

## **ARTICLE-BY-ARTICLE COMPARISON OF THE HONG KONG / SRI LANKA 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**

This Article is substantially the same as the model agreement.

### **ARTICLE 2 – CENTRAL AUTHORITY**

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

### **ARTICLE 3 – OTHER ASSISTANCE**

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

### **ARTICLE 4 – LIMITATIONS ON COMPLIANCE**

**Paragraph (1)** contains all the grounds of refusal provided for in Article IV(1) of the model agreement with the following modifications –

- The chapeau adopts “may, and shall if required by its law”. Such a formulation gives flexibility if some of the grounds are not mandatory under the law of a Party. It is consistent with Hong Kong’s position under the MLA Ordinance. Similar provision is found in the MLA Agreements with Israel, Denmark and Belgium.
- **Paragraph (1)(a)** is substantially the same as Article IV(1)(a) of the model agreement, but is amended to bring it in line with section 5(1)(a) of MLA Ordinance.
- **Paragraph (1)(e)** (the double jeopardy refusal) is extended to apply in respect of an offence occurring in the “Requesting Party”. The amendment is consistent with section 5(1)(e) of MLA Ordinance and other MLA agreements signed.

**Paragraph (2)** is added at the suggestion of the Sri Lanka to reflect the emerging international trend for multilateral Conventions to provide that the specific offences they comprehend are not political offences. Similar provision is found in the MLA Agreement with Belgium.

## **ARTICLE 5 – REQUESTS**

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

## **ARTICLE 6 – EXECUTION OF REQUESTS**

**Paragraphs (1) – (4)** are the same as Article VI of the model agreement.

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

## **ARTICLE 7 – REPRESENTATION AND EXPENSES**

**Paragraphs (1) and (3)** are the same as Article VII(1) and (3) of the model agreement.

**Paragraph (2)** is substantially the same as Article VII(2) of the model. **Paragraph (2)(d)** makes it clear that the exception in respect of travel expenses and allowances only applies to expenses etc. incurred by persons who travel between the Parties. This reflects Hong Kong's policy in this area.

## **ARTICLE 8 – LIMITATIONS ON USE**

This Article is substantially the same as Article VIII of the model agreement, with evidence specified to include “documents, articles or records” to be consistent with Article 1(1)(g) and Article 9 of this Agreement.

## **ARTICLE 9 – OBTAINING OF EVIDENCE DOCUMENTS, ARTICLES OR RECORDS**

This Article corresponds to Article IX of the model agreement.

**Paragraph (1)** applies in respect of the “investigation and prosecution” of criminal matters and provides that the assistance be “subject to” the

law of the Requested Party.

**Paragraphs (2), (3) and (5)** are the same as the corresponding paragraphs of the model agreement.

**Paragraph (4)** corresponds to Article IX(4) of the model agreement and aligns with section 10(4) of MLA Ordinance.

**Paragraph (6)** is substantially the same as Article IX(6) of the model agreement which has been modified at the request of Sri Lanka to reflect its law in respect of external law certificate.

#### **ARTICLE 10 – OBTAINING STATEMENTS OF PERSONS**

This Article corresponds to Article X of the model agreement slightly modified for consistency with Article 9(1) of this Agreement.

#### **ARTICLE 11 – LOCATION OR IDENTITY OF PERSONS**

This Article is the same as Article XI of the model agreement.

#### **ARTICLE 12 – SERVICE OF DOCUMENTS**

This Article is the same as Article XII of the model agreement.

#### **ARTICLE 13 – PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS**

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

#### **ARTICLE 14 – CERTIFICATION AND AUTHENTICATION**

This Article is substantially the same as Article XIV of the model agreement. The last sentence of the model agreement is deleted as the laws of neither side have such requirements.

#### **ARTICLE 15 – TRANSFER OF PERSONS IN CUSTODY**

This Article is the same as Article XV of the model agreement.

## **ARTICLE 16 – TRANSFER OF OTHER PERSONS**

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

## **ARTICLE 17 – SAFE CONDUCT**

This Article is substantially the same as Article XVII of the model agreement with the reference to “civil matter” in **paragraph (1)** deleted to reflect the Sri Lankan law. Precedents can be found in the MLA Agreements with Canada, Denmark and the UK.

## **ARTICLE 18 – SEARCH AND SEIZURE**

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

## **ARTICLE 19 – PROCEEDS OF CRIME**

This Article is substantially the same as Article XIX of the model, with **paragraph (3)** slightly revised to make it clear that requests shall be executed pursuant to the laws of the Requested Party.

## **ARTICLE 20 – SETTLEMENT OF DISPUTES**

This Article is the same as Article XX of the model agreement.

## **ARTICLE 21 – ENTRY INTO FORCE AND TERMINATION**

This Article is substantially the same as Article XXI of the model agreement save for providing a six-month lead period from the date of notification before the agreement ceases to have effect.

**International Law Division  
Department of Justice  
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