

## **HONG KONG SAR / UKRAINE AGREEMENT ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

### **ARTICLE BY ARTICLE COMPARISON WITH THE MODEL AGREEMENT**

#### **TITLE AND PREAMBLE**

According to Ukraine Constitutional Law Mutual Legal Assistance Agreements must be between Ukraine and the other jurisdiction. Such Agreements cannot be Government to Government because they concern human rights. We accordingly agreed to the Agreement being between Ukraine and the Hong Kong SAR.

#### **ARTICLE 1: SCOPE OF LEGAL ASSISTANCE**

**Paragraph (1)** is substantially the same as the model text.

**Paragraph (2)** is substantially the same as the model agreement, but slightly expanded and with the sequence rearranged.

**Paragraph (3)** is amended to reflect section 5(2) of the Mutual Legal Assistance in Criminal Matters Ordinance [Cap. 525].

**Paragraph (4)** is the same as the model agreement.

#### **ARTICLE 2: CENTRAL AUTHORITIES**

Ukraine requested that there be two central authorities, the General Prosecutor's Office and the Ministry of Justice. This was because the General Prosecutor's Office was in charge of pre-trial investigations, while the Ministry of Justice was responsible for the judicial proceedings. Due to the division of work between these

two authorities, the provision for two central authorities was necessary. Where Hong Kong is the requesting Party it will forward its request to what it considers to be Ukraine's appropriate Central Authority. That authority will either process the request or forward it to the other Central Authority for processing.

### **ARTICLE 3: OTHER ASSISTANCE**

The same as the model agreement.

### **ARTICLE 4: LIMITATIONS ON COMPLIANCE**

The model text is adopted except that the definition on “essential interests” in paragraph (2) of the model text is not included as being unnecessary. The same approach was adopted in the HKSAR Agreements with France, the USA, Italy, the Philippines and Switzerland.

### **ARTICLE 5: CONTENTS AND FORM OF REQUESTS FOR LEGAL ASSISTANCE**

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

**Paragraph (2)** is substantially the same as Article V(2) of the model Agreement with a “catch-all” clause, paragraph (h), added. A similar “catch-all” clause is found in the Agreements with Korea and the USA.

**Paragraph (3)** Since it would be very difficult for Hong Kong to arrange for documents to be translated into Ukraine it was agreed that English could be used.

## **ARTICLE 6: EXECUTION OF REQUESTS FOR LEGAL ASSISTANCE**

Substantially the same as Article VI of the model Agreement.

## **ARTICLE 7: REPRESENTATION AND EXPENSES**

Article 7 is substantially the same as Article VII of the model with the “expenses of translation” expanded to “expenses of translation, interpretation and record-keeping” as one of the categories of “ordinary expenses”. This is a more comprehensive definition. Similar formulations are found in the Hong Kong SAR’s agreements with the USA and Switzerland.

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

Article 8 is substantially the same as the Article VIII of the model agreement.

## **ARTICLE 9: OBTAINING EVIDENCE**

**Paragraph (1)** is the same as provisions in most of HK's signed Agreements.

**Paragraphs (2) and (3)** are the same as Article IX(2) and (3) of the model agreement.

**Paragraph (4)** is substantially the same as Article IX(4) of the model agreement, but is slightly altered to follow more closely the provisions of section 10(4) of the Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525, Laws of the Hong Kong SAR.

**Paragraphs (5) and (6)** are substantially the same as Article IX(5) and (6) of the model agreement.

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

Article 10 is slightly altered for consistency with Article IX(1).

## **ARTICLE 11: LOCATION OR IDENTIFICATION OF PERSONS AND ARTICLES**

Article 11 is expanded to cover both location or identity of persons and articles, instead of just persons. Similar formulation is found in the Agreements with the USA and Canada.

## **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: AUTHENTICATION**

Article 14 is expanded to cover not only the documents to be transmitted to the Requesting Party but also the documents submitted in support of a request. There is no specific reference to authentication by consular or diplomatic officers but this is covered by the references to the material not requiring "any particular form of certification or authentication unless the law of the Requesting Party specifically so requires". The agreement with the Philippines also has no reference to authentication by consular

or diplomatic officers.

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

Article 15 is substantially the same as Article XV of the model agreement.

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

Article 16 is identical to Article XVI of the model of agreement.

## **ARTICLE 17: SAFE CONDUCT**

**Paragraph (1)** separates (in paragraphs (a) and (b)) criminal and civil "immunity". It is in substance the same as Article XVII(1) of the model Agreement.

**Paragraphs (2) to (5)** are substantially the same as Article XVII (2) - (5) of the model agreement.

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

Article 18 is substantially the same as Article XVIII of the model agreement.

## **ARTICLE 19: PROCEEDS FROM CRIME**

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

**Paragraph (5)** provides for a definition of "proceeds from crime". It adopts the wordings used in the definition of "external confiscation order" in the Mutual Legal Assistance in Criminal

Matters Ordinance, Cap. 525, Laws of the Hong Kong SAR.

## **ARTICLE 20: SETTLEMENT OF DISPUTES**

Article 20 is identical with Article XX of the model agreement.

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

**Paragraph (1)** is identical with the Article XXI(1) of the model agreement.

**Paragraph (2)** provides for 6 months' notice of termination. The agreements with Australia, Korea, New Zealand, USA, Philippines, Portugal, Switzerland and the UK provide for 3 months notice of termination. The model agreement provides for termination on the giving of notice. All are acceptable.

**Signature Paragraph** is expanded to include "in case of divergence in interpretation the English text shall prevail". The inclusion was proposed by the Ukrainian authorities. There is no precedent for such a provision in other MLA Agreements although such provisions have been included in air services agreements.