

TREATY WITH LIECHTENSTEIN ON MUTUAL LEGAL
ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE PRINCIPALITY OF LIECHTENSTEIN ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED
AT VADUZ ON JULY 8, 2002



SEPTEMBER 5, 2002.—Treaty was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 5, 2002.*

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 Principality of Liechtenstein on Mutual Legal Assistance in Criminal Matters, signed at Vaduz on July 8, 2002. 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 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 crimes, including terrorism, drug trafficking, and fraud and other white-collar offenses. The Treaty is self-executing.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: locating or identifying persons or items; serving documents; taking the testimony or statements of persons; transferring persons in custody for testimony or other purposes; providing documents, records and items; executing requests for searches and seizures; assisting in proceedings related to immobilization and forfeiture of assets and restitution; initiating criminal proceedings in the Requested State; and any other form of assistance consistent with the purposes of this Treaty and not prohibited by the laws of the State from whom the assistance is requested.

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

GEORGE W. BUSH.

LETTER OF SUBMITTAL

THE SECRETARY OF STATE,
Washington, August 14, 2002.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty Between the United States of America and the Principality of Liechtenstein on Mutual Legal Assistance in Criminal Matters (“the Treaty”), and a related exchange of notes, both signed at Vaduz on July 8, 2002. I recommend that the Treaty 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 between the United States and a number of other countries. This Treaty contains many provisions similar to those other treaties and all of the essential provisions sought by the United States. It is accompanied by an exchange of notes (described below), which relates to Article 1 of the Treaty. The Treaty will enhance our ability to investigate and prosecute a variety of offenses, including tax offenses of particular interest to the United States law enforcement community. The Treaty is designed to be self-executing and will not require implementing legislation.

Article 1 sets out the scope of assistance available under the Treaty. Article 1(2) contains a non-exhaustive list of the major types of assistance to be provided under the Treaty, including taking the testimony or statements of persons; providing items; locating or identifying persons; serving documents; transferring persons in custody for testimony or other purposes; executing requests for searches and seizures; assisting in proceedings related to immobilization and forfeiture of assets; restitution to the victims of crime and collection of fines; and any other form of assistance not prohibited by the laws of the Requested State.

The scope of the Treaty includes not only assistance provided in connection with the investigation, prosecution, and prevention of criminal offenses, but also in related forfeiture proceedings. Article 1(3) states that assistance is to be provided without regard to whether the conduct involved would constitute an offense under the laws of the Requested State, except that the Requested State may refuse to comply in whole or in part with a request to the extent that the conduct would not constitute an offense under its laws and the execution of the request would require a court order for search and seizure or other coercive measures.

Article 1(4) provides that, with respect to offenses concerning taxation, the Requested State shall provide assistance where the

conduct described constitutes tax fraud, defined as tax evasion committed by means of the intentional use of false, falsified or incorrect business records or other documents, provided the tax due, either as an absolute amount or in relation to an annual amount due, is substantial. This paragraph also provides that 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. This Treaty, like the MLAT with Luxembourg, is accompanied by an exchange of diplomatic notes that further elaborate the definition of tax fraud under Article 1(4). The exchange of notes constitutes an integral part of the Treaty.

In the exchange of notes the Parties agreed that any of five different types of intentional conduct would create a presumption that the conduct described in a request for assistance constitutes “tax fraud” and therefore would trigger assistance under Article 1(4). These are: (1) preparing, signing, or filing any document that is required by law to be filed to evidence to the tax authorities the amount of taxable income, serves as the basis for an assessment of tax, and is false as to any matter necessary to the assessment of such tax; (2) keeping a double set of books; (3) making false entries or alterations or false invoices or documents; (4) destroying books or records; or (5) concealing assets or covering up sources of income by the means described in Article 1(4).

The exchange of notes also expresses the Parties’ agreement that the term “document” includes specific tax forms used by a Party to evidence the bookkeeping of a business (balance sheets, and income and expense accounts), and specifically that U.S. Internal Revenue Service Form 1120, relating to corporate income tax returns, and Schedule C of Form 1040, relating to profit or loss from sole proprietorships, constitute such documents. Other forms may subsequently be added to this list by means of a subsequent exchange of diplomatic notes.

