

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

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

#### **PREAMBLE**

Substantially the same as the Hong Kong model agreement (“the model agreement”), except that “suppression of crime” is used”. The wording is derived from the Singapore model agreement and the same approach is adopted in the HKSAR/Switzerland Agreement.

#### **ARTICLE 1 – SCOPE OF ASSISTANCE**

**Paragraph (1)** is similar to Article I(1) of the model agreement. The provision of assistance is to be “subject to” the parties’ respective domestic laws.

**Paragraph (2)** is substantially the same as Article I(2) in the model agreement. Paragraph (2)(f) of the model agreement is not included; Singapore law does not allow for the transfer of persons in custody to provide assistance.

**Paragraph (3)** is not in the model agreement but similar variations can be found in other signed Agreements [e.g. Article 2 HKSAR/Switzerland Agreement]. It derives from Article 2(3) of the Singapore model agreement.

Article I(3) of the model agreement was not included as Singapore cannot provide assistance for taxation offences.

## **ARTICLE 2 – EXCLUSION OF THIRD PARTY RIGHTS**

Substantially the same as Article I(4) of the model agreement. This is a stand-alone article in the Singapore model agreement.

## **ARTICLE 3 – REFUSAL OR POSTPONEMENT OF EXECUTION OF REQUESTS**

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

- subparagraph (d) is expanded to take into account a person’s “sex” and “ethnic origin” so as to align with Singapore law;
- subparagraph (e) is expanded to cover offences in the “Requesting Party”;
- subparagraph (f) is revised at the request of Singapore to reflect the fact that Singapore Law refers to “public interest”.

**Paragraph (2)** is a combined version of Article IV(4) and IV(5) of the model agreement.

**Paragraph (3)** is the same as Article IV(6) of the model agreement.

**Paragraph (4) (a) and (b)** is added at the request of Singapore to reflect their mandatory grounds of refusal and is acceptable;

**Paragraph (4)(c) and (d)** is to the same effect as Article IV(2) of the model agreement.

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

Article IV(3) of the model agreement covering refusal for death penalty cases is not included. Singapore however agreed that Hong Kong could use the “essential interests” ground (see Article 3(1)(f)) to deny assistance in respect of death penalty offences. The same approach was adopted in the USA and Philippines Agreements.

#### **ARTICLE 4 – OBTAINING STATEMENTS OF PERSONS**

This Article corresponds to Article X of the model agreement. It is taken from Article X of the HKSAR/New Zealand Agreement and deals with the obtaining of “voluntary” statements of persons in relation to a criminal matter. The New Zealand Article was adopted because like New Zealand, Singapore cannot compel the taking of evidence at the investigation stage.

#### **ARTICLE 5 – OBTAINING OF EVIDENCE**

**Paragraphs (1) and (3)** make it clear that evidence cannot be taken at the investigation stage.

**Article 5** is otherwise substantially the same as Article IX of the model agreement with the omission of Article IX(2).

Article IX(2) of the model agreement is made a separate article dealing with production of material. The splitting into two articles was considered desirable because Singapore can compel the production of material at the investigation stage.

#### **ARTICLE 6 – PRODUCTION OF MATERIAL**

This Article provides for production of material for the purposes of any criminal matter and is modeled on Article IX(2) of the model agreement.

## **ARTICLE 7 – ATTENDANCE OF PERSONS**

This Article corresponds to Article XVI of the model agreement. The provision provides that the Requested Party may “arrange” for the attendance of persons. As previously indicated (see Article 1(2)) Singapore law does not permit the transfer of prisoners to provide assistance.

## **ARTICLE 8 – CONSENT OF PERSONS**

This Article is substantially the same as the HKSAR/Canada Agreement, Article 13(2).

## **ARTICLE 9 – SAFE CONDUCT**

This Article has the same effect as Article XVII of the model agreement.

**Paragraph (1)** deals with the content of paragraphs (1), (3) and (4) of Article XVII of the model agreement. For consistency with Singapore Law the requesting Party is to provide undertakings in respect of the various aspects of “safe conduct”.

In addition -

- in subparagraph (1)(a)(iii), “contempt of court” is added to align with the laws of Singapore and Hong Kong; and
- subparagraphs (1)(a)(iv) and (1)(b) are new provisions derived from the Singapore model agreement.

The modifications are consistent with HK practice and are acceptable.

**Paragraph (2)** is substantially the same as Article XVII(2) of the model agreement but provides in addition that the person is to be “officially and personally” notified.

**Paragraph (3)** is substantially the same as Article XVII(5) of the model agreement.

## **ARTICLE 10 – CONFISCATION AND FORFEITURE**

This Article corresponds to Article XIX of the model agreement, except that Article XIX(4) is made a separate article entitled “Accrual of confiscated or forfeited property”.

**Paragraph (1)** is derived from the Singapore model agreement and is to the same effect as paragraphs (1), (2) and (3) of Article XIX of the model agreement.

**Paragraph (2)** is a new provision derived from the Singapore model agreement. The provision which makes it clear that assistance will not be provided in respect of proceedings instituted before the coming into force of the Agreement is not objectionable.

**Paragraph (3)** - The inclusive definition of “property used or derived from the commission of offences” is consistent with the MLA Ordinance.

