

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

ARTICLE BY ARTICLE COMPARISON WITH MODEL AGREEMENT

Title and Preamble:

In conformity with bilateral Agreements signed after the resumption of sovereignty.

Article 1: Scope of Assistance:

Paragraph (2) is expanded to comprehend the obtaining of information and statements.

Paragraphs 2(e) and (f) have been redrafted to reflect the fact that persons who travel to the Requesting Party to assist may render assistance otherwise than by appearing as witnesses.

Paragraph (3) is to the same effect as paragraph (3) of the model but represents clearer drafting. The same formulation was used in the Agreement with Australia [Article 1(3)].

Article 2: Central Authorities:

This formulation emphasises that the Central Authorities will process requests for assistance pursuant to the Agreement.

Article 3: Other Assistance:

Same as the model Agreement.

Article 4: Limitations on Compliance:

The only variation to the model Agreement is in paragraph (3). The Portuguese Constitution prohibits the imposition of life sentences or sentences of undetermined duration for offences committed in Portugal. The Portuguese delegation could therefore not agree to a provision requiring Portugal to provide legal assistance for foreign offences which attracted these penalties, in the absence of assurances that these penalties would not be carried out, because this would violate Portugal's fundamental legal principles.

Paragraph (3) reflects the Portuguese position. The limitation in relation to life and indeterminate sentences can be overcome by charging offences that do not carry such penalties or by giving assurances [after consulting the CE] that if such sentences are imposed they will be commuted to fixed term sentences.

Article 5: Requests:

Paragraph (1) differs from the model Agreement in that oral requests for assistance are not permitted. This accords with HKSAR practice.

Paragraph (4) has been recast to deal with the translation of requests for assistance as well as the supporting documents.

Article 6: Execution of Requests:

Same as the model Agreement.

Article 7: Representation and Expenses:

The words “within its boundaries” in paragraph (2) are omitted as being unnecessary. The change to paragraph 2(d) is to reflect the fact that persons will normally only travel [to provide assistance] at the request of the Requesting Party. If persons travel at the request of the Requested Party it will assume the expenses.

Article 8: Limitations of Use:

In paragraphs (1) and (2) a reference to “documents articles or records” is included to clarify what is comprehended by “evidence”.

Article 9: Obtaining of Evidence, Articles or Documents:

The only variation is to paragraph (1). The reference to investigations and prosecutions is included to avoid any doubt that these are not covered by “proceeding in relation to a criminal matter”.

Article 10: Obtaining Statements of Persons:

For consistency with Article 9(1) a reference to “prosecution” is included.

Article 11: Location or Identity of Persons:

Same as the model Agreement.

Article 12: Service of Documents:

Paragraph (1) is slightly recast to make it clear that it is only a criminal process which has to be served.

Article 13: Publicly Available and Official Documents:

Same as the model Agreement.

Article 14: Certification and Authentication:

Same as the model Agreement.

Article 15: Transfer of Persons in Custody:

Substantially the same as the model Agreement.

Article 16: Transfer of Other Persons:

Paragraph (2) is expanded to require the Requested Party to inform the Requesting Party of the person's response.

Article 17: Safe Conduct:

In paragraph (2) the period is extended, at Portuguese request, to 45 days. The period of 15 days has been varied in a number of the HKSAR's other Agreements [e.g. France, Switzerland, New Zealand].

Article 18: Search and Seizure:

Same as the model Agreement.

Article 19: Proceeds of Crime:

Paragraph (5) provides that the proceeds of crime includes the instruments of the crime. Most of the HKSAR's Agreements so provide.

Article 20: Settlement of Disputes:

Same as the model Agreement.

Article 21: Entry into Force and Termination:

Same as the model Agreement.

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