the other Party.

The Central Authorities may add to or amend the categories referred to above as may be agreed in writing between the Parties.

(f) In the spirit of cooperation, mutual respect, and good will, and in the interests of facilitating the cooperative use of the Treaty with respect to proceedings that fall within its scope and of avoiding measures which could result in a conflict of laws, policies, or national interests, the United States Government shall take several practical measures to reduce the number of instances in which conflict may be anticipated. In particular, the United States Department of Justice, on behalf of the United States Government, shall:

(i) instruct all federal prosecutors not to seek compulsory measures, as referred to in Article 18(2), with respect to any matter for which assistance could be granted under the Treaty unless the United States Central Authority has concluded that the provisions of Article 18 of the Treaty have been satisfied;

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(ii) instruct all federal prosecutors not to enforce any compulsory measures, as referred to in Article 18(2), with respect to any matter for which assistance could be granted under the Treaty, unless the United States Central Authority has concluded that the provisions of Article 18 have been satisfied; and

(iii) undertake to discourage the issue of compulsory measures by other United States Government agencies for evidence located in the United Kingdom in any matter covered by the Treaty by advising all such agencies not to seek such process without consultation and coordination with the United States Central Authority.

If the above proposal is acceptable to the Government of the United States of America, I have the honour to propose that this Note and Your Excellency's reply to that effect shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Treaty.

I have the honour to convey to Your Excellency the assurance of my highest consideration."

I have the further honor to inform Your Excellency that the foregoing proposals are acceptable to the Government of the United States of America and that Your Excellency's Note and this Note shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Treaty.

For The Secretary of State:



British Embassy
Washington D.C.

His Excellency
Warren M Christopher
Secretary of State
of the United States of America

6 January 1994

Your Excellency,

I have the honour to refer to the Treaty between the Government of The United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters (the Treaty) signed today. I have the honour to propose that the Treaty be applied in accordance with the provisions set out in this Note.

- (a) The term "important public policy" in Article 3(1)(a) would include a Requested Party's policy of opposing the exercise of jurisdiction which in its view is extraterritorial and objectionable.
- (b) Article 3(1)(b) shall not affect the availability of assistance in respect of other participants in the offence for which assistance is requested who would not be entitled to be discharged on the grounds of previous acquittal or conviction.
- (c) Article 7(2) shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution or law of the Requesting Party in a criminal prosecution. Any such proposed disclosure shall be notified by the Requesting Party to the Requested Party in advance.
- (d) The Treaty shall not apply to anti-trust or competition law investigations or proceedings at this time. The Central Authorities may at their discretion treat as proceedings for the purpose of this Treaty such anti-trust or competition law matters, or anti-trust or competition law matters generally, as may be agreed in writing between the Parties at a later date.
- (e) "Compulsory measures" in Article 18, including in the case of the United States a grand jury subpoena, are those measures that require an action to be performed by any person located in the territory of the Party not issuing the measure and that fall within the following categories:

- (i) any measure for the production of evidence located in the territory of the Party not issuing the measure;
- (ii) any measure relating to assets in the territory of the Party not issuing the measure; or
- (iii) any measure compelling a natural person who is in the territory of one Party to make a personal appearance in the territory of the other Party unless:
 - a) the Party compelling the appearance has lawfully obtained jurisdiction over that person; or
 - b) the person is a national of the Party compelling the appearance,

without prejudice to whether a Party objects to these compulsory measures or the jurisdiction claimed by the other Party.

The Central Authorities may add to or amend the categories referred to above as may be agreed in writing between the Parties.

(f) In the spirit of cooperation, mutual respect, and good will, and in the interests of facilitating the cooperative use of the Treaty with respect to proceedings that fall within its scope and of avoiding measures which could result in a conflict of laws, policies, or national interests, the United States Government shall take several practical measures to reduce the number of instances in which conflict may be anticipated. In particular, the United States Department of Justice, on behalf of the United States Government, shall:

- (i) instruct all federal prosecutors not to seek compulsory measures, as referred to in Article 18(2), with respect to any matter for which assistance could be granted under the Treaty unless the United States Central Authority has concluded that the provisions of Article 18 of the Treaty have been satisfied;
- (ii) instruct all federal prosecutors not to enforce any compulsory measures, as referred to in Article 18(2), with respect to any matter for which assistance could be granted under the Treaty, unless the United States Central Authority has concluded that the provisions of Article 18 have been satisfied; and
- (iii) undertake to discourage the issue of compulsory measures by other United States Government agencies for evidence located in the United Kingdom in any matter covered by the Treaty by advising all such agencies not to seek such process without consultation and coordination with the United States Central Authority.

If the above proposal is acceptable to the Government of the United States of America, I have the honour to propose that this Note and Your Excellency's reply to that effect shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Treaty.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

A handwritten signature in black ink, appearing to read "Robin W. Renwick". The signature is written in a cursive style with a prominent flourish at the end.

ROBIN W RENWICK

