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SENATE

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MUTUAL LEGAL ASSISTANCE TREATY
WITH LUXEMBOURG

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE GOVERNMENT OF THE GRAND DUCHY
OF LUXEMBOURG ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL
MATTERS, SIGNED AT WASHINGTON ON MARCH 13, 1997



JULY 8, 1997.—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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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *July 8, 1997.*

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 Grand Duchy of Luxembourg on Mutual Legal Assistance in Criminal Matters, signed at Washington on March 13, 1997, and a related exchange of notes. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties that the United States is negotiating in order to counter criminal activity more effectively. The Treaty should be an effective tool to assist in the prosecution of a wide variety of modern criminals, including those involved in drug trafficking, terrorism, other violent crime, and money laundering, fiscal fraud, and other “white-collar” crime. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: taking testimony or statements of persons; providing documents, records, and articles of evidence; transferring persons in custody for testimony or other purposes; locating or identifying persons and items; serving documents; executive requests for searches and seizures; immobilizing assets; assisting in proceedings related to forfeiture and restitution; and rendering any other form of assistance not prohibited by the laws of the Requested State.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 18, 1997.

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 Grand Duchy of Luxembourg on Mutual Legal Assistance in Criminal Matters ("the Treaty"), signed at Luxembourg on March 13, 1997, and a related exchange of notes signed 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 a number of other countries. This Treaty contains many provisions similar to those in the other treaties.

The Treaty will enhance our ability to investigate and prosecute a variety of offenses, including drug trafficking, terrorism, money laundering, fiscal fraud, and other violent and white-collar crimes. The Treaty is designed to be self-executing and will not require implementing legislation.

Article 1 contains a non-exhaustive list of the major types of assistance to be provided under the Treaty, including the taking of testimony or statements of persons; providing documents, records, and articles of evidence; transferring persons in custody for testimony or other purposes; locating or identifying persons and items; serving documents; executing requests for searches and seizures; immobilizing assets; assisting in proceedings related to forfeiture and restitution; and any other form of assistance not prohibited by the laws of the Requested State. The scope of the Treaty includes not only criminal offenses, but also forfeiture and restitution proceedings related to criminal matters, which may be civil or administrative in nature.

Moreover, under the Treaty, assistance is to be provided without regard to whether the conduct involved would constitute an offense under the laws of the Requested State. However, if execution of the request would require a court order for search and seizure or other coercive measures, the Requested State may refuse such assistance if the facts stated in the request fail to establish a reasonable suspicion that the conduct would constitute an offense for which the maximum penalty under its laws would be deprivation of liberty for a period of at least six months. The Requested State is required to

make every effort to approve a request for assistance requiring court orders or other coercive measures.

Article 1 specifies, and the exchange of diplomatic notes accompanying the Treaty further clarifies, the scope of coverage regarding tax offenses. The requested State is required to provide assistance for offenses concerning value added taxes, sales taxes, excise taxes, customs duties, and any other taxes that may be agreed to by the Contracting Parties through an exchange of diplomatic notes. For other tax offenses, the Requested State must provide assistance only where the facts in a request establish a reasonable suspicion of “fiscal fraud” as that term is defined in the Treaty and interpreted in the exchange of diplomatic notes. As used in this article, the term “fiscal fraud” means a criminal offense in which: (1) the tax involved, either as an absolute amount or in relation to an annual amount due, is significant; and (2) the conduct involved constitutes a systematic effort or a pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities.

The Requested State may not refuse assistance because its law does not impose the same kind of tax, or does not contain the same kind of tax regulations, as does the law of the Requesting State.

Finally, Article 1 makes it clear that the Treaty is intended only for mutual assistance between specified authorities that by law are responsible for investigations, prosecutions, or proceedings related to criminal offenses. It is not intended or designed to provide such assistance to private parties. The Treaty provisions neither create a new right nor affect a pre-existing right on the part of a private party to impede the execution of a request or to suppress or exclude any evidence.

Article 2 provides for the designation of Central Authorities to make and receive requests pursuant to the Treaty. For the United States, the Central Authority is the Attorney General or another prosecutor designated by the Attorney General. For Luxembourg, the Central Authority is the Parquet Général. The Central Authorities shall communicate directly with one another for purposes of the Treaty.

