

AGREEMENT BETWEEN

**THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLE’S REPUBLIC OF CHINA**

AND

THE GOVERNMENT OF THE STATE OF ISRAEL

CONCERNING

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

**ARTICLE BY ARTICLE COMPARISON
WITH THE HKSAR MODEL AGREEMENT**

TITLE AND PREAMBLE

The title and preamble are substantially the same as the Model.

ARTICLE 1 – SCOPE OF ASSISTANCE

Sub-article (1) includes a reference to the “prevention” of offences, as well as to the “investigation” and “prosecution” of offences.

Sub-article (2) is in substantial conformity with the Model. It includes, at item (k), the provision of “any other form of assistance not inconsistent with the laws of the Requested Party”.

Sub-article (3) is in substance the same as the Model. The wording adopted more closely reflects section 5(2) of the Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525.

Sub-article (4) is the same as the Model.

ARTICLE 2 – CENTRAL AUTHORITY

Sub-articles (1), (2) and (4) correspond to sub-articles (1), (2) and (3) of the Model.

Sub-article (3) provides that either party may change its Central Authority, in which case it shall notify the other.

ARTICLE 3 – OTHER ASSISTANCE

In substance this Article is the same as the Model.

ARTICLE 4 – LIMITATIONS ON ASSISTANCE

The chapeau in sub-article (1) makes the denial of assistance either mandatory or discretionary depending upon the law of the Requested Party. This takes account of the fact that under Israeli law, all grounds of refusal are discretionary whilst under Hong Kong law, a number of grounds (sub-articles (a) – (f) and (h)) are mandatory grounds of refusal.

Sub-articles (1)(a) – (d) and (g) – (h) are the same as sub-articles (1)(a), (f), (b) – (c), and (g) – (h) of the Model respectively.

Sub-article (1)(e) corresponds with (1)(d) of the Model, except that it includes, at the request of the Israeli side, the additional reference to “sex” and “social origin”.

Sub-article (1)(f) corresponds with (1)(e) of the Model. It covers prior conviction and acquittal in the Requesting Party (as well as the Requested Party) and excludes lapse of time as a ground of refusal. These modifications are consistent with section (5)(1)(e) of the Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525.

Sub-articles (1)(i) and (j) were included at the request of the Israeli side.

Sub-articles (2) – (5) correspond with sub-articles (2) – (6) of the Model.

ARTICLE 5 – REQUESTS

Sub-article (5)(1) corresponds with sub-articles (1) – (2) of the Model. Provision for oral requests for assistance has been excluded.

Sub-article (2) is the same as sub-article (2) of the Model.

Sub-article (3) provides for requests between the parties in the English language.

ARTICLE 6 – EXECUTION OF REQUESTS

Sub-articles (1) – (4) are the same as the Model.

Sub-article (5) was inserted at the request of the Israeli side in order to facilitate review on the progress of requests in the Requested Party, or of the underlying proceedings in the Requesting Party. A similar provision appears in Article 5(7) of the Agreement with the USA.

ARTICLE 7 – REPRESENTATION AND EXPENSES

Sub-articles (1) – (3) correspond with sub-articles (1) – (3) of the Model.

Sub-article (4) provides for compensation by the Requesting Party for injured third parties if such compensation is ordered by the courts of the Requested Party. This provision was inserted at the request of the Israeli side.

ARTICLE 8 – LIMITATIONS ON USE

Same as Article 8 of the Model.

ARTICLE 9 – OBTAINING OF EVIDENCE

Sub-articles (1) – (2) correspond to sub-articles (1) – (2) of the Model. Sub-article (2) also covers the taking of witness statements, which corresponds with Article 10 of the Model.

Sub-articles (3) – (4) are the same as sub-articles (3) – (4) of the Model.

Sub-article (5) corresponds with sub-article (5)(a) of the Model.

Sub-article (6) provides that if the witness refuses to answer questions based on the law of the Requesting Party, the evidence shall nonetheless be taken and forwarded to the Requesting Party for resolution. This is a variation of sub-articles 5(b) and (6) of the Model, but the same variation has been used in other Agreements (France, Article 10(5); USA Article 9(5); Italy Article 8(5)) and is contemplated under section 10(a) of the Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525.

Sub-articles (7) – (8) are largely procedural and were inserted at the request of the Israeli side.

Sub-article (9) provides for the taking of evidence by video-conference, where appropriate. This was inserted at the request of the Israeli side.

ARTICLE 10 – LOCATION OR IDENTIFICATION OF PERSONS OR ITEMS

Corresponds with Article 11 of the Model.

ARTICLE 11 – SERVICE OF DOCUMENTS

Corresponds with Article 12 of the Model.

ARTICLE 12 – PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

Same as Article 13 of the Model.

ARTICLE 13 – CERTIFICATION AND AUTHENTICATION

Same as Article 14 of the Model.

ARTICLE 14 – TRANSFER OF PERSONS IN CUSTODY

Sub-articles (1) – (2) are substantially the same as sub-articles (1) – (2) of Article 15 of the Model. Sub-article (2) specifically provides that a person whose sentence of imprisonment expires whilst present in the Requesting Party shall be entitled to travel expenses for his or her return to the Requested Party.

ARTICLE 15 – APPEARANCE OF OTHER PERSONS

Sub-articles (1) – (2) are substantially the same as sub-articles (1) – (2) of Article 16 of the Model. Sub-article (2) contains additional reference to the nature of the arrangements for transfer.

Sub-article (3) has no corresponding provision in the Model, but the substance of the provision is implicit in Article 16 of the Model.

ARTICLE 16 – SAFE CONDUCT

Sub-article (1) corresponds to sub-article (1) of Article 17 of the Model, except that it omits immunity from civil suit. This omission was made at the request of the Israeli side, and is consistent with the Agreement with the UK (Article 17(1))

Sub-articles (2) – (5) are the same as sub-articles (2) – (5) of Article 17 of the Model.

ARTICLE 17 – SEARCH AND SEIZURE

Substantially the same as Article 18 of the Model.

ARTICLE 18 – PROCEEDS OF CRIME

Same as Article 19 of the Model.

ARTICLE 19 – SETTLEMENT OF DISPUTES

Corresponds with Article 20 of the Model.

ARTICLE 20 – ENTRY INTO FORCE AND TERMINATION

Sub-article (1) corresponds with sub-article (1) of Article 21 of the Model.

Sub-article (2) makes it clear that the Agreement will apply to requests made after its entry into force even if the request relates to offences occurring prior to that date.

Sub-article (3) corresponds with sub-article (2) of Article 21 of the Model.

**International Law Division
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