

ARTICLE-BY-ARTICLE COMPRISON OF THE HONG KONG/ INDONESIA MLA AGREEMENT WITH THE MODEL AGREEMENT

TITLE AND PREAMBLE

The title and preamble are substantially the same as the model agreement.

ARTICLE 1 – SCOPE OF ASSISTANCE

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

Paragraph 3 is substantially the same as Article I(3) of the model agreement.

Paragraph 4 is substantially the same as Article I(2) of the model agreement subject to the following variations -

- “Letters rogatory” in Article I(2)(c) of the model agreement is not included. Letters rogatory are court-to-court requests and need not be mentioned in MLA agreements. Precedents can be found in MLA Agreements with Belgium, Canada, Denmark, France, USA, Ukraine, Ireland, Italy, Korea, the Netherlands, New Zealand, the Philippines, Poland, Singapore and Switzerland.
- Article I(2)(j) of the model agreement is not included. Precedents can be found in MLA Agreements with the Netherlands, Poland and Singapore.
- Paragraph 4(h) is added as a “catch-all” provision. Similar provision can be found in MLA Agreements with Australia, Belgium, Canada, France, Ireland, Israel, Italy, Korea, New Zealand, the Philippines, Poland, Singapore and USA.

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

ARTICLE 2 – NON-APPLICATION

This Article was added at the suggestion of Indonesia.

Provisions similar to **paragraph 1** are found in MLA Agreements with Australia [Article I(4)], Belgium [Article 1(4)], France [Article 1(4)], Italy [Article I(4)] , Korea [Article 1.4], Singapore [Article 1(3)] and Switzerland [Article 2].

Paragraph 2 refers to the exclusivity of the right of the Parties in the exercise of their law enforcement functions. Similar provision is found in MLA Agreement with France [Article 1(4)].

ARTICLE 3 – OTHER ASSISTANCE

This Article is substantially the same as Article III of the model agreement.

ARTICLE 4 – CENTRAL AUTHORITY

Paragraph 1 corresponds to Article II(1) of the model agreement.

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

Paragraph 3 caters for a change in the Central Authorities. Similar provision is found in MLA Agreements with Belgium, Denmark, Portugal, Israel, Ireland, Poland, New Zealand, Singapore and Ukraine.

Paragraph 4 is an expansion of Article II(3) of the model agreement.

ARTICLE 5 - REQUESTS

Paragraph 1 is substantially the same as Article V(1) of the model agreement.

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

Paragraph 3 relates to additional information to be set out in requests for specific types of assistance. Similar provision is found in MLA Agreements with Ireland, Korea, the Philippines, Poland, Switzerland and the USA.

Paragraph 4 corresponds to Article V(4) of the model agreement.

Paragraph 5 was added at the suggestion of Indonesia. Similar provision is found in MLA Agreements with New Zealand [Article V(4)], the Netherlands [Article 5(5)], Korea [Article 5(4)] and Canada [Article 4(3)].

ARTICLE 6 – LIMITATIONS ON ASSISTANCE

Paragraph 1(a), (b), (d) and (f) correspond to Article IV(1)(b), (c), (d) and (h) respectively of the model agreement.

Paragraph 1(e) is the amalgamation of Article IV(1)(a) and (f) of the model agreement.

Paragraph 1(c) is substantially the same as Article IV(1)(e) of the model agreement.

Paragraph 1(g) was added at the request of Indonesia to reflect a special requirement stipulated in their law. A special provision is inserted in paragraph 4 of Article 9 of the Agreement for this requirement.

Paragraph 2 corresponds to Article IV(2) of the model agreement. Similar provision is found in MLA Agreements with the Philippines [Article IV(2)(d)] and Singapore [Article 3(4)(c) and (d)].

Paragraph 3 was added principally for the avoidance of doubt. Similar provision is found in MLA Agreement with Belgium.

Paragraphs 4 to 6 are substantially the same as Article IV(4), Article IV(5) and Article IV(6) of the model agreement respectively.

Article IV(3) of the model agreement was not included in the Agreement. It was agreed that assistance may be refused in respect of offences carrying the death penalty on the ground of impairment of essential interest of the Requested Party under paragraph 1(e) of Article 6 unless assurances in the terms of Article IV(3) of the model agreement and section 5(4) of the MLA Ordinance are provided by the Requesting Party.

Paragraph 7 is substantially the same as Article VI(4) of the model agreement.

ARTICLE 7 – EXECUTION OF REQUESTS

This Article is substantially the same as Article VI(1) to (3) of the model agreement.

ARTICLE 8 – RETURN OF MATERIAL TO REQUESTED PARTY

This Article was added at the suggestion of Indonesia. Similar provision is found in MLA Agreements with Korea [Article 11], Poland [Article 16], Singapore [Article 13] and USA [Article 17].

ARTICLE 9 – CONFIDENTIALITY AND LIMITATION ON USE

Paragraph 1 is substantially the same as Article V(3) of the model agreement.

Paragraph 2 is substantially the same as Article VIII(1) of the model agreement.

Paragraph 3 was added at the request of Indonesia. Similar provision is found in MLA Agreement with New Zealand [Article VIII(4)].

Paragraph 4 corresponds to Article VIII(2) of the model agreement. It has been worded to reflect a legal requirement in Indonesia. (See also paragraph 1(g) of Article 6 above).

ARTICLE 10 – SERVICE OF DOCUMENTS

This Article is substantially the same as Article XII(1), (2), (4) and (5) of the model agreement. A minimum number of days is specified in **paragraph 2** for service of witness summonses. Similar provision is found in MLA Agreements with Belgium [Article XI(2)]; France [Article 11(3)]; Italy [Article X(3)]; Korea [Article 10(2)] and the Netherlands [Article 12(3)].