Article 3 sets forth the circumstances under which the Central Authority of the Requested State may deny assistance under the Treaty. A request may be denied if it relates to a military offense that would not be a crime under ordinary criminal law or to an offense for which the maximum penalty in the Requesting State is deprivation of liberty for a period of a year or less. Assistance may be denied if the person whose conduct is the subject of the request has been prosecuted and either convicted and sentenced or acquitted in the Requested State based upon identical conduct. In addition, a request may be denied if its execution would prejudice the sovereignty, security, ordre public, or similar essential interests of the Requested State, or if the request is not made in conformity with Article 4.

Finally, a request may be denied if it involves a political offense. This exception does not apply to any offense that the Contracting Parties consider not to be a political offense under any international agreement to which they are parties.

Before denying assistance under Article 3, 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 as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4 prescribes the form and contents of written requests under the Treaty, specifying in detail the information required in each request. 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. Unless otherwise agreed, all requests and supporting documents shall be in the language of the Requested State. The article permits other forms of request in emergency situations, but requires written confirmation within ten days thereafter unless the Central Authority of the Requested State agrees otherwise.

Article 5 provides that the Requested State shall promptly execute a request or transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute a request.

Requests are to be executed in accordance with the laws of the Requested State except to the extent the Treaty provides otherwise. The courts of the Requested State shall have the authority to issue such orders to execute requests under the Treaty as are authorized under the laws of the Requested State with respect to proceedings in domestic investigations and prosecutions. The preferred method of execution specified in the request shall be followed except insofar as it is prohibited under the laws of the Requested State.

If the Central Authority of the Requested State determines that execution of the request would interfere with an ongoing criminal investigation or proceeding in the Requested State, jeopardize the security of a person, or impose an extraordinary burden on the State's resources, it may postpone execution or, after consultations with the Requesting State, impose conditions on such execution. If the Requesting State accepts assistance subject to such conditions, it shall comply with them.

Article 5 further requires the Requested State, if so requested by the Central Authority of the Requesting State, to use its best efforts to keep confidential a request and its contents, and to inform the Central Authority of the Requesting State if the request cannot be executed without breaching confidentiality.

Article 5 specifies that the Central Authority of the Requested State may permit the presence during execution of a request of persons specified in the request.

Article 6 apportions between the two States the costs incurred in executing a request. Generally, the Requested State pays all costs relating to the execution of the request, except for the fees of experts, the costs of translation, interpretation and transcription, and allowances and expenses related to travel of persons travelling either in the Requested State for the convenience of the Requesting State or pursuant to Articles 10 and 12. If, during execution of a request, it becomes apparent that complete execution will entail ex-

traordinary expenses, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7 provides that the Central Authority of the Requested State may require that any information or evidence obtained under the Treaty not be used for any investigation, proceeding or prosecution other than that described in the request without the prior consent of the Central Authority of the Requested State. Information or evidence obtained regarding a tax offense shall also be available for specified uses, including assessment and collection in relation to the taxes underlying that offense.

Article 7 specifies that nothing therein shall preclude the use or disclosure in a criminal prosecution of information or evidence to the extent that there is an obligation to do so for the United States under its Constitution or for Luxembourg under the European Convention for the Protection of Human Rights and Fundamental Freedoms. Prior notification to the Requested State is required.

Once information or evidence has been made public in the Requesting State in the normal course of the proceeding for which it was provided, it may be used for any purpose other than prosecution of: a military offense that would not be an offense under ordinary criminal law; a political offense; a capital offense; or a tax offense for which assistance is not available pursuant to the Treaty. For such offenses, information or evidence shall not be used without the prior consent of the Central Authority of the Requested State.

Article 8 provides that a person in the Requested State whose statement is requested shall be required to appear, testify and produce items to the same extent as in criminal investigations or proceedings in the Requested State. The article requires the Requested State, upon request, to inform the Requesting State in advance of the date and place of the taking of testimony.