During the course of negotiations, the U.S. delegation developed and presented to the delegation of Liechtenstein a series of hypothetical cases arising under U.S. tax law for which assistance from Liechtenstein should be provided. Based upon the replies provided by Liechtenstein, the U.S. Government determined that Article 1(4) and the related exchange of notes established a sufficiently broad scope for coverage of criminal tax matters.

Article 1(5) states explicitly that the Treaty does not create a right on the part of any private person to obtain, suppress or exclude any evidence, or to impede the execution of a request.

Article 2 provides for the establishment of Central Authorities and defines 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 Liechtenstein, the Central Authority is the Ministry of Justice or its designee. The article provides that the Central Authorities are to communicate directly with one another for the purposes of the Treaty.

Article 3 sets forth the circumstances under which a Requested State’s Central Authority may deny assistance under the Treaty. A request may be denied if it relates to a military offense that would not be an offense under ordinary criminal law, if its execution

would prejudice the security or other essential public interests of the Requested State, if it is not made in conformity with the Treaty, or if it relates to a political offense (a term the meaning of which is well-defined in the extradition context and which is expected to be defined on that basis in connection with mutual assistance).

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 the Central Authority of the Requested State deems necessary. If the Requesting State accepts assistance subject to these conditions, it is required to comply with them. If the Central Authority of the Requested State denies assistance, it is required under Article 3(3) to inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4 prescribes the form and content of written requests under the Treaty, specifying in detail the information required in each request. A request for assistance must be in writing, except that a request may be accepted in another form in emergency situations, but would require written confirmation within ten days thereafter unless the Central Authority of the Requested State agrees otherwise.

Article 5 concerns execution of requests. Article 5(1) requires the Central Authority of the Requested State to execute the request promptly or, where appropriate, to transmit it to the authority having jurisdiction to do so. It provides that the competent authorities of the Requested State must do everything in their power to execute a request, and that judicial and other authorities of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request. Under Article 5(2), the Central Authority of the Requested State must make all arrangements for representation of the Requesting State in any proceedings arising out of an assistance request.

Article 5(3) provides that requests are to be executed in accordance with the internal laws and procedures of the Requested State except to the extent that the Treaty provides otherwise. Procedures specified in the request must be followed except to the extent that those procedures cannot lawfully be followed in the Requested State. Under Article 5(4), if the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts assistance subject to conditions, it must comply with them.

Article 5(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. The Central Authority of the Requested State must inform the Requesting State's Central Authority if the request cannot be executed without breaching such confidentiality. This provides the Requesting State an opportunity to decide whether to pursue the request or to withdraw it in order to maintain confidentiality.

This article also requires the Requested State's Central Authority to respond to reasonable inquiries by the Requesting State's Central Authority concerning progress toward execution of a particular request; to promptly inform the Requesting State's Central Authority of the outcome of its execution; and, if the request is denied, to inform the Requesting State's Central Authority of the basis for the denial.

Article 6 apportions between the two States the costs incurred in executing a request. It provides that the Requested State must pay all costs relating to the execution of a request, except for the following items to be paid by the Requesting State: fees of expert witnesses; costs of translation, interpretation and transcription; and allowances and expenses related to travel of persons pursuant to Articles 10 and 11. The article further provides that, in the event that a request entails extraordinary expenses, consultation between Central Authorities shall occur in order to determine the terms and conditions for continuing execution.

Article 7 provides that the Requested State may require the Requesting State not to use information or evidence obtained under the Treaty for any purposes other than those described in the request without the prior consent of the Requested State. Further, if the Requesting State accepts information or evidence under the Treaty, subject to a request by the Requested State's Central Authority that it be kept confidential or be used in accordance with specified terms and conditions, the Requesting State must use its best efforts to comply with the conditions. Once information is made public in the Requesting State in accordance with either of these provisions, it may thereafter be used for any purpose. Nothing in the Article prevents the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the Requesting State in a criminal prosecution. The Requesting State is obliged to notify the Requested State in advance of any such proposed disclosure.

Article 8 provides that, insofar as the laws of the Requested State allow, a person in the Requested State from whom testimony or evidence is requested shall be compelled, if necessary, to appear and testify or produce records, including documents, information in any form, and other items. Upon request, the Central Authority of the Requested State is required to furnish information in advance about the date and place of the taking of testimony or evidence pursuant to this Article.

