

HONG KONG SAR / CZECH REPUBLIC  
AGREEMENT ON  
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (“THE AGREEMENT”)

ARTICLE BY ARTICLE COMPARISON  
WITH THE MODEL AGREEMENT

**TITLE AND PREAMBLE**

“Government” has been taken out of the text upon the request of the Czech Republic (“the CR”). The Czech delegation explained that since MLA agreements required parliamentary approval they could not as a matter of Czech law be between two governments. There are precedents in the agreements with Ukraine and Japan,

**ARTICLE 1: SCOPE OF ASSISTANCE**

**Paragraph (1)** is substantially the same as the model Agreement (Article I(1)).

**Paragraph (2)** is substantially the same as the model Agreement (Article I(2)), but slightly expanded and with some paragraphs consolidated. A new “catch-all” clause, paragraph (j) is added to make it more comprehensive. Similar clauses appear in other signed Agreements, e.g. Japan (1(2)(9)), Italy(I(2)(k)), Ireland (1(2)(j)), Sri Lanka (1(2)(j)), India (I(2)(k)), Finland (1(2)(l)) and Indonesia (1(4)(h)).

**Paragraphs (3) and (4)** are the same as the model Agreement (Article I(3) & (4)).

**ARTICLE 2: CENTRAL AUTHORITY**

Consistent with Hong Kong practice and provisions in other signed Agreements.

**ARTICLE 3: LANGUAGE OF REQUESTS**

Article 3 is an amended version of Article V(4) of the model Agreement. The amended version is more flexible. The same approach was adopted in Article 4(4) of the Agreement with Ireland.

The substance of Article III of the model text is embodied in Article 21.

## ARTICLE 4: REFUSAL OR POSTPONEMENT

The title of Article IV has been amended to include as reference to postponement of its granting of assistance. It is acceptable as it reflects the contents of this Article.

**Paragraph (1)(d)** is substantially the same as Article IV(1)(d) of the model Agreement, with the addition of “sex” at the request of the CR. Similar formulation can be found in the agreements with Australia (IV(1)(d)), New Zealand (IV(1)(d)), Italy (III(1)(e)), South Korea (4(1)(d)), Singapore (3(1)(d)), Israel (4(1)(e)), Germany (4(1)(5)), Japan (3(1)(5)), Philippines (IV(1)(d)), Belgium (IV(1)(d)), Malaysia (4(1)(d)) and Indonesia (6(1)(d)).

**Paragraph (1)(e)** is added at the request of the CR in accordance with international human rights obligations. It is acceptable to Hong Kong as the same obligations apply.

**Paragraphs (1)(f) to (i)** are the same as Articles IV(1)(e) to (h) of the model Agreement.

## ARTICLE 5: REQUESTS

**Paragraph (1)** excludes oral requests, but a request sent by fax is included. This is acceptable because it is essentially the same as the model Agreement which specifies that requests should be in writing. Similar formulations can be found in the Agreements with France (II(3)) and Italy (IV(1)).

**Paragraphs (2)(a), (b), (f) to (h)** are substantially the same as the corresponding provisions in Article V(2) of the model Agreement.

**Paragraphs (2)(c) and (e)** correspond to Article V(2)(c) and (e) of the model text. Changes have been made at the request of the CR to better reflect their legal requirements. Paragraph 2(d) was added at the request of the CR. All changes are consistent with Hong Kong practice. There are similar provisions in the Agreements with South Korea (5(3)(a)), Switzerland (27(1)(f)), Canada (4(2)(h)), Philippines (V(3)(a)), Germany (5(2)(7)), Malaysia<sup>1</sup> (6(2)(a)), Ireland (4(3)(a)), and Indonesia<sup>2</sup> (5(3)(a)).

**Paragraphs (3) and (4)** of Article V of the model Agreement become Article 8(1) and Article 3 of the Agreement respectively.

## ARTICLE 6: EXECUTION OF REQUESTS

Substantially the same as Article VI of the model Agreement.

## ARTICLE 7: REPRESENTATION AND EXPENSES

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<sup>1</sup> Not mandatory.

<sup>2</sup> Not mandatory.

**Paragraphs (1) and (3)** are the same as the corresponding provisions in Article VII of the model Agreement.

**Paragraph (2)** has been expanded to cover fees of receivers and the extensive reproduction of documents. Similar provision covering the costs of managing property can be found in the Agreement with Germany (7(2)).

#### **ARTICLE 8: LIMITATIONS ON USE OF INFORMATION**

**Paragraph (1)** has the same effect as Article V(3) and Article VIII(2) of the model Agreement. Paragraph (2) is substantially the same as Article VIII(1) of the model Agreement.