Article 8 also requires that when the Requesting State requests that testimony be taken under oath for use in a proceeding, the Requested State shall permit the presence during the execution of the request of persons specified in the request and shall allow such persons to question the person whose testimony is being taken or, if such direct questioning is not permitted, to have questions posed in accordance with applicable procedures in the Requested State. 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 State, the evidence shall be taken and the claim shall be made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

Finally, Article 8 provides a mechanism for certifying items, including business records, produced pursuant to this article and provides that documents so certified shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 9 requires that the Requested State provide the Requesting State with copies of publicly accessible records of any nature and in any form that are in possession of its judicial authorities or government departments or agencies. The Requested State may further provide copies of records of any nature, and in any form,

in the possession of its judicial authorities or government departments or agencies, but that are not publicly accessible, to the same extent and under the same conditions that would apply to its own law enforcement or judicial authorities, but the Requested State has the discretion to deny such requests entirely or in part. Article 9 provides that official records produced and certified pursuant to the article shall be admissible in evidence as proof of the truth of the matters set forth therein.

Article 10 provides a mechanism for the Requesting State to invite a person located in the Requested State to appear in the Requesting State to assist in investigations and proceedings in that State. The Requested State is required to invite the person to appear and to inform the Requesting State of the person's response.

Article 11 provides that, unless otherwise specified in the request, a person appearing as a witness or expert in the Requesting State pursuant to the Treaty shall not be subject to any civil suit to which the person could not be subjected but for the person's presence in the Requesting State, or be prosecuted, punished or subjected to any restriction of personal liberty by reason of any acts or omissions that preceded the person's departure from the Requested State. Any safe conduct provided under this article shall cease to apply if, after the person appearing has been notified that the person's presence is no longer required, that person, being free to leave, has not left the Requesting State within seven days or, having left, has voluntarily returned.

Article 12 provides for the voluntary transfer to one State (and, in some circumstances, to a third State) of a person in custody in the other State for purposes of assistance under the Treaty, provided that the person in question and the Central Authorities of both States agree. The article establishes the express authority and the obligation of the receiving State to maintain the person transferred in custody unless otherwise authorized by the sending State. It further obligates the receiving State to return the person to the Sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities, without the sending State being required to initiate proceedings for the return of the person. The person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

Article 13 requires the Requested State to use its best efforts to ascertain the location or identity of persons or items when such information is sought in a request.

Article 14 requires the Requested State to use its best efforts to effect service of any document relating to a request for assistance under the Treaty. Any request for the service of a document inviting a person to appear in the territory of the Requesting State must be transmitted by the Requesting State a reasonable time before the scheduled appearance. The Requested State is required to return proof of service.

Article 14 specifies that a person who is not a national or resident of the Requesting State and who does not answer a summons to appear in the Requesting State as a witness or expert pursuant to the treaty shall not by reason thereof be liable to any penalty or be subjected to any coercive measures.

Article 15 obligates the Requested State to execute requests for search, seizure, and transfer of any item to the Requesting State if a judicial authority of the Requesting State issues, approves, or otherwise authorizes the request and if the request includes the information justifying such action under the laws of the Requested State. For purposes of this paragraph, a judicial authority shall be, as appropriate, a prosecutor, court, or examining magistrate. The article further provides a mechanism for the certification, upon request, by every official of the Requested State who has had custody of a seized item, of the identity of the item, the continuity of its custody, and the integrity of its condition. This certification is by means of Form B appended to the Treaty, or a document containing the essential information required by the Requesting State. If certified in accordance with this article, no further certification is required and any such certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein. In addition, Article 15 provides that the Central Authority of the Requested State may impose conditions on the transfer of seized items to protect third party interests in the property.

Article 16 provides that the Central Authority of the Requested State may require that the Central Authority of the Requesting State return as soon as possible any items furnished under the Treaty.

Article 17 provides that, upon request and to the extent permitted by its laws, the Requested State may take protective measures, such as temporary immobilization or seizure, to ensure that proceeds, objects and instrumentalities of crime that are located in the Requested State are available for forfeiture or restitution to victims of crime. Article 17 also obligates the Contracting Parties to assist one another to the extent permitted by their respective laws in proceedings relating to forfeiture of the proceeds, objects and instrumentalities of offenses or restitution to victims of crime. The article further permits the Contracting Parties to assist each other to the extent permitted by their respective laws to give effect to either State's final decisions forfeiting proceeds, objects, and instrumentalities of crime or independently to initiate legal action for the forfeiture of such assets. Article 17 provides for disposition of forfeited assets in accordance with the laws of the Party enforcing its decision. Finally, it permits the Parties to share forfeited assets, or the proceeds of their sale, to the extent permitted by the transferring Party's laws and upon such terms as the transferring Party deems appropriate.