Article 8(3) further requires the Requested State to permit persons specified in the request (such as the accused, counsel for the accused, or other interested persons) to be present during execution of the request and to allow them to question the person giving the testimony or evidence. 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, Article 8(4) provides that the testimony or evidence is to be taken and the claim made known to the Central Authority of the Requesting State for resolution by its authorities. Finally, in order to ensure admissibility in evidence in the Requesting State, Article 8(5) provides a mechanism for authenticating evidence that is produced pursuant to or that is the subject of testimony taken in the Re-

requested State Business records authenticated through the use of Form A, or a certification of the absence or nonexistence of such records made by use of Form B, attached to the Treaty, are to be admissible in evidence in the Requesting State.

Article 9 requires the Requested State to provide the Requesting State with copies of publicly available records in the possession of government departments and agencies in the Requested State. The Requested State may also provide copies of records 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 provide them to its own law enforcement or judicial authorities. The Requested State has the discretion to deny requests for such non-public documents, entirely or in part. Article 9 also provides that no further authentication is necessary for admissibility into evidence in the Requesting State of official records provided pursuant to this Article, where the official in charge of maintaining them authenticates the records through the use of Form C, or certifies the absence of nonexistence of such records by use of Form D, both also appended to the Treaty.

Article 10 provides a mechanism for the Requesting State to invite the voluntary appearance in its territory of a person located in the Requested State. The Requesting State must indicate the extent to which the expenses will be paid and the Central Authority of the Requested State must promptly inform its counterpart in the Requesting State of the person's response. Article 10(3) requires the Central Authority of the Requesting State to inform the Central Authority of the Requested State whether a decision has been made by the relevant competent authorities that a person appearing in the Requesting State pursuant to this Article is not subject to service of process or detention or any restriction of personal liberty by reason of any acts or convictions that preceded his departure from the Requested State. Under Article 10(4), any safe conduct provided for by this Article ceases seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or if the person has left the Requesting State and voluntarily returns to it. An extension of up to fifteen days for good cause may be granted by the Requesting State's competent authorities in their discretion.

Article 11 provides for the temporary transfer of a person in custody in the Requested State to the Requesting State or to a third State for purposes of assistance under the Treaty (for example, a witness incarcerated in the Requested State may be transferred to the Requesting State to have his testimony taken in the presence of the defendant), provided that the person in question consents and the Central Authorities of both States agree. The Article also provides for the voluntary transfer of a person in the custody of the Requesting State to the Requested State for purposes of assistance under the Treaty (for example, a defendant in the Requesting State may be transferred for purposes of attending a witness deposition in the Requested State), if the person consents and if the Central Authorities of both States agree.

Article 11(3) further establishes both the express authority and the obligation of the receiving State to maintain the person trans-

ferred in custody unless otherwise authorized by the sending State. The person transferred must be returned to the custody of the sending State as soon as circumstances permit or as otherwise agreed by the Central Authorities, and the sending State is not required to initiate extradition proceedings for the return of the person transferred. The person transferred also receives credit for time served in the custody of the receiving State.

Article 12 provides that the Requested State may authorize the transit through its territory of a person whose appearance in an investigation, prosecution or proceeding has been sought by the Requesting State, and that the Requested State shall be obliged to keep the person in custody during such transit.

Article 13 requires the Requested State to use its best efforts to ascertain the location or identity of persons or items specified in the request.

Article 14 obligates the Requested State to use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance under the Treaty. A request for the service of a document requiring a person to appear in the Requesting State must be transmitted a reasonable time before the scheduled appearance. Proof of service is to be provided in the manner specified in the request. A person who is a national of the Requested State, or who has equal status thereto, is not subject to sanctions for failure to answer a summons to appear in the Requesting State as a witness or expert. Liechtenstein has a substantial number of permanent residents deemed to have equal status to its nationals.

Article 15 obligates the Requested State to execute requests for search, seizure, and transfer of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State. The Requesting State may request that every official who has custody of a seized item certify, through the use of Form E appended to the Treaty, the identity of the item, the continuity of custody, and the integrity of its condition. No further certification is to be required and the certificate is admissible in evidence in the Requesting State. Article 15(3) further provides that the Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 16 provides that the Central Authority of the Requested State may require its counterpart in the Requesting State to return items furnished to it in execution of a request.

