

AGREEMENT BETWEEN
THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLE’S REPUBLIC OF CHINA
AND
THE GOVERNMENT OF THE REPUBLIC OF POLAND
CONCERNING
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

ARTICLE BY ARTICLE COMPARISON
WITH THE HKSAR MODEL AGREEMENT

ARTICLE 1 - SCOPE OF ASSISTANCE

This Article is substantially the same as Article 1 of the Model. Note that the restriction on assistance in relation to tax matters (which appears in Article 1(3) of the Model) has been shifted to Article 3(h) of the Agreement.

ARTICLE 2 - CENTRAL AUTHORITY

This Article is substantially the same as Article 2 of the Model.

ARTICLE 3 - LIMITATIONS ON PROVIDING ASSISTANCE

Note that this Article corresponds with Article 4 of the Model. (Article 3 of the Model – “Other Assistance” – appears as Article 19 of the Agreement – “Compatibility with Other Agreements”).

The Article is substantially the same as Article 4 of the Model, except to the extent that the requirement to consult before postponing or denying assistance (Article 4(5) of the Model) has been removed. In addition, Article 4(4) of the Model (interference with an ongoing

domestic investigation or prosecution) now appears in Article 5(4) of the Agreement.

Article 3(3) of the Agreement (refusal of request) has been drawn from Article 6(4) of the Model.

ARTICLE 4 - FORM AND CONTENT OF REQUESTS

This Article is substantially the same as Article 5 of the Model.

Article 5(3) of the Model (confidentiality of requests) appears in Article 5(5) of the Agreement.

Article 5(4) of the Model (language of requests) forms part of Article 4(1) of the Agreement.

ARTICLE 5 - EXECUTION OF REQUESTS

This Article is substantially the same as Article 6 of the Model. Note that Article 5(2) of the Agreement is derived from Article 7(1) of the Model (Representation).

ARTICLE 6 - COSTS

This Article is substantially the same as Article 7 of the Model.

ARTICLE 7 - LIMITATIONS ON USE

This Article is substantially the same as Article 8 of the Model, except to the extent that information exculpatory of the defendant in a criminal prosecution may be disclosed (Article 7(3)) and information, once made public, may be used for any purpose thereafter (Article 7(4)).

ARTICLE 8 - EVIDENCE IN THE REQUESTED PARTY

This Article is substantially the same as Article 9 of the Model.

Article 8(6) provides for the use of forms to certify items produced in the Requested Party.

ARTICLE 9 - DOCUMENTS AND OFFICIAL RECORDS

This Article is substantially the same as Article 13 of the Model.

Article 9(3) provides for the use of forms to certify official documents produced in the Requested Party.

ARTICLE 10 – APPEARANCE IN THE REQUESTING JURISDICTION

This Article is substantially the same as Article 16 of the Model.

ARTICLE 11 - TRANSFER OF PERSONS IN CUSTODY

This Article is substantially the same as Article 15 of the Model. Note that Article 11(2) also makes provision for transfer of a person from the requesting to the requested Party if this is necessary to give effect to a request for assistance under the Agreement.

ARTICLE 12 - SAFE CONDUCT

Article 12 is substantially the same as Article 17 of the Model.

ARTICLE 13 – LOCATION OR IDENTIFICATION OF PERSONS OR ITEMS

This Article is substantially the same as Article 11 of the Model,

except to the extent that it allows for location of items, as well as persons.

ARTICLE 14 - SERVICE OF DOCUMENTS

This Article is substantially the same as Article 12 of the Model.

ARTICLE 15 - SEARCH AND SEIZURE

This Article is substantially the same as Article 18 of the Model.

ARTICLE 16 - RETURN OF ITEMS

This Article has no corresponding Article in the Model. It was inserted at the request of the Polish side to ensure that items furnished under any request would be returned if required. The power to impose such conditions is already implied in other provisions of the Model (e.g. Article 18(3) : the power to impose conditions, such as the return of the item, in relation to property delivered under the search and seizure provisions).

ARTICLE 17 – ASSISTANCE IN CONFISCATION AND FORFEITURE PROVISIONS

This Article is substantially the same as Article 19 of the Model.

ARTICLE 18 - AUTHENTICATION

This Article is substantially the same as Article 14 of the Model.

ARTICLE 19 - COMPATIBILITY WITH OTHER AGREEMENTS

This Article is substantially the same as Article 3 of the Agreement.

ARTICLE 20 - CONSULTATION

This Article is substantially the same as Article 20 of the Model.

ARTICLE 21 – ENTRY INTO FORCE, DURATION AND TERMINATION

This Article is substantially the same as Article 21 of the Model. At the request of the Polish side, a reference to the duration of the Agreement has been inserted in the heading and sub-paragraph (3) of the Article (1st sentence). In addition, termination of the Agreement shall take effect 3 months after notice, rather than immediately upon notice.

**International Law Division
Department of Justice
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