Article 18 provides that the Central Authorities of the Contracting Parties shall consult, at times mutually agreed upon, to promote the most effective use of the Treaty and to agree on such practical measures as may be necessary to facilitate implementation of the Treaty.

Article 19 provides that the Treaty shall be subject to ratification and shall enter into force on the first day of the second month after the exchange of instruments of ratification. In addition, Article 19 allows either Contracting Party to terminate the Treaty upon six months written notice to the other Party. Termination shall take effect six months following the date of notification.

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 recommending approval of this Treaty by the Senate as soon as possible.

Respectfully submitted.

MADELEINE ALBRIGHT.

TREATY
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

(1)

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The Government of the United States of America and the
Government of the Grand Duchy of Luxembourg,

Desiring to improve the effectiveness of the law
enforcement authorities of both countries in the investigation
and prosecution of crime by extending to each other the widest
measure of cooperation and mutual assistance in criminal
matters,

Have agreed as follows:

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Article 1
Scope of Assistance

1. The Contracting Parties shall provide mutual assistance, in accordance with the provisions of, this Treaty, in connection with the investigation and prosecution of offenses, the punishment of which, at the time of the request for assistance, would fall within the jurisdiction of the judicial authorities of the Requesting State, and in forfeiture and restitution proceedings related to criminal offenses.

2. Assistance shall include:

- a) taking the testimony or statements of persons;
- b) providing documents, records, and articles of evidence;
- c) transferring persons in custody for testimony or other purposes;
- d) locating or identifying persons and items;
- e) serving documents;
- f) executing requests for searches and seizures;
- g) immobilizing assets;
- h) assisting in proceedings related to forfeiture and restitution; and
- i) any other form of assistance not prohibited by the laws of the Requested State.

3. The Requested State shall provide assistance without regard to whether the conduct that is the subject of the

investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State. However, if execution of the request would require a court order for search and seizure or other coercive measures, the Requested State may refuse such assistance if the facts stated in the request fail to establish a reasonable suspicion that the conduct would constitute an offense for which the maximum penalty under its laws would be deprivation of liberty for a period of at least six months. The Requested State shall make every effort to approve a request for assistance requiring court orders or other coercive measures.

4. The Requested State shall provide assistance for offenses concerning value added taxes, sales taxes, excise taxes, customs duties, and any other taxes hereafter agreed to by the Contracting Parties through an exchange of diplomatic notes.

5. The Requested State shall provide assistance for offenses concerning taxes other than those specified in paragraph 4 only where the facts in a request establish a reasonable suspicion of "fiscal fraud" ("escroquerie fiscale"). The term fiscal fraud as used in this paragraph means a criminal offense in which:

- a) the tax involved, either as an absolute amount or in relation to an annual amount due, is significant; and
- b) the conduct involved constitutes a systematic effort or a pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities.

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The Requested State shall not refuse assistance because its law does not impose the same kind of tax, or does not contain the same kind of tax regulations, as the law of the Requesting State.

6. This Treaty is intended for mutual assistance between authorities that by law are responsible for investigations, prosecutions, or proceedings related to criminal offenses. For the United States, these authorities are prosecutors, investigators with criminal law enforcement jurisdiction, and agencies or entities with specific statutory or regulatory authority to refer matters for criminal prosecution. For Luxembourg, these authorities are courts, examining magistrates, public prosecutors, and other authorities authorized to conduct criminal investigations. This Treaty is not intended or designed to provide such assistance to private parties.

7. The provisions of this Treaty neither create a new right nor affect a pre-existing right on the part of a private party to impede the execution of a request or to suppress or exclude any evidence.

Article 2

Central Authorities

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or another prosecutor designated by the Attorney General. For Luxembourg, the Central Authority shall be the Parquet Général.