Article 17(1) provides that, if the Central Authority of one Party becomes aware that proceeds or instrumentalities of offenses that may be forfeitable or otherwise subject to seizure are located in the other Party, it may so inform the Central Authority of the other Party. If the Party receiving such information has jurisdiction, it may present this information to its authorities for a determination whether any action is appropriate. The Central Authority of the Party receiving such information is required to inform the Central Authority of the Party that provided the information of any action taken.

Article 17(2) obligates the Parties to assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, res-

titution to victims of crime, and collection of fines imposed as sentences in criminal prosecutions. Under Article 17(3), the Party having custody over proceeds or instrumentalities of offenses is required to dispose of them in accordance with its laws. Either Party may share all or part of such assets, or the proceeds of their sale, with the other Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article 18 states that assistance and procedures provided in the Treaty do not prevent either Party from granting assistance to the other through the provisions of other applicable international agreements or through the provisions of its national laws. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

Article 19 provides that the Central Authorities shall consult, at times mutually agreed, to promote the most effective use of the Treaty, and may agree upon practical measures to facilitate the Treaty's implementation.

Article 20 provides that the Treaty is subject to ratification and that the instruments are to be exchanged as soon as possible. The Treaty then enters into force on the first day of the second month following the month of the exchange of instruments. Article 19(3) provides that the Treaty applies to requests presented after the date of its entry into force, whether the relevant acts or omissions occurred prior to or after that date. Article 19(4) further provides that either State may terminate the Treaty by written notice to the other State, termination to be effective six months after the date of such notice.

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

Respectfully submitted,

COLIN L. POWELL.

TREATY
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE PRINCIPALITY OF LIECHTENSTEIN
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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FORMS

- Form A Certification of Authenticity of Business Records
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Records
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The United States of America and the Principality of Liechtenstein,

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

Have agreed as follows:

Article 1**Scope of Assistance**

1. The Parties shall provide mutual assistance to each other, in accordance with the provisions of this Treaty, in connection with the investigation and prosecution of offenses and in related forfeiture proceedings.

2. Assistance shall include:

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

3. Assistance shall be provided 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, except that the Requested State may refuse to comply in whole or in part with a request for assistance to the extent that the conduct would not constitute an offense under its laws and the execution of the request would require a court order for search and seizure or other coercive measures. However, the Requested State shall make every effort to approve a request for assistance requiring court orders or other coercive measures and shall grant assistance where the facts stated in the request establish a reasonable suspicion that the conduct described, if it had occurred in the Requested State, would constitute an offense under its laws.

4. With respect to offences concerning taxation, the Requested State shall provide assistance where the conduct described constitutes tax fraud, defined as tax evasion committed by means of the intentional use of false, falsified, or incorrect business records or other documents, provided the tax due, either as an absolute amount or in relation to an annual amount due, is substantial. 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.

5. 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.

Article 2

Central Authorities

1. Each Party shall designate a Central Authority through which it will seek and obtain assistance pursuant to this Treaty. Requests shall be made on behalf of authorities which by law are responsible for investigations or prosecutions related to criminal matters. For purposes of this Treaty, investigations conducted by agencies with jurisdiction to refer matters for criminal prosecution shall be considered to be penal proceedings.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For Liechtenstein, the Central Authority shall be Ministry of Justice or a person designated by the Ministry of Justice.

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 execution of the request would prejudice the security or similar essential interests of the Requested State;
- c) the request is not made in conformity with the Treaty; or
- d) the request relates to a political offense.

2. 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.

3. If the Central Authority of the Requested State denies assistance pursuant to this Article, 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. If the request is not in writing, it shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise. The request shall be in the language of the Requested State unless otherwise agreed.