## **ARTICLE 11 – ACCRUAL OF CONFISCATED OR FORFEITED PROPERTY**

Substantially the same as Article XIX(4) of the model agreement.

## **ARTICLE 12 – SEARCH AND SEIZURE**

This Article is substantially the same as Article XVIII(1) and (2) of the model agreement.

**Paragraph (1)** is expanded to set out the requirements for seeking assistance of this nature. These requirements are in line with the MLA Ordinance.

## **ARTICLE 13 – RETURN OF MATERIAL**

This is made a stand-alone article to deal with material delivered to the Requesting Party under the Agreement.

**Paragraph (1)** is derived from the Singapore model agreement and is in line with requirements under sections 10(14)(b) and 12(11)(b) of the MLA Ordinance.

**Paragraph (2)** is taken from Article XVIII(3) of the model agreement.

## **ARTICLE 14 – LOCATING OR IDENTIFYING PERSONS**

Substantially the same as Article XI of the model agreement.

## **ARTICLE 15 – SERVICE OF PROCESS**

This Article corresponds to Article XII of the model agreement.

**Paragraphs (1) and (2)** are the same as Article XII(1) and (2) of the model agreement.

Article XII(3) of the model agreement was deleted as Singapore would not be able to provide information in relation to outstanding warrants or judicial orders. This provision was deleted in other signed agreements, such as US, France and Switzerland, for the same reason.

## **ARTICLE 16 – EFFECT OF SERVICE OF PROCESS**

**Paragraph (1)** corresponds to Article XII(5) of the model agreement but is modified by adding “liability” after “penalty” to align with Singapore law. It is acceptable.

**Paragraphs (2) and (3)** are added to reflect the requirements of Singapore law. Requirements set out in paragraph (2) (a) and (b) are consistent with our practice. Paragraphs (2)(c) and (3) derive from section 39 of Singapore’s Mutual Legal Assistance Act (“MAA”) and

are acceptable.

## **ARTICLE 17 – PROOF OF PROCESS**

Same as Article XII(4) of the model agreement.

## **ARTICLE 18 – PROVISION OF PUBLIC AND OFFICIAL DOCUMENTS**

Substantially the same as Article XIII of the model agreement.

## **ARTICLE 19 – FORM AND CONTENTS OF REQUESTS**

A more detailed version of Article V of the model agreement. It covers Article V(1) and (2) of the model agreement and sets out the basic requirements in respect of each type of assistance, all of which are consistent with the MLA Ordinance.

Article V(4) of the model agreement is made a separate article on “Language”.

## **ARTICLE 20 – CENTRAL AUTHORITIES**

Article 20 amalgamates Articles II and VI of the model agreement so that this Article deals with both Central Authorities and the execution of the requests.

**Paragraphs (1) – (3)** are substantially the same as Article II of the model agreement.

**Paragraphs (4) – (6)** are substantially the same as Article VI(1) – (3) of the model agreement.

## **ARTICLE 21 – CONFIDENTIALITY**

Article 21 covers both the use of material provided and the maintenance

of confidentiality in respect of requests.

**Paragraphs (1) and (2)** deal with the limitation of use imposed on the Requesting Party. The provisions have the same effect as Article VIII of the model agreement.

**Paragraph (3)** sets out the confidentiality obligation of the Requested Party in the execution of requests. It is an expansion of Article V(3) of the model agreement and is the same as Article VIII(1) of the HKSAR/Australia Agreement.

## **ARTICLE 22 – AUTHENTICATION**

This Article specifies authentication requirements which are consistent with section 32 of the MLA Ordinance.

## **ARTICLE 23 – LANGUAGE**

Same as Article V(4) of the model agreement.

## **ARTICLE 24 – REPRESENTATION AND EXPENSES**

**Paragraph (1)** is identical to Article VII(1) of the model agreement.

**Paragraphs (2) and (3)** are substantially the same as Article VII(2) and VII(3) of the model agreement with paragraph (2)(b) modified to include “interpretation and transcription”.

## **ARTICLE 25 – OTHER FORMS OF ASSISTANCE**

This Article is an expanded version of Article III of the model Agreement.



## **ARTICLE 26 – CONSULTATIONS**

**Paragraph (1)**, which derives from the Singapore model agreement, deals with the interpretation, application, and implementation of the Agreement by the Central Authorities through timely consultation. This conforms with our practice.

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

## **ARTICLE 27 – ENTRY INTO FORCE AND TERMINATION**

**Paragraphs (1) and (3)** are the same as Article XXI of the model agreement except for a 3-month lead period from the date of notification before the Agreement ceases to have effect.

**Paragraph (2)** is a common variation which provides that assistance can relate back to offences which occurred before the Agreement enters into force. Such provisions can be found in our signed agreements with the US, New Zealand, Philippines and Korea.

## **LAST PARAGRAPH**

The following sentence is added at the end of the text at Singapore's suggestion:

*“In case of divergence between the texts, the English text shall prevail.”*

Singapore informed that they had a pending case on divergence between texts used in an agreement. They wished to insert the sentence to avoid unnecessary litigation and also on the basis that English was Singapore's only official language. Adding the sentence is acceptable.