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3. 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 State may deny assistance if:

- a) the request relates to an offense under military law that would not be an offense under ordinary criminal law;
- b) the request relates to an offense for which the maximum penalty in the Requesting State is deprivation of liberty for a period of a year or less;
- c) the person whose conduct is the subject of the request has been prosecuted and either convicted and sentenced or acquitted in the Requested State based upon identical conduct;
- d) the execution of the request would prejudice the sovereignty, security, ordre public, or similar essential interests of the Requested State; or
- e) the request is not made in conformity with Article 4.

2. The Central Authority of the Requested State may also deny a request if it involves a political offense. This paragraph shall not apply to any offense that the Contracting

Parties consider not to be a political offense under any international agreement to which they are parties.

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

4. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4

Form and Contents of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In any such situation, the request shall be confirmed in writing within ten days unless the Central Authority of the Requested State agrees otherwise. The request and any supporting documents shall be in the language of the Requested State unless otherwise agreed.

2. The request shall include the following:

- a) the identity of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- b) a description of the facts and nature of the investigation, prosecution, or proceeding, including the

applicable provisions of law that relate to the matter;

- c) a description of the evidence, information, or other assistance sought; and
- d) a statement of the purpose for which the evidence, information, or other assistance is sought.

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

- a) information on the identity and location of any person from whom evidence is sought;
- b) information on the identity and location of a person to be served, that person's relationship to the proceeding, and the preferred manner of service;
- c) information on the identity and suspected location of a person or item to be located;
- d) the name of the judicial authority issuing, approving, or otherwise authorizing a request requiring search and seizure;
- e) a precise description of the place or person to be searched and of the items to be seized;
- f) a description of the preferred manner in which any testimony or statement is to be taken and recorded;
- g) a description of the testimony or statement sought, which may include a list of questions to be asked;

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- h) a description of any particular preferred procedure to be followed in executing the request;
- i) information as to the allowances and expenses to which a person asked, to appear in the Requesting State will be entitled;
- j) a statement that the matter for which assistance is requested is not barred by lapse of time under the laws of the Requesting State; and
- k) any other information that may be brought to the attention of the Requested State to facilitate its execution of the request.

Article 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request.

2. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. The courts of the Requested State shall have the authority to issue such orders to execute requests under this Treaty as are authorized under the laws of the Requested State with respect to proceedings in domestic investigations and prosecutions. The preferred method of execution specified in the request shall be followed except

insofar as it is prohibited under the laws of the Requested State.

3. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation or proceeding in that State, jeopardize the security of a person, or impose an extraordinary burden on the resources of that State, it may postpone execution or make execution subject to conditions determined to be necessary after consultation with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

4. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

5. The Central Authority of the Requested State may permit the presence during execution of a request of persons specified in the request.

Article 6

Costs

1. The Requested State shall pay all costs relating to the execution of the request except for the following; which shall be paid by the Requesting State:

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- a) fees of experts;
- b) costs of translation, interpretation, and transcription; and
- c) allowances and expenses related to travel of persons travelling either in the Requested State for the convenience of the Requesting State or pursuant to Articles 10 and 12.

2. If, during the execution of a request, it becomes apparent that complete execution will entail extraordinary expenses, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

Article 7

Limitations on Use

1. The Central Authority of the Requested State may require that the Requesting State not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested State. In such situations, the Requesting State shall comply with the requirement.

2. Information or evidence obtained by the Requesting State for a tax offense shall be available for the investigation or prosecution of the tax offense specified in the request and for use by persons or authorities involved in the assessment, collection, or administration of, the enforcement in respect of, or the determination of appeals in relation to, the taxes underlying that offense.

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3. Nothing in this Article shall preclude the use or disclosure in a criminal prosecution of information or evidence to the extent that there is an obligation to do so for the United States under its Constitution or for Luxembourg under the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Requesting State shall notify the Requested State in advance of any such proposed use or disclosure.

4. Information or evidence that has been made public in the Requesting State in the normal course of the proceeding for which it was provided may thereafter be used for any purpose other than prosecution of the following offenses:

- a) an offense under military law that would not be an offense under ordinary criminal law;
- b) a political offense;
- c) a capital offense; or
- d) a tax offense for which assistance is not available pursuant to this Treaty.