2. The request shall include the following:

- a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

- b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses 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 proceedings, and the manner in which service is to be made;
- c) information on the identity and suspected location of a person or item to be located;
- d) a precise description of the place or person to be searched and of the items to be seized;
- e) a description of the manner in which any testimony or statement is to be taken and recorded;
- f) a description of the testimony or statement sought, which may include a list of questions to be asked of a person;
- g) a description of any particular procedure to be followed in executing the request;
- h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and
- i) 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. The Courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for representation in the Requested State of the Requesting State in any proceedings arising out of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. Procedures specified in the request shall be followed except to the extent that those procedures cannot lawfully be followed in the Requested State. Where neither the Treaty nor the request specifies a particular procedure, the request shall be executed in accordance with the appropriate procedure under the laws applicable for criminal investigations or proceedings in the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined necessary after consultations 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.

5. 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.

6. The Central Authority of the Requested State shall respond to reasonable requests by the Central Authority of the Requesting State on progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, delayed or postponed, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the denial, delay, or postponement.

Article 6

Costs

1. The Requested State shall pay all costs relating to the execution of a request, including the costs of representation, except for the following:

- a) the fees of experts;
- b) the costs of translation, interpretation, and transcription; and
- c) the allowances and expenses related to travel of persons traveling either in the Requested State for the convenience of the Requesting State or pursuant to Articles 10 and 11.

2. If during the execution of a request it becomes apparent that complete execution will entail expenses of an extraordinary nature, 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 request 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. If the Requested State makes such a request, the Requesting State shall comply with the conditions.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.

3. Nothing in this Article shall preclude the use or disclosure of information or evidence to the extent that

there is an obligation to do so under the Constitution of the Requesting State in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such proposed disclosure.

4. Information or evidence that has been made public in the Requesting State pursuant to paragraph 1 or 2 may thereafter be used for any purpose.

Article 8

Testimony or Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce records, including documents or information in any form, and other items, in the same manner and 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 or evidence pursuant to this Article.

3. The Requested State shall permit the presence of persons specified in the request during the execution of the request, and shall allow such persons to question the person giving the testimony or evidence.

4. If the person referred to in paragraph 1 asserts a basis for not testifying or providing items under the laws of the Requesting State that was not specified in the request, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

5. Items that have been produced in the Requested State pursuant to this Article or Article 15 or that has been the subject of testimony taken under this Article shall, upon

request, be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. The absence or nonexistence of such records shall, upon request, be certified through the use of Form B appended to this Treaty. Records authenticated by Form A, or Form B certifying the absence or nonexistence of such records, 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 the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of government departments or agencies or courts in the Requested State.

2. The Requested State may provide copies of any records, including documents or information in any form, that are in the possession of government departments or agencies or courts in that State but that are not publicly available, to the same extent and under the same conditions as such copies would be available to the Requested State's own law enforcement or judicial authorities. The Requested State may, in its discretion, deny, entirely or in part, a request pursuant to this paragraph.

3. Records produced pursuant to this Article shall, upon request, be authenticated under the provisions of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, dated 5 October 1961, or by the official responsible for maintaining them through the use of Form C appended to this Treaty. No further authentication shall be necessary. The absence or nonexistence of such records shall, upon request, be certified through the use of Form D appended to this Treaty. Records authenticated under this paragraph, or Form D certifying the absence or nonexistence of such records, shall be admissible in evidence in the Requesting State as proof of the truth of the matters stated therein.

Article 10

Testimony in the Requesting State

1. When the Requesting State requests that a person in the Requested State appear in the Requesting State, the Requested State shall invite the person to do so. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the 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.

3. Unless otherwise specified in the request, a person appearing in the Requesting State 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 that preceded his departure from the Requested State.

4. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or when the person, having left the Requesting State, voluntarily returns. The Central Authority of the Requesting State may, in its discretion, extend this period up to fifteen days if it determines that there is good cause to do so.

Article 11

Transfer of Persons in Custody

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

2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State if the person consents and if 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;

- 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 extradition proceedings for the return of the person transferred;
- 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; and
- e) where the receiving State is a third State, the Requesting State shall be responsible for all arrangements necessary to meet the requirements of this paragraph.

Article 12

Transit of Persons in Custody

1. The Requested State may authorize the transit through its territory of a person held in custody, by the Requesting State or a third State, whose personal appearance has been requested by the Requesting State in an investigation, prosecution, or proceeding.

2. The Requested State shall have the authority and the obligation to keep the person in custody during transit.

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, in whole or in part, 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 return a proof of service in the manner specified in the request.

