

**Article-by-Article Comparison of the
Agreement between the Government of the HKSAR and the
Government of the Republic of Finland concerning Mutual Legal
Assistance in Criminal Matters (“MLA”) and the
Model Agreement on MLA (“model agreement”)**

Preamble

The preamble is the same as the model agreement.

Article 1 – Scope of Assistance

Paragraph (1) follows the similar formulation in the MLA Agreements with Belgium, Denmark and France.

Paragraph 2(a) to (k) is substantially the same as Article I(2) of the model agreement.

Paragraph 2(l) follows the corresponding article in the MLA Agreements with Australia, Belgium, Canada, France, Italy, New Zealand and the Philippines.

Article I(4) of the model agreement was omitted at the request of Finland. Similar omissions are found in the MLA Agreements with Australia, Belgium, France and Switzerland.

Article 2 – Central Authority

Paragraph (1) follows the corresponding article in the MLA Agreements with Denmark, the Netherlands and Portugal.

Paragraph (2) is substantially the same as the model agreement.

Paragraph (3) follows the similar formulation in the MLA Agreements with France and Belgium.

Article 3 – Other Assistance

This article is the same as the model agreement.

Article 4 – Limitations on Compliance

Paragraph (1)(a) to (f) is the same as the model agreement.

The formulation of **paragraph (1)(g)** was proposed by Finland to reflect the requirement under its domestic law. Under the law of Finland, where compulsory measures are requested or where the request otherwise involves the use of compulsory measures, such measures shall not be used, where not permitted under Finnish law, had the offence to which the request relates been committed in Finland in similar circumstances. As far as Hong Kong is concerned, assistance will be refused in the absence of double criminality where compulsory measures are required in execution of the request. Similar provisions are found in the MLA Agreements with France, Switzerland, Italy and Belgium.

Paragraph (1)(h) replaces Article IV(3) of the model agreement and has become a compulsory ground for refusal. Similar provisions are found in the MLA Agreements with Ireland, Italy, Portugal and Poland.

Paragraph (2) is the same as the model agreement.

Paragraph (3) replaces Article IV(1)(g) of the model agreement as a discretionary ground for refusal. Similar formulations are found in the MLA Agreements with Australia, Denmark, the Philippines and Switzerland.

Paragraphs (4) to (6) are the same as the model agreement.

Article 5 – Requests

Paragraph (1) is substantially the same as the model agreement. It should be read in conjunction with the second sentence in Article 2(3) of the Agreement.

Paragraph (2) is substantially the same as the model agreement.

Paragraph (3) is derived from Article V(4) of the model agreement with the official languages clearly spelt out.

Article 6 – Execution of Requests

This article is substantially the same as the model agreement.

Article V(3) of the model agreement has been transposed to Article 6(4) of the Agreement.

Article 7 – Representation and Expenses

This article is substantially the same as the model agreement. Paragraph (1) of the model agreement has been omitted. Similar omissions are found in the MLA

Agreements with Belgium, France and Poland.

Article 8 – Limitations of Use

This article is the same as the model agreement.

Article 9 – Obtaining of Evidence, Documents, Articles or Records

This article is substantially the same as the model agreement.

Article 10 – Obtaining Statements of Persons

This article is substantially the same as model agreement.

Article 11 – Location or Identify of Persons

This article is the same as model agreement.

Article 12 – Service of Documents

Paragraph (1) is the same as the model agreement.

Paragraph (2) is added at the request of Finland. Similar formulations are found in the MLA Agreements with Belgium, Switzerland, France, Australia and the USA.

Paragraph (3) is the same as Article XII(2) of the model agreement.

Paragraph (4) is the same as Article XII(3) of the model agreement.

Paragraph (5) is the same as Article XII(4) of the model agreement.

Paragraph (6) corresponds to Article XII(5) of the model agreement. The additional clause at the end of the paragraph is modelled on Article 8 of the European Convention on Mutual Legal Assistance. Similar formulations are found in the MLA Agreement with Italy.

Article 13 – Publicly Available and Official Documents

This article is substantially the same as model agreement.

Article 14 – Certification and Authentication

This article is the same as model agreement.

Article 15 – Transfer of Persons in Custody

Paragraph (1) is amended because the law of Finland only permits the transfer of prisoners where they will appear as witnesses in the requesting place. Similar formulation is found in Article XIII(1) of the MLA Agreement with Italy.

Paragraph (2) is added at the request of Finland to reflect the position under their domestic law. The provision is consistent with Hong Kong law and our MLA practice.

Paragraph (3) is the same as Article XV(2) of the model agreement.

Article 16 – Transfer of Other Persons

Paragraph (1) follows the similar formulations in the MLA Agreements with France, Italy, Switzerland and Belgium.

Paragraph (2) which is the same as Article 15(2) of the Agreement is added at the request of Finland to reflect the position under their domestic law. The provision is consistent with Hong Kong law and our MLA practice.

Paragraph (3) follows the similar provisions in the MLA Agreements with France, Poland, Italy, Denmark, Belgium, the Netherlands, Canada and Switzerland.

Article 17 – Safe Conduct

Paragraphs (1) and (2) are substantially the same as the model agreement.

Paragraphs (3) to (5) are the same as the model agreement.

Article 18 – Search and Seizure

This article is the same as model agreement.

Article 19 – Proceeds of Crime

Paragraphs (1) to (4) are substantially the same as the model agreement.

Paragraph (5) defines “proceeds of crime”. This definition is useful and similar formulations are found in the MLA Agreements with Australia, the Philippines, Singapore and the UK.

Article 20 – Settlement of Disputes

This article is the same as model agreement.

Article 21(2) – Entry into Force and Termination

Paragraphs (1) and (3) are the same as the model agreement.

Paragraph (2) follows the similar formulations in the MLA Agreements with Australia, Canada, Korea, Belgium, the Netherlands, New Zealand, the Philippines, Singapore and the USA.

Language of the Agreement

The Agreement spells out clearly that in case of divergence in the language agreements, the English language shall prevail. Similar provisions are found in the MLA Agreements with Singapore, Ukraine and Poland.

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