The Central Authority of the Requesting State shall obtain the consent of the Central Authority of the Requested State before the Requesting State uses such information or evidence in the prosecution of an offense listed above even if the Central Authority of the Requested State initially imposed no restriction on its use pursuant to paragraph 1.

Article 8

Testimony, Statements, or Evidence in the Requested State

1. A person in the Requested State whose testimony or statement is requested pursuant to this Treaty shall be

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compelled to appear, testify, and produce any items, including, but not limited to, documents, records, and articles of evidence, to the same extent as in criminal investigations or proceedings in the Requested State. A person who gives false testimony, either orally or in writing, in execution of a request shall be subject to prosecution and punishment in the Requested State in accordance with the criminal laws of that State.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony, statement, or evidence pursuant to this Article.

3. When the Requesting State requests that testimony be taken under oath for use in a proceeding, the Requested State shall permit the presence during the execution of the request of persons specified in the request and shall allow such persons either to question directly the person whose testimony is being taken or to have questions posed in accordance with applicable procedures in the Requested State.

4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the evidence shall nonetheless be taken and the claim shall be made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. The Requesting State may request that items produced in the Requested State pursuant to this Article or Article 15, or that are the subject of testimony or a statement taken pursuant to this Article, be certified by an attestation. Where such items are business records, the attestation may be by:

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- a) a certificate such as Form A appended to this Treaty;
- b) a protocol containing the essential information sought in Form A; or
- c) a document containing the essential information required by the Requesting State.

Documents so certified shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 9
Official Records

1. The Requested State shall provide copies of records of any nature and in any form that are in the possession of its judicial authorities or government departments or agencies and that are accessible to the public.

2. The Requested State may provide copies of records of any nature and in any form that are in the possession of its judicial authorities or government departments or agencies, but that are not accessible to the public, to the same extent and under the same conditions that would apply to its own law enforcement or judicial authorities. The Requested State may, in its discretion, deny entirely or in part a request covered by this paragraph.

3. Official records produced pursuant to this Article and certified by a competent authority of the Requested State as official records, or true and correct copies thereof, shall

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require no further authentication. Upon request, the Central Authority of the Requested State shall certify the official position of the authority certifying an official record. Official records so certified shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

Article 10

Appearance in the Requesting State

1. The Requesting State may request the appearance of any person to assist in investigations or proceedings in that State. The Requested State shall invite the person to appear and shall inform the Requesting State of the person's response.

2. The Requesting State shall indicate the extent to which the person's expenses will be paid. A person who agrees to appear may ask that the Requesting State advance money to cover these expenses. This advance may be provided through the Embassy or a consulate of the Requesting State.

Article 11

Safe Conduct

1. Unless otherwise specified in the request, a person appearing as a witness or expert in the Requesting State pursuant to this Treaty shall not be subject to any civil suit to which the person could not be subjected but for the person's presence in the Requesting State, or be prosecuted, punished, or subjected to any restriction of personal liberty, by reason of

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any acts or omissions that preceded the person's departure from the Requested State.

2. Any safe conduct provided pursuant to this Article shall cease to apply if, after a person appearing pursuant to this Treaty has been notified that the person's presence is no longer required, that person, being free to leave, has not left the Requesting State within seven days or, having left, has voluntarily returned.

Article 12

Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State or in a third State is needed for purposes of assistance under this Treaty shall be transferred from the Requested State for that purpose if the person consents and the Central Authorities of both States agree.

2. A person in the custody of the Requesting State whose presence in the Requested State is needed for purposes of assistance under this Treaty shall be transferred to the Requested State if the person consents and the Central Authorities of both States agree.

3. For purposes of this Article:

- a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

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- b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
- c) the receiving State shall not require the sending State to initiate proceedings for the return of the person transferred; and
- d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

Article 13

Location or Identification of Persons or Items

If the Requesting State seeks the location or identity of persons or items in the Requested State, the Requested State shall use its best efforts to ascertain the location or identity.

Article 14

Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating to any request for

assistance made by the Requesting State under the provisions of this Treaty.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall effect service and return a proof of service in the manner provided by its laws or, if otherwise specified in the request, in a special manner consistent with such laws.