**Paragraph (3)** is added at the request of the CR. It is an expanded version of Article VIII(2) of the model Agreement and permits the use of information obtained pursuant to a request to certain defined purposes that are not specified in the request. Those defined purposes are consistent with the spirit of the Agreement and, hence, are acceptable.

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

The title has been expanded to be more comprehensive and consistent with the contents of the Article.

**Paragraph (1)** is a consolidation of Article IX (1) and (2) of the model Agreement. The new paragraph (1) is modelled on Article 3 of the European Convention on Mutual Assistance in Criminal Matters at the request of the CR. It has the same effect as paragraphs (1) and (2) of the model text and is more concise.

**Paragraphs (2) to (5)** are identical to Article IX (3) to (6) of the model Agreement.

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

Article 10 is identical to Article X the model Agreement.

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

Article 11 is identical to Article XI the model Agreement.

## **ARTICLE 12: SERVICE OF DOCUMENTS**

Article 12 is substantially the same as Article XII of the model Agreement.

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

Article 13 is substantially the same as Article XIII of the model Agreement.

## **ARTICLE 14: CERTIFICATION AND AUTHENTICATION**

Article 14 has been amended to specifically state that no consular certification is required. This amendment is acceptable as neither Hong Kong nor Czech law requires such certification or authentication.

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

**Paragraph (1)** is identical to Article XV(1) of the model Agreement.

**Paragraph (2)** is substantially the same as Article XV(2) of the model Agreement.

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

**Paragraph (1)** has been slightly amended into the more appropriate wording “inviting a person to appear”, since the Requested Party cannot “make available” a person to provide assistance. The substance is the same as Article XVI(1) of the model text.

**Paragraph (2)** Consequent upon changes to paragraph (1), the new paragraph (2) limits the obligation of the Requested Party to informing the Requesting Party of the person’s response and not to oblige the Requested Party to consider the question of the person’s security as in Article XVI(2) of the model Agreement. The question of security is for the person himself to consider when deciding whether to agree to appear.

**Paragraph (3)** deals with the question of the person’s expenses. There is similar provision in other signed Agreements, e.g. Canada (13(2)), France (XV(1)), Belgium ( XV), Switzerland (18) and Singapore (8).

## **ARTICLE 17: SAFE CONDUCT**

**Paragraph (1)** deals separately with criminal and civil immunity. It is substantially the same as Article XVII (1) of the model Agreement. A similar formulation can be found in HKSAR's agreement with Ukraine (17).

**Paragraphs (2) to (5)** are the same as Article XVII (2) – (5) of the model Agreement.

#### **ARTICLE 18: SEARCH AND SEIZURE**

**Paragraphs (1) and (2)** are the same as Article XVIII (1) and (2) of the model Agreement.

**Paragraph (3)** has been amended at the request of the CR to include a second sentence to the effect that the Requesting Party may dispose of seized property provided that the Requested Party consents. This is consistent with the approach in Article XVIII(3) of the model Agreement.

#### **ARTICLE 19: PROCEEDS OF CRIME**

**Paragraphs (1), (2) and (4)** are substantially the same as Article XIX of the model Agreement.

**Paragraph (3)** has been amended to restrict the execution of the request to that provided by the laws of the Requested Party. This is appropriate since the Hong Kong SAR can only provide assistance pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance [Cap. 525], in cases where the offence carries a maximum penalty of 2 years or more, under Laws of the Hong Kong SAR.

#### **ARTICLE 20 : SPONTANEOUS INFORMATION**

New Article added at the request of the CR. The Article allows law enforcement agencies to provide to each other information considered relevant for criminal proceedings without a request. Similar formulation can be found in the agreements with Belgium and Switzerland. Paragraphs (2) and (3) provide that the use of information may be restricted.

#### **ARTICLE 21: SETTLEMENT OF DISPUTES**

Article 21 is identical to Article XX of the model Agreement.

#### **ARTICLE 22: COMPATIBILITY WITH OTHER AGREEMENTS**

Article 22 is substantially the same as Article III of the model Agreement.

### **ARTICLE 23: ENTRY INTO FORCE AND TERMINATION**

**Paragraph (1)** is the same as Article XXI(1) of the model Agreement.

**Paragraph (2)** has been amended at the request of the CR to provide for termination to take effect 6 months after the giving of notice. The second sentence of Article XXI(2) of the model Agreement, which provides for the continuous execution of requests made prior to the service of the termination notice, has been deleted at the request of the CR. A similar deletion was made in the Agreement with the Philippines.

### **SIGNATURE PARAGRAPH**

The English text is made the prevailing text in case where disputes concerning interpretation arise. This is acceptable since the agreement was negotiated in English and English is an official language of the Hong Kong SAR.

Precedents can be found in HKSAR's agreements with Ukraine, Poland, Singapore, Finland and Indonesia.