ARTICLE 11 – TAKING OF EVIDENCE

The Article has incorporated Article X of the model agreement which relates to the obtaining of statements from persons.

Paragraphs 1 and 5 are substantially the same as Article IX(1) and (2) of the model agreement respectively.

Paragraph 2 is substantially the same as Article IX(4) of the model agreement. Article IX(3) of the model agreement is now incorporated under paragraph 3 of Article 5.

Paragraphs 3 and 4 are substantially the same as Articles IX(5) and IX(6) of the model agreement respectively.

ARTICLE 12 – AVAILABILITY OF PERSONS IN CUSTODY TO GIVE EVIDENCE OR PROVIDE ASSISTANCE

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

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

Paragraph 4 sets out the obligation to return the person transferred to the Requesting Party. Similar provision is found in MLA Agreements with Ireland [Article 15(2)(b)] and the Netherlands [Article 13(1)].

Paragraph 5 reflects the legal position under section 24 of MLA Ordinance. Similar provision is found in MLA Agreements with Ireland [Article 15(2)(d)], Korea [Article 13(3)], Poland [Article 11(3)(d)] and USA [Article 11(3)(d)].

Paragraph 6 corresponds to Article XVII(5) of the model agreement.

ARTICLE 13 – AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE OR PROVIDE ASSISTANCE

Paragraphs 1 and 2 are substantially the same as Article XVI of the model agreement. There is an additional requirement regarding providing information on expenses and allowances payable in paragraph 1. Similar provision is found in MLA Agreements with Canada [Article 13(2)], France [Article XV(2)], Italy [Article XIV(2)], Denmark [Article 12(2)(c)], Belgium [Article XV(2)], the Netherlands [Article 12(2)(f)], Poland [Article 10], Israel [Article 15(2)], Switzerland [Article 18.3] and Korea [Article 14].

Paragraph 3 corresponds to Article XVII(5) of the model agreement.

ARTICLE 14 – SAFE CONDUCT

Paragraphs 1(a) and (b) are substantially the same as Article XVII(1) of the model agreement. Similar provision is found in MLA Agreement with Ukraine [Article 17(1)].

Paragraph 1(c) corresponds to Article XVII(4) of the model agreement.

Paragraph 2 corresponds to Article XVII(2) of the model agreement.

Paragraph 3 corresponds to Article XVII(3) of the model agreement. The person giving evidence can also be prosecuted for contempt of court. Similar provision is found in MLA Agreements with Australia, Canada, Ireland, Korea, New Zealand, the Philippines and Singapore.

Article XVII(5) of the model agreement now appears separately in paragraph 6 of Article 12 and paragraph 3 of Article 13 under the individual items of assistance.

ARTICLE 15 – PROVISION OF PUBLICLY AVAILABLE DOCUMENTS AND OTHER RECORDS

This Article is substantially the same as Article XIII of the model agreement.

ARTICLE 16 – SEARCH AND SEIZURE

This Article is substantially the same as Article XVIII of the model agreement.

ARTICLE 17 – PROCEEDS OF CRIME

Paragraphs 1 and 2 correspond to Article XIX(1) and XIX(2) of the model agreement respectively

Paragraph 3 is a simplified version of Article XIX(3). Similar provision is found in MLA Agreements with Australia, New Zealand and the Philippines.

Paragraph 4 concern the general principle about respecting the rights of in bona fide third parties. Similar provision is found in MLA Agreements with Australia, the Netherlands and New Zealand.

The first sentence of **paragraph 5** was modelled on earlier agreements with Korea, Poland, Ireland, and USA. The second sentence was added at the request of Indonesia. It reflects the obligations of the Parties under the United Nations Convention Against Corruption 2003 which applies to both HKSAR and Indonesia.

Paragraph 6 is a definition of “proceeds of crime”. Similar provision is found in MLA Agreements with Denmark, the Netherlands, New Zealand, the Philippines, Singapore, United Kingdom and Ukraine.

ARTICLE 18 – CERTIFICATION AND AUTHENTICATION

Paragraphs 1 and 2 are substantially the same as the first part of Article XIV of the model agreement.

Paragraph 3 reflects Hong Kong’s legal position under section 32 of the MLA Ordinance. Similar provision is found in MLA Agreements with Australia, Singapore and the Philippines.

ARTICLE 19 – REPRESENTATION AND EXPENSES

Paragraph 1 corresponds to Article VII(1) of the model agreement.

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

Paragraph 3 corresponds to Article VII(3) of the model agreement.

ARTICLE 20 – SETTLEMENT OF DISPUTE

This Article is identical to Article XX of the model agreement.

ARTICLE 21 - AMENDMENT

This Article was added at the request of Indonesia. Similar provision is found in the MLA Agreement with Malaysia [Article 25] and in the agreement on surrender of fugitive offenders with Indonesia [Article 21].

ARTICLE 22 – ENTRY INTO FORCE AND TERMINATION

Paragraph 1 corresponds to Article XXI(1) of the model agreement.

Paragraph 2 is a useful provision included by agreement of the two sides. Similar provision is found in MLA Agreements with Australia,

Canada, Korea, Belgium, Israel, the Netherlands, Singapore, New Zealand, the Philippines and USA.

Paragraphs 3 and 4 correspond to Article XXI(2) of the model agreement.

OTHERS

Article XI (location or identity of persons) of the model agreement was not included in the Agreement at the suggestion of the Indonesia. Precedents can be found in MLA Agreements with Belgium, Denmark, France, Korea, the Netherlands and Switzerland.

**International Law Division
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