4. A person who is not a national or resident of the Requesting State and who does not answer a summons to appear in the Requesting State as a witness or expert pursuant to this Treaty shall not by reason thereof be liable to any penalty or be subjected to any coercive measures.

Article 15

Search and Seizure

1. The Requested State shall execute a request requiring search, seizure, and transfer of any item to the Requesting State if:

- a) a judicial authority of the Requesting State issues, approves, or otherwise authorizes the request; and
- b) the request includes the information justifying such action under the laws of the Requested State.

For purposes of this paragraph, a judicial authority shall be, as appropriate, a prosecutor, court, or examining magistrate.

2. Upon request, every official who has custody of a seized item shall certify the identity of the item, the continuity of its custody, and the integrity of its condition. This certification shall be by means of Form B appended to this Treaty or a document containing the essential information required by the Requesting State. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 16
Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return as soon as possible any items, including documents, records, or articles of evidence, furnished to it in execution of a request under this Treaty.

Article 17
Proceeds, Objects, and Instrumentalities of an Offense

1. Upon request and to the extent permitted by its laws, the Requested State may take protective measures, such as temporary immobilization or seizure, to ensure that proceeds, objects, and instrumentalities of an offense that are located in

the Requested State are available for forfeiture or restitution to victims of crime.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of proceeds, objects, and instrumentalities of offenses or restitution to victims of crime.

3. The Contracting Parties may assist each other to the extent permitted by their respective laws to give effect to final decisions rendered in either State forfeiting proceeds, objects, and instrumentalities of an offense, or may independently initiate legal action for the forfeiture of such assets. The Party that enforces a final decision relating to such proceeds, objects, and instrumentalities of an offense shall dispose of them in accordance with its laws. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems to be appropriate.

Article 18
Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 19

Ratification, Entry into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Washington as soon as possible.
2. This Treaty shall enter into force on the first day of the second month after the exchange of instruments of ratification.
3. Either Contracting Party may terminate this Treaty by means of written notice to the other Party. Termination shall take effect six months following the date of notification.

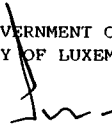
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Luxembourg this 13 day of March 1997
in duplicate, in the English and French languages, both texts
being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE
GRAND DUCHY OF LUXEMBOURG:



Form A

CERTIFICATION OF BUSINESS RECORDS

(The entire certificate may be handwritten by the person signing the certificate.

A typed transcription should accompany the handwritten original.)

I, the undersigned *[insert full name]*, born *[insert birthdate]*, in *[insert birthplace]*, resident at *[insert street address, town or city, and country]*, *[insert occupation/profession]*, employed by/associated with *[insert name of business organization]* in the position of *[insert position]*, with the understanding that I am subject to criminal penalty under the laws of the Grand Duchy of Luxembourg for an intentionally false attestation, make this declaration for use in proceedings before a court of justice:

The documents accompanying this declaration are originals or true copies of records in the custody of *[insert name of business organization]* that:

- (1) were made at or near the time of the occurrence of the matters set forth therein, by (or from information transmitted by) a person with knowledge of those matters;
- (2) were kept in the course of a regularly conducted business activity;
- (3) were made by such business activity as a regular practice; and,
- (4) if not original records, are duplicates of original records.

Date of execution: _____

Place of execution: _____

Signature: _____

Form B

ATTESTATION WITH RESPECT TO SEIZED ITEMS

I, ______{name}_____, attest on penalty of criminal punishment for false attestation that my official position in ______{country}_____ is ______{position or function}_____. I received custody of the items listed below from ______{name of person}_____ on ______{date}_____, at ______{place}_____. I relinquished custody of the items listed below to ______{name of person}_____ on ______{date}_____, at ______{place}_____ in the same condition as when I received them (or, if different, as noted below).

Description of items:

Changes in condition while in my custody:

______{signature}_____

Official Seal

______{title}_____

______{place}_____

______{date}_____

EMBASSY OF THE
UNITED STATES OF AMERICA

Luxembourg, March 13, 1997

Excellency:

I have the honor to refer to the Treaty on Mutual Legal Assistance in Criminal Matters signed today between the United States of America and the Grand Duchy of Luxembourg and to propose that the Treaty be interpreted and applied in accordance with the provisions set forth in this note.

