

**AGREEMENT ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
HONG KONG SPECIAL ADMINISTRATIVE REGION/CANADA**

ARTICLE BY ARTICLE COMPARISON WITH MODEL AGREEMENT

PREAMBLE

Substantially the same as the Model Agreement and other signed texts.

ARTICLE 1 - SCOPE OF ASSISTANCE

Paragraph (1) : The second sentence is included at the request of Canada; it is consistent with Hong Kong practice.

Paragraph (2) : Also included at the request of Canada because Canada has a federal system.

Paragraph (3) : Same as Article 1(3) of the HK/Australia Agreement.

Paragraph (4) : Paragraph (i) has also been included in a number of Hong Kong's other signed agreements e.g. Article 1(1)(j) of the HK/New Zealand Agreement.

Paragraph (5) : Same as Article 1(4) of the Model Agreement.

ARTICLE 2 – CENTRAL AUTHORITY

Substantially the same as Article 2 of the Model Agreement.

ARTICLE 3 - EXECUTION OF REQUESTS

Paragraphs (1) and (2) are the same as Article 6(1) and (2) of the Model Agreement.

Paragraph (3) is included at the request of Canada; it is unobjectionable and useful in the context of other Articles, particularly Article 9.

Paragraph (4) is the same as Article 6(3) of the Model Agreement.

Article 6(4) of the model Agreement is not included on the basis that Article 5(7) of the HK/Canada text will ensure that the Requesting Party is informed of the reason(s) for denial of a request.

ARTICLE 4 - CONTENT OF REQUESTS

An expanded version of Article 5 of the Model Agreement. Most of the corresponding Articles in our signed texts have also been expanded to

take into account the law and practice of our negotiating parties.

ARTICLE 5 - LIMITATIONS ON COMPLIANCE

Paragraph (1) : Sub-paragraphs (a), (b) and (c) equate to Article 4 (1)(a), (f) and (c) of the Model Agreement.

Paragraph (2) : This paragraph covers the grounds of refusal in Article 4 (1)(b), (d), (e) and (h) of the Model Agreement. It should be noted however that Article 5(2)(c) covers previous convictions etc in both the Requesting and Requested Parties whereas the model agreement only covers previous convictions in the Requested Party. Article 5(2)(c) is however consistent with provisions in other signed Agreements [Australia, Article IV(1)(e)]

Canada would not however agree to the grounds of refusal in paragraph (2) being mandatory on the basis that their law did not so require. Hong Kong stressed that Hong Kong law [see Section 5(1) of the Mutual Legal Assistance in Criminal Matters Ordinance] required Hong Kong to mandatorily refuse assistance if these grounds existed. The compromise reached [see preambular part of paragraph (2)] ensures that the Agreement is consistent with Hong Kong law.

Paragraph (3) : This paragraph is the same as Article IV (2)(a) and (b) of the HK/Australia Agreement.

Paragraph (4) : Same as Article 4(2) of Model Agreement

Paragraph (5) : Same as Article 4(3) of Model Agreement

Paragraph (6) : Same as Article 4(4) of Model Agreement

Paragraph (7) : Same as Article 4(5) of Model Agreement

Paragraph (8) : Same as Article 4(6) of Model Agreement

ARTICLE 6 - LOCATION AND IDENTITY OF PERSONS AND OBJECTS

Similar to Article 11 of Model Agreement except that there is also an obligation to locate objects.

ARTICLE 7 : SERVICE OF DOCUMENTS

Substantially the same as the Model Agreement except that Article 12(3) was omitted as Canada does not have the capacity (largely because of its federal system) to provide information in relation to outstanding warrants or other judicial orders; Article 12 (3) was also omitted in the agreements with France, the USA and Switzerland.

ARTICLE 8 - TRANSMISSION OF DOCUMENTS AND OBJECTS

This Article includes the substance of Article 13 of the model Agreement but is expanded to deal with the transmission of documents which are not publicly available. It is provided that only copies of these latter documents need be provided and, if originals are provided they are to be returned [see paragraphs (1) and (2)]. This accords with the requirements of Hong Kong's Mutual Legal Assistance in Criminal Matters Ordinance. Finally it is provided that the Requesting Party may request certification to ensure admissibility of the documents provided [see paragraph 5].

ARTICLE 9 - TAKING OF EVIDENCE

In substance the same as Article 9 of the Model Agreement.

Article 9(3) of the Model Agreement is not included as specification of the questions to be put to witnesses is dealt with in Article 4(2)(j) of the text.

Paragraph (4) permits the making of verbatim transcripts; this is consistent with Hong Kong practice.

Paragraph (5) permits the taking of video link evidence if permitted by the laws of the Parties. At present Hong Kong law does not so permit. The taking of video link evidence is however a developing international trend and it is possible that legislation will be introduced in this regard in the future.

ARTICLE 10 - OBTAINING STATEMENTS OF PERSONS

Same as Article 10 of the Model Agreement.

ARTICLE 11 - SEARCH AND SEIZURE

Substantially the same as Article 18 of the Model Agreement.

ARTICLE 12 - AVAILABILITY OF PERSONS IN CUSTODY TO GIVE ASSISTANCE

Substantially the same as Article 15 of the Model Agreement; paragraph (1) of the model agreement is subdivided into two sub-paragraphs.

ARTICLE 13 - AVAILABILITY OF OTHER PERSONS TO GIVE ASSISTANCE

Paragraph (1) is the same as Article 16(1) of the Model Agreement.

Paragraph (2) requires the Requested Party to invite the person to

appear and advise of the expenses payable. This is similar to Article 18(2) and (3) of the HK/Switzerland Agreement.

ARTICLE 14 - SAFE CONDUCT

Substantially the same as Article 17 of the Model Agreement.

ARTICLE 15 - PROCEEDS OF CRIME

The same as Article 19 of the Model Agreement.

ARTICLE 16 LIMITATIONS OF USE

Paragraphs (1) and (2) are substantially the same as Article 8 of the Model Agreement.

Paragraph (3) derives from Article 5(3) of the Model Agreement.

ARTICLE 17 - CERTIFICATION AND AUTHENTICATION

Substantially the same as Article 14 of the Model Agreement.

ARTICLE 18 - REPRESENTATION AND EXPENSES

The same as Article 7 of the Model Agreement

ARTICLE 19 - OTHER ASSISTANCE

The same as Article 3 of the Model Agreement.

ARTICLE 20 - CONSULTATIONS AND DISPUTE SETTLEMENT

Paragraph (1) deals with consultation. There is no equivalent provision in the model Agreement. It is however a useful provision; Article 36 of the HK/Switzerland Agreement also deals with consultation.

Paragraph (2) is the same as Article 20 of the Model Agreement.

ARTICLE 21 - ENTRY INTO FORCE AND TERMINATION

Paragraph (1) is a variation of the normal 30 day rule for entry into force; it is unobjectionable.

Paragraph (2) has no equivalent in the Model Agreement. There are similar provisions in other signal Agreements [e.g. Article XXI(2) of the HK/Australia Agreement].

Paragraph (3) is substantially the same as Article 21(2) of the Model Agreement.