4. A person who is a national of the Requested State or who has equal status thereto 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 that it search for, seize, and transfer any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State. Such information shall include a statement that an appropriate authority in the Requesting State could compel production of the item in question if they were located in that State.

2. Upon request, every official who has custody of a seized item shall certify, through the use of Form E appended to this Treaty, the identity of the item, the continuity of custody, and any changes in condition. No further certification shall be required. Form E shall be admissible in evidence in the Requesting State.

3. The Central Authority of the Requested State may require that the Requesting State agree to 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 any item, including records, furnished to it in execution of a request under this Treaty.

Article 17**Assistance in Forfeiture Proceedings**

1. If the Central Authority of one Party becomes aware of proceeds or instrumentalities of offenses that are located in the other Party and may be forfeitable or otherwise subject to seizure under the laws of that State, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country and shall, through their Central Authority, report to the other Party on the action taken.

2. Each Party shall assist the other to the extent permitted by its respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to temporarily immobilize the proceeds or instrumentalities or the recognition of a forfeiture judgement.

3. The Party that has custody over proceeds or instrumentalities of offenses 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 appropriate. This may include the sharing of forfeited assets, or the proceeds of their sale, where one Party has assisted the other in an investigation or proceeding that results in the forfeiture of assets.

Article 18**Compatibility with Other Treaties**

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

Article 19**Consultation**

The Central Authorities 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 20**Ratification, Entry Into Force, and Termination**

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force on the first day of the second month following the month of the exchange of instruments of ratification.

3. This Treaty shall apply to any request presented after the date of its entry into force whether the relevant acts or omissions occurred prior to or after that date.

4. Either 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 Vaduz, in duplicate, this 8th day of July 2002, in the English and German languages, both ~~texts~~ being equally authentic.

FOR THE
UNITED STATES OF AMERICA:

FOR THE
PRINCIPALITY OF LIECHTENSTEIN:

Mercer Reynolds *F. H. H.*

Form A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, [name] , attest on penalty of criminal punishment for false statement or attestation that I am employed by [name of business from which records are sought] that my official title is [official title]. I further state that each of the records attached hereto is the original or a duplicate of the original record in the custody of [name of business from which records are sought].

I 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 such records as a regular practice; and
- D) if any such record is not the original, it is a duplicate of the original.

[signature]

[date]

[Sworn to or affirmed before me,
[name], a judicial officer, this day of, 20]

Form B

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF BUSINESS
RECORDS

I, [name] , attest on penalty of criminal punishment for false statement or attestation that I am employed by/associated with [name of business from which records are sought] in the position of [business position or title] and by reason of my position am authorized and qualified to make this attestation.

As a result of my employment/association with the abovenamed business, I am familiar with the business records it maintains. The business maintains records that are:

- A) 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) kept in the course of a regularly conducted business activity; and
- C) made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the abovenamed business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

[date of execution]

[place of execution]

[signature]

Form C

ATTESTATION OF AUTHENTICITY OF OFFICIAL RECORDS

I, [name] attest on penalty of criminal punishment for false statement or attestation that my position with the Government of [country] is [official title] and that in that position I am authorized by the law of [country] to attest that the records 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 [country]

Description of Records:

[signature]

[title]

[date]

Form D

CERTIFICATION OF ABSENCE OR NONEXISTENCE OF OFFICIAL
RECORDS

I, *[name]*, attest on penalty of criminal punishment for false statement or attestation that:

A) *[name of office or agency]* is a government office or agency of *[country]* and is authorized by law to maintain official records setting forth matters authorized by law to be reported and recorded or filed;

B) records of the type described below set forth matters that are authorized by law to be reported and recorded or filed, and such matters regularly are recorded or filed by the abovenamed public authority;

C) my position with the abovenamed public authority is *[official title]*;

D) in my official capacity I have caused the production of true and accurate copies of records maintained by that public authority; and

E) no such records have been found to exist therein.

Description of Records:

[signature]

[date]

Official Seal

Form E

ATTESTATION WITH RESPECT TO SEIZED ITEMS

I, [name] attest on penalty of criminal punishment for false statement or attestation that my position with the Government of [country] is [official title]. 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]

[Title]

Official Seal

[place]

[date]



Vaduz, July 8, 2002

Excellency,

I have the honor to acknowledge receipt of your Note of July 8, 2002, which reads as follows:

„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 Principality of Liechtenstein and to propose that the Treaty be interpreted and applied in accordance with the provisions set forth in this note.