The Parties agree that the description of offenses in Article 1(5)(a) and (b) for which assistance is available is in accord with the concept of "fiscal fraud" ("*escroquerie fiscale*") under the current laws of Luxembourg. The Luxembourg concept of "*escroquerie fiscale*" is in accord with the concept of "fiscal fraud" under the laws of the United States where a pattern of affirmative willful misconduct ("*manoeuvres frauduleuses*") exists, the likely effect of which would be to mislead tax authorities or conceal information from them. By way of illustration, the Parties consider that a pattern or combination of any of the following activities designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities ("*l'emploi systématique de manoeuvres frauduleuses*") would create a presumption of an offense for which assistance is available under Article 1(5):

1. keeping a double set of books;
2. making false entries or alterations or false invoices or documents;
3. destroying books or records;
4. concealing assets or covering up sources of income; and
5. handling one's affairs to avoid making the records usual in transactions of the kind.

His Excellency
Jacques F. Poos
Minister of Foreign Affairs
Grand Duchy of Luxembourg

The Parties consider that Luxembourg's concept of "concealing pertinent facts from or providing inaccurate facts to the tax authorities" is comparable to the United States concept of "misleading tax authorities."

I have the further honor to propose that this Note and Your Excellency's Note in reply confirming on behalf of the Government of Luxembourg the foregoing arrangements shall be regarded as constituting an agreement between the two Governments, which shall enter into force simultaneously with the Treaty on Mutual Legal Assistance in Criminal Matters.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.


Clay Constantinou
Ambassador

A TRUE COPY OF THE
SIGNED ORIGINAL


SALLY COCHRAN
VICE CONSUL OF THE UNITED STATES OF AMERICA



GRAND-DUCHÉ DE LUXEMBOURG

MINISTÈRE
DES AFFAIRES ÉTRANGÈRES

LE MINISTRE

Luxembourg, March 13rd, 1997

Excellency:

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

« I have the honor to refer to the Treaty on Mutual Legal Assistance in Criminal Matters signed today between the United States of America and the Grand Duchy of Luxembourg and to propose that the Treaty be interpreted and applied in accordance with the provisions set forth in this note.

The Parties agree that the description of offenses in Article 1(5)(a) and (b) for which assistance is available is in accord with the concept of "fiscal fraud" ("*escroquerie fiscale*") under the current laws of Luxembourg. The Luxembourg concept of "*escroquerie fiscale*" is in accord with the concept of "fiscal fraud" under the laws of the United States where a pattern of affirmative willful misconduct ("*manoeuvres frauduleuses*") exists, the likely effect of which would be to mislead tax authorities or conceal information from them. By way of illustration, the Parties consider that a pattern or combination of any of the following activities designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities ("*l'emploi systématique de manoeuvres frauduleuses*") would create a presumption of an offense for which assistance is available under Article 1(5):

1. keeping a double set of books;
2. making false entries or alterations or false invoices or documents;

/..

His Excellency
Clay CONSTANTINOU
Ambassador of the
United States of America

3. destroying books or records;
4. concealing assets or covering up sources of income; and
5. handling one's affairs to avoid making the records usual in transactions of the kind.

The Parties consider that Luxembourg's concept of "concealing pertinent facts from or providing inaccurate facts to the tax authorities" is comparable to the United States concept of "misleading tax authorities."

I have the further honor to propose that this Note and Your Excellency's Note in reply confirming on behalf of the Government of Luxembourg the foregoing arrangements shall be regarded as constituting an agreement between the two Governments, which shall enter into force simultaneously with the Treaty on Mutual Legal Assistance in Criminal Matters.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration. »

I have the further honor to confirm on behalf of the Government of Luxembourg that the above proposal is acceptable to the Government of Luxembourg and that Your Excellency's Note and this Note in reply shall constitute an agreement between the two Governments, which shall enter into force simultaneously with the Treaty on Mutual Legal Assistance in Criminal Matters.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.



Jacques F. Poos
Minister of Foreign Affairs
Foreign Trade
and Cooperation
of the Grand Duchy of Luxembourg