

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

PREAMBLE

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

ARTICLE 1 – SCOPE OF ASSISTANCE

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

Paragraph 5 corresponds with Article III of the model agreement.

ARTICLE 2 – CENTRAL AUTHORITY

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

ARTICLE 3 – LIMITATIONS ON COMPLIANCE

This Article corresponds with Article IV of the model agreement. The rule of double criminality as specified in paragraph (1)(i) only applies in the case of requests made by South Africa to Hong Kong.

Paragraph (1)(h) corresponds with Article IV(2) of the model agreement.

ARTICLE 4 – REQUESTS

Paragraphs (1), (2), (4) and (5) correspond with Article V of the model agreement.

Paragraph (3) does not appear in the model agreement. It provides a more

detailed description of the information to be supplied in support of a request and is similar to Article 4(4) of the HKSAR/US MLA Agreement.

ARTICLE 5 – EXECUTION OF REQUESTS

Paragraphs (1) to (4) correspond with Article VI of the model agreement.

Paragraph (5) is similar to Article 5(7) of the HKSAR/US MLA Agreement.

ARTICLE 6 – REPRESENTATION AND EXPENSES

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

ARTICLE 7 – LIMITATIONS OF USE

Paragraphs (1) and (2) correspond with Article VIII of the model agreement.

Paragraph (3) is similar to Article 7(3) of the HKSAR/US MLA Agreement.

ARTICLE 8 – OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

Paragraphs (1), (3) to (6) are substantially the same as Article IX of the model agreement.

Paragraph (2) relates to the certification that proceedings have been instituted or an investigation has commenced while **paragraph (7)** certification of evidence produced. They were added at the request of South Africa.

ARTICLE 9 – RETURN OF ITEMS AND OBJECTS

This Article was inserted at the request of South Africa and is similar to Article 17 of the HKSAR/US MLA Agreement.

ARTICLE 10 – SERVICE OF DOCUMENTS

This Article corresponds with Article XII of the model agreement.

ARTICLE 11 – PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

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

ARTICLE 12 – CERTIFICATION AND AUTHENTICATION

This Article corresponds with Article XIV of the model agreement.

ARTICLE 13 – TRANSFER OF PERSONS IN CUSTODY

This Article is substantially the same as Article XV of the model agreement. The second sentence in paragraph (1) was inserted to make it clear that the prisoner will be regarded as continuing to serve the sentence imposed while providing assistance in the Requesting Party.

ARTICLE 14 – TRANSFER OF OTHER PERSONS

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

ARTICLE 15 – SAFE CONDUCT

This Article corresponds with Article XVII of the model agreement.

Paragraph (3) provides that the immunity given to witnesses does not extend to contempt of court, in addition to perjury. This is consistent with section 23(2)(b) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525).

ARTICLE 16 – SEARCH AND SEIZURE

This Article corresponds with Article XVIII of the model agreement. The second sentence in paragraph (2) was inserted at the request of South Africa.

ARTICLE 17 – PROCEEDS OF CRIME

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

ARTICLE 18 – SETTLEMENT OF DISPUTES

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

ARTICLE 19 - ENTRY INTO FORCE AND TERMINATION

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

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Department of Justice
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