The Parties agree that any of the following activities, if committed intentionally, would create the presumption that the the conduct described in a request for assistance constitutes „tax fraud“ under Article 1(4):

1. preparing, causing to be prepared, signing, or filing any document that:
 - (a) is required by law to be filed to evidence to the tax authorities the amount of taxable income,
 - (b) serves as the basis for an assessment of tax, and
 - (c) is false as to any matter necessary to the assessment of such tax;
2. keeping a double set of books;
3. making false entries or alterations or false invoices or documents;
4. destroying books or records; or
5. concealing assets or covering up sources of income by means as described in Article 1(4).

His Excellency
Mr. Mercer Reynolds
Ambassador
Embassy of the United States of America
Bern

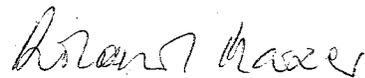
The Parties further agree that the term „document“ in point 1 above includes specific tax forms utilized by a Party insofar as they serve to evidence the bookkeeping (balance sheets, and income and expense accounts) of a business. Such forms are: Form 1120 (U.S. Corporation Income Tax Return) and Schedule C [Profit or Loss from Business (Sole Proprietorship)] of Form 1040, utilized by the tax authorities of the United States of America, and such other forms as may be subsequently designated by exchange of diplomatic notes between the Parties.

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

Accept, Excellency, the renewed assurances of my high consideration.“

I have the honor to confirm on behalf of the Principality of Liechtenstein that your Note of July 8, 2002 and this Note in reply shall be regarded as constituting an agreement between the Parties, which shall be subject to ratification and shall enter into force simultaneously with the Treaty on Mutual Legal Assistance in Criminal Matters.

Accept, Excellency, the renewed assurances of my high consideration.

A handwritten signature in cursive script, appearing to read "Hans Maser".

EMBASSY OF THE
UNITED STATES OF AMERICA

July 8, 2002

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 Principality of Liechtenstein and to propose that the Treaty be interpreted and applied in accordance with the provisions set forth in this note.

The Parties agree that any of the following activities, if committed intentionally, would create the presumption that the conduct described in a request for assistance constitutes "tax fraud" under Article 1(4):

1. preparing, causing to be prepared, signing, or filing any document that:
 - (a) is required by law to be filed to evidence to the tax authorities the amount of taxable income,
 - (b) serves as the basis for an assessment of tax, and
 - (c) is false as to any matter necessary to the assessment of such tax;
2. keeping a double set of books;
3. making false entries or alterations or false invoices or documents;
4. destroying books or records; or
5. concealing assets or covering up sources of income by means as described in Article 1(4).

The Parties further agree that the term "document" in point 1 above includes specific tax forms utilized by a Party insofar as they serve to evidence the bookkeeping (balance sheets, and income and expense accounts) of a business. Such forms are: Form 1120 (U.S. Corporation Income Tax Return) and Schedule C [Profit or Loss from Business (Sole Proprietorship)] of Form 1040, utilized by

the tax authorities of the United States of America, and such other forms as may be subsequently designated by exchange of diplomatic notes between the Parties.

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Accept, Excellency, the renewed assurances of my high consideration.

Merca Reynolds

His Excellency

Roland Marxer

Director,

Office of Foreign Affairs,

Principality of Liechtenstein,

Vaduz.

CONFEDERATION OF SWITZERLAND }
CANTON AND CITY OF BERN }
EMBASSY OF THE UNITED STATES } SS
SCOTT D. BORWAMERICA }

I, CONSUL Merca Reynolds Consul of the United States of America at Bern, Switzerland, duly commissioned and qualified, do hereby certify that on this

2nd day of August 2002

before me personally appeared

Merca Reynolds

to me personally known and known to me to be the

individual R.M. described in, whose name

subscribed to, and who executed the foregoing

instrument, and being informed by me of the contents

thereof S.M. duly acknowledged to me that

executed the same freely and voluntarily for the

uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand

and official seal the day and year last above written.

[Signature